

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1891

4 In the Matter of

5 QWEST CORPORATION, dba
6 CENTURYLINK QC,

STAFF'S REPLY BRIEF

7 Petition for Approval of 2017 Additions to Non-
8 Impaired Wire Center List

9 **I. INTRODUCTION**

10 CenturyLink asks the Public Utility Commission of Oregon (“Commission”) to reclassify
11 several wire centers to different tiers on its Non-Impaired Wire Center List. Commission Staff
12 filed an opening brief supporting CenturyLink’s position, and hereby replies to several points
13 raised in Integra’s opening brief. Specifically, Staff offers further context to clarify several
14 passages of the FCC’s *Triennial Review Remand Order*¹ that Integra quotes to support its
15 position. The context of these passages show that the FCC cited evidence of alternative inter-
16 office transport to explain why the record in that proceeding supported the agency’s development
17 of the proxies by which it would measure competitive potential in the future. The FCC did not,
18 however, incorporate direct measurement of such deployment into the definition of “fiber-based
19 collocator,” the proxy at issue here. The carrier in dispute meets the criteria of that definition.

20 **II. ARGUMENT**

21 **A. The FCC’s discussion of actual deployment in the *Triennial Review Remand***
22 ***Order* is consistent with the FCC’s intent to develop a proxy that was**
23 **supported by the record in that proceeding, but the fiber-based collocator**
24 **proxy does not itself directly measure alternative transport deployment.**

25 Integra takes the position that for a carrier to qualify as a fiber-based collocator, that
26 carrier’s collocated cable must be used by the carrier for alternative inter-office transport.

25 ¹ *Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling*
26 *Obligations of Incumbent Local Exchange Carriers*, Order on Remand, CC Docket No. 01-338,
WC Docket No. 04-313, 20 FCC Rcd 2533 (2005) (“*Triennial Review Remand Order*” or
“*TRRO*”), *aff’d*, *Covad Communications Company v. FCC*, 450 F3d 528 (DC Cir 2006).

1 Integra cites several portions of the *Triennial Review Remand Order* to support its position,
2 highlighting places where the FCC discussed actual competitive deployment. Careful
3 consideration of these passages, however, shows that the test adopted by the FCC does not work
4 as Integra describes.

5 As Integra acknowledges,² the FCC considers the count of fiber-based collocators to be a
6 proxy. To support its analysis, Integra quotes the FCC's statement that its "approach focuses on
7 actual competitive deployment, which signifies that actual and potential revenues justified the
8 underlying costs" to build facilities.³ Properly understood in context, though, this statement does
9 not describe how any particular proxy works. Instead, it reflects the FCC's explanation for its
10 approach to developing the impairment test and the proxies that it would use to measure
11 impairment going forward. It does not reflect the ultimate tests, which were intended to measure
12 the *potential* for competitive deployment.⁴ In this passage, the FCC was specifically addressing
13 concerns that may have been held by parties who had submitted large quantities of cost data.
14 The FCC declined to construct cost models to assess impairment, instead looking to evidence in
15 the record of competitive deployment that supported the thresholds it chose.⁵ This is an example
16 of the agency's explanation for why the path that it took was justified by the record.

17 Another passage that, properly understood, does not support Integra's argument, is the
18 FCC's statement that it would "accommodate reasonable inferences that can be drawn between
19 similarly situated routes based on evidence of actual deployment by competing carriers."⁶ In this
20 passage, the FCC was discussing its choice to assess impairment for inter-office transport
21 purposes on a route-by-route basis. The key development explained in this passage is the use of
22 categories of routes so that "similarly situated" routes could be treated similarly. Prior to the

23 ² Integra Opening Brief at 2.

24 ³ *Id.* at 4 (citing *TRRO* ¶ 74).

25 ⁴ *TRRO* ¶ 93 ("[T]he best and most readily administered indicator of the potential for competitive
deployment is the presence of fiber-based collocators in a wire center.").

26 ⁵ *Id.* ¶ 74.

