



February 7, 2018

Via eFiling Only

Oregon Public Utility Commission
Attn: Filing Center
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RE: UM 1891 – Qwest Corporation d/b/a CenturyLink QC's Reply
Brief on Disputed Issue

Dear Commission:

Attached for filing please find CenturyLink QC's Reply Brief on Disputed
Issue.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Hendricks", with a stylized flourish at the end.

William E. Hendricks
Senior Corporate Counsel

Attachment

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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1891

In the Matter of
QWEST CORPORATION d/b/a
CENTURYLINK QC
Petition for Commission Approval of 2017
Addition to Non-Impaired Wire Center List

**QWEST CORPORATION dba
CENTURYLINK QC'S REPLY BRIEF ON
DISPUTED ISSUE**

Qwest Corporation d/b/a CenturyLink QC (CenturyLink) hereby submits its reply brief on the disputed issue in this matter, concerning its Petition for Commission Approval of 2017 Additions to the Non-Impaired Wire Center List.

I. INTRODUCTION

CenturyLink's Petition under the FCC's Triennial Review Remand Order¹ asks the Public Utility Commission of Oregon (Commission) to approve the addition of certain wire centers to CenturyLink's non-Impaired Wire Center List.

Pursuant to the schedule previously established, the parties have filed opening briefs on the remaining disputed issue, and reply briefs were also allowed under the procedural schedule. CenturyLink therefore files this very brief statement in reply to the opening briefs of Commission Staff and Integra.

Issue Presented: Whether, under the FCC's TRRO, fiber-based collocators should be determined based on the criteria set forth in the rule as CenturyLink advocates, or, whether the test should include additional criteria, not readily determinable by the ILEC, as advocated by Integra.

The definition of fiber-based collocator is set forth below.

¹ *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").

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) 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.

Although the definition is long, the issue in this case is simply, and only, whether the CLEC fiber “leaves” the CenturyLink wire center premises under (2). The parties are in agreement that every other aspect of the definition is met by the disputed fiber-based collocator in the wire centers at issue.

II. DISCUSSION

Commission Staff has presented a well-researched and well-reasoned brief in support of CenturyLink’s position. Staff has stated that the “text and structure of the [FCC’s] rule and the express intent of the FCC in adopting support the [wirecenter] reclassification that CenturyLink seeks.” CenturyLink will not further reply to this brief – the reasoning in it is unassailable and it is in accord with the interpretation advocated by CenturyLink.

Integra, on the other hand, continues to advocate in opposition to the plain and straightforward interpretation of the rule that is supported by the language of the rule itself and the discussion in the narrative provisions of the TRRO. CenturyLink will reply to just three issues raised by Integra, each of the having to do with whether the fiber “leaves” the wire center premises.

The first issue is whether the type of service provided over the CLEC’s fiber should make a difference in the interpretation of the rule. The second issue is whether Integra’s interpretation

of the rule is consistent with the FCC’s mandate that the non-impairment test be “self-effectuating. The third is the question of whether the presence of CenturyLink Unbundled Dark Fiber as shown in the diagram on page 10 of Integra’s opening brief has any bearing on the interpretation of the rule.

The type of service provided over the CLEC’s fiber.

Integra suggests that the type of service provided over the CLEC’s fiber should make a difference in the interpretation of the rule. See, for example, page 3 of Integra’s opening brief: “We believe that a fair reading of the FCC’s fiber-based collocation and its intent demonstrates that the intent was not to allow the presence of end user fiber (i.e., non-transport fiber) alone to support a conclusion that the ILEC’s obligation to provide unbundled transport facilities should be relaxed.”

First, Integra is wrong when it claims that this type of fiber (an entrance facility) is “non-transport fiber”. The FCC has explicitly stated that entrance facilities are a type of transport. “As we noted in the *Triennial Review Order*, entrance facilities are used to transport traffic to a switch and often represent the point of greatest aggregation of traffic in a competitive LEC’s network.”² “Because the traffic aggregation potential inherent in entrance facilities more closely resembles that associated with dedicated transport, we reject these arguments [that entrance facilities be created as a separate UNE] and consider these facilities to be a type of transport.”³

Furthermore, the TRRO never excludes a fiber-based collocation that serves an end-user. Had the FCC wanted to include such a restriction, it would have been easy to do. Instead, the FCC explicitly did *not* place limits on the nature of the service provided over the cable, stating that “we find that a competing carrier’s collocation facilities shall count toward the

² TRRO ¶ 138.

³ TRRO, FN 384.

qualification of a wire center for a particular tier *irrespective of the services that the competing carrier offers* because the fiber-based collocation indicates an ability to deploy facilities and because it would exponentially complicate the process of counting such collocation arrangements (emphasis added).⁴

The FCC’s non-impairment test is “self-effectuating”.

The FCC has stated that the test for non-impairment is intended to be self-effectuating. “We believe that the impairment framework we adopt is *self-effectuating*, forward-looking, and consistent with technology trends that are reshaping the industry.”⁵ Self-effectuating means that the incumbent can validate the non-impairment criteria without consultation with the collocators.

Integra’s recommended interpretation of the fiber-based collocation rule would require CenturyLink to understand what type of service is provided over the CLEC fiber. This would require CenturyLink to make inquiries of each company regarding how their fiber is used – this flies in the face of what is supposed to be a self-effectuating process.

The test is for determining a fiber-based collocator is satisfied once CenturyLink has validated the other factors in the rule and has determined that the fiber leaves the wire center premises – there is simply no basis on which to read additional requirements into the test.

The presence of CenturyLink Unbundled Dark Fiber

On this point, CenturyLink would simply like to clarify an issue about the diagram on page 10 of Integra’s opening brief. Many aspects of this diagram simply have no bearing on the issue at hand. The discussion about the disputed fiber-based collocator connecting to other central offices using CenturyLink Unbundled Dark Fiber is simply contextual, and not determinative of the issue presented. Nor is it relevant that the disputed fiber-based collocator

⁴ TRRO, ¶ 102.

⁵ TRRO, ¶ 3.

purchases unbundled loops. The only fiber that matters to this discussion is the one that Integra agrees is operated from the collocation, with active power, and which physically leaves the wire center premises.

IV. CONCLUSION

The Commission should reject the interpretation of the rule advocated by Integra and adopt the interpretation put forth by Commission Staff and CenturyLink. The Oregon City (ORCYOR18) wire center should be changed from Tier 2 to Tier 1, based on the existence of four fiber-based collocators. The Corvallis (CRVSOR65) wire center should be changed from Tier 3 to Tier 2, based on the existence of three fiber-based collocators.

RESPECTFULLY submitted this 7th day of February, 2018.

QWEST CORPORATION d/b/a
CenturyLink QC



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