

ENTERED JAN 11 2018

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1891

In the Matter of

QWEST CORPORATION, dba
CENTURYLINK QC,Petition for Approval of 2017 Additions
to Non-Impaired Wire Center List.

ORDER

DISPOSITION: PARTIAL STIPULATION ADMITTED INTO RECORD;
PARTIAL STIPULATION ADOPTED; STIPULATED
FACTS ACKNOWLEDGED

I. SUMMARY

In this order, we adopt the partial stipulation among Qwest Corporation, dba CenturyLink QC (CenturyLink); Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., Electric Lightwave, LLC (collectively Integra); and Commission Staff to resolve all issues related to the reclassification of three CenturyLink wire centers (Hermiston, Pendleton, and Bend), and to partially resolve issues related to the reclassification of a fourth wire center (Oregon City). The partial stipulation leaves open certain issues related to the further reclassification of the Oregon City wire center, and all issues related to the reclassification of a fifth wire center (Corvallis). We also acknowledge the stipulated facts to be used for briefing the remaining issues according to the briefing schedule already established in this proceeding.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Legal Framework

To promote competition in the telecommunications industry, the Telecommunications Act of 1996, 47 USC § 251 *et seq.*, requires incumbent local exchange carriers (ILECs), such as CenturyLink, to make high-capacity unbundled network elements (UNEs) that are necessary to enter the telecommunication services market available to competitive local exchange carriers (CLECs) until such time as it can be demonstrated that failure to provide UNEs would no longer impair a CLEC's ability to provide services to the public. Pricing of the UNEs is based on ILECs' costs, pursuant to federal methodology.

In its *Triennial Review Remand Order*, the Federal Communications Commission (FCC) set objective measures for determining when wire center conditions indicate non-

impairment sufficient to relieve an ILEC of the obligation to provide UNEs to a requesting CLEC.¹ One measure indicates that when the number of business lines served by a wire center and/or the number of “fiber-based collocators” at a wire center reaches a certain number, a wire center is no longer considered impaired.²

For purposes of determining whether an ILEC must provide unbundled access to dedicated transport on a particular route, the FCC classifies wire centers into three tiers based on the number of fiber-based collocators, business lines served, or both.³ An ILEC’s obligation to provide UNEs for a particular transport route depends on the classification of the wire centers at both ends of the route, with the ILEC’s obligations being lessened or eliminated when the wire centers are reclassified to higher tiers.⁴ For example, unless the wire centers on both ends of a route are classified as Tier 1, an ILEC must unbundle DS1 transport.⁵ For dedicated DS3 transport, however, an ILEC must unbundle if either wire center is classified as Tier 3.⁶

Tier 1 ILEC wire centers contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 2 ILEC wire centers contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 3 wire centers are any that do not qualify as either Tier 1 or Tier 2.⁷ Tier reclassification occurs only as a promotion and is not reversible.⁸

B. Procedural History

On August 15, 2017, CenturyLink filed a petition seeking to add certain wire centers to its list of non-impaired wire centers, and to reclassify several wire centers to higher tiers, all on the basis that the wire centers have the requisite number of fiber-based collocators under 47 CFR § 51.319(d)(3). The petition specifically requests that: (1) the Corvallis, Hermiston, and Pendleton wire center classifications be changed from Tier 3 to Tier 2; (2) the Bend classification be changed from Tier 2 to Tier 1; and (3) the Oregon City wire center be changed from Tier 3 to Tier 1.

On October 6, 2017, Integra filed objections and challenged CenturyLink’s methodology for determining the number of fiber-based collocators for the Oregon City and Corvallis wire centers. Integra also asserted that CenturyLink had not met its burden of proof with regard to certain conditions at the Bend wire center. On October 17, 2017, CenturyLink filed a response. A procedural schedule was adopted at a prehearing conference held on November 20, 2017.

¹ *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 (2005) (*Triennial Remand Order or TRRO*).

