



January 17, 2018

Via eFiling Only

Oregon Public Utility Commission
Attn: Filing Center
P.O. Box 1088
Salem, OR 97308-1088
Puc.filingcenter@state.or.us

RE: UM 1891 – Qwest Corporation d/b/a CenturyLink QC's
Opening Brief on Disputed Issue

Dear Commission:

Attached for filing please find CenturyLink QC's Opening 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

902 Wasco St.
Hood River, OR 97031
Tel. 541.387.9439
Fax. 541.400.8421
tre.hendricks@centurylink.com

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 OPENING BRIEF
ON DISPUTED ISSUE**

Qwest Corporation d/b/a CenturyLink QC (CenturyLink) hereby submits its opening 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. BACKGROUND

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.

After CenturyLink's filing, Integra objected to certain reclassifications. Staff subsequently scheduled a workshop and later facilitated settlement discussions. As a result, the parties were able to file a Partial Stipulation as to uncontested issues, and Stipulated Facts upon which to base a determination on the disputed issue. Both Stipulations were filed on December 15, 2017.

Pursuant to the Partial Stipulation, all parties agree that the Hermiston (HMTNOR56), and Pendleton (PNTNOR56) wire center classifications should be changed from Tier 3 to Tier 2 based on the number of fiber-based collocations, and that the Bend (BENDOR24) classification

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").

should be changed from Tier 2 to Tier 1. The parties further agree that Oregon City (ORCYOR18) can be changed from Tier 3 to Tier 2 based on the number of fiber-based collocators. The Commission entered Order No. 18-008 on January 11, 2018 adopting the partial stipulation.

The sole question remaining for decision is whether the Oregon City wire center should be changed from Tier 2 to Tier 1 and the Corvallis (CRVSOR65) wire center should be changed from Tier 3 to Tier 2, both based on the number of fiber-based collocations. Underlying this question is the legal issue presented to the Commission for decision under the Stipulated Facts filed on December 15, 2017.

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.

II. SUMMARY

In the TRRO the Federal Communications Commission (FCC) established clear and simple tests for determining when competitors are not impaired without access to certain high capacity unbundled network elements (UNEs). The tests are based on the number of fiber-based collocators and the number of switched business lines in a particular wire center. Switched business lines are not at issue in this particular proceeding, as all of the reclassifications are based on the number of fiber-based collocators in each wire center.

Integra disputes the inclusion of one fiber-based collocator in the Oregon City and Corvallis wire centers, alleging that in each case the fiber-based collocation does not meet the FCC's test. Integra claims that because the fiber optic cable only connects an end user customer to the collocation space the cable cannot be used as an alternative to CenturyLink dedicated

transport and does not qualify the carrier as a fiber-based collocator. However, Integra's arguments are based on a misinterpretation of the FCC's requirements. Integra's interpretation, if adopted, would create new and additional requirements not contemplated by the plain language of the FCC rule that establishes the test.

CenturyLink will show that in both disputed wire centers the fiber-based collocator operates a fiber optic cable which meets the criteria set forth in the relevant rule governing a determination of non-impairment, 47 C.F.R. §51.5 (quoted in full below). CenturyLink's methodology for determining fiber-based collocators squarely meets the FCC's criteria: the fiber terminates at the collocation, it leaves the wire center premises, and it is owned by the collocator, who is unaffiliated with CenturyLink. That is the simple test that must be met, and the disputed collocation in each of these wire centers meets that test.

III. DISCUSSION

CenturyLink has verified the existence of four fiber-based collocators in Oregon City and three in Corvallis, in accordance with the FCC's requirements. The FCC stated: "[w]e 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..."² Integra's interpretation of the rule is flawed, and would add requirements to the definition of fiber-based collocator that the FCC did not impose.

A. Oregon City (ORCYOR18)

A fiber-based collocator is defined in 47 C.F.R, §51.5 as follows:

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

² TRRO ¶ 102.

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.

CenturyLink and Integra agree that each provision within the above definition must be met in order for a carrier to be classified as a fiber-based collocator. Integra agrees that the “disputed fiber-based collocator” in Oregon City is unaffiliated with CenturyLink, and that it maintains a collocation within the Oregon City wire center with an active power supply.³ Integra also agrees that the disputed fiber-based collocator has an operating fiber-optic cable that terminates in the collocation space⁴ and that is capable of originating and terminating traffic. In fact, the only element of the FCC’s test that Integra disputes is whether the fiber optic cable can be said to “leave” the collocation.

Integra states that the fiber optic cable does not “leave” the collocation because it serves an end-user. Integra then states that *traffic* on that cable cannot be said to leave the wire center because the traffic is originated by the end-user. However, Integra has mis-read the requirement. The clear and plain language of the rule states that the requirement pertains *to the cable itself*, not the traffic on the cable. And given that Integra concedes that the cable exits the wire center to serve an end-user, outside of the wire center⁵, Integra must agree that the fiber optic cable leaves the wire center.

