



Office of Mayor Miro Weinberger

MEMORANDUM

TO: City Council
FROM: Mayor Miro Weinberger
DATE: October 10, 2017
RE: Burlington Telecom Finalists

After months of due diligence, analysis and deliberation, the City Council is scheduled to vote to narrow the list of BT bidders to two next Monday, October 16, 2017. This memorandum shares my perspective on this important decision and offers a recommendation for your consideration.

After careful review of the three proposals before the Council, as well as the opinions of the Burlington Telecom Advisory Board (BTAB) and the multiple professionals we have advising us on this transaction, I have come to the conclusion that only the Schurz Communications and Ting/Tucows proposals meet all of the sales criteria developed by the public and approved by the City Council. I have great appreciation for the Keep Burlington Telecom (KBTL) leaders and its committed volunteers, and their engagement will impact and improve the future of Burlington Telecom no matter which bid the City ultimately chooses. KBTL proponents deserve our appreciation and respect for their ingenuity and sustained commitment to the importance of local control, which has done much to shape this process and all of the bids we have received. Unfortunately, as a result of a host of operational, financial, regulatory, and ultimately legal concerns, I do not believe the KBTL proposal offers the City a viable path forward. I respectfully urge you to forward the Schurz Communications and Ting/Tucows bids to the final stage to keep the City on track for a successful resolution of the Burlington Telecom challenge in a way that achieves enormous community benefit.

Background: Current BT choices defined by history and 2014 settlement

At the beginning of 2014, the City was months away from the start of a federal jury trial in which Citibank was seeking more than \$33.5 million plus other damages and the return of the underground fiberoptic cable and/or the placement of BT into receivership. While the City had addressed the acute liquidity concerns created by the misappropriation of \$17 million of taxpayer funds, there was no available route for recouping any of these resources. Largely as a result of this situation, the City's credit rating was pegged at the edge of junk bond status and had been for over a year and a half.

In early 2014, the City negotiated a settlement agreement with Citibank that was ratified unanimously by the City Council and achieved three major outcomes: 1) it protected taxpayers from further financial liability for Citibank's claims; 2) it kept BT's fiberoptic cable in the ground and the BT entity out of receivership; and 3) it allowed the City to continue operating BT for up to five years while negotiating and directing the sale of BT.

The City has used the years since the settlement agreement effectively. The strong performance by the City's BT team, the leadership of Dorman & Fawcett, and the stability created by the settlement agreement have resulted in an approximately 75 percent increase in customers over three and a half years and a dramatic financial improvement, greatly increasing the entity's value. Further, the Council-approved deliberative bidding process has enabled the City to secure multiple strong proposals for our consideration.

Criteria for selecting buyer and long-term operator

In April 2016, after significant public testimony and deliberation, the City Council approved 13 criteria to guide the sale process and evaluation of bids. Attached is a table that assesses the three proposals on each of the criteria. This table incorporates the professional feedback the City has received from the BTAB, Dorman & Fawcett, an independent accountant, the City Attorney and outside counsel, and an independent telecom expert. It illustrates that our professionals have been unanimous in their assessment that the Schurz and Ting/Tucows proposals meet the criteria.

The table also illustrates the concerns that have been raised by the BTAB and the professionals retained by the City regarding the shortcomings of the KBTL proposal on four of the 13 criteria. Of particular concern are the deficiencies of the KBTL proposal with respect to the foundational criteria of establishing a skilled, experienced management team and demonstrating sufficient financial capacity. These two criteria will be the main focus of the upcoming State regulatory review process and the KBTL proposal's weakness in these areas raises serious concerns about the ability of the start-up organization to deliver the community benefits KBTL seeks to achieve.

The top bids secure major benefits for BT customers, taxpayers and the City

The top two bids from Schurz and Ting/Tucows are very strong, meet the BTAB criteria, and if accepted, both would create a long list of valuable benefits for BT users, taxpayers and the City:

BT customers

- Both proposals involve a stable, well-capitalized, experienced operator that will ensure that Burlingtonians have access to very high-speed internet for the foreseeable future. There will be no return to the financial and operational uncertainty that marked BT's early years.
- Customer pricing would be capped for years – and may decrease over time as a result of the telecom competition created by BT and protected by the enduring, enforceable, anti-monopoly clause in the sales agreement.
- BT's network would finally be built out to the entire community by approximately 2019, making BT available to the approximately 15 percent of the city's homes that cannot currently connect to BT's services.
- Customer service will continue to be provided by Burlington-based staff and support hours will be expanded significantly and improved with additional options and technologies.
- Continuation of the net neutrality, privacy, and digital divide policies that BT customers have come to expect and value.