² See 47 CFR § 51.319 (setting forth detailed unbundling requirements).

³ See 47 CFR § 51.319(d); *TRRO*, 20 FCC Rcd. ¶¶ 66, 111-24.

⁴ See 47 CFR § 51.319(d)(2).

⁵ Joint Explanatory Brief, pp. 2-3, citing 47 CFR § 51.319(d)(2)(iii)(A).

⁶ *Id.* at 3 citing 47 CFR § 51.319(d)(2)(iii)(A).

⁷ 47 CFR § 51.319(d)(3).

⁸ 47 CFR § 51.319(d)(3)(i), (ii).

Following workshops and settlement conferences, the parties were able to reach partial agreement and filed the present stipulation. With the stipulation, the parties filed a motion asking for expedited handling of the uncontested wire centers.

III. DISCUSSION

The partial stipulation, attached as Appendix A, presents agreement among the stipulating parties regarding CenturyLink's request to reclassify the company's Hermiston, Pendleton, and Bend wire centers. The stipulating parties agree that the Hermiston and Pendleton wire centers meet the criteria to be reclassified for the purpose of dedicated transport as Tier 2 (from Tier 3), and that the Bend wire center meets the criteria to be reclassified as Tier 1 (from Tier 2) on the basis of the number of fiber-based collocators in each. The stipulating parties also agree that the reclassification of the Oregon City wire center from Tier 3 to Tier 2 is undisputed. The stipulating parties ask that we approve these undisputed reclassifications.

The stipulating parties identify two remaining disputed issues: (1) whether the Oregon City wire center should be further reclassified from Tier 2 to Tier 1; and (2) whether the Corvallis wire center should be reclassified as Tier 2. The stipulating parties agree that the resolution of these two questions depends on interpretation of the term, "fiber-based collocator" under 47 CFR § 51.5 and the *Triennial Review Remand Order*, as applied to the facts set forth in the Stipulated Facts. The stipulating parties explain that under CenturyLink's interpretation, the Oregon City wire center should be deemed as having four fiber-based collocators and be reclassified as Tier 1, and that the Corvallis wire center should be reclassified as Tier 2, with three fiber-based collocators. On the other hand, the stipulating parties state that under Integra's interpretation, the Oregon City wire center should be reclassified as Tier 2, and that the Corvallis wire center should remain Tier 3. The stipulating parties agree to brief the remaining issues according to the briefing schedule previously adopted to address issues not resolved by stipulation.

For purposes of briefing, the stipulating parties agree to the following facts:

- CenturyLink includes one carrier in its count of fiber-based collocators for each of the Oregon City and Corvallis wire centers that the Stipulating Parties agree as to factual characteristics but not whether the carrier meets the definition of a fiber-based collocator. Thus, there is a "disputed fiber-based collocator" in each of the Oregon City and Corvallis wire centers.
- The disputed fiber-based collocator in each of the Oregon City and Corvallis wire centers: (1) is a carrier that is unaffiliated with CenturyLink; (2) maintains collocation arrangements within CenturyLink's Oregon City and Corvallis wire centers that each have an active electrical supply; and (3) operates a fiber optic cable that terminates

at collocation arrangements within CenturyLink's Oregon City and Corvallis wire centers.

- The cable operated by the disputed fiber-based collocater in each of the Oregon City and Corvallis wire centers connects an end-user customer premises outside the wire center but within the CenturyLink wire center exchange boundary to the disputed fiber-based collocater's collocation space in CenturyLink's central office.
- The disputed fiber-based collocater also leases from CenturyLink, on a non-IRU basis, unbundled dark fiber that connects to its collocation arrangements within CenturyLink's central offices. The disputed fiber-based collocater connects this fiber to its own fiber network through its collocation spaces in other CenturyLink end offices not addressed in this proceeding.

