



City Council Adjourned Session to Continue Agenda from 10/30 - Monday, November 6, 2017, 7:00 pm, Contois Auditorium, City Hall 11/6/2017

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

November 6, 2017

MEMBERS PRESENT: Jane Knodell (Council President) – Central District

David Hartnett – North District

Joan Shannon – South District

Richard Deane – East District

Sharon Foley Bushor – Ward 1

Max Tracy – Ward 2

Sara Moore – Ward 3

Kurt Wright – Ward 4

William “Chip” Mason – Ward 5

Karen Paul – Ward 6

Ali Dieng – Ward 7

Adam Roof – Ward 8

ADMINISTRATION: Miro Weinberger, Mayor

Beth Anderson, Interim CAO

Rich Goodwin, DFO

Eileen Blackwood, City Attorney

Brian Lowe, Mayor’s Office

Katie Vane, Mayor’s Office

Lori Olberg, C/T

Amy Bovee, C/T



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OTHERS PRESENT: Raphine O'Rourke

Representative(s) from Ting

Representative (s) from BTAB

Members of the public

1.0 DELIBERATIVE AGENDA

1.01 Continuation of Selection of Buyer for Burlington Telecom

City Council President Knodell reopened the meeting recessed on 10/30/17 at 7:12 PM and announced her intention to participate in the discussion so Councilor Wright will facilitate the meeting.

Councilor Tracy asked for a full explanation of the conflict of interest issue and how to resolve the matter. City Attorney Blackwood explained any city councilor can declare a conflict of interest and recuse themselves. If the matter is discussed with the City Attorney there is attorney/client privilege and the information cannot be shared. Once the conflict is gone the councilor can engage in proceedings. In the current situation the individual had a professional conflict with their job and has since left that employment so the conflict is eliminated. Councilor Tracy asked for a statement of the conflict of interest. Attorney Blackwood chose not to further explain the conflict of interest.

Vote on Motion to Postpone

VOTING (on motion to postpone the selection of the buyer for BT to a date certain: 0 ayes, 12 nays (all city councilors unanimously against postponement); motion did not carry.

MOTION by Councilor Knodell, SECOND by Councilor Roof, to adopt the resolution relating to the voting process for choosing the Burlington Telecom buyer.

DISCUSSION:

- **Councilor Knodell read the steps of the process to allow the Mayor to sign a letter of intent with the bidder or City Council to decide to end the process.**

VOTING: unanimous; motion carried.

Councilor Knodell reviewed her statement on the sale of Burlington Telecom (statement posted on BoardDocs), the two bidders, and the model from the bidders that will give Burlington taxpayers their fair share. Highlights include:

- Concern Burlington is not sharing in the return in the same multiple as Ting.
- Ting if acquired by a larger company means Burlington over time will become a smaller part of the larger multi-national corporation and lose the ability to have a partner that owns, operates, and manages the telecom



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infrastructure to achieve the city's economic and social goals.

- Right of repurchase offer to Burlington only extends through the City Council vote on 11/6/17.
- There are other entities with whom there can be a more positive partnership.
- Under the Ting proposal Burlington is inadequately compensated for its past investment in BT, loses local control, and loses its Burlington based telecom entity.
- The best path is a solution somewhere in between the two options (bids). The solution must preserve BT as a Burlington based company and add upfront equity as the current proposal from KBTL does.
- The problems with the KBTL bid can be addressed; the Ting bid cannot as a publicly traded corporation.

Councilor Hartnett agreed there is a better partner for BT. Ting takes away local control, but KBTL financials are doomed to failure. There must be a compromise. Much hard work has been done to get to this point and that was done with the help of loyal BT customers. The city owes it to BT and the people of Burlington to find a better partner. The highest offer was Schurz (BTAB said that was the top offer). Schurz could be a great partner for Burlington and get BT to a better place within the timeline. The \$30 million offer from Ting is simply matching the offer from Schurz which also offered 1/3 partnership to Burlington.

Councilor Roof said he is prepared to vote on the two options before City Council. KBTL did not address concerns with their bid. Ting made improvements to their bid.

Councilor Wright thanked the BT employees for taking the distressed company and building it into a valuable asset for decades going forward. BT employees said they did not want to speak before City Council, but they understand what is needed for BT and can help get there. Councilor Wright also thanked all the public in attendance.

Councilor Moore asked how the city would repurchase BT if necessary. Mayor Weinberger explained the city has limitations on how investments can be made and how public money is spent. The city would have the ability to try to marshal resources for a new deal in the face of a hostile takeover or Ting divesting. Councilor Moore said she also met with BT employees and recognized they have worked hard to bring the company to where it is today. The employees want the company to soar and want to retain the asset locally to get value back on the investment.

Councilor Tracy stated the issue of maintaining local control was the priority and keeping BT local has brought value to the city. The best opportunity to keep BT local is the co-op model. Public outcry has been in support of keeping BT local and trusting in the co-op model to give Burlington a voice and to maintain control of the asset.