Taxpayers

- Finalizing an agreement with either of the two top bidders will bring permanent resolution to the Citibank lawsuit that undermined the City's credit rating and exposed taxpayers to tens of millions of dollars of potential liability. Moody's last City review indicated that completion of the BT sale would be a credit-positive development that would likely result in another tax-saving credit rating increase.

- The top two bids would return approximately \$6 million of value – in cash, real estate, and/or equity in the new BT – to the taxpayers.
- The bids would provide funds to offset the cost to the Burlington Employee Retirement System for the unfunded future liability for BT employees when BT ceases to be a City Department. This liability is currently estimated to be approximately \$1 million.

The City of Burlington

In addition to the direct financial benefits noted above, the City would benefit from local elements of both proposals:

- Both bidders would commit to substantial annual investment, perhaps as much as \$250,000 a year, in the Burlington entrepreneurial ecosystem and additional community investments through continued support of BTV Ignite and other efforts.
- Burlington’s outstanding Public, Educational, and Government (PEG) media opportunities would continue to be supported.
- The City would secure enduring access rights to the fiber to Burlington homes to pursue a variety of Smart City initiatives in the years ahead.
- BT would continue to operate under the current logo with a Burlington office and a robust local operation.
- To protect these and other local commitments and recoup taxpayer value over time, the City would have the option, subject to regulatory approval, to reinvest sale proceeds back into equity in the new company.

Accepting the KBTL proposal would expose BT and the City to major risks

All of us hoped that the local telecom cooperative would make a strong proposal, and the City encouraged the development of such a proposal for years. We met and communicated with KBTL leadership for years before the commencement of the bidding process, ensured that the cooperative perspective was well-represented on the Burlington Telecom Advisory Board (BTAB), and gave KBTL the opportunity to improve its bid in recent months despite deep concerns about its viability.

The BTAB summarized its unanimous concerns to the Council in its July 10, 2017 report:

“The KBTL proposal to date has been the weakest of the 8 respondents. The proposal submitted on 5th June was incomplete and a further update due on 30 June was also incomplete. The proposal relies very heavily on expensive debt and this weak capital structure has the BTAB very concerned about the risk of losing the asset again to the lender. We are also concerned that there is no management depth beyond the existing team. The BTAB is pessimistic that the PSB would ever approve this structure given the debt, lack of capital and lack of management experience in the industry. The BTAB has moved this proposal forward to the Council due to the significant public interest in the offer. However, unless KBTL can address the concerns of the BTAB we do not believe this to be a viable offer.”

Three months later, the concerns remain largely unaddressed. In addition, in the time since the BTAB report, our attorneys have advised us that selecting the KBTL proposal will result in Citibank and possibly the City’s own taxpayers taking legal action against the City, seeking millions of dollars from the City for selecting a proposal that totals less than half of the other proposals we have before us. Citibank has also indicated it would seek to intervene in the regulatory process before the Public Utilities Commission, the State regulator.

In sum, I greatly appreciate the hard work of the KBTL Board and other volunteer supporters to present the City with an option for continued local ownership. KBTL's focus on local issues throughout this process has helped shape the City's goals and improved the quality of the other proposals we received. Regrettably, however, the KBTL offer is simply not a viable option for the City to pursue. Selecting it would put Burlington Telecom's future on very uncertain footing and threaten to undo the progress we have made together with BT over the past five years.

Forwarding only one of the top bidders to the final round will undermine the City's negotiations during the critical phase of legal document negotiations

Finally, it is crucial to remember that we have only letters of intent at this stage from the bidders. As a result, the commitments in them are conceptual and not yet backed by comprehensive, enforceable language. We designed this process together understanding that it was important to have two strong, viable bids still under consideration through the legal documentation phase. The City's ability to negotiate strong language to protect the benefits discussed in this memo will be undermined if only one viable proposal is forwarded to the final stage.

Conclusion

In summary, after years of hard work and tough decisions by this Council, we have two proposals before us that meet all of the thoughtful criteria established by the Council for BT's future. Let's seize the opportunity before us to secure the multiple benefits either of these proposals will deliver for BT customers, taxpayers and the City. I look forward to working with the Council in the coming weeks to finish this important job for the people of Burlington.