

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

3 UT 125

4 In the Matter of

5 QWEST CORPORATION, fka
6 U S WEST COMMUNICAITON, INC.,

7 Application for Increase in Revenues.

MOTION FOR A MODIFIED GENERAL
PROTECTIVE ORDER

8 Pursuant to OAR 860-001-0000, 860-001-0420 and OAR 860-001-0080(3) and for the
9 reasons provided below, Staff of the Oregon Public Utility Commission (Staff) moves for entry
10 of a modified general protective order to address complications of operating under a 1996
11 protective order and permit electronic submission of confidential information. Staff's motion is
12 not intended to affect any parties' existing obligations under Protective Order 96-045; rather to
13 permit use of updated technology for any discovery or fillings, as needed, in this docket moving
14 forward.

15 On February 21, 1996, Administrative Law Judge (ALJ) Crowley issued protective Order
16 No. 96-045. Neither the petition for Protective Order nor the signatory pages signed prior to
17 2018 are available on e-dockets.¹ This makes it difficult to determine who is, and is not, covered
18 by Protective Order No. 96-045. Additionally, the protective order does not allow for use of the
19 Commission's electronic discovery portal (Huddle),² bases its authority on the no longer existent
20 OAR 860-012-035(1)(k),³ and requires submission of all fillings by mail.⁴

21 _____
22 ¹ Docket No. UT 125 contains 39 signatory pages to Protective Order 96-045 which cannot be viewed
through the docket.

23 ² See, Docket No. UT 125, Protective Order No. 96-045, Appendix A, p2 & p3-4 (1996); Subsection 10
24 seems to preclude use of Huddle by prohibiting the "copying" of confidential data through electronic
25 means. The Commission's more modern protective orders generally permit alternate means for providing
protected information e.g. "(...) (a) the Commission's discovery portal, Huddle; (b) a password protected
and encrypted electronic ZIP file distributed electronically; or (c) through physical production."

26 ³ Order No. 96-045, at p2; Note that Division 12 of the OARs no longer exists. Protective Orders are
now governed by the requirements of OAR 860-001-0080.

⁴ Order No. 96-045, Appendix A, at 2; Subsection 6 requires that physical copies of confidential
information be delivered to counsel or made available for inspection.

1 Staff requests the ALJ issue a modification to the general protective order to allow for
2 alternative methods of providing confidential information, consistent with the Commission's
3 Order No. 20-088.⁵ Order No. 20-088 specifically waives the requirement in OAR 860-001-0070
4 requiring confidential information be either printed on yellow paper and placed in a sealed
5 container or provided on a data storage device. The Commission's order temporarily waived the
6 requirement to instead allow for the electronic submission of confidential information.
7 Consistent with that waiver and to allow for the production of confidential information through
8 electronic means, Staff hereby requests an exemption under OAR 860-001-000 to allow for a
9 modification of the standard general protective order. A draft of the proposed modified general
10 protective order is attached as Appendix A to this motion. Good cause exists to issue a modified
11 general protective order since it will facilitate the timely sharing of requested information in a
12 manner that maintains confidentiality.

13 For these reasons, Staff respectfully requests that the ALJ issue a modified General
14 Protective Order in the format provided as Appendix A to this motion.
15

16
17 DATED this 6 day of October 2023.

18
19 Respectfully submitted,

20 ELLEN F. ROSENBLUM
21 Attorney General

22 /s/ Natascha Smith

23 _____
24 Natascha Smith, OSB No. 174661
25 Assistant Attorney General
Of Attorneys for Staff of the Public Utility
Commission of Oregon

26 ⁵ UM 2061, Order No 20-088, *Waiver of Rules to Accommodate Temporary Changes in Business Practices* (Mar. 18, 2020).

MODIFIED PROTECTIVE ORDER
DOCKET NO. UT 125

Scope of this Order:

1. This order governs the acquisition and use of Protected Information produced or used by any party to these proceedings.

Designation of Protected Information:

2. Any party may designate as Protected Information any information the party reasonably determines:
(a) Falls within the scope of ORCP 36(C)(1) (a trade secret or other confidential research, development, or commercial information); and
(b) Is not publicly available.

3. To designate information as Protected Information, a party should place the following legend on the material:

PROTECTED INFORMATION SUBJECT TO
GENERAL PROTECTIVE ORDER

The party should make reasonable efforts to designate as Protected Information only the portions of the information covered by ORCP 36(C)(1).

All Protected Information in OPUC Docket UT 125 will be provided either through: 1) the Commission's discovery portal, Huddle; 2) a password protected and encrypted electronic ZIP file distributed to parties electronically who have signed the appropriate protective order; or 3) through physical production.

