

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Qwest Communications International Inc. and)	WC Docket No. 10-110
CenturyTel, Inc. d/b/a CenturyLink)	
)	
Application for Transfer of Control Under)	
Section 214 of the Communications Act, as)	
Amended)	

COMMENTS OF CEDAR FALLS UTILITIES

Cedar Falls Utilities (CFU) submits these comments in response to the Commission’s Public Notice¹ inviting interested parties to file comments or petitions to deny in respect of a series of applications filed by Qwest Communications International Inc. (Qwest) and CenturyTel, Inc. d/b/a CenturyLink (CenturyLink) (together, Applicants). Applicants seek Commission approval to transfer control of certain licenses and authorizations held by Qwest and its subsidiaries to CenturyLink in connection with the proposed merger of Qwest and CenturyLink.²

If the Commission decides to approve the merger, CFU asks, for the reasons described below, that the Commission impose appropriate conditions to assure that the surviving entity behaves in a manner consistent with the Commission’s goals of promoting competition and broadband deployment as expressed in the Commission’s National Broadband Plan.³

¹ Public Notice, DA 10-993 (rel. May 28, 2010)

² Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended, WC Docket No. 10-110 (filed May 10, 2010) (Application).

³ See Federal Communications Commission, Connecting America: The National Broadband Plan (2010), <http://www.broadband.gov> (National Broadband Plan).

Cedar Falls Utilities (CFU) is a municipally-owned provider of cable television, broadband internet, electricity, natural gas, water, and other utility services to residents of the City of Cedar Falls, Iowa. The Municipal Water, Electric, Gas and Communications Utilities that comprise CFU are four separate enterprises, and each of the Utilities is financially independent and self-supporting through user fees. CFU is governed by a five-member Board of Trustees appointed by the Cedar Falls City Council. In the communications space, CFU successfully competes with a number of private sector providers of cable television and internet services including Qwest (internet), and Mediacom (cable and internet).

CFU has enjoyed a longstanding utility-to-utility relationship with Qwest and its predecessor entities. Even though CFU is exempt from regulation under 47 USC §224, CFU and Qwest have shared each other's poles and conduit for more than 30 years, and have engaged in joint trenching pursuant to a "Local Network General Agreement for Joint Use of Trenches" (Joint Trench Agreement) entered into in 2003.

However, recent actions by Qwest may portend a lack of future cooperation in joint trenching. While the *local* concerns are matters that can be addressed by contract, and as appropriate by the Iowa Utilities Board, to the extent that these local Cedar Falls region actions, reflect new company policies, and in particular, the policies of the merged company, the Commission needs to address the issue to assure the claimed public interest benefits of the merger will be realized.

The Applicants make several claims as to the public interest benefits of the merger. These include more broadband deployment, and a "ramping up" of IPTV deployment that will foster greater competition in these services.⁴ The Application also touts CenturyLink's "local focus"

⁴ Application, pp. 9-13.

and emphasis on meeting local needs.⁵ CFU supports all forms of communications service competition provided the competition is fair. Like the Commission in its National Broadband Plan, CFU believes competitors should be encouraged to share joint facilities where such sharing promises more and less expensive deployment of broadband facilities.⁶

The particular events that give rise to CFU's concerns can be summarized as follows: Qwest has recently conceded that it can be required by the City to underground facilities. Nonetheless, it has suggested that it may choose to not cooperate with CFU in joint trenching, and has cancelled the long-standing joint trenching contract – behavior that suggests the merged company may intend to refuse to cooperate in placement of facilities.

The company's actions are directly contrary to the approach advocated in the National Broadband Plan to encourage joint trenching for broadband projects.⁷ Moreover, it is contrary to the Applicants' public interest claims that they will do business with a "local focus."

CFU fully understands that the specific Cedar Falls undergrounding concerns are local in nature and CFU is pursuing appropriate remedies locally. For example, CFU has intervened in the state-level proceeding before the Iowa Utilities Board (IUB) that is considering the Applicants' request for approval of its proposed "reorganization" as required by Iowa law.⁸

The issue for the Commission is whether Qwest's actions in Cedar Falls are symptomatic of a broader corporate plan that will prevent the company and its competitors from taking advantage of the benefits of joint trenching – or provide additional excuses for foot-dragging in

⁵ Application, pp. 19-21.

⁶ See National Broadband Plan, Chapter 6.

⁷ *Id.*

⁸ In re: Qwest Communications International, Inc., and CenturyTel, Inc., IUB Docket No. SPU-2010-0006, Order Granting Interventions (rel. July 6, 2010); Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp. (filed May 25, 2010).

the necessary process of relocating and extending critical utility facilities. If so, then local Iowa remedies, while perhaps sufficient to address the problems in Cedar Falls, will not be sufficient to deal with the problem. CFU asks the Commission to satisfy itself that Qwest is committed to cooperating with joint trenching wherever permitted or encouraged by local law. Further, if the Commission ultimately approves the Application, CFU asks the Commission to impose appropriate merger conditions requiring the new entity's cooperation in joint trenching projects.

CONCLUSION

Cedar Falls Utilities urges the Commission to impose appropriate merger conditions, should the Commission decide to approve the merger.

Respectfully submitted,



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