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STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

<p>IN RE:</p> <p>QWEST COMMUNICATIONS INTERNATIONAL, INC., AND CENTURYTEL, INC.</p>	<p>DOCKET NO. SPU-2010-0006</p>
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**DIRECT TESTIMONY OF JAMES R. KRIEG, GENERAL MANAGER
OF CEDAR FALLS UTILITIES**

10 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

11 **Q. Please state your name, position at Cedar Falls Utilities, and business**
12 **address.**

13 A. My name is Jim Krieg and I am employed as General Manager and CEO for
14 Cedar Falls Utilities (CFU). My business address is 1 Utility Parkway Cedar Falls
15 IA 50613.

16 **Q. Please describe your educational background, employment experience, and**
17 **job responsibilities.**

18 A. I have been employed by CFU for eight years as its General Manager. CFU is
19 comprised of four municipal utilities serving electricity, natural gas, water, cable
20 and high speed internet to the City of Cedar Falls. I oversee all facets including
21 power generation, power purchase and power distribution systems in the electric
22 utility and cable television retransmission, and broadband as well as overseeing
23 the Gas and Water Utilities. I am a Professional Engineer, a 1978 graduate of
24 Iowa State University with a degree in Civil Engineering. Prior to coming to

1 CFU, I was General Manager at MetoKote Corporation, and served as the
2 Director of Developmental Services and Interstate Substitution Administrator for
3 the City of Cedar Falls. I began my career as a project manager for Brice Petrides
4 and Associates, an engineering firm.

5 **Q. Have you previously submitted testimony before the Board?**

6 A. No.

7 **Q. What is the purpose of your testimony?**

8 A. CFU intervened in the IUB proceeding, advising the Board that Qwest has
9 recently refused to cooperate in undergrounding facilities, and has recently
10 canceled a joint trenching arrangement. In its petition to intervene, CFU has
11 pointed out that the refusal to cooperate can result in increases in costs to
12 taxpayers and ratepayers (by increasing project costs and delay), increases in costs
13 to utility ratepayers (by increasing the eventual compliance costs), increases to
14 competitors (by blocking efficient relocation and trenching) and perhaps most
15 importantly, create public safety hazards and reduce the reliability of basic
16 infrastructure. Further, CFU pointed out that Qwest is now contending that it can
17 not afford to comply with undergrounding requirements, calling into question
18 whether the merged company will have the resources or willingness to comply
19 with right-of-way requirements with which it may be obligated to comply.

20 My testimony will provide the factual underpinnings for CFU's
21 intervention, and will describe recent storms and floods that led CFU to decide to
22 place more facilities underground, the historically cooperative working
23 relationship between CFU and Qwest, and recent uncooperative behavior by

1 Qwest related to present and future undergrounding and joint trenching. Further,
2 my testimony will support and demonstrate the need for the Board to impose
3 conditions on the proposed “reorganization” of Qwest Communications
4 International, Inc., and CenturyTel, Inc., should the Board choose to approve the
5 proposed “reorganization” in order to ensure that the company can comply with
6 requirements of Iowa law, and cannot impose unnecessary costs on taxpayers,
7 consumers, or competitors.

8 **II. CFU’S RECENT EXPERIENCE WITH SEVERE WEATHER EVENTS**

9 **Q. Please provide the Board with some information about CFU and its**
10 **operations.**

11 A. CFU is Iowa’s largest municipally-owned provider of cable television, broadband
12 internet, electricity, natural gas, water, and other utility services to residents of the
13 City of Cedar Falls, Iowa. CFU does not offer telephone services. The Municipal
14 Water, Electric, Gas and Communications Utilities that comprise CFU are four
15 separate enterprises, and each of the Utilities is financially independent and self-
16 supporting through user fees. CFU is governed by a five-member Board of
17 Trustees appointed by the Cedar Falls City Council. CFU has had operations in
18 the City of Cedar Falls for more than 60 years. With the Communications Utility,
19 CFU successfully competes with a number of private sector providers of cable
20 television and internet services including Qwest (internet), and Mediacom (cable
21 and internet).

22 **Q. Please describe recent severe weather events in Cedar Falls.**

1 A. In February, 2007, CFU experienced a severe ice storm. There were over 50
2 overhead poles on our system which were damaged with resulting loss of power
3 and communications to the residents served by those structures. CFU crews
4 worked in freezing conditions (with two minor injuries) to repair the overhead
5 system. The ice storm did not affect distribution services which were
6 underground.

7 In May 2008, the northern rural area of the CFU service territory was
8 struck by the same F5 tornado which devastated the town of Parkersburg. Seven
9 transmission structures were damaged with loss of the underbuild and outages for
10 some rural customers.

