

October 6, 2017

Via E-File

Oregon Public Utility Commission
ATTN: Filing Center
P.O. Box 1088
Salem, Oregon 97308-1088

RE: In the Matter of QWEST CORPORATION d/b/a CENTURYLINK QC Petition for
Commission Approval of 2017 Addition to Non-Impaired Wire Center List.
Docket No. UM 1891

Dear Filing Center:

Enclosed for filing is the Redacted comments of Integra. A Highly Confidential version of these comments will be sent via overnight delivery and will be provided to participants designated on the service list to receive Highly Confidential information.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Denney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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Enclosures

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1891

In the Matter of

Qwest Corporation dba CenturyLink QC

**Petition for Commission Approval of 2017
Addition to the Non-Impaired Wire Center
List**

OBJECTIONS OF INTEGRA

PUBLIC VERSION

Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Advanced TelCom, Inc. and Electric Lightwave, LLC (collectively referred to as “Integra”), respectfully provide these comments to the Qwest Corporation dba CenturyLink QC’s (“CenturyLink”) Petition for Commission Approval of 2017 Additions to the Non-Impaired Wire Center List.¹

I. Background

On May 26, 2017, CenturyLink sent a Contract/Network Notice to Competitive Local Exchange Carriers (“CLECs”) operating in the state of Oregon indicating its intent to “file a petition with the Oregon Public Utilities Commission to open a docket to consider the addition of wire centers to CenturyLink’s non-Impaired Wire Center List.”²

On August 15, 2017, CenturyLink filed with the Commission its 2017 Petition. On August 30, 2017, CenturyLink filed its confidential attachments in support of its 2017 Petition and on September 6, 2017, CenturyLink filed supplementary confidential information. In its 2017 Petition, CenturyLink requested that the Corvallis (CRVSOR65), Hermiston (HMTNOR56), and

¹ *In the Matter of Qwest Corporation dba CenturyLink QC Petition for Commission Approval of 2017 Addition to the Non-Impaired Wire Center List*, CenturyLink Petition, Docket No. UM 1891, August 15, 2017, (“2017 Petition”).

² CenturyLink, *Contract/Network Notice: Additions to Non-Impaired Wire Center Lists*, May 26, 2017, available at http://wholesale.centurylinkapps.com/cnla_pub_files/CLEC_OR_Notice_20171.doc.

Pendleton (PNTNOR56) wire center classifications be changed from Tier 3 to Tier 2 based on the number of fiber-based collocations. CenturyLink also requested that the Bend (BENDOR24) classification be changed from Tier 2 to Tier 1 and the Oregon City (ORCYOR18) wire center be changed from Tier 3 to Tier 1, also based on the number of fiber-based collocations.

On August 28, 2017, Integra filed its petition to intervene and requested access to the highly confidential information CenturyLink filed to support its 2017 Petition. Integra received the highly confidential information around the dates CenturyLink filed the information in this docket.

The 2007 multi-state settlement in the Triennial Review Remand Order (“TRRO”) Wire Center Dockets³ contemplated that the parties would have 30 days to review the confidential supporting data in future wire center proceedings.

2005 TRRO Settlement Agreement

On June 20, 2007, CenturyLink and a number of CLECs signed the *Multi-State Settlement Agreement Regarding Wire Center Designations and Related Issues*.⁴ Part of this settlement laid out a process the parties agreed to abide by for future requests for changes to non-impaired wire center designations.⁵

The agreed upon process, as it pertains to this current CenturyLink filing, is as follows:

- 1) At least five days prior to a new non-impairment filing, CenturyLink will request a protective order from the Commission.⁶

³ *In the Matter of Covad Communications Company; Eschelon Telecom of Oregon, Inc.; Integra Telecom of Oregon, Inc.; McLeodUSA Telecommunications Services Inc.; and XO Communications Services, Inc. Request for Commission Approval of Non-Impairment Wire Center List*, Docket No. UM 1251, Order No. 07-328 approving settlement agreement, Attachment 1, July 31, 2007, (“TRRO Settlement Order”).

⁴ TRRO Settlement Order.

⁵ TRRO Settlement Order, § VI.

⁶ TRRO Settlement Order, § VI.C.

- 2) A CLEC or any other party will have 30 days from the filing date to raise objections to CenturyLink's request.⁷
- 3) In the event of objections, the parties agree to ask the Commission to use its best efforts to resolve such a dispute within 60 days of the date of the objection.⁸
- 4) In the event that no objections are filed with respect to some but not all of the non-impairment designations, the parties agree they will jointly request an expedited order approving the undisputed designations identified in the CenturyLink filing.⁹

II. Summary

In its Triennial Review Remand Order ("TRRO")¹⁰ the Federal Communications Commission ("FCC") set forth criteria, that when met, would relieve ILECs, including CenturyLink, of their obligation to provide certain high capacity unbundled network elements ("UNEs"). The FCC determined that it would "measure impairment with regard to dedicated transport on a route-by-route basis,"¹¹ based on "economic characteristics of each end-point of the route."¹² The FCC criteria are based on the number of fiber-based collocators and the number of switched business lines in a particular wire center.¹³ The issue in this docket is the methodology CenturyLink used to count the number of fiber-based collocators.