Councilor Deane said he met with BT employees and they are proud of what they have built and do not want BT to fail again. The employees want to expand the business right now. KBTL offers promises. Ting offers concrete investments. Local brings value, but should not outweigh all else.



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Councilor Paul spoke of meeting with BT employees as well as visiting Ting's home office for a firsthand view of the company and culture. BT employees want an owner that has the resources, depth of knowledge, and formal business structure to collaboratively take BT to the next level. The new owner of BT must retain current BT customers. If Ting increases prices the cost is customers. Based on the letter of intent and pro forma the additional funds to Burlington in partnering with Ting are \$43 million over 10 years. That is a lot of money and a lot of jobs and a lot of funding to Burlington based services. Local means local jobs, expanding the infrastructure and ability to attract more people to Burlington, and expanding the footprint. This is an economic tool. It is hard to run a telecom company, but Ting is an established operator and has received awards for deploying internet connectivity through creative partnerships with local communities. Ting is committed to BT and Burlington and will be a good partner.

Councilor Dieng stressed the need for a clear vision for the residents of the municipality because without a clear vision nothing will happen. Burlington's identity is about community building and building a greater and sustainable community. People have been working hard for many generations to stand against corporate and to make sure every resident can strive, feel they matter, and be part of the process. That option has not been provided to the residents. The best option is KBTL because a group of people stood up. The people need to stand together against corporate and get the \$17 million back. There are knowledgeable people with expertise. The KBTL board and BT employees are the dream team. The best choice is for the city to hold onto the asset.

Mayor Weinberger said the objective is to try to get the best return on the asset. No one has a crystal ball on who will succeed. The equity percentage has been calculated the same way with all the proposals. Ting committed the most resources to growth and is the best operator with the most investment and expertise in fiber. City Council should make a decision based on the best offer of customer service, the best price, running BT with progressive values around net neutrality privacy policies and digital divide policies. Ting has the best record of all the competitors in the process and it is a disservice to overlook their record simply because of the way the business has been organized in the legal structure it has. That is too shallow an analysis for such a great decision.

Councilor Mason said he has not heard how KBTL will have a successful path forward and the city has been told in no uncertain terms that Citibank will bring suit against the city which will cost the taxpayers and cause delay as well as other impacts. There are other threats of lawsuits if the KBTL bid is chosen. Blue Water Holdings had serious concerns about KBTL being able to obtain a Certificate of Public Good. City Council must make the right decision by December 2018 or lose the right to select the bidder. Ting will be a good steward of the asset. BT employees are interested in taking the asset to its full potential. The Ting investment can do this. KBTL will be at a standstill until debt service is repaid. Fiber to home will happen, and if BT does not take the opportunity to build in the surrounding communities then the opportunity will be lost.

Councilor Bushor spoke of people at the NPA meetings saying City Council is making decisions that divide the people so perhaps the process is not working or should be different. Councilor Bushor also spoke of the process the city went through with Adelphia in the past. The employees of BT and the investment made must be considered. People are saying it is important to make the right choice even if more time is needed.

Councilor Knodell emphasized the importance of the terms of the potential sell back of the city's share which are unfavorable with the Ting proposal. The Ting buildout commits to expanding in Burlington and only building if warranted



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in surrounding communities.

There were no further comments.

VOTING on the two choices was as follows:

Ting

Councilor Deane

Councilor Shannon

Councilor Wright

Councilor Mason

Councilor Paul

Councilor Roof

KBTL

Councilor Hartnett

Councilor Knodell

Councilor Bushor

Councilor Tracy

Councilor Moore

Councilor Dieng

City Council recessed the meeting at 9:15 PM and resumed at 9:30 PM. A second vote was taken following the recess. The results were as follows:

Ting

Councilor Deane

Councilor Shannon

Councilor Wright

Councilor Mason

Councilor Paul

Councilor Roof

KBTL

Councilor Hartnett

Councilor Knodell

Councilor Bushor

Councilor Tracy

Councilor Moore

Councilor Dieng

City Council recessed the meeting at 9:38 PM and resumed at 10:27 PM. The majority of the councilors were in favor of ceasing the voting. Representatives from BTAB and Ting indicated a willingness to discuss doing a joint proposal for presentation at the next City Council meeting.

MOTION by Councilor Dieng, SECOND by Councilor Moore, that City Council request the KBTL Board and representatives from Ting/Tucows double on a joint venture proposal that addresses the following:



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- How the municipal fiber network can benefit the City of Burlington, residents, and BT subscribers through a co-op model;
- How the fiber optic network can be extended throughout Burlington and surrounding communities such as Colchester, Winooski, Essex, and beyond.
- How KBTL and Tucows/Ting can create a Burlington Telecom governing structure enabling representatives from KBTL and Tucows/Ting alongside a city representative on a governing board of the new BT.
- How BT, KBTL, and Tucows/Ting can create an ongoing firm that supports technology incentive in the community that benefits entrepreneurs, youth, and residents who need digital support.
- KBTL and Tucows/Ting shall use assistance of a mid-field agreeable third party as deemed appropriate to help with the joint venture proposal to be delivered to City Council and the Mayor no later than November 13, 2017, the next City Council meeting.
- Failure to address the joint venture proposal means City Council can resolve to reopen the BT sale process including and not limited to ZRF, KBTL, Tucows/Ting, and Schurz.

