



August 6, 2020

Oregon Public Utility Commission  
By Email

Re: HB 3065 COLR Investigation – Recommendations for Legislative Action

Dear Commissioners and Commission Staff:

CenturyLink and Ziplly (the Companies) hereby respond to the questions posed by the Commission in this docket. We believe it is critical that the Commission provide the legislature with recommendations to address the fact that the current market for voice telecommunications service, including the extent of competition, technology, and consumer demand, is radically different from when the allocation of territories statutes (ORS 759.500 - .570) were passed.

The Companies hope these answers provide you with some guidance on how to begin to craft a recommendation. We believe the best approach is to work together on specific language for the legislature to consider in the 2021 session. We look forward to that process and thank you for the opportunity to collaborate.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tre Hendricks".

Tre Hendricks  
Director of Government Affairs and  
Associate General Counsel  
CenturyLink

And

A handwritten signature in black ink, appearing to read "Jessica Epley".

Jessica Epley  
Regulatory & External Affairs Director  
Ziplly

## **HB 3065 COLR Public Process Framework Questions for Recommendations**

### **1. What are the key industry trends and policy directives that should be considered?**

Policymakers must understand that the COLR requirement is no longer tenable for large telecommunications providers that do not receive sufficient subsidies on a per line basis. It is patently unfair to force a provider that serves a shrinking minority of the market to bear the sole burden of being the COLR. This is particularly true for large providers (CenturyLink and Zply) whose market shares have diminished substantially since the market for local telephone service was opened by Congress in the Telecommunications Act of 1996. Since that time CenturyLink and Zply have lost nearly three-quarters of their customers to competitive providers that deliver service through numerous modalities, including satellite, fixed wireless, traditional wireline, cable, and cellular technologies. *See Attachment.* Although the Commission has worked with the companies under its existing authority to limit the impact of these losses, something the Companies greatly appreciate, that authority is insufficient to fully address the predicament ILECs find themselves in.

The market for voice telecommunications has not been a monopoly since 1996. Unlike other traditional monopoly utility services, the state cannot rely on just one provider to be the COLR. This is especially true in areas where competition is present, which with the ubiquity of satellite broadband is virtually everywhere in the state. The fact is, both cellular and cable voice providers now each serve significantly more voice lines than the regulated utility companies. In 1999, CenturyLink, Frontier, the small ILECs, and Cooperatives (“Regulated Companies”) served 70% of the market. Today, the Regulated Companies serve only 12% of the market, while cable’s share has increased to 14% and mobile to 74%. *See Attachment.* Last, the artificially low price of ILEC voice service in high cost areas, and the associated internet service that can be provided over those facilities, serves as an impediment to investment by competitors in those areas. The consequence is a stagnant market that is resistant to technological innovation and the associated improvements in broadband deployment that comes with it.

### **2. Do those trends and directives warrant COLR relief?**

Unquestionably. The basis of regulation, including the COLR, was the “regulatory compact”, which is a common law understanding of the conditions that justify the regulation of utility services and providers. The regulatory compact provides that the utility is granted a monopoly and the ability to earn a reasonable rate of return on its investment via rate regulation in exchange for assuming the COLR responsibility in designated areas. That compact is broken and beyond repair

– there is currently no practical, equitable, or legal justification for imposing a COLR on just one provider while allowing others with significantly greater market shares to serve in the same areas without any such obligation. As a result of the Telecommunications Act of 1996, which effectively ended the ILEC monopoly on voice telephone service, new entrants have dominated the market for voice service using traditional and alternative technologies, such as email, text, social media, video chat (Zoom and MS Teams has rendered useless our home and office telephones), and a litany of other internet-based platforms. As the ILEC access line declines demonstrate, POTS is going the way of the telegraph.

Large ILECs used to rely on revenues generated from above cost rates in densely populated areas, like cities and suburbs, to subsidize high cost areas. Those revenue sources, however, have dried up as mobile and cable service providers have cherry-picked customers in lower cost areas, reducing the large ILECs market share in those communities to the double and in some cases single digits. We believe this phenomenon has occurred in smaller towns and cities as well. And the truth is, you can't blame these providers for choosing more profitable areas to serve – any intelligent firm would do the same.

The bottom line is, however, that customers more and more are choosing to cancel their POTS service in favor the flexibility and mobility of internet-based and cellular services. For those who have not already made that choice for unknown reasons (and we believe there are very few), COLR relief should not result in the abandonment of their access to telecommunications. Quite the contrary, as the obligations of maintaining the network in locations where it has been rendered antiquated, technology will allow the large providers to focus on the maintenance and improvement of the network where it remains viable and necessary, so long as they are able to fully recover the costs associated with providing service and earn a reasonable return on their investment – this can be likely be accomplished through a combination of increased rates for stand-alone voice service and explicit subsidies.

**3. If so, what does COLR relief look like when implemented? Specifically, what would implementing COLR relief look like with regard to:**

The Commission should focus on broadband deployment and availability rather than solely on traditional wireline voice service, which is truly a dinosaur in terms of demand and technology. That focus should include granting COLR relief in areas where there is a competitive alternative and where there is not, encouraging competition with subsidies to deploy broadband, and then granting COLR relief in those areas.