Integra submits that in the Oregon City and Corvallis wire centers CenturyLink improperly counted one of the carriers as a fiber-based collocator. In each wire center the carrier in question

⁷ TRRO Settlement Order, § VI.F.1.

⁸ TRRO Settlement Order, § VI.F.3.

⁹ TRRO Settlement Order, § VI.F.3.a.

¹⁰ *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, CC Docket No. 01-338, WC Docket No. 04-313 20 FCC Rcd 2533, (2004) ("TRRO").

¹¹ TRRO, ¶ 79.

¹² TRRO, ¶ 79.

¹³ TRRO, ¶ 66.

operates a fiber optic cable, but that cable only connects an end user customer to the collocation space. This cable cannot be used as an alternative to CenturyLink dedicated transport and, as explained below, does not qualify the carrier as a fiber-based collocator. In order to leave the wire center premises, the carrier leases unbundled dark fiber from CenturyLink. Leased unbundled dark fiber cannot be used to qualify a carrier as a fiber-based collocator under the FCC's fiber-based collocation definition.

Because Oregon City is currently classified as Tier 3 and Integra objects to only one of the four fiber-based collocation claims in the wire center, Integra does not object to the reclassification of the Oregon Wire Center to Tier 2, but objects to a Tier 1 classification.

Integra also objects to CenturyLink's request to reclassify the Bend wire centers from Tier 2 to Tier 1. In 2010, CenturyLink attempted to reclassify Bend and subsequently withdrew its petition. CenturyLink bears the burden of proof in this docket and the information provided by CenturyLink to support the Bend reclassification does not demonstrate that circumstances have changed since 2010. CenturyLink should provide supporting documentation showing that circumstances in Bend have changed. Without this additional support, CenturyLink's request to reclassify Bend should be denied.

Integra does not object to the classification of Hermiston or Pendleton to Tier 2.

III. Discussion

A change in a wire center's non-impairment classification, as CenturyLink is requesting, would permanently¹⁴ alter the availability of unbundled network elements such as dark fiber, unbundled DS3 transport, and unbundled DS1 transport by limiting which unbundled elements the

¹⁴ 47 C.F.R § 51.319 (i) ...Once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 wire center.

incumbent Local Exchange Carrier (“ILEC”) must make available to CLECs.¹⁵ Dark Fiber and DS3 transport are not available as Unbundled Network Elements (“UNEs”) between a Tier 2 wire center and another wire center classified as either Tier 1 or Tier 2.¹⁶ Unbundled DS1 transport is limited to a cap of 10 transport circuits between a Tier 2 wire center and another wire center classified as either Tier 1 or Tier 2.¹⁷ Unbundled DS1 transport is not available between wire centers classified as Tier 1.¹⁸ In order to be classified as a Tier 2, based on fiber-based collocations, CenturyLink must demonstrate three fiber-based collocations in the wire center.¹⁹ In order to be classified as Tier 1, based on fiber-based collocations, CenturyLink must demonstrate four fiber-based collocations in the wire center.²⁰ Therefore, when scrutinizing a wire center petition such as the one presented in this docket, it is imperative that the Commission confirm with certainty that the required Federal Communications Commission criteria have been met, before any classification is changed.

For the reasons discussed below, Integra objects to the reclassification of Oregon City (ORCYOR18) as Tier 1, Corvallis (CRVSOR65) as Tier 2, and Bend (BENDOR24) as Tier 1.

A. Oregon City (ORCYOR18)

A fiber-based collocator is defined as follows:²¹

Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that

- (1) Terminates at a collocation arrangement within the wire center;
- (2) Leaves the incumbent LEC wire center premises; and

³ 47 C.F.R. § 51.319(d)(3)(i) and (ii).

¹⁶ *Id.* § 51.319(d)(2)(iii)(A) and (iv).

¹⁷ *Id.* § 51.319(d)(2)(ii)(B).

¹⁸ *Id.* § 51.319(d)(2)(ii)(A).

¹⁹ *Id.* § 51.319(d)(3)(ii).

²⁰ *Id.* § 51.319(d)(3)(i).

²¹ 47 C.F.R § 51.5.

(3) Is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. 153(1) and any relevant interpretation in this Title.