⁶ Integra Opening Brief at 4 (citing *TRRO* ¶ 79).

1 *Triennial Review Remand Order*, the FCC had prescribed an assessment of each individual
2 specific route, with no tiers to simplify the administration of the test.⁷ The use of the phrase
3 “evidence of actual deployment” in this passage is again an explanation of the record that
4 supported the FCC’s route-by-route approach.

5 Certain other passages mention evidence of alternative transport deployment, but
6 similarly do not support Integra’s position when considered in context. For instance, the FCC’s
7 statement that its approach “more carefully measures actual and potential transport deployment”⁸
8 does not refer to the fiber-based collocation test. The FCC instead was contrasting the route-by-
9 route approach it opted to use for transport to an approach based on entire Metropolitan
10 Statistical Areas. Additionally, the FCC’s explanation of why it rejected approaches that would
11 “remove the unbundling obligation to many other locations without any proof that a requesting
12 carrier could self-provide or utilize alternative transport to reach those other locations”⁹ only
13 refers to why it favored an approach that considered the competitive potential at both ends of a
14 transport route instead of the single end-point test advocated by some.

15 Many of the passages of the *Triennial Review Remand Order* that mention evidence of
16 actual competitive transport deployment do so in the context of justifying the FCC’s choice of
17 tests on the basis of the record before the agency. This makes sense in an extremely technical
18 proceeding in an order that was all but guaranteed to be appealed. But these passages do not
19 change the definition of fiber-based collocator. Nor do they change the fact that the FCC
20 intended fiber-based collocation to function as a proxy for competitive potential, and not as a
21 direct measurement of a particular type of transport deployment.

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25 ⁷ *TRRO* ¶ 79 (distinguishing this approach from the approach previously taken by the FCC).

26 ⁸ Integra Opening Brief at 4 (citing *TRRO* ¶ 82).

⁹ *Id.* (citing *TRRO* ¶ 84).

1 **B. The Disputed Carrier meets the criteria of a fiber-based collocator.**

2 The parties appear to agree that the only cable that is relevant to the fiber-based
3 collocator question is the cable that goes to an end user.¹⁰ Therefore, while Integra discusses and
4 depicts some of the additional infrastructure that comprises its network, it is not necessary to
5 address any of that infrastructure here. The carrier whose cable connects the central office to the
6 end user, as explained in Staff and CenturyLink's opening briefs, meets the criteria to qualify as
7 a fiber-based collocator. Integra's analysis to the contrary is unpersuasive.

8 Staff and CenturyLink's reading is consistent with Integra's observation that each of the
9 criteria in the definition must be read as unique. Staff addressed in its opening brief how the
10 carrier in dispute meets each of the separate criteria of the rule.¹¹ This analysis shows why,
11 contrary to what Integra suggests, Staff's position would not amount to relying on the "presence
12 of *any* fiber facility."¹² CenturyLink further explained that unlike the cable at issue here, cross-
13 connects would terminate in a collocation space but not leave the wire center.¹³ CenturyLink
14 also accurately distinguishes between the FCC's adoption of a rule that refers to "cable" and
15 Integra's analysis that focuses on "traffic."¹⁴ These points reinforce Staff's textual analysis,
16 which need not be repeated here.

17 **III. CONCLUSION**

18 For the reasons discussed above and in Staff's Opening Brief, the Disputed Carrier meets
19 the criteria to be counted as a fiber-based collocator. The Commission should therefore grant

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24 ¹⁰ See *id.* at 11; CenturyLink Opening Brief at 6 n8.

25 ¹¹ Staff's Opening Brief at 7-11.

26 ¹² Integra's Opening Brief at 12.

¹³ CenturyLink Opening Brief at 6.

¹⁴ *Id.*

1 CenturyLink's petition and reclassify the Oregon City wire center as Tier 1 and reclassify the
2 Corvallis wire center as Tier 2.

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4 DATED this 7th day of February, 2018.

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Respectfully submitted,

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