IV. RESOLUTION

We have reviewed the entire case record together with the terms of the partial stipulation, which we admit into the record. We understand that the partial stipulation was freely entered into by the stipulating parties, and we find that its terms are reasonable and should be adopted.

We will conduct additional proceedings to address the two remaining issues. We acknowledge the stipulated facts for use in opening briefs due on January 17, 2018, and optional reply briefs due on February 7, 2018.

V. ORDER

IT IS ORDERED that:

1. The Partial Stipulation among between Qwest Corporation, dba CenturyLink QC; Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., Electric Lightwave, LLC (collectively Integra), and Commission Staff, attached as Appendix A, is adopted.
2. CenturyLink's Hermiston wire center is reclassified for the purpose of dedicated transport from Tier 3 to Tier 2.
3. CenturyLink's Bend wire center is reclassified for the purpose of dedicated transport from Tier 2 to Tier 1.

4. CenturyLink's Oregon City wire center is reclassified from Tier 3 to Tier 2.
5. CenturyLink's Pendleton wire center is reclassified from Tier 3 to Tier 2.

Made, entered, and effective JAN 11 2018

Lisa D. Hardie

Lisa D. Hardie
Chair

Stephen M. Bloom

Stephen M. Bloom
Commissioner



Megan W. Decker

Megan W. Decker
Commissioner

BEFORE THE PUBLIC UTILITY COMMISSION

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In the Matter of

QWEST CORPORATION, dba
CENTURYLINK QC,

PARTIAL STIPULATION

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

INTRODUCTION

1. The parties to this Partial Stipulation are Qwest Corporation d/b/a CenturyLink QC ("CenturyLink"); Eschelon Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., and Electric Lightwave, LLC ("Integra"); and Staff of the Public Utility Commission of Oregon ("Staff"), together referred to as "the Stipulating Parties."

2. By entering into this Partial Stipulation, the Stipulating Parties intend to resolve the issue of the reclassification of the Hermiston, Pendleton, and Bend wire centers with respect to CenturyLink's non-impaired wire center list, and to partially resolve the issue of the reclassification of the Oregon City wire center with respect to the non-impaired wire center list.

BACKGROUND

3. Under Section 251(d)(2) of the Telecommunications Act of 1996, incumbent local exchange carriers ("ILECs"), such as CenturyLink, are required to make available to competitive local exchange carriers ("CLECs") certain high-capacity unbundled network elements ("UNEs") for the provision of telecommunications services to the public, until such time that the failure to provide those UNEs would no longer "impair" a CLEC's ability to provide service. In its *Triennial Review Remand Order*,¹ the Federal Communications Commission ("FCC")

¹ *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 (2005) ("*Triennial Review Remand Order*" or "*TRRO*").

1 established the rules for when ILECs must make UNEs available and set objective measures for
 2 when the conditions in a wire center indicate the requisite level of non-impairment to relieve
 3 ILECs of the obligation to provide UNEs to a requesting carrier. Once the number of business
 4 lines served by a wire center and/or the number of “fiber-based collocators” at a wire center
 5 reaches a certain number, a wire center is no longer “impaired.”²

6 4. For the purposes of determining whether an ILEC must provide unbundled access
 7 to dedicated transport on a particular route, the FCC classifies wire centers into three tiers based
 8 on the number of fiber-based collocators, business lines served, or both.³ An ILEC’s obligation
 9 to provide UNEs for a particular transport route depends on the classification of the wire centers
 10 at both ends of the route, with the ILEC’s obligations being lessened or eliminated when the wire
 11 centers are reclassified to higher tiers.⁴

12 5. On August 15, 2017, CenturyLink filed a Petition asking the Commission to
 13 approve the addition of certain wire centers to CenturyLink’s non-impaired wire center list, all
 14 on the basis that the wire centers have the requisite number of fiber-based collocators under the
 15 *Triennial Review Remand Order* to qualify the wire centers as no longer being competitively
 16 impaired. CenturyLink filed confidential attachments in support of its Petition on August 30,
 17 2017, and supplementary confidential information on September 6, 2017.

