

February 7, 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 Reply 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.

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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 REPLY BRIEF

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 reply 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. Summary

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

This reply brief addresses three issues raised by either Staff and/or CenturyLink in their opening briefs.

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.

First, both Staff and CenturyLink erroneously disregard the requirement in the FCC’s fiber-based collocation definition that the fiber-based collocater “operates a fiber-optic cable.”² Instead, Staff and CenturyLink focus on only whether a physical fiber optic cable leaves the incumbent LEC wire center premises and terminates at the collocation arrangement, and do not consider whether the traffic over this cable (i.e., the operation of the cable) meets these criteria.³

Second, Staff relies on the phrase, “irrespective of the services that the competing carrier offers,” in the Triennial Review Remand Order (“TRRO”),⁴ and erroneously concludes that this supports that there should be no distinction between transport and end-user facilities.⁵

Third, CenturyLink’s relies on the FCC’s concept of a self-effectuating framework⁶ to suggest that every fiber-based collocation is simply derived, uncomplicated, and does not require verification.⁷ This is contrary to actual implementation of the TRRO and the process laid out in the TRRO Settlement Order.⁸ In fact, it is not uncommon for CenturyLink to make a fiber-based collocation claim and subsequently withdraw the claim as details surrounding the claim are investigated more closely.

² 47 C.F.R § 51.5.

³ *Staff’s Opening Brief*, Docket No. UM 1891, January 17, 2018, (“Staff Opening Brief”), p. 8; and *Qwest Corporation dba CenturyLink QC’s Opening Brief on Disputed Issue*, Docket No. UM 1891, January 17, 2018, (“CenturyLink Opening Brief”), p. 4.

⁴ *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”), ¶ 102.

⁵ *Staff Opening Brief*, p. 9.

⁶ TRRO, ¶ 3.

⁷ *CenturyLink Opening Brief*, p. 5.

⁸ *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”).

Integra continues to believe that a fair reading of the fiber-based collocation rule, and the intent of the rule, demonstrates that end-user fiber (or non-transport fiber) should not be used to support a conclusion about an ILEC's obligation to provide unbundled transport facilities.

II. Discussion

“Operation” of a Fiber Optic Cable Means the Traffic Riding Over the Cable is Relevant

A fiber-based collocator is defined as follows:⁹

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.

CenturyLink states that, “The FCC’s definition of ‘fiber-based collocator’ makes no mention of the traffic on the fiber optic cable.”¹⁰ This is incorrect. The fiber-based collocation rule clearly identifies that it applies to the **operation** of a fiber-optic cable and operating a fiber-optic cable means that a carrier is placing traffic over that cable. The Oregon Supreme Court interprets “operate” in the same way, concluding, “a company operates a cable communications system by causing the system to function – that is, to send or receive electronic or electrical signals

⁹ 47 C.F.R § 51.5 (emphasis added).

¹⁰ *CenturyLink Opening Brief*, p. 6.

over a cable communications system.”¹¹ Staff, likewise, ignores the operation of the fiber-optic cable when concluding that the cable both leaves the incumbent LEC wire center premises and terminates at a collocation arrangement.¹²

Staff and CenturyLink’s interpretation of the rule, that any competitive fiber-optic cable that leaves a wire center premises must also terminate at a collocation arrangement within the wire center, erroneously renders these two conditions identical. In fact, these two conditions must be read uniquely.¹³ The only way read this rule in a way that gives full meaning to both the termination and leaving conditions is to recognize that they fall under the provision of the rule that clearly states the fiber-optic cable must be in operation.

Because the fiber-optic cable in question is dedicated to an end-user, rather than a transport facility, the traffic originated by the end user over this fiber never leaves the wire center premises.¹⁴

Transport Fiber and End User Fiber are not Different Services but Different Facilities

Staff concludes that there should be no distinction between transport and end-user facilities, based on the FCC’s statement that, “facilities shall count toward the qualification of a wire center for a particular tier irrespective of the services that the competing carrier offers.”¹⁵

Telecommunications Service means, “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public,

¹¹ Supreme Court of Oregon decision in *City of Eugene v. Comcast of Oregon*, May 26, 2016; 375 P.3d 446 (2016) 359 Or. 528 (available at https://scholar.google.com/scholar_case?case=16153940824596420487&q=city+of+eugene+v.+comcast+of+oregon+ii+inc&hl=en&as_sdt=6,48&as_vis=1).

¹² *Staff Opening Brief*, p. 8.

¹³ *Integra Opening Brief*, Docket No. UM 1891, January 17, 2018, p. 11.

¹⁴ *Integra Opening Brief*, Docket No. UM 1891, January 17, 2018, p. 11.

¹⁵ *Staff Opening Brief*, p. 9 referencing TRRO, ¶ 102.

regardless of the facilities used.”¹⁶ Telecommunications means, “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”¹⁷

Services are *regardless of facilities*. Services are offerings such as traditional voice, Voice over IP, digital subscriber line, SONET and Ethernet, but not the physical facility over which the service rides.

