

January 17, 2018

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 Opening Brief of Integra. Please let me know if you have
any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Denney", enclosed in a thin black rectangular border.

Douglas Denney
18110 SE 34th Street
Building One, Suite 100
Vancouver, WA 98683
Direct: 360-558-4318
Fax: 763-745-8459
doug.denney@allstream.com

Attachment

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**

INTEGRA OPENING BRIEF

HIGHLY CONFIDENTIAL 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 this opening brief regarding 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 August 15, 2017, CenturyLink filed with the Commission its Petition for Commission approval of 2017 changes to the Tier status of certain CenturyLink wire centers in the state of Oregon.²

On October 6, 2017, Integra filed objections regarding the change in Tier status of certain wire centers contained in CenturyLink’s petition.³

¹ *In the Matter of Qwest Corporation dba CenturyLink QC Petition for Commission Approval of 2017 Addition to the Non-Impaired Wire Center List*, Partial Stipulation Admitted into Record; Partial Stipulation Adopted; Stipulated Facts Acknowledged, Docket No. UM 1891, January 11, 2018, p. 4.

² Qwest Corporation’s Petition for Commission Approval of 2017 Addition to Non-Impaired Wire Center list and Motion For Expedited Issuance of Protective Order, Docket No. UM 1891, August 15, 2017.

³ Objections of Integra, Docket No. UM 1891, August 15, 2017.

On December 15, 2017, CenturyLink, Integra and Staff of the Public Utility Commission of Oregon (“Staff”) filed a Partial Stipulation⁴ resolving certain issues in this case along with Stipulated Facts⁵ regarding the remaining disputes involving the proper tier status of the Oregon City and Corvallis wire centers.

II. Summary

The dispute in this docket is about whether CenturyLink’s unbundling obligations associated with unbundled dedicated transport along certain routes out of the Corvallis and Oregon City wire centers should be relaxed.

In order to determine whether an incumbent local exchange carrier’s (“ILEC’s”) obligations to provide unbundled dedicated transport on specific routes should be relaxed, the Federal Communications Commission (“FCC”) sought to look for evidence that the wire centers on the end points of a route had the potential to support competitive transport facilities. To make this determination the FCC classified each wire center based either on the line density of the wire center or whether competitors have deployed alternative transport facilities out of that wire center. The FCC used business line counts as its proxy for line density, and fiber-based collocations as its proxy for alternative fiber-transport providers. The FCC determined that competitors had the potential to self-deploy transport facilities when both ends of a transport route have a sufficient number of business lines or fiber-based collocations. The FCC did not review whether competitors had actually deployed facilities along a specific route, but instead concerned itself with whether the route had the potential to support competitors.

⁴ Partial Stipulation, Docket No. UM 1891, December 15, 2017.

⁵ Stipulated Facts, Docket No. UM 1891, December 15, 2017.

At issue in this case is whether fiber facilities built for the purpose of serving an end user customer, rather than for the purpose of transport facilities, are intended by the FCC to qualify a competitive local exchange carrier (“CLEC”) as a fiber-based collocator, thereby reducing CenturyLink’s obligations to provide unbundled dedicated transport.

We believe a fair reading of the FCC’s fiber-based collocation rule 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 an ILEC’s obligation to provide unbundled transport facilities should be relaxed.

III. Discussion

Measuring Impairment for Dedicated Transport

Under Section 251(c)(3) of the Telecommunications Act of 1996, ILECs such as CenturyLink are required to make certain unbundled network elements (“UNEs”) available to competitive local exchange carriers (“CLECs”) for the provision of telecommunications services to the public.

In its Triennial Review Remand Order (“TRRO”)⁶ the FCC set forth criteria, that when met, would relieve ILECs of their obligation to provide certain high capacity UNEs, including specific unbundled dedicated transport routes. A dedicated transport route is defined as a transmission path between one of an ILEC’s wire centers or switches and another of the ILEC’s wire centers or switches.⁷

⁶ *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”).

⁷ 47 CFR 51.319(d).