DISCUSSION:

- Councilor Dieng said it is clear the people of Burlington want to keep local control of BT and regain the \$17 million. Many people are unhappy with the process with some bidders being asked to withdraw without consult input, and some recusing themselves. Having the two parties work out a joint venture will bring closure to the community. Peter Clavelle could be asked to help bring closure to the deal and bring everyone together and make BT stronger. Burlington is strong. The people of Burlington are strong. Burlington must solve its own problems. There is a lot of work to do, but together it can be done.

Suspend the Rules

MOTION by Councilor Knodell, SECOND by Councilor Bushor, to suspend the rules at 10:38 PM to continue working on the item before City Council until complete. VOTING: unanimous; motion carried.

Councilor Paul offered the following amendment to the resolution moved by Councilor Dieng:

AMENDMENT by Councilor Paul, SECONDED by Councilor Mason, to amend the resolution for a joint venture approach as follows:

- Insert "in concept, not the legal construct" between "joint venture" and "proposal" in the first sentence of the resolution.
- In the first bullet delete "through a co-op model".
- Delete the second bullet regarding how the fiber optic network can be extended throughout Burlington and surrounding communities.
- In the third bullet replace "KBTL, Tucows/Ting alongside a city representative on a governing board" with "KBTL and Tucows/Ting on an advisory board of the new BT".
- Add to the end of the fourth bullet: "by creating a process to determine allocation of Ting's community impact funding."

DISCUSSION OF AMENDMENT:

- Andy Montroll was asked if there is a problem with removing the words "through a co-op model". Mr.





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Montroll said the key operating parts of the resolution are to have both parties work together. Holding true to the co-op model is important whether stated in the resolution or not.

- Councilor Bushor asked about the wording change from “governing board” to “advisory board” relative to taking an equity stake, noting the language seems more restrictive and not open ended. Andy Montroll said there are elements that are important and it is better to have flexibility and to discuss to get the end result.
- Councilor Dieng asked the Ting representative about working toward a joint proposal with an independent entity. The Ting representative said discussion will begin between the two parties to find common ground.

VOTING ON AMENDMENT: 8 ayes, 4 nays (Councilor Bushor, Councilor Hartnett, Councilor Moore, Councilor Tracy); motion carried. The amendment is adopted.

Councilor Knodell offered the following amendment to the motion as amended:

AMENDMENT by Councilor Knodell, SECOND by Councilor Bushor, to amend the last clause of the resolution to read: “Failure to provide a joint venture proposal from both KBTL and Tucows/Ting by no later than November 13, 2017 allows City Council to reopen the BT sale process to the following four bidders: KBTL, Tucows/Ting, Schurz, ZRF for a final decision at the 11/27/17 City Council meeting.”

DISCUSSION ON AMENDMENT:

- Councilor Knodell said it is very helpful to have the process laid out and having a process that is hoped to bear fruit, but if it does not the next steps are known.
- Councilor Roof spoke in support of the amendment(s) and tightening the language in the resolution around dates as well as not opening up the bid process beyond the four bidders listed.

VOTING ON AMENDMENT: unanimous; motion carried. The amendment is adopted.

CONTINUED DISCUSSION ON THE MOTION AS AMENDED:

- Councilor Mason asked what happens if the joint proposal is not accepted by a majority of City Council. Councilor Knodell explained the two bidders will only bring a proposal that is mutually agreed upon and City Council will vote on the now blended proposal.
- Councilor Wright asked if the bidding would open to the other bidders if the mutually agreement is voted down. Councilor Knodell said some documentation would be expected for the Mayor to move forward.
- Councilor Shannon said if the joint effort fails then the four bidders return and the previously agreed upon voting process begins.
- Councilor Knodell said City Council could discuss how to run the voting process.
- Councilor Tracy expressed disappointment in the elimination of the language relative to ‘co-op model’.
- Councilor Hartnett said it is a bad idea for KBTL to sell out to Ting. Ting is not the right partner for Burlington. There are better partners including two that could be added back to get to the right place.
- Councilor Shannon asked what offers City Council will vote on if the joint agreement is not reached. Councilor Knodell said on November 13, 2017 City Council will receive a report and documentation on the joint agreement which City Council will vote on and if that vote fails then on November 27, 2017 the four bidders are before City Council to be voted down to one.
- Councilor Mason suggested the information be received at an earlier date and not the night of the meeting.
- Councilor Dieng said the proposal will be discussed on November 13, 2017 and sent to the Mayor for signature.
- Councilor Wright suggested there be a status report on Friday, November 10, 2017.





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There were no further comments.

VOTING (on motion as amended): 11 ayes, one nay (Councilor Hartnett); motion carried.

2.0 ADJOURNMENT

**MOTION by Councilor Hartnett, SECOND by Councilor Bushor, to adjourn the meeting. VOTING: unanimous;
motion carried.**

The meeting was adjourned at 11:50 PM.

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