

**PRESS RELEASE
FOR IMMEDIATE RELEASE
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BURLINGTON FILES ANSWER TO CITIBANK LAWSUIT

Burlington, VT. The City of Burlington filed its answer today to the Citibank complaint related to Burlington Telecom in Federal District Court. Burlington strongly disputes Citibank's case and the factual assertions it is based on. The filing answers Citibank's claims, contains several affirmative defenses, and makes twelve counterclaims against Citibank for damages. At issue in the proceeding is Burlington's Lease-Purchase agreement with Citibank for Burlington Telecom equipment.

"Burlington Telecom provides critical communications infrastructure and economic development opportunities to residents, businesses, and City departments in Burlington," said Mayor Bob Kiss. "While addressing Citibank's legal claims, we continue to work on finding solutions for BT that will preserve and enhance its services and set a more financially sustainable course for the future. We must always keep in mind BT's tremendous value to Burlington."

A memo from Burlington's lawyers to the City Council and Mayor Kiss regarding the filing is attached.

A copy of the Answer can be found at:

www.burlingtontelecom.net/CityofBurlingtonAnswerAffirmativeDefensesandCounterclaims12.22.11_00019306.PDF
<http://www.burlingtontelecom.net/CityofBurlingtonAnswerAffirmativeDefensesandCounterclaims12.22.11_00019306.PDF>
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MEMO

TO: Burlington City Council
Mayor Bob Kiss

FROM: Kenneth A. Schatz, Esq., City Attorney
Michael L. Burak, Esq.

RE: CitiBank v. City of Burlington and McNeil, Leddy & Sheahan

DATE: December 22, 2011

City of Burlington's Answer, Affirmative Defenses and Counterclaims

The City of Burlington filed its response today in Federal District Court to the Citibank Complaint related to Burlington Telecom. Burlington strongly disputes Citibank's case and the factual assertions it is based on. The filing answers Citibank's claims, contains several affirmative defenses, and makes twelve counterclaims against Citibank for damages. At issue in the proceeding is Burlington's Lease-Purchase agreement for Burlington Telecom equipment.

Burlington's Answer, Affirmative Defenses and Counterclaims are founded on several facts and principles, among others:

- (1) Citibank misconstrues and misstates the nature of its lease-purchase agreement with Burlington.** This agreement was an equipment lease, subject to annual appropriation. When Burlington failed to appropriate payments for the lease by June 30, 2010, for fiscal year 2011, the agreement terminated under its own terms. Citibank has acknowledged its termination, yet sidesteps this crucial fact in its complaint. While Citibank would like to convert the lease agreement to a debt of Burlington or bend the facts to make it seem as though Burlington defaulted on the agreement, this is not the case. Citibank's failure to properly understand or describe the basic nature of the lease agreement is a fundamental flaw in its case against Burlington.

- (2) **Citibank failed to negotiate in good faith with Burlington and summarily rebuffed Burlington's attempts to resolve this dispute.** In order to fulfill its obligations under the Lease Purchase Agreement, Burlington petitioned the Public Service Board ("PSB") in January of 2010 for permission to utilize Burlington's pooled cash funds to make the February 2010 lease payment. This request was rejected by the PSB. Burlington notified Citibank of this development immediately and, failing other options, the lease was terminated as of June 30, 2010. Our understanding through Dorman & Fawcett is that Burlington made numerous attempts in 2010 and early 2011 to engage Citibank on a plan to restructure the Lease Purchase Agreement. This included minimum monthly payments from BT operations coupled with a cash flow sharing arrangement and credible growth plan.

Burlington's proposals were summarily rejected and the rulings of the PSB ignored. Citibank insisted on full payment of the lease amount despite the legal constraints placed on Burlington with respect to the use of non-BT revenue. Burlington then offered to work with Citibank on a plan to inventory and return the equipment covered by the lease – equipment in the possession of BT or in the form of replacement equipment. Alternatively, we understand that Burlington advised Citibank that a cash payment in lieu of a return was possible. Despite attempting to work cooperatively with Citibank on an orderly and responsible plan to return equipment, in effect Burlington received no response.

It is disingenuous of Citibank to claim it has been damaged by Burlington's actions under these circumstances.

- (3) **Burlington has been damaged by Citibank.** Burlington makes twelve counterclaims against Citibank in its answer. Among other things, these relate to Citibank's unfulfilled promise to do a refinancing of the BT equipment which induced Burlington to enter into the lease purchase agreement and Citibank's clear failure to negotiate in good faith to resolve the dispute. Citibank falsely induced Burlington into the lease purchase agreement and took other actions and inactions that significantly reduced BT's value.

A copy of the Answer, Affirmative Defenses and Counterclaims is attached. We've also attached a copy of the Motion to Dismiss with supporting Memorandum filed by McNeil, Leddy, and Sheahan this afternoon.

Enclosures