With respect to unbundled dedicated transport, the FCC determined that it would, “measure impairment with regard to dedicated transport on a route-by-route basis,”⁸ based on “economic characteristics of each end-point of the route.”⁹ The FCC criteria are based on the presence of fiber-based collocators and the number of switched business lines in a particular wire center.¹⁰

Actual Competitive Transport Deployment out of a Wire Center Shows the Potential for Additional Competitive Transport Deployment between Wire Centers

The purpose of the FCC’s criteria was to focus, “on **actual competitive deployment**, which signifies that actual and potential revenues justified the underlying costs,” to build transport facilities.¹¹ The FCC’s impairment analysis is intended to implicitly consider competitive transport deployment costs.¹² In its approach to evaluating route-specific impairment, the FCC accommodated, “reasonable inferences that can be drawn between similarly situated routes based on **evidence of actual deployment** by competing carriers.”¹³ As a result the FCC focused on the, “economic characteristics of each end-point of the route, in order to better identify routes with similar economic traits.”¹⁴ The FCC indicated its route-specific test, “more carefully **measures actual and potential transport deployment**.”¹⁵

The FCC rejected various other approaches, including those that would, “remove the unbundling obligation to many other locations without any proof that a requesting carrier could self-provide or utilize alternative transport to reach those other locations.”¹⁶ The FCC also rejected

⁸ TRRO, ¶ 79.

⁹ TRRO, ¶ 79.

¹⁰ TRRO, ¶ 66.

¹¹ TRRO, ¶ 74 (emphasis added).

¹² TRRO, ¶ 74.

¹³ TRRO, ¶ 79 (emphasis added).

¹⁴ TRRO, ¶ 79.

¹⁵ TRRO, ¶ 82 (emphasis added).

¹⁶ TRRO, ¶ 84.

a, “matched-pair test that requires that a certain number of competing carriers each have fiber-based collocations in both end-points of the route in order to find no impairment.”¹⁷ The FCC’s test, “does not require verification that fiber on both ends is operated by the same carriers,” as this would fail, “to account for areas of potential deployment.”¹⁸

The FCC believed that the test it adopted “examines the feasibility of duplicating dedicated transport facilities connecting incumbent LEC wire centers.”¹⁹ The FCC determined, “**We use fiber-based collocation as a key factor in determining where competing carriers have deployed fiber transport facilities...**”²⁰

The FCC also used business line density as, “an administrable proxy for determining where significant revenues are available sufficient for competitors to deploy transport facilities, despite the fixed and sunk costs of deployment.”²¹

The purpose of both the fiber-based collocation and business line criteria are to extract, “the economic characteristics of individual incumbent LEC wire centers to **identify routes where competitive deployment is economic** (based on indicia of high potential revenues),” and thus “treat all routes with similar sets of end-points in a similar fashion, making reasonable inferences about potential competition even where no such competition has developed to date.”²²

At issue in this docket is the fiber-based collocation criteria that CenturyLink relies on to request a change to the Tier status of the Corvallis and Oregon City wire centers, thus impacting the availability of unbundled dedicated transport on along certain routes. It is clear that the FCC

¹⁷ TRRO, ¶ 98.

¹⁸ TRRO, ¶ 98.

¹⁹ TRRO, ¶ 91.

²⁰ TRRO, ¶ 96 (emphasis added).

²¹ TRRO, ¶ 103.

²² TRRO, ¶ 90 (emphasis added).

established its criteria in order to determine whether or not competitors could self-deploy alternative transport. Though the FCC did not look for competitive deployment along specific routes, the intent of the fiber-based collocation criteria was to look for actual deployment. In other words, the FCC concluded that if two wire centers have sufficient demand to support competitive facilities (line counts) or actual deployment of competitive transport facilities (fiber-based collocations), then the requirement for an ILEC to provide unbundled transport between these two wire centers can be relaxed, regardless of actual deployment between the two wire centers in question.

For the two wire centers at dispute in this docket the *disputed fiber-based collocator*²³ did not deploy alternative competitive transport out of the wire centers. The *disputed fiber-based collocator* did deploy fiber within the wire center to connect an end-user customer to its collocation space,²⁴ but this is not and cannot be used as competitive fiber transport, and thus the competitor should not be considered a fiber-based collocator.

A Change in a Wire Center's Tier Status is Permanent

A change in a wire center's non-impairment classification, as CenturyLink is requesting, would permanently²⁵ alter the availability of unbundled network elements such as dark fiber, unbundled DS3 transport, and unbundled DS1 transport by limiting which unbundled elements the ILEC must make available to CLECs.²⁶ Dark Fiber and DS3 transport are not available as UNEs between a Tier 2 wire center and another wire center classified as either Tier 1 or Tier 2.²⁷

²³ Stipulated Facts, Docket No. UM 1891, December 15, 2017, p. 2, #1.