Each provision within the above definition must be met in order for a carrier to be classified as a fiber-based collocator:

- 1) the carrier must be unaffiliated with the incumbent LEC;
- 2) the carrier must maintain a collocation within an incumbent LEC wire center;
- 3) the collocation must have active electrical power supply; and
- 4) the carrier must operate a fiber-optic cable or comparable transmission facility that
 - a. terminates at a collocation arrangement within a wire center;
 - b. leaves the incumbent LEC wire center premises; and
 - c. is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC.

One of the carriers identified by CenturyLink in the Oregon City office is listed as **[HIGHLY CONFIDENTIAL DATA BEGINS]** XXXXXXXX²² XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX **[HIGHLY CONFIDENTIAL DATA ENDS]**
 (“disputed fiber-based collocator”). The *disputed fiber-based collocator* is unaffiliated with CenturyLink, the incumbent LEC, and maintains a collocation within the Oregon City wire center. The *disputed fiber-based collocator* also has an operating fiber-optic cable that is capable of originating and terminating traffic. This cable terminates in the collocation space. However, as

²² See Highly Confidential Attachment A.

explained below, the *disputed fiber-based collocator* does not operate a fiber-optic cable that can be said to leave the incumbent LEC wire center premises.

The diagram below is a high-level diagram detailing the *disputed fiber-based collocator's* Oregon City collocation and how it is being used.

Starting from the bottom of the diagram, the *disputed fiber-based collocator* owns fiber within the Oregon City wire center. This fiber connects an end user customer to the *disputed fiber-based collocator's* collocation space at the CenturyLink central office.

The fiber in the collocation space is connected to two fiber routes that leave the wire center premises and connect to other CenturyLink end offices. However, these fiber routes are obtained from CenturyLink as unbundled dark fiber. An unbundled dark fiber circuit leased from CenturyLink does not qualify as a fiber-optic cable for the purposes of determining a fiber based collocator,²³ because it is considered owned and operated by the incumbent LEC, not the carrier leasing the unbundled dark fiber.

The *disputed fiber-based collocator* also purchases unbundled loops from CenturyLink (not shown on the diagram), which it aggregates onto the leased dark fiber circuits leaving the CenturyLink wire center premises. The *disputed fiber-based collocator* purchases power from CenturyLink in order to operate the aggregation/concentration equipment in its collocation space.

²³ 47 C.F.R § 51.5.

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Considering the foregoing, it cannot be said that this *disputed fiber-based collocator* should be counted as a fiber-based collocator in Oregon City. The only fiber relevant to the evaluation of the fiber-based collocation criteria is the fiber connecting the end user customer to the collocation space inside the Oregon City central office. Other fiber used by the disputed fiber-based collocator is leased from CenturyLink and thus is affiliated with the incumbent LEC.

In order to qualify as a *fiber-based collocator* all of the criteria for a fiber-based collocation must be met. In addition, each of the criteria must be read as unique.²⁴

The *disputed fiber-based collocator* operates a fiber optic cable, but this cable does not meet the three criteria set out within the rule. “Operates” means to perform a function or to cause to function.²⁵ This means that placing traffic over the fiber-optic cable is key to the determination of the existence of a fiber-based collocator. Under the fiber-based collocation definition, the operating fiber optic cable must both terminate in the wire center and leave the wire center premises. This makes sense as the FCC’s definition was intended to capture both actual and potential alternatives on a route specific basis to ILEC dedicated transport. The FCC described a route “as a connection between incumbent LEC wire center or switch A and incumbent LEC wire center or switch Z.”²⁶

In order for traffic to leave a wire center premises it must be originated by end user customers within that wire center. Traffic destined for end users within the wire center terminates to those end users. As described above and as depicted in the diagram, originating traffic from end user customers within the Oregon City wire center associated with the disputed fiber-based carrier

²⁴ The rule to avoid surplusage is a standard rule applied to the interpretation of rules and statutes. See Gustafson v. Alloyd Co., 513 U.S. 56, 577-78 (1995).

²⁵ See <https://www.merriam-webster.com/dictionary/operate>.

²⁶ TRRO, ¶ 80.

leaves the wire center premises on unbundled dark fiber, which does not count as fiber for the purposes of determining whether a carrier is a fiber-based collocator.

The FCC's fiber-based collocation definition is precise and detailed because, for this part of the "non-impairment" test, the FCC was looking at actual deployment of transport alternatives. If the FCC were relying simply upon the presence of any fiber facility, or any operating collocation, the FCC would simply have indicated as much. Instead the FCC set forth specific unique criteria that must be met in order to be classified as a fiber-based collocation.