Protected Information provided through physical production shall have each page of a document containing Protected Information filed with the Commission or otherwise provided to Qualified Persons under this order must be printed on yellow paper and placed in a sealed envelope or other appropriate container. *Only the portions of a document that fall within ORCP 36(C)(1) may be placed in the envelope/container.* The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. _____
AND CONTAINS PROTECTED INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED
PERSONS AS DEFINED IN THE ORDER.

4. A party may designate as Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Protected Information must make reasonable efforts to ensure that all copies of the material containing the information bear the above legend if requested by the designating party.

5. A designating party must make reasonable efforts to ensure that information designated as Protected Information continues to warrant protection under this order. If designated information becomes publicly available or no longer falls within the scope of ORCP 36(C)(1), the designating party should make reasonable efforts to remove the protected designation and provide written notice to the Commission and other parties.

Challenge to Designation of Information as Protected:

6. A party may informally challenge any designation of Protected Information by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(1). Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

7. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection needs only identify the information in dispute and certify that reasonable efforts to achieve informal resolution have failed.

8. Within five business days of service of the objection, the designating party must either remove the protected designation or file a written response. A written response must identify the factual and legal basis of how the challenged information is protected under the Oregon Public Records Act, ORS 192.410 et seq, or the Uniform Trade Secrets Act, ORS 646.461(4). Broad allegations unsubstantiated by specific facts are not sufficient. If the designating party does not timely respond to the objection, the Commission will remove the protected designation from the challenged information.

9. The challenging party may file a written reply to any response within five business days of service of an objection. The designating party may file a sur-reply within three business days of service of a response. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

Access to Protected Information:

10. Only Qualified Persons may access Protected Information designated by another party under this Protective Order. Persons automatically bound by this protective order and qualified to access Protected Information are:

- a. Commission employees; and
- b. Assistant Attorneys General assigned to represent the Commission.

11. Persons qualified upon a party signing the Consent to be Bound section of Appendix B are:

- a. Counsel for the party;
- b. Any person employed directly by counsel of record; and
- c. An employee of the Regulatory Division at the Citizens' Utility Board of Oregon.

A party must identify all these persons in section 2 of Appendix B when consenting to be bound by the order, and must update this list throughout the proceeding to ensure it accurately identifies Qualified Persons

12. A party bound by the protective order may seek to qualify other persons to access Protected Information by having those persons complete and sign Appendix C, and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix C, the designating party must either provide the requested access to Protected Information or file an objection under Paragraph 14.

Objection to Access to Protected Information:

13. All Qualified Persons have access to Protected Information unless the designating party objects as provided in this paragraph. As soon as the designating party becomes aware of reasons to restrict access to a Qualified Person, the designating party must provide the Qualified Person and his or her counsel notice stating the basis for the objection. The parties must promptly confer and try to resolve the dispute informally.

14. If the parties are unable to resolve the matter informally, the designating party must file a written objection with the ALJ. The requesting party may file a response to the motion within 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of the last filing. Pending the ALJ's decision, the specific Protected Information may not be disclosed to the person subject to the objection.

Use of Protected Information:

15. All Qualified Persons must take reasonable precautions to keep Protected Information secure. A Qualified Person may reproduce Protected Information to the extent necessary to participate in these proceedings. A Qualified Person may discuss Protected Information obtained under this order only with other Qualified Persons who have obtained the same information.

16. Without the written permission of the designating party, any Qualified Person given access to Protected Information under this order may not disclose Protected Information for any purpose other than participating in these proceedings.

17. Nothing in this protective order precludes any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this protective order.

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Protected Information to the extent reasonably necessary to maintain a file of these proceedings or to comply with requirements imposed by another governmental agency or court order. The information retained may only be disclosed to

Qualified Persons under this order. Any other person retaining Protected Information must destroy or return it to the designating party within 90 days after final resolution of

ORDER NO.

these proceedings unless the designating party consents in writing to retention of the Protected Information. This paragraph does not apply to the Commission or its Staff.

Duration of Protection:

19. The Commission will preserve the designation of information as protected for five years from the date of the final order in these proceedings, unless extended by the Commission at the request of the designating party. The Commission will notify the designated party at least two weeks prior to the release of Protected Information.

QUALIFICATION OF OTHER PERSONS
DOCKET NO.

III. Persons Seeking Qualification under Paragraph 13:

I have read the general protective order, agree to be bound by the terms of the order, and provide the following information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If not employee of party, description of practice and clients:		