

**August 31, 2010**

**IOWA UTILITIES BOARD**

**STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD**

IN RE:  QWEST COMMUNICATIONS INTERNATIONAL, INC., AND CENTURYTEL, INC.	DOCKET NO. SPU-2010-0006  COMMENTS ON SETTLEMENT AGREEMENT
--	---

**COMMENTS OF CEDAR FALLS UTILITIES (CFU) ON  
SETTLEMENT AGREEMENT**

Cedar Falls Utilities (CFU) hereby contests the Settlement Agreement and Joint Motion for Approval of Settlement Agreement filed by the Applicants and the Office of Consumer Advocate on August 16, 2010 in the above-mentioned docket.

**OBJECTIONS TO THE SETTLEMENT**

In the Settlement Agreement, the Applicants amend their proposal for reorganization and agree to several additional commitments related to reports, access to books and records, and charitable contributions. CFU does not oppose these specific commitments. However, CFU does not believe these commitments *alone* are sufficient to address the various intervenors' concerns about the proposed reorganization, or to warrant approval by the Board of the proposed reorganization. Specifically, the proposed settlement does not address any of CFU's concerns about the proposed reorganization.

CFU petitioned to intervene in this proceeding because it was concerned about the effect of Qwest's unwillingness to cooperate with CFU on competition, on consumers, and on the reliability of critical services provided by the merged company. CFU was also concerned because the company seemed to assert that it did not have the

financial resources to comply even with legitimate police power requirements with respect to its facilities. The Applicants opposed CFU's petition to intervene because they thought CFU was concerned with a specific contractual dispute that the Applicants believed had been resolved by a state court decision.<sup>1</sup> The Board disagreed with the Applicants, and granted CFU's petition to intervene, recognizing that CFU's concerns may be relevant to the statutory factors the Board must consider in reviewing the proposed organization.<sup>2</sup> Nonetheless, the Applicants continue to mischaracterize CFU's interests as a localized, legal dispute over undergrounding, and to express the view that the dispute is not relevant to the present proceeding.<sup>3</sup>

In fact, the un rebutted testimony submitted by CFU<sup>4</sup> showed that Qwest's actions would increase costs (to Qwest and its competitors); reduce competition; and create reliability issues with respect to the provision of its services. These problems, of course, go directly to factors the Commission should consider in connection with the proposed merger, including but not limited to Iowa Code § 476.77(3)"c" (whether the utility's ability to provide safe, reasonable, and adequate service will be impaired) and §

---

<sup>1</sup> *City of Okoboji v. US West, Inc.*, Case No. 03301 LACV020548 (Dickinson), Nov. 14, 2001. The opinion is attached as Exhibit A to the Applicants' Opposition. The *Okoboji* case is notable, but not for the reasons Qwest suggested in its Opposition. *Okoboji* found that cities had a right to order undergrounding, and that an ordinance requiring undergrounding was not preempted by either federal or state law. The court also found the specific undergrounding ordinance in question in that case was not a valid exercise of police power because it was adopted only because of concerns about aesthetics. That is to say, the Applicants have a duty to comply with right-of-way undergrounding ordinances adopted pursuant to a proper exercise of an Iowa city's police power. It follows, of course, that a company cannot be financially qualified to provide service if it is not willing or able to devote the resources necessary to comply with applicable laws and regulations. A fair test for the *ability* of the Merged Company to comply is whether it is willing to provide the resources to comply.

<sup>2</sup> *In re: Qwest Communications International, Inc. and CenturyTel, Inc.*, Docket No. SPU-2010-0006, Order Granting Interventions, July 6, 2010, p. 5-6.

<sup>3</sup> See Rebuttal Testimony of Max Phillips, Qwest Communications International Inc., August 26, 2010, p. 17.

<sup>4</sup> See Direct Testimony of James R. Krieg, General Manager of Cedar Falls Utilities, August 16, 2010.

476.77(3)"e" (whether the public interest will be detrimentally affected). As mentioned above, the Applicants' witness does not dispute any of the facts asserted by CFU's witness; all he does is repeat the view that it is not relevant to this proceeding. CFU respectfully disagrees. Hence, the Settlement should be amended to ensure that the merged company cannot engage in behavior that has such an adverse effect.

### **CONDITIONS REQUIRED**

In light of the above, CFU believes that three commitments are warranted to address CFU's concerns, if the proposed reorganization is approved. These are:

a. The Merged Company warrants that it is able to comply with undergrounding requirements, and agrees to devote adequate resources to undergrounding facilities in rights-of-way in Iowa, so that where possible, affected entities, including the Merged Company embrace the policy of "dig once".

b. That Merged Company's shareholders, and not ratepayers or consumers, will bear any additional costs caused by the Merged Company's refusal to joint trench, or its refusal to underground; and

c. That the Merged Company shall cooperate with other utilities and service providers in use of the rights-of-way (intercarrier cooperation).

Respectfully submitted,

/s/ \_\_\_\_\_  
Robert J. Dieter  
General Counsel  
Cedar Falls Utilities  
1 Utility Parkway  
Cedar Falls IA 50613  
319-268-5203  
rdieter@cfunet.net