11 In June 2008, the City of Cedar Falls experienced unprecedented flooding
12 which necessitated emergency evacuation of areas of the City north of the Cedar
13 River, including the boat rescue by city fire rescue personnel of more than 100
14 people from their homes in flooded areas. During the period of rising floodwaters,
15 public service announcements, and eventual evacuation orders were effectively
16 and reliably communicated to affected residents. The CFU Streeter Station Power
17 Plant and Substation were out of service. As the flood waters crested and
18 overtopped the emergency generator, power to the Communications Utility was
19 lost. Emergency power was supplied by electric cable boated in to the building in
20 which the Head End was located in order to restore communications and
21 emergency public service announcements. The flood washed out some overhead
22 poles. The underground distribution was not impaired except three pad mount
23 transformers that took in water.

1 On July, 10, 2009, the City of Cedar Falls and surrounding areas suffered
2 a severe storm, which involved straight-line winds measured exceeding 100 miles
3 per hour. This storm caused more than \$6,900,000 of damage to CFU public
4 infrastructure in the City, including utility poles, wires, and other facilities in the
5 City right-of-way, and in dedicated public utilities easement areas. The storm
6 resulted in a loss of electric and other communication utilities in parts of the City
7 for up to four (4) days following the storm. The storm had at least two effects.
8 First, in areas where facilities were above-ground, the poles and wires created a
9 significant safety hazard in the rights-of-way. These safety hazards included the
10 obvious risks to the safety of general public, workers, and property caused by
11 downed lines and poles. Second, the presence of wires and poles in the streets
12 also prevented passage of emergency vehicles, and made restoration of vital
13 utility services more difficult. Those safety hazards were avoided in underground
14 areas, there were no outages in those areas from the storm, except as they were
15 part of an overhead system which was damaged. In addition, a communications
16 worker for a cable company suffered a severe personal injury when he
17 prematurely attempted a repair and came into contact with an energized storm
18 damaged line, which resulted in litigation..

19 **III. CFU'S RATIONALE FOR ADDITIONAL UNDERGROUNDING**

20 **Q. Have the recent severe weather events affected CFU's view on above ground**
21 **facilities compared to undergrounding?**

22 **A.** Yes. Historically, we placed all our facilities on poles. As a result, there are
23 utility lines in some parts of the City of Cedar Falls that are located above ground

1 on overhead poles and fixtures. However, in other parts of the City, particularly
2 the newer areas of the City within or adjacent to newer residential, commercial
3 and industrial subdivisions, all facilities, including electrical, telephone, and other
4 communications facilities, must be installed underground under City ordinance
5 provisions which have been in effect since at least 1995. In those areas, CFU's
6 facilities are underground.

7 The main lesson that stood out for us based on the recent severe weather
8 events, and in particular the storm with the very destructive winds, was the
9 importance of having facilities underground in order to maintain reliable service
10 during emergencies. As I mentioned, areas of the City with utilities services
11 installed underground generally suffered no losses of services during the 2009
12 storm. The exception was where the delivery of utilities services in the
13 underground areas depended on connections to above ground poles and lines that
14 were damaged by the storm.

15 For our own purposes, it is important to move facilities underground to
16 improve safety and reliability of CFU's services. As an associated matter, we
17 desire to remove our poles. Of course, as residents of Cedar Falls, we also think
18 undergrounding is an important protection for public safety. Poles in proximity to
19 the right-of-way and to turning areas are an identified risk by transportation
20 authorities at both the State and Federal levels.

21 CFU especially wants to place services underground where they were
22 damaged in the 2009 windstorm in the older parts of the City. These repairs are
23 temporary now and will be part of a vigorous effort by CFU to make long term,

1 safer and more reliable and permanent underground installations. The ability to
2 address these issues, and to minimize costs depends on the cooperation of other
3 utilities.

4 **IV. CFU'S EXPERIENCE WITH QWEST ON JOINT USE OF POLES, AND**
5 **JOINT TRENCHING**

6 **Q. Please describe your past experience regarding CFU's utility-to-utility**
7 **relationship with Qwest?**

8 A. Historically, CFU has enjoyed a cooperative, utility-to-utility relationship with
9 Qwest and its predecessor entities. CFU and Qwest each own poles located in
10 City of Cedar Falls rights-of-way. Even though CFU is exempt from pole
11 attachment regulation under 47 U.S.C. §224, CFU and Qwest have cooperated
12 and shared each other's poles and conduit for more than 30 years, under the terms
13 of an "Agreement Covering the Joint Use of Poles" (Joint Pole Agreement)
14 entered into with Qwest's predecessor, Northwestern Bell Telephone Company,
15 in 1980. A true and correct copy of the agreement is attached as Exhibit A
16 hereto.