We urge the Commission to engage in a conversation with the stakeholders with the goal of crafting a legislative proposal for legislative action to address this important issue.

- a. Existing residential customers? Include a description on how an ILEC could change availability, rates, terms, and conditions relative to existing customers to implement COLR relief.**

Another alternative is to allow ILECs to charge rates that recover the actual cost to provide service. This would allow the ILEC to lose less in serving the customer and would increase the quality and reliability of service generally. In addition, and maybe more importantly, it would promote competition in these areas that is otherwise thwarted by the artificially low prices that the ILECs are required to charge.

- b. New residential customers? Include a description of how an ILEC would make a determination on whether to provide service to a new customer. Include what factors would be used to make the decision, such as geographic location.**

The following factors would be used to determine whether to serve a new customer:

- Whether the customer has access to another provider of reasonably comparable service at affordable rates.
- Whether the potential customer lives in a subdivision where the developer has contracted with a competitive provider to build distribution plant.
- Affordability would be determined based on the companies' cost to provide service in the area.
- Explicit subsidies could be targeted to customers based on need and location.

- c. Provision of Lifeline services? Please describe how existing and future low-income program participants would be affected; include effects to federal programs and Oregon programs.**

Lifeline should be enhanced to ensure universally affordable service in high cost areas.

- 4. Would COLR relief impact an ILEC's core network and interconnection to that network, or provision of services to non-residential customers? Please address:**

- a. Provision of SIP trunk interconnections to RLECs and other service providers?

Interconnection should not be affected.

- b. Core network topology changes, specifically POIs and POPs, and wire center central offices?

Under the proposed COLR relief model, ILECs would not abandon an area unless an alternate provider assumed responsibility for it. Moreover, interconnection in POIs, POPs and central offices is much less costly than maintaining “last mile” connections to all the network assets associated with it. Thus, even if an ILEC hypothetically abandoned an entire area, those POPs and COs would likely remain.

- c. Remote terminals, pair gain systems and cables, copper loops, and interoffice facilities? Include a description of what the company would do with these existing facilities and how it would affect Capital Expenditure improvements funded with or without universal service subsidies, grants and loans.

It appears from this question that the Commission is contemplating a COLR relief model that would result in wholesale abandonment of service in entire areas. We are not proposing such a model, and even if permitted we do not believe it would result in such an abandonment – the ILECs still have existing network with a useful life that generates revenue. We would however like to see prices more in line with actual costs and further reductions to regulation to achieve parity with competitors.

Universal service would be provided based on the number of high cost locations for which the company has an obligation to serve. An ILEC would no longer be eligible to receive state USF for locations for which it relinquishes the COLR.

- d. *(Is there a question to highlight the impact to non-residential customers?)*

Business or enterprise services are some of the most sought-after opportunities in the communications industry and technology had been enhanced to address this market at a far greater pace than that of residential customers. Providers representing all of the various communication modalities actively compete for this business today.

**5. Would COLR relief impact telecommunication platforms that enable alternative telecommunications service? Please address:**

- a. **Network connections for cellular backhaul and BIAS (aka any-haul for emerging cellular network designs)? Include a description of how the network footprint changes would impact cellular providers; new and existing tower connections, and 5G implementation especially in rural high cost areas**

COLR relief as posited, even if COLR were to be rescinded today, would have zero impact on these services.

- b. Network connections to facilitate WISP and satellite services including WISP and satellite BIAS? Include a description of how network footprint changes would affect existing and new service to satellite and WISP providers.**

COLR relief as posited, even if COLR were to be rescinded today, would have zero impact on these services.

- c. Common trunks for switched traffic connections with smaller telecommunications providers; competitive and ILECs?**

COLR relief as posited, even if COLR were to be rescinded today, would have zero impact on these services.

- d. Interconnections with other service providers?**

COLR relief as posited, even if COLR were to be rescinded today, would have zero impact on these services.

**6. Would COLR relief impact safety and reliability? Please address:**

- a. Facility relocations, maintenance, and safety inspection compliance?**
- b. Support for E-911 and NG 9-1-1?**
- c. Support for law enforcement agency radio communications?**

COLR relief as posited, even if COLR were to be rescinded today, would have zero impact on these services.

**7. What changes to existing laws, rules, and policies would be required to implement COLR relief?**

- a. What changes could be made within existing PUC statutory authority?
- b. What changes would require legislative action?

Any relinquishment of COLR based on the presence of competitive providers would require a change to existing statutes because they require that the Commission allocate territory to a provider, thereby creating a COLR in areas where an ILEC serves. And in fact, in some instances it appears that the statute is currently being violated. According to ORS 759.500(1),

“Allocated territory” means a geographic area for which the Public Utility Commission has allocated **to no more than one person** the authority to provide

local exchange telecommunications service, the boundaries of which are set forth on an exchange map filed with and approved by the commission.

The Commission has granted to numerous other carriers the authority to provide local exchange service in nearly all, if not all, exchanges in the state.