²⁴ Stipulated Facts, Docket No. UM 1891, December 15, 2017, p. 2, # 3.

²⁵ 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.

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

²⁷ *Id.* § 51.319(d)(2)(iii)(A) and (iv).

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 2.²⁸ Unbundled DS1 transport is not available between wire centers classified as Tier 1.²⁹ 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.³⁰ In order to be classified as Tier 1, based on fiber-based collocations, CenturyLink must demonstrate four fiber-based collocations in the wire center.³¹ 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 FCC criteria have been met before any classification is permanently changed.

Fiber-Based Collocation Definition

A fiber-based collocator is defined as follows:³²

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.

²⁸ *Id.* § 51.319(d)(2)(ii)(B).

²⁹ *Id.* § 51.319(d)(2)(ii)(A).

³⁰ *Id.* § 51.319(d)(3)(ii).

³¹ *Id.* § 51.319(d)(3)(i).

³² 47 C.F.R § 51.5.

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.

Corvallis and Oregon City Wire Centers

The scenario for the *disputed fiber-based collocator* is similar for both the Corvallis and Oregon City wire centers. One of the carriers identified by CenturyLink in the Oregon City and Corvallis offices as a fiber-based collocator is under dispute (“disputed fiber-based collocator”). The *disputed fiber-based collocator* is unaffiliated with CenturyLink, the incumbent LEC,³³ and maintains a collocation within the disputed wire centers.³⁴ 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.³⁵ 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. Therefore, the required FCC criteria are not met.

³³ Stipulated Facts, Docket No. UM 1891, December 15, 2017, p. 2, #2.

³⁴ Stipulated Facts, Docket No. UM 1891, December 15, 2017, p. 2, #2.

³⁵ Stipulated Facts, Docket No. UM 1891, December 15, 2017, p. 2, #2.

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

Starting from the bottom of the diagram, the *disputed fiber-based collocator* owns fiber within the wire center. This fiber connects an end user customer to the *disputed fiber-based collocator's* collocation space at the CenturyLink central office. This central office is labeled as the “Disputed CenturyLink CO” to distinguish it from the “Other CenturyLink CO.” The *Disputed CenturyLink CO* is either Oregon City or Corvallis. The *Other CenturyLink CO* is another CenturyLink Central office not at dispute in this docket.