The context of the FCC’s discussion in paragraph 102 of the TRRO regarding the phrase *irrespective of the of the services* was about the inclusion of fixed-wireless collocation arrangements as a part of the fiber-based collocation definition, even though they were providing **transport** using a different service than what would be provided over fiber cables. For reference, the entire paragraph 102 is included below:

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. We find that the collocation arrangement may be obtained by the competing carrier either pursuant to contract, tariff or, where appropriate, section 251(c)(6) of the Act, including less traditional collocation arrangements such as Verizon’s CATT fiber termination arrangements. **Because fixed-wireless carriers’ collocation arrangements may not literally be fiber-based, but nevertheless signal the ability to deploy transport facilities, we include fixed-wireless collocation arrangements at a wire center if the carrier’s alternative transmission facilities both terminate in and leave the wire center.** In tallying the number of fiber-based collocators for purposes of our transport impairment analysis, parties shall only count multiple collocations at a single wire center by the same or affiliated carriers as one fiber-based collocation. Finally, 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.¹⁸

¹⁶ 47 C.F.R § 153(53) (emphasis added).

¹⁷ 47 C.F.R § 153(50).

¹⁸ TRRO, ¶ 102 (footnotes omitted), (emphasis added). The entire TRRO can be found at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-04-290A1.pdf.

The FCC's determination that the carriers' collocation facilities shall count regardless of services provided is a reference to a carrier using fixed-wireless or some other technology for transport, rather than fiber, not a reference to the equality of transport and end-user facilities.

Fiber-Based Collocation Claims are not often inherently Obvious and Require Nuanced, Detailed Application of the Fiber-Based Collocation Definition

CenturyLink argues that Integra's interpretation of the rules, "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,"¹⁹ and, "[t]his is not consistent with the concept of a self-effectuating framework."²⁰ However, CenturyLink has already agreed to consult with each collocator as part of the June 20, 2007, *TRRO Settlement Order*,²¹ and this process has improved the accuracy rather than hindered the review of wire centers submitted for non-impairment.

Immediately after the release of the TRRO and the first attempt at implementing the fiber-based collocation rule, the parties involved realized that the process was more complicated and involved than CenturyLink simply announcing a new fiber-based collocator. As a result, CenturyLink and a number of CLECs signed the *TRRO Settlement Order*. 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.²²

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

¹⁹ *CenturyLink Opening Brief*, p. 5.

²⁰ *CenturyLink Opening Brief*, p. 5.

²¹ TRRO Settlement Order.

²² *TRRO Settlement Order*, §§ V and VI.

- 1) Before filing a request for Commission approval of a non-impairment designation, CenturyLink will inform the carrier that it will be counted as a fiber-based collocator in CenturyLink's filing. The CLEC will have a reasonable opportunity to provide feedback to this information before CenturyLink files its request...²³ This process has been in place since 2007.
- 2) At least five days prior to a new non-impairment filing, CenturyLink will request a protective order from the Commission.²⁴
- 3) A CLEC or any other party will have 30 days from the filing date to raise objections to CenturyLink's request.²⁵

The entire purpose of this process is to give impacted carriers the opportunity to review and/or dispute CenturyLink's filings and the data upon which the filings are based. It gives carriers a chance to object to CenturyLink's interpretation of a carrier's own data and does not allow CenturyLink to self-effectuate non-impairment changes without proper review of the facts. These steps would be unnecessary if, "the incumbent can validate the non-impairment criteria without consultation with the collocators,"²⁶ as CenturyLink has claimed.

Evidence of the effectiveness of this process as outlined in the TRRO Settlement Order, is that as a result of the process, CenturyLink has on numerous occasions withdrawn a wire center from a State Commission TRRO filing, including CenturyLink's 2010 attempt to reclassify the Bend wire center from Tier 2 to Tier 1,²⁷ and most recently in Minnesota, where after further

²³ *TRRO Settlement Order*, § V.B.4.

²⁴ *TRRO Settlement Order*, § VI.C.

²⁵ *TRRO Settlement Order*, § VI.F.1.

²⁶ *CenturyLink Opening Brief*, p. 5.

²⁷ *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.

review from the Department of Commerce and Integra, CenturyLink withdrew its application with respect to a specific wire center.²⁸

III. Conclusion

Integra continues to believe that a fair reading of the fiber-based collocation rule, and the intent of the rule, demonstrates that end-user fiber (or non-transport fiber) should not be used to support a conclusion about an ILECs' obligation to provide unbundled transport facilities.

Based on the reasons cited above and in Integra's opening brief, 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, 7th, day of February, 2018.



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²⁸ *Qwest Corporation dba CenturyLink QC's Reply Comments*, In the Matter of Qwest Corporation dba CenturyLink QC's Petition for Commission Approval of 2017 Additions to the Non-Impaired Wire Center List, Docket No. P-421/AM-17-541, August 24, 2017.