18 6. In its Petition, CenturyLink specifically requests that the Corvallis (CRVSOR65),
 19 Hermiston (HMTNOR56), and Pendleton (PNTNOR56) wire center classifications be changed
 20 from Tier 3 to Tier 2; the Bend (BENDOR24) classification be changed from Tier 2 to Tier 1;
 21 and the Oregon City (ORCYOR18) wire center be changed from Tier 3 to Tier 1.

22 7. Pursuant to the procedure established in Order No. 07-328, Integra filed a petition
 23 to intervene and filed objections to CenturyLink’s Petition. Integra argued that CenturyLink’s
 24 methodology for determining the number of fiber-based collocators as to the Oregon City and
 25

26 ² See 47 C.F.R. § 51.319 (setting forth detailed unbundling requirements).

³ See 47 C.F.R. § 51.319(d); *TRRO*, 20 FCC Rcd. ¶¶ 66, 111-24.

⁴ See 47 C.F.R. § 51.319(d)(2).

1 Corvallis wire centers is incorrect and asserted that CenturyLink had not met its burden of proof
2 as to the Bend wire center. In its filed objections, Integra did not object to the reclassification of
3 the Hermiston, Pendleton, and Oregon City wire centers from Tier 3 to Tier 2.

4 8. At a workshop held on October 19, 2017, the Stipulating Parties discussed these
5 issues and reached a general agreement on how to move forward.

6 9. Commission Staff contacted several providers that did not respond to notices sent
7 by CenturyLink to confirm whether they met the definition of fiber-based collocater. Based on
8 the information obtained by Staff, Integra agreed to withdraw its objection to the reclassification
9 of the Bend wire center from Tier 2 to Tier 1.

10 10. A prehearing conference was held on November 27, 2017, at which Integra's
11 petition to intervene was granted and a schedule was set for the filing of a Partial Stipulation, a
12 motion with regard to undisputed issues, Stipulated Facts, and legal briefing on disputed issues.

13 11. At a workshop held on December 4, 2017, the Stipulating Parties discussed
14 remaining issues in this docket and reached general agreement on how to move forward.

15 **PARTIAL STIPULATION**

16 12. The Stipulating Parties agree that the reclassification of the Hermiston wire center
17 from Tier 3 to Tier 2 is undisputed and should be approved by the Commission.

18 13. The Stipulating Parties agree that the reclassification of the Pendleton wire center
19 from Tier 3 to Tier 2 is undisputed and should be approved by the Commission.

20 14. The Stipulating Parties agree that the reclassification of the Bend wire center from
21 Tier 2 to Tier 1 is undisputed and should be approved by the Commission.

22 15. The Stipulating Parties agree that the reclassification of the Oregon City wire
23 center from Tier 3 to Tier 2 is undisputed and should be approved by the Commission.

24 16. In the Oregon City wire center, CenturyLink includes in its counts of fiber-based
25 collocators three carriers that the parties agree are unaffiliated with CenturyLink; that maintain a
26 collocation arrangement in the CenturyLink wire center, with active electrical power supply; and

1 that operate a fiber-optic cable or comparable transmission facility that terminates at a
2 collocation arrangement within the wire center, leaves the incumbent LEC wire center premises,
3 and is owned by a party other than CenturyLink or its affiliates.

4 17. In the Corvallis wire center, CenturyLink includes in its counts of fiber-based
5 collocators two carriers that the parties agree are unaffiliated with CenturyLink; that maintain a
6 collocation arrangement in the CenturyLink wire center, with active electrical power supply; and
7 that operate a fiber-optic cable or comparable transmission facility that terminates at a
8 collocation arrangement within the wire center, leaves the incumbent LEC wire center premises,
9 and is owned by a party other than CenturyLink or its affiliates.