17 CFU and Qwest have also engaged in joint trenching pursuant to a "Local
18 Network General Agreement for Joint Use of Trenches" (Joint Trench
19 Agreement) entered into in 2003. A true and correct copy of the agreement is
20 attached as Exhibit B hereto.

21 **Q: How does cooperation in undergrounding and joint trenching affect CFU?**

22 A: Joint trenching can occur when there is undergrounding, or in new residential or
23 business areas. Joint trenching allows utilities to share the cost of placing

1 facilities underground. It can reduce the burden and risks to the public, by
2 limiting the number of time the streets have to be blocked to allow for placement
3 of facilities underground. It can avoid some of the delay and the expense
4 associated with locating and identifying facilities in the right-of-way that would
5 otherwise be required if one facility is placed in a trench, and another trench must
6 be dug later by another utility to place additional facilities underground. It limits
7 utility disruption, and repeated damage to the streets.

8 Cooperation in undergrounding not only has the benefits I've just
9 described, but also allows CFU to quickly remove utility poles and the hazard that
10 they represent. Of course, it also limits the costs associated with maintaining and
11 administering aging poles.

12 Cooperation also sets the stage for fair and efficient competition. If two
13 competing utilities are required to underground, and one simply refuses to do so,
14 it can save expenses in the short term, to its advantage. A large company like
15 Qwest may also benefit if it can require a smaller competitor to bear unnecessary
16 costs.

17 I am speaking here of the benefits to CFU as a utility, and not the benefits
18 to the local community and its citizens.

19 **Q. How would you characterize the relationship with Qwest today?**

20 A. Unfortunately, Qwest has become non-cooperative over the last year on
21 underground trenching. Qwest communicated both officially and at the operations
22 level that it would not be joining in the joint trench. We communicate well on
23 other matters.

1 **Q. Can you provide some examples to illustrate this lack of cooperation on**
2 **Qwest's part?**

3 A. Yes, I can provide three examples that have occurred in the past year.

4 First, by letter dated October 6, 2009, Qwest advised the City of Cedar
5 Falls that it opposed a draft undergrounding ordinance proposed by the City. In
6 that letter, Qwest suggested that any undergrounding ordinance may "restrict
7 Qwest's ability to provide telecommunications services." CFU was given a copy
8 of the letter because, in addition to stating its opposition to the undergrounding
9 ordinance, the letter also discussed Qwest's interpretation of its contractual rights
10 under the Joint Pole Agreement with CFU. A true and correct copy of the letter is
11 attached as Exhibit C hereto. Qwest's claim appears to be that it cannot afford to
12 comply with undergrounding requirements.

13 Second, by letter dated February 10, 2010, Qwest served CFU with notice
14 that Qwest will terminate the Joint Trenching Agreement upon the expiration of
15 the contractual notice period (365 days). As far as I am aware, no reason was
16 offered for this unexpected contract termination notice. A true and correct copy
17 of the letter is attached as Exhibit D hereto. Of course, joint trenching reduces the
18 cost of undergrounding for all parties who engage in the joint trenching activities.
19 The termination not only affects Qwest, therefore, it also affects other utilities, as
20 well as the coordination and effective completion of projects that involve
21 trenching.

22 Third, Qwest has, for the first time to my knowledge, refused to joint
23 trench with CFU in some areas. CFU is now installing underground electric and

1 communications conduit and asked Qwest to joint trench, but it has declined to
2 participate. CFU has told Qwest that it can restore the joint trench agreement and
3 join CFU in undergrounding its system at any time, and CFU would be happy to
4 have Qwest involved in its joint trenching activities again.

5 **V. POTENTIAL HARMS DUE TO QWEST'S NON-COOPERATION**

6 **Q. In this proceeding, the Board is reviewing the proposal for reorganization,**
7 **and may consider a number of factors set out in Iowa Code § 476.77(3). I am**
8 **going to ask you to provide the Board with information related to some of**
9 **these factors. First, can you explain what impact Qwest's non-cooperation on**
10 **undergrounding in Cedar Falls has had on CFU to date, and may have in the**
11 **future, if it is allowed to continue?**

12 A. In a joint trench arrangement, CFU offered Qwest and Mediacom (and any other
13 company with facilities on CFU poles) the opportunity to cost share. Recently
14 CFU reduced its normal asking price for participation in joint trenching in order
15 to induce cooperation. Nonetheless, Qwest has declined to participate and so
16 informed CFU that it would not be joining in the joint trenching. If it would join
17 in undergrounding, Qwest would be asked to pay only 12.5% of the cost of boring
18 or 25% of the cost of open trenching. CFU will pay the balance with Mediacom
19 being treated the same as Qwest. By refusing to joint trench, the cost is increased
20 for CFU, the cost is increased for the taxpayers maintaining the right-of-way, the
21 cost and burden is increased for homeowners who will have (at least for a time)
22 both an overhead and an underground system in the utility easements along front
23 and back lot lines, and when the poles go down in a storm, or eventually wear out,

1 CFU, the City and its residents will be subject to additional costs and interruptions
2 associated with maintaining, replacing or removing CFU's poles.