³ Stipulated Facts ¶ 1 and ¶ 2(1)(2)

⁴ Stipulated Facts ¶ 2(3)

⁵ Stipulated Facts ¶ 3

An additional factor in support of CenturyLink’s interpretation of this provision of the TRRO is found in the provision where the FCC states that the test for non-impairment is intended to be self-effectuating. Specifically, the FCC noted that “[w]e believe that the impairment framework we adopt is *self-effectuating*, forward-looking, and consistent with technology trends that are reshaping the industry.”⁶ Self-effectuating means that the incumbent can validate the non-impairment criteria without consultation with the collocators. Integra’s argument would force the incumbent to consult with each and every collocator to determine whether the fiber served an end-user or performed some other function. This is not consistent with the concept of a self-effectuating framework. In addition, as discussed in more detail below, the test is satisfied once it is determined that the fiber leaves the collocation – there is simply no basis on which to read additional requirements into the test.

Nowhere in the TRRO is there an exclusion for 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 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).”⁷

Integra argues that CenturyLink’s interpretation of the rule fails to read each of the criteria as unique, citing the general rule of statutory construction that each provision must be given meaning. Integra misconstrues CenturyLink’s position. Each prong of the test is unique,

⁶ TRRO, ¶ 3.

⁷ TRRO, ¶ 102.

and not all facilities will meet all of the requirements. For example, CLECs might have CLEC-to-CLEC cross connections, on fiber optic cable, in a wire center. These fiber connections would meet all of the requirements of the FCC, *except* the requirement that the cable leave the wire center. CLEC-to-CLEC cross connects do not physically “leave” the wire center and thus do not qualify. CenturyLink excludes those cables when it is counting fiber-based collocations.

Integra relies on a convoluted process to shift attention away from whether the physical facility leaves the wire center, which it does, and on to the issue of whether “traffic” leaves the wire center.⁸ However, there is no basis to adopt Integra’s reasoning, or to allow Integra to create a requirement that was not established by the FCC. The FCC’s definition of “fiber-based collocator” makes no mention of the traffic on the fiber optic cable. Yet the TRRO has dozens of references to “traffic” in other parts of the Order. This is clearly a limitation that the FCC could have included in the consideration of fiber-based collocator, but did not.

Finally, Integra seems to argue that the only fiber-based collocations that “count” are ones that are transport facilities, and that the connection to the end-user is not a transport facility. This is also incorrect. The disputed fiber-based collocator has what is called an “entrance facility” in the wire center. The FCC has definitely stated that entrance facilities are a type of transport.⁹ Integra’s argument here is unavailing.

⁸ In this regard CenturyLink notes that many aspects of the diagram used by Integra in its original objections simply have no bearing on the issue at hand. CenturyLink anticipates that this diagram will come into play again in the briefing, and will respond if necessary in a reply brief, but for now would simply note that all of the discussions about Integra connecting to other central offices using CenturyLink fiber is simply contextual, and not determinative of the issue presented. (Stipulated Facts ¶4.) The only fiber that matters to this discussion is the one that Integra agrees is operated from the collocation, with active power, and which leaves the wire center.

⁹ “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.” TRRO ¶ 138.

“Because the traffic aggregation potential inherent in entrance facilities more closely resembles that associated with dedicated transport, we reject these arguments and consider these facilities to be a type of transport.” TRRO, FN 384.

For these reasons, a carrier who provides fiber between a collocation and an end-user customer that otherwise meets the requirements of the rule is eligible to be counted as a fiber-based collocator under the rules.

B. Corvallis (CRVSOR65)


The circumstances for the disputed fiber-based collocator in the Corvallis wire center are the same as with Oregon City.¹⁰ Integra's objections are the same as for Oregon City, and CenturyLink will not repeat its arguments. For the reasons stated above, CenturyLink states that Corvallis has three fiber-based collocators and is eligible for Tier 2 status.

IV. CONCLUSION

The Oregon City (ORCYOR18) wire center should be changed from Tier 2 to Tier 1, based on the existence of four fiber-based collocators as determined under CenturyLink's interpretation of the rule. The Corvallis (CRVSOR65) wire center should be changed from Tier 3 to Tier 2, based on the existence of three fiber-based collocators as determined under CenturyLink's interpretation of the rule.

RESPECTFULLY submitted this 17th day of January, 2018.

QWEST CORPORATION d/b/a
CenturyLink QC

By 
William E. Hendricks, III
OSB# 116944
902 Wasco Street
Hood River, OR 97031
tre.hendricks@centurylink.com
Attorney for Qwest Corporation

¹⁰ Stipulated Facts ¶ 1