10 18. In each of the Oregon City and Corvallis wire centers, CenturyLink includes in its
11 counts of fiber-based collocators one carrier in each wire center about which the parties agree as
12 to the factual characteristics but do not agree whether it meets the definition of a fiber-based
13 collocator. This carrier is referred to as the "disputed fiber-based collocator."

14 19. The Stipulating Parties agree that the remaining disputed issues—whether the
15 Oregon City wire center should be reclassified as Tier 1 and whether the Corvallis wire center
16 should be reclassified as Tier 2—depend on the proper interpretation of "fiber-based collocator"
17 under 47 C.F.R. § 51.5 and the *Triennial Review Remand Order*, as applied to the facts set forth
18 in the Stipulated Facts filed contemporaneously with this Partial Stipulation. The Stipulating
19 Parties agree that under CenturyLink's interpretation, the Oregon City wire center should be
20 reclassified as Tier 1, with four fiber-based collocators, and the Corvallis wire center should be
21 reclassified as Tier 2, with three fiber-based collocators. The Stipulating Parties agree that under
22 Integra's interpretation, the Oregon City wire center should be reclassified as Tier 2, and the
23 Corvallis wire center should remain in Tier 3. The Stipulating Parties will brief this issue
24 according to the legal briefing schedule adopted for disputed issues.

25 20. The Partial Stipulation will be offered into the record of the above-captioned
26 docket pursuant to OAR 860-001-0350. The Stipulating Parties will support the Partial

1 Stipulation throughout this proceeding and any appeal, provide witnesses to sponsor the Partial
2 Stipulation at any hearing held in the above-captioned docket, and recommend that the
3 Commission issue an order adopting the settlement contained herein.

4 21. The Stipulating Parties have negotiated the Partial Stipulation as an integrated
5 document. If the Commission rejects all or any material portion of the Partial Stipulation, or
6 conditions its approval upon the imposition of additional material conditions, any party
7 disadvantaged by such action shall have the rights provided in OAR 860-001-0350 to present
8 evidence and argument on the record in support of the Partial Stipulation or to withdraw from the
9 Partial Stipulation, and shall be entitled to seek reconsideration of the Commission's order.

10 22. By entering into this Partial Stipulation, no party shall be deemed to have
11 approved, admitted or consented to the facts, principles, methods or theories employed by any
12 other party in arriving at the terms of the Partial Stipulation. No party shall be deemed to have
13 agreed that any part of the Partial Stipulation is appropriate for resolving issues arising in any
14 other proceeding.

15 23. The Partial Stipulation may be executed in counterparts and each signed
16 counterpart shall constitute an original document.

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1 The Partial Stipulation is entered into by each Party on the date entered below.

2 CENTURYLINK

3 Dated: December 15, 2017

4
5
6 By:  _____

7
8 INTEGRA

9
10 Dated: _____

11 By: _____

12
13 PUBLIC UTILITY COMMISSION STAFF

14
15 Dated: _____

16 By: _____

1 The Partial Stipulation is entered into by each Party on the date entered below.

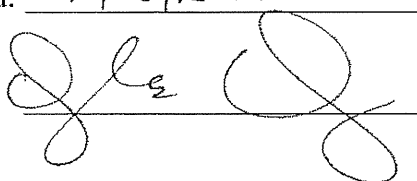
2 CENTURYLINK

3 Dated: _____

4 By: _____

5 INTEGRA

6 Dated: 12/15/2017

7 By:  _____

8 PUBLIC UTILITY COMMISSION STAFF

9 Dated: _____

10 By: _____

1 The Partial Stipulation is entered into by each Party on the date entered below.

2

3 CENTURYLINK

4 Dated: _____

5 By: _____

6

7 INTEGRA

8 Dated: _____

9 By: _____

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11 PUBLIC UTILITY COMMISSION STAFF

12 Dated: 12/15/2017

13 By: 

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