

Exhibit C to Testimony of James R. Krieg (CFU)



825 High Street, 9 South of B
Des Moines, IA 50309
Phone 515-208-8121
Fax 515-206-8007

Michael Sadler
Director, Policy and Law

Ms. Michelle Sweeney
Civil Engineer I
Department of Developmental Services
City Hall
220 Clay Street
Cedar Falls, IA

October 6, 2009

Re: City of Cedar Falls Proposed Undergrounding Ordinance

Dear Ms. Sweeney:

Qwest appreciates the opportunity to comment on the City of Cedar Falls' (City) proposed Underground Utilities Ordinance (ordinance). While Qwest understands the City's interest in maintaining its public surfaces and rights of way, it appears that some of the proposed provisions discriminate against utilities and fail to provide for a competitively neutral market. Because Qwest sees public policy problems as well as practical problems with the ordinance as drafted, including the possibility that the proposal extends beyond the City's municipal rights of way management privileges, the objections noted here are more general and not focused on particular sections of the ordinance.

From a policy perspective, the state of Iowa recognizes that efficiency, reducing the need for relocation of facilities and cost minimization are goals met through cooperative coordination between utilities and local government. See e.g., Iowa Code 306.47. Further, Iowa recognizes that fees and obligations for use of right of way by public utilities will be imposed on a competitively neutral basis and allocated appropriately. Iowa Code 480A.3 Qwest lawfully located its facilities in the public right of way and executed a joint use pole attachment agreement with the City. That agreement grants Qwest the right to retain, maintain, and, ultimately, own those jointly used poles, if the City abandons them even if those poles are located within public utility easements. The proposed ordinance unreasonably seeks to eliminate Qwest's contractual rights without the benefit of compensation and appears to do so merely for aesthetics.

The proposed ordinance points to no public health, safety or welfare reason for requiring utilities to relocate existing facilities or underground new facilities. The underlying result of this apparent beautification intent is an increase in inefficiency, wasted resources and discrimination. A reasonable compromise might require coordination at a minimum or relocation if the request is to protect public health, safety or welfare but no such component exists in the proposed self-dealing ordinance.

To the extent any adopted ordinance may restrict Qwest's ability to provide telecommunications services, or otherwise result in unfair, unreasonable, onerous or discriminatory treatment or fees, Qwest reserves all of its rights under state and federal law, including but not limited to Section 253 of the Federal Telecommunications Act of 1996 (the Act), to challenge the same.

By way of background and as you are no doubt aware, the Act was enacted in 1996 to create a fair and balanced legal and regulatory environment. Section 253 of the Act, in particular, ensures that telecommunications services are provided throughout the country in a fair, competitively neutral and nondiscriminatory manner. Under controlling law, local governments may only adopt

regulations that narrowly manage their rights-of-way. Local governments may not adopt regulations that may have the effect of prohibiting the provision of telecommunications services or are otherwise unrelated to the city's limited rights-of-way management. Section 253 specifically prohibits preferential or discriminatory treatment of telecommunications providers by a local government. It is critical to Qwest—and all telecommunications carriers—that they be treated in a competitively neutral and nondiscriminatory fashion. To this end, Qwest encourages the City to amend its proposed ordinance to comply with Section 253 of the Act.

Further, from a practical perspective, placing facilities under the ground are an extraordinary expense and often require extra time and expense for maintenance. So too is moving existing underground facilities out from under streets or sidewalks. Yet, this proposed ordinance shifts all of those expenses to the utility and provides no mechanism for cost recovery. Apparently, utilities doing business in the City, unless they are a City owned utility, are expected to shoulder the expense and act as a deep pocket – whether they have any actual capacity to do so or not. The ordinance fails to provide any flexibility for unusual financial burdens, specific circumstances or consideration of particular project impact or right of way congestion even though locating facilities underground or moving them out from a current location may simply not be practical.

Utilities such as Qwest that operate with competition are left applying these extraordinary expenses to the cost of doing business in a particular area which can make that area less attractive for future business development and leave city residents without as many choices for services. There are real costs associated with requiring undergrounding and moving facilities. In short, the proposed ordinance increases expenses without reasonable cause and requires resource allocations that might be better used for providing services to residents and businesses within the City.

Qwest encourages the City to amend the ordinance to comply with law, eliminate discriminatory impacts, provide reasonable cost recovery for utilities, and reduce the unnecessary the allocation of valuable resources.

Thank you in advance for your cooperation. Please feel free to call me with any questions.

Sincerely,

Qwest Public Policy

cc: Ross Larson, Qwest