

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1543

CITY OF LINCOLN CITY, LINCOLN
COUNTY, and TILLAMOOK COUNTY,

Complainants

vs.

CENTURYLINK,

Defendant.

ERRATA¹
HIGHLY PROTECTIVE
ORDER

DISPOSITION: MOTION FOR HIGHLY PROTECTIVE ORDER GRANTED

On September 23, 2011, United Telephone Company of the Northwest, d/b/a CenturyLink (Defendant) filed a motion² requesting that the Commission adopt a highly protective order in addition to a general protective order.³ Based on discovery requests received by Defendant and deemed by the Defendant to request highly sensitive information related to network security and the competitiveness of non-regulated services, Defendant asks the Commission to adopt a highly confidential protective order. Complainants did not file a timely objection.

I find that good cause exists to issue the requested highly protective order, with minor revisions, attached as Appendices A & B.

¹ This errata order is being issued to correct a typographical error on page 4 of Appendix A, paragraph 17, changing the word "sue" to "use".

² On September 26, 2011, CenturyLink filed a corrected motion requesting the same.

³ On October 4, 2011, a general protective order was entered in this docket (Order No. 11-389).

ORDER

IT IS ORDERED that the Highly Protective Order, attached as Appendices A & B, govern the disclosure of highly confidential information in these proceedings.

Made, entered, and effective OCT 12 2011.




Traci A. G. Kirkpatrick
Administrative Law Judge

A party may appeal this order to the Commission under OAR 860-001-0420.

HIGHLY PROTECTIVE ORDER
DOCKET NO. UM 1543

Scope of this Order:

1. This order governs the acquisition and use of "Highly Confidential Information" in this proceeding.

Definitions:

2. "Highly Confidential Information" is information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"), the disclosure of which presents risk of business harm.

Designation of Confidential Information:

3. Information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of Highly Confidential documents or information, the disclosure of which imposes a highly significant risk of competitive harm to the disclosing party or third parties. Parties may designate documents or information they consider to be Highly Confidential and such documents or information will be disclosed only in accordance with the provisions of this Section.
4. Parties must carefully scrutinize responsive documents and information and strictly limit the amount of information they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by: **"Highly Confidential Subject to Protective Order"**.
5. Placing "Highly Confidential Subject to Protective Order" on the first page of a document indicates only that one or more pages contains Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate where Highly Confidential information is redacted. The unredacted versions of each page containing Highly Confidential Information that is provided under seal also must be stamped "Highly Confidential" and be submitted on light blue paper with reference (*i.e.*, highlighting or other markings) to show where Highly Confidential Information is redacted in the original document.
6. Material has been designated Highly Confidential by placing the following legend on the information:

HIGHLY CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as highly confidential as few documents as necessary to protect the party's interests in its Highly Confidential Information.

7. Parties who seek access to or disclosure of Highly Confidential documents or information must designate one or more outside counsel and one or more outside consultant, legal or otherwise, to receive and review materials marked "Highly Confidential . . ." For each person for whom access to Highly Confidential Information is sought, parties must submit to the party that designated the material as Highly Confidential and file with the Commission the Highly Confidential Information Agreement certifying that the person requesting access to Highly Confidential Information:

- a. Is not now involved, and will not for a period of two years involve themselves in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of highly confidential information with respect to the pricing, marketing, and sales of telecommunications services in the state of Oregon; and
- b. Has read and understands, and agrees to be bound by, the terms of the Highly Protective Order in this proceeding, including this Section of the Highly Protective Order.

8. The restrictions in paragraph 7 do not apply to the Commission Staff or employees or attorneys in the Office of the Attorney General representing Commission Staff. However, should Commission Staff participate in this matter, it shall submit the Highly Confidential Information Agreement, in the form prescribed by this Order, for any external experts or consultants they wish to have review the Highly Confidential Information.

9. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within five days after receipt of the objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

10. Highly Confidential Information that is: (a) filed with the Commission or its Staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

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

11. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

12. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies shall also be subject to the provisions of this Order.

13. Staff of designated outside counsel and staff of designated outside consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Outside counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all confidential information consistent with the terms of this Order.

14. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing, or refer to such materials in cross-examination of a witness. The presiding officer will determine the process will determine the process for including such documents or information following consultation with the parties.

15. The designation of any document or information as Highly Confidential may be challenged by motion and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

16. Highly Confidential documents and information will be provided to Commission Staff and the Commission under the same terms and conditions of this Highly Confidential Protective Order as govern the treatment of Confidential Information provided to Commission Staff and Public Counsel and as otherwise provided by the terms of the General Protective Order in this proceeding.

Preservation of Confidentiality:

17. All persons who are given access to Highly Confidential Information by reason of this Order shall not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

Duration of Protection:

18. The Commission will preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission will notify the party desiring confidentiality at least two weeks prior to the release of Highly Confidential Information.

Destruction After Proceeding:

19. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Highly Confidential Information or documents containing such Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

Additional Protection:

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary; and

- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if release, shall not be disclosed pending the Commission's ruling on the motion.

HIGHLY CONFIDENTIAL PROTECTIVE AGREEMENT

Docket UM 1543

I, _____, as

- ☐ Commission Staff attorney
☐ Commission Staff expert
☐ CUB Attorney
☐ CUB Expert
☐ Outside attorney
☐ Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declares under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I am not now involved, and will not for a period of two years involve myself in, competitive decision making with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the company or business organization from whom they seek disclosure of Highly Confidential information with respect to the pricing, marketing, and sales of telecommunications services in the state of Oregon; and
- b. I have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Section C of the Protective Order.

Signature_____
Date_____
City/State where this agreement was signed_____
Employer_____
Position and Responsibilities_____
Permanent Address

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Highly Confidential Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named person having access to Highly Confidential Information. The objecting party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking exclusion of the person from access to Highly Confidential Information.

Signature

Date