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2 **Resolution Relating to**
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RESOLUTION
Councilors Decelles,
Sponsor(s): Dober

Introduced: _____
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

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7 RECOVERING CITY FUNDS SPENT ON BURLINGTON TELECOM IN
8 CONTRAVENTION OF CERTIFICATE OF PUBLIC GOOD

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12 **CITY OF BURLINGTON**

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14 In the year Two Thousand Eleven.....
15 Resolved by the City Council of the City of Burlington, as follows:

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17 That WHEREAS, the City-owned Burlington Telecom (BT), the product of a lofty vision for
18 the City's technological future in the digital age, has regrettably resulted in a \$50 million dollar
19 expense for construction of a network that reaches fewer than 5,000 Burlingtonians, has
20 consistently lost money since its inception, has massively overleveraged itself, and apparently
21 from the beginning in September 2005 has failed to comply with State-mandated conditions to its
22 Certificate of Public Good (CPG) which were meant to protect taxpayers from risk; and

23 WHEREAS, the injection into BT of approximately \$16.9 million dollars from the City's
24 cash pool, and the uncertainty of that money ever being repaid by BT, has resulted in two
25 downgrades of the City of Burlington's credit rating, with the resulting financial instability
26 directly factoring into the downgrade of the Burlington Electric Department's credit rating and
27 the downgrade of the Burlington International Airport's credit rating to junk bond level; and

28 WHEREAS, this Council will reserve judgment on whether BT's mismanaged and
29 unprofessional financial practices have been properly addressed until it hears from the Kiss
30 Administration on the question later in January; and

31 WHEREAS, what does indeed continue is that Burlington taxpayers are being made to
32 pay for attorneys representing both the City before the Vermont Public Service Board and the
33 Chief Administrative Officer (CAO) before the Chittenden Superior Court in a lawsuit with

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39 Docket No. S1588-09 CnC filed by two Burlington residents which seeks to recover funds spent
40 in violation of BT's CPG for repayment into the cash pool; and

41 WHEREAS, against this financial backdrop a municipal tax increase is currently being
42 considered for inclusion on the 2011 ballot of the Annual City Meeting; and

43 WHEREAS, one or more of the City's insurance policies may provide coverage for the
44 taxpayers' claims against the (CAO) in the event he is found liable, as shown by the fact that the
45 City's insurer is paying the CAO's legal defense costs under a "reservation of rights" clause; and

46 WHEREAS, the City has joined the CAO in opposing the plaintiffs' claims, and has used
47 City resources and employees to do so, even though a recovery would benefit the City and its
48 taxpayers; and

49 WHEREAS, the Administration has stated that the City will require any purchasers of
50 BT, or of an interest in BT, to repay the \$16.9 million over time, even though such a repayment
51 would subject the City and its taxpayers to the risk that full repayment will not be made and
52 would also deprive BT of funds to provide and make its services available to all residents, as
53 required by its CPG; and

54 WHEREAS, the immediate replacement of the \$16.9 million would greatly aid in
55 restoring financial stability to the City and perhaps obviate the need for consideration of a tax
56 increase;

57 NOW, THEREFORE, BE IT RESOLVED that, in view of conflicting opinions over
58 which City insurance policy may govern in this situation, the City Council first desires to retain
59 outside independent counsel with expertise in insurance law who can advise this Council as to
60 which insurance policy governs and the extent of allowable coverage and to that end directs its

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66 President to place the selection of such counsel as an agenda item for the Council's next
67 regularly scheduled meeting; and

68 BE IT FURTHER RESOLVED that in the event the City Council is advised by outside
69 independent counsel that the City's insurance coverage would allow it, then the Council 1)
70 directs the City Attorney to cease further opposition to the plaintiffs' claims in the
71 aforementioned lawsuit and instead to join in seeking reimbursement of the City's cash pool in
72 the amount of approximately \$16.9 million; and 2) request that the Mayor of Burlington, the
73 Honorable Bob Kiss, file a claim with the City's insurer for all monies spent by the City in
74 contravention of BT's Certificate of Public Good and to take all further actions necessary to
75 obtain payment from the insurer; and

76 BE IT FURTHER RESOLVED that in the event the City's insurer denies coverage, the
77 City Attorney is directed to seek a declaratory judgment from the Superior Court that the insurer
78 must provide coverage for the \$16.9 million spent from the cash pool in contravention of the
79 CPG.

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81 lb/kas/c: Resolutions 2011/Burlington Telecom-Recover Funds spent in Contravention of PSB's CPG via insurance claim or
82 join Osier & Shaver Lawsuit
83 1/24/11