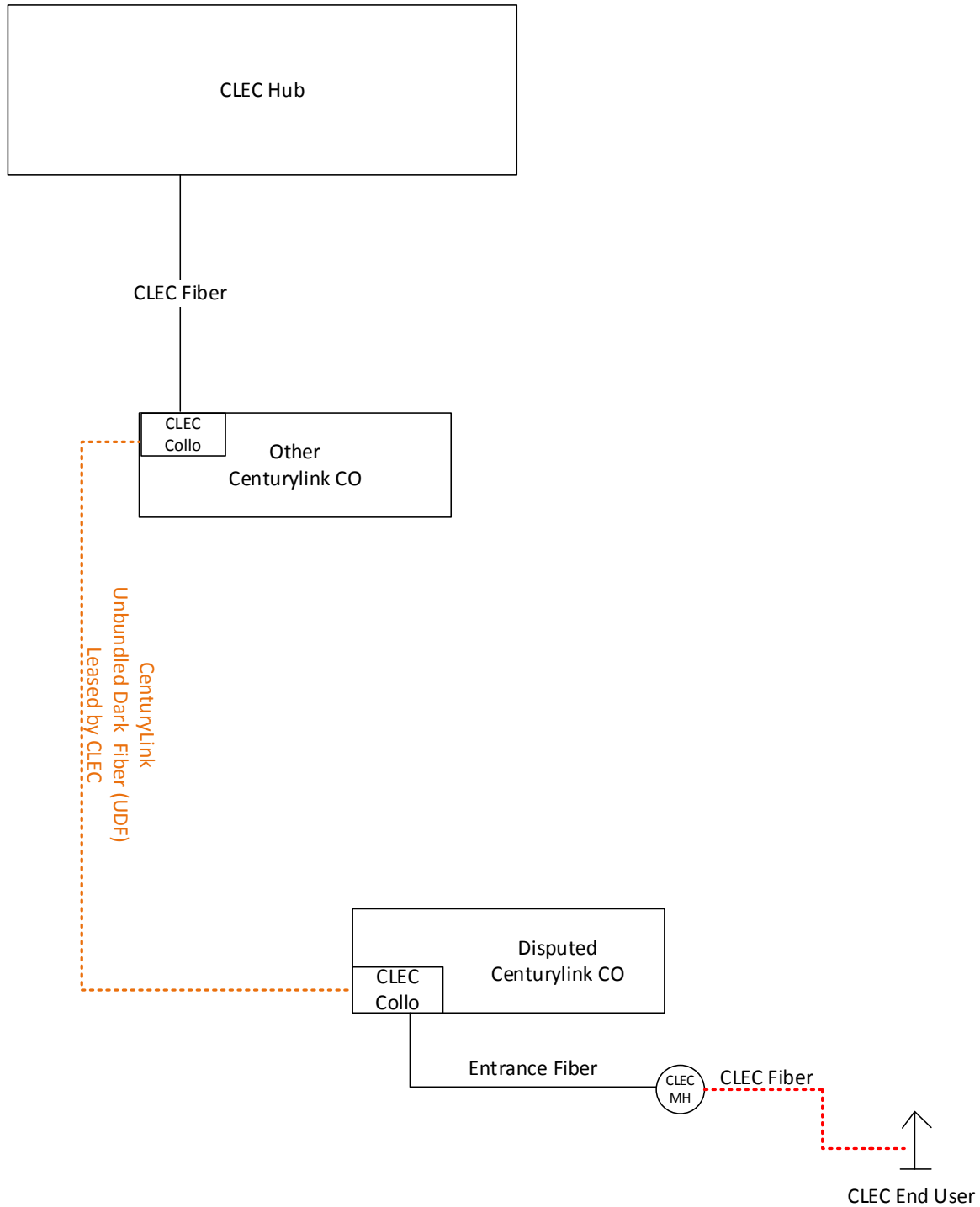
The fiber in the collocation space is connected to a CenturyLink Unbundled Dark Fiber route that leaves the wire center premises and connects the *Disputed CenturyLink CO* to the *Other CenturyLink CO*. However, this fiber route is leased from CenturyLink as unbundled dark fiber. An unbundled dark fiber circuit leased from CenturyLink does not qualify as a fiber-optic cable for the purpose of determining a fiber-based collocator,³⁶ because it is considered owned and operated by the incumbent LEC, not the carrier leasing the unbundled dark fiber.³⁷

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.

³⁶ 47 C.F.R § 51.5.

³⁷ Stipulated Facts, Docket No. UM 1891, December 15, 2017, p. 2, #4.

Generic Diagram Showing Fiber Deployment in Oregon City and Corvallis Wire Centers



Without Competitive Transport Facilities a Carrier Should not be Classified as a Fiber-based Collocator

Considering the foregoing, this *disputed fiber-based collocator* should not be counted as a fiber-based collocator in the disputed wire center. 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 disputed 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.³⁸

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.³⁹ 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 to ILEC dedicated transport, on a route specific basis.

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 disputed wire center associated with the *disputed fiber-based*

³⁸ 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).

³⁹ See <https://www.merriam-webster.com/dictionary/operate>.

collocator leaves the wire center premises on unbundled dark fiber, which does not count as “fiber” for the purpose 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 on 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 each 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....”⁴⁰

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.”⁴¹

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.

IV. Conclusion

In each wire center the disputed fiber-based carrier 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 thus, does not qualify the carrier as a fiber-

⁴⁰ TRRO ¶ 102.

⁴¹ TRRO ¶ 102 n. 293 (emphasis added).

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.

Based on the reasons cited above, CenturyLink's request to reclassify the Oregon City wire center to Tier 1 and the Corvallis wire centers to Tier 2 should be denied.

RESPECTFULLY submitted this, 17th day of January, 2018.

A handwritten signature in black ink, appearing to read "Douglas Denney", enclosed in a thin black rectangular border.

Douglas Denney
Integra
VP, Costs & Policy
360-558-4318
doug.denney@allstream.com