The FCC further explained, "We define fiber-based collocation simply. For purposes of our analysis, we define fiber-based collocation as a competitive carrier collocation arrangement, with active power supply, that has a non-incumbent LEC fiber-optic cable that both terminates at the collocation facility and leaves the wire center...."²⁷

Footnote 293 explains further what these criteria are intended to identify. "We expect this to identify cable *company transport facilities* to the extent the cable company has collocated with access to its own transmission facilities."²⁸

For these reasons, fiber provided between a collocation and an end user customer does not qualify a carrier as a fiber-based collocator under the rules.

B. Corvallis (CRVSOR65)

One of the carriers identified by CenturyLink in the Corvallis wire center is listed as
[HIGHLY CONFIDENTIAL DATA BEGINS] XXXXXXXXXXX²⁹ XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX [HIGHLY CONFIDENTIAL DATA ENDS]

²⁷ TRRO ¶ 102.

²⁸ TRRO ¶ 102 n. 293 (emphasis added).

²⁹ See Highly Confidential Attachment A.

(“*disputed fiber-based collocator*”). The scenario for the *disputed fiber-based collocator* in the Corvallis wire center is the same as with Oregon City.

The *disputed fiber-based collocator* is unaffiliated with CenturyLink, the incumbent LEC, and maintains a collocation within the Corvallis wire center. The *disputed fiber-based collocator* also has an operating fiber-optic cable that is capable of originating and terminating traffic. This cable terminates in the collocation space. However, as explained below, the *disputed fiber-based collocator* does not operate a fiber-optic cable that can be said to leave the incumbent LEC wire center premises.

The diagram below is a high-level diagram detailing the *disputed fiber-based collocator’s* Corvallis collocation and how it is being used.

Starting from the bottom of the diagram, the *disputed fiber-based collocator* owns fiber within the Corvallis wire center. This fiber connects an end user customer to the *disputed fiber-based collocator’s* collocation space at the CenturyLink central office.

The fiber in the collocation space is connected to two unbundled dark fiber routes that leave the wire center premises and connect to another CenturyLink end office. Again, since these fiber routes are obtained from CenturyLink as unbundled dark fiber, they do not qualify as a fiber-optic cable for the purposes of determining a fiber based collocator.

The *disputed fiber-based collocator* also purchases unbundled loops from CenturyLink (not shown on the diagram), which it aggregates onto the leased dark fiber circuits leaving the CenturyLink wire center premises. The *disputed fiber-based collocator* purchases power from CenturyLink in order to operate the aggregation/concentration equipment in its collocation space.

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As with Oregon City, the *disputed fiber-based collocator* does not meet the three criteria set out within the rule because one cannot conclude based on the rule that the operating fiber cable leaves the wire center premises.

C. Bend (BENDOR24)

CenturyLink previously attempted to reclassify Bend from Tier 2 to Tier 1 based on fiber-based collocations in 2010.³⁰ The current filing by CenturyLink to reclassify Bend from Tier 2 to Tier 1 is also based on fiber-based collocations. A number of parties objected to Qwest's attempts to reclassify Bend and CenturyLink subsequently withdrew its request³¹ on the basis that one of the collocators did not have an active power supply. The Commission subsequently closed the docket.³²

CenturyLink bears the burden of proof in this docket and based on the Highly Confidential information provided by CenturyLink in this docket.³³ Integra is unable to determine whether circumstances actually changed in the Bend wire center and thus it objects to the reclassification of the Bend wire center to Tier 1. If CenturyLink is able to provide supporting documentation demonstrating that conditions are not the same as they were in 2010, then Integra would drop its objection to the Bend reclassification.

IV. Conclusion

Due to the permanency and impact of changes to wire center classifications, careful scrutiny of CenturyLink's Petition is warranted before granting its requests. Based on the reasons

³⁰ *Qwest Corporation's Petition*, In the Matter of Qwest Corporation Petition for Commission Approval of 2010 Addition to Non-Impaired Wire Center List, Docket No. UM 1486, June 14, 2010.

³¹ *Qwest Motion to Withdraw*, UM 1486, September 14, 2010.

³² Order No. 10-366, UM 1486, September 20, 2010.

³³ See Highly Confidential Attachments A – D.

cited above, Integra objects to CenturyLink's request to reclassify the Oregon City and Bend wire centers to Tier 1 and the Corvallis wire centers to Tier 2.

Because Oregon City is currently classified as Tier 3 and Integra objects to only one of the four fiber-based collocation claims in the wire center, Integra does not object to the reclassification of the Oregon Wire Center to Tier 2.

Integra also does not object to the classification of Hermiston or Pendleton to Tier 2.

RESPECTFULLY submitted this, 6th, day of October, 2017.

A handwritten signature in black ink, appearing to read "Douglas Denney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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