3 The CFU facilities will be placed into conduit which can be serviced
4 without disturbing the residents. Qwest can likewise place its cable into a conduit,
5 in a joint trench, and be assured that neither storm, nor ice, nor pole breakage for
6 any reason will ever interrupt service. The refusal of Qwest to join in a joint
7 trench makes the facilities in the rights-of-way more difficult and expensive to
8 maintain and to administer.

9 **Q. Please comment on how you think continued non-cooperation by Qwest (or**
10 **the reorganized entity) will impact ratepayers and the general public.**

11 A. The first impact is upon public safety. In storm damaged situations, the
12 effectiveness and timeliness of public safety personnel is reduced. Vital
13 communications for Ambulance, Police and Fire services are lost if
14 communications and cable lines are storm damaged. All First Responders lose
15 time in addressing emergencies, just when they are most needed if the public does
16 not have the ability to communicate.

17 To the extent that Qwest's non-cooperation adds costs to any
18 undergrounding project, those costs will be passed on to ratepayers and the
19 general public. So, these groups will be detrimentally affected by Qwest's actions.
20 This is true whether Qwest's non-cooperation increases CFU's costs as described
21 in my previous answer, or if it drives up Qwest's own costs because it refuses to
22 joint trench now but then later has to put its facilities underground anyway to
23 comply with the City's ordinance. Presently Qwest can joint trench for one dollar

1 per foot. If Qwest undergrounds its facilities later, on its own, the costs to Qwest
2 will be much higher. Open trenching will be four times that and the cost of a
3 directional boring trench will be about eight times that. These costs will be passed
4 on to Qwest's customers. In addition, Qwest alone will bear the full costs of
5 maintenance or removal of the pole system.

6 If the CFU system goes underground, and Qwest joins the effort,
7 Mediacom will join as well because of the significant cost savings to all involved.
8 CFU is glad to cost share with this competitor because it promotes efficient use of
9 resources for all parties. However, if Qwest maintains its system on poles,
10 Mediacom is less likely to join in undergrounding with CFU and the costs will not
11 be shared.

12 Qwest may perceive that it will save money by staying on the poles, but
13 this is short sighted for a number of reasons, not the least of which it may only be
14 able to remain aboveground for a limited time because it is public knowledge that
15 the City of Cedar Falls is moving forward with an undergrounding ordinance.

16 In addition, the refusal to joint trench will impact the general public and
17 transportation because it will cause more disruption if Qwest has to place its
18 facilities underground at a later date in order to comply with the City's ordinance.

19 Finally, poles represent a well-recognized hazard to traffic. To the extent
20 that Qwest refuses to underground, it also maintains a safety hazard that could
21 otherwise be avoided.

1 **Q. Finally, comment on how this non-cooperation will impact Qwest's or CFU's**
2 **ability to provide safe, reasonable, and adequate service in the City of Cedar**
3 **Falls?**

4 A. As I mentioned earlier, the main lesson that stood out for us based on the recent
5 severe weather events, and in particular the storm with the very destructive winds,
6 was the importance of having facilities underground facilities in order to maintain
7 reliable service during emergencies. I believe that without undergrounding,
8 Qwest's ability to provide safe, reasonable, and adequate service will be
9 detrimentally affected. As I've suggested above, it will also affect CFU, because
10 CFU will bear costs it would not otherwise bear if utilities cooperated in joint
11 trenching. It is in the best interest of all parties, their owners whether public or
12 private, their workers and service personnel and their customers if they cooperate
13 to save costs and to be safer. It is also a better service to the residents of Cedar
14 Falls in their well being, happiness and safety.

15 **Q. Thank you. Does this conclude your testimony?**

16 A. Yes.

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AFFIDAVIT

STATE OF IOWA)
) SS:
COUNTY OF BLACK HAWK)

I, James R. Krieg, being first duly sworn on oath, state that I am the same James R. Krieg identified in the testimony being filed with this affidavit, that I have caused the testimony and exhibits to be prepared and am familiar with its contents, and that the testimony and exhibits is true and correct to the best of my knowledge and belief as of the date of this affidavit.

Further affiant sayeth not.

James R. Krieg

Subscribed and sworn to before me this 16th day of August, 2010.

Notary Public in and for
the State of Iowa
My Commission Expires 05/12/12