

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2148

In the Matter of

FRONTIER COMMUNICATIONS
NORTHWEST, LLC, dba ZIPLY
FIBER,

Petition for Designation as an Eligible
Telecommunications Carrier (ETC) and
as an Eligible Telecommunications
Provider.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On March 25, 2021, Frontier Communications Northwest, LLC (ZiPLY Fiber) filed a motion for a modified protective order, in the form attached to the motion, pursuant to OAR 860-001-0080(3) and 860-001-0420. ZiPLY Fiber states that good cause exists to issue the modified protective order that is attached to the motion due to a need to protect highly confidential information contained in, and associated with, ZiPLY Fiber's Rural Development Opportunity Fund (RDOF) application. ZiPLY Fiber indicates that the production of highly confidential documents and materials containing sensitive competitive information will be needed to respond to an existing data request from Commission Staff, and likely future data requests. Because the release of such information to competitors would cause ZiPLY Fiber to suffer irreparable harm, the modified protective order is designed to designate and protect highly confidential information and ZiPLY Fiber asks that it be used in these proceedings. On March 30, 2021, counsel for ZiPLY Fiber filed a revised motion containing a representation that Staff, the only other party in these proceedings, does not object to the motion.

Review of the proposed protective order revealed some inconsistencies with current Commission procedures addressing remote working situations due to the COVID-19 pandemic. I sent an electronic message to counsel for Staff and ZiPLY Fiber and asked them to confer about amending the modified protective order. On April 1, 2021, ZiPLY Fiber filed a second revised motion with amendments to the proposed modified protective order.

As a modified protective order is needed to respond to a data request already issued by Staff, and based on Zply's representation that Staff does not object to the modified protective order, I address the motion on an expedited basis so that discovery may continue uninterrupted. Zply Fiber provided the information required by OAR 860-001-0080(3)(a)(A)-(G) by explaining what additional protections it seeks and why. I find that good cause exists to issue the modified protective order, which is attached as Appendix A. I also find that the proposed modified protective order contained in the second revised motion is consistent with current Commission practices. I grant the second revised motion. This expedited action does not foreclose a party from seeking reconsideration of this decision under OAR 860-001-0720.

ORDER

IT IS ORDERED that the modified protective order attached is adopted.

Made, entered, and effective on Apr 2, 2021.



Traci Kirkpatrick
Administrative Law Judge



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UM 2148

In the Matter of

Petition of Frontier Communications
Northwest, LLC for Designation as an
Eligible Telecommunications Carrier
and as an Eligible Telecommunications
Provider

MODIFIED PROTECTIVE ORDER

To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential and highly confidential information, the Administrative Law Judge (“ALJ”) now issues this Protective Order (“Order”).

Designation of Confidential Information

1. Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as “Confidential Information”), shall be printed on yellow paper, separately bound and placed in individually sealed envelopes or other appropriate containers. To the extent practicable, only the portions of a document that fall within ORCP 36(C)(1) shall be placed in the envelope/container. The envelope/container shall be marked with the following legend:

“CONFIDENTIAL—SUBJECT TO MODIFIED PROTECTIVE
ORDER, ORDER NO. _____, IN DOCKET UM 2148.”

2. Electronic Distribution and Filing. Consistent with Commission Order No. 20-088 and the procedures adopted by the Administrative Hearings Division thereunder, the parties to this docket shall follow the following steps to file confidential information:

- (a) Compress, encrypt, and password protect electronic files containing confidential information in a ZIP format.
- (b) Include the ZIP file in the filing submitted to the Filing Center.
- (c) In a separate email to the Filing Center, include the instructions for opening the file, along with the password necessary to access the file.

- (d) Send both emails to the Filing Center with a copy to parties on the service list entitled to receive the information by having signed the Protective Order. Those who have signed the Protective Order are designated on the service list with a (C) for Confidential and (HC) for Highly Confidential next to the party's name. Include a certificate of service with the filing showing who was served.
- (e) Do NOT upload .zip files to HUDDLE for discovery purposes. Upload the files separately to HUDDLE pursuant to the standard practice for use of HUDDLE.

Access to Confidential Information

3. Only persons qualified to access Confidential Information under this Modified Protective Order may access Confidential Information. Persons automatically bound and qualified to access Confidential Information are:

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

4. The following persons are qualified to access Confidential Information, subject to the terms of this Order, after completing and submitting Appendix A:

- (a) Counsel for any party;
- (b) Consultants retained by the Commission or its staff;
- (c) Experts, consultants and advisors retained by a party who need access to the material to assist the party in this proceeding, provided that counsel for the party represents that no such person is advising on sales, marketing, pricing, or strategic planning in connection with that party's products or services; and
- (d) An employee of any party who needs access to the material to assist the party in this proceeding, provided that counsel for the party represents that no such employee is involved in sales, marketing, pricing, or strategic planning in connection with that party's products or services.

A party seeking to designate a person as qualified to receive Confidential Information under this paragraph 3 shall deliver an executed copy of Appendix A to counsel for the designating party before access is granted. Within five business days of receiving a copy of such an Appendix, the designating party must either provide the access to the requested information designated as Confidential Information or file an objection under Paragraph 9.

Designation of Highly Confidential Information

5. Highly Confidential Information. Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided for Highly Confidential Information in this Order. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked with the following legend:

“HIGHLY CONFIDENTIAL—USE RESTRICTED PER
MODIFIED PROTECTIVE ORDER, ORDER NO. _____, IN
DOCKET UM 2148.”

Placing a “Highly Confidential” marking on the first page of a document indicates only that one or more pages contain 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 Highly Confidential Information, even where that information has been redacted.

Each page of a document containing Highly Confidential Information filed with the Commission and served on persons qualified to access Highly Confidential Information under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. To the extent practicable, only the portions of a document that fall within ORCP 36(C)(1) shall be placed in the envelope/container. The envelope/container must bear the legend:

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

6. Electronic Distribution and Filing. Consistent with Commission Order No. 20-088 and the procedures adopted by the Administrative Hearings Division thereunder, the parties to this docket shall follow the following steps to file highly confidential information:

- (a) Compress, encrypt, and password protect electronic files containing confidential information in a ZIP format.
- (b) Include the ZIP file in the filing submitted to the Filing Center.
- (c) In a separate email to the Filing Center, include the instructions for opening the file, along with the password necessary to access the file.
- (d) Send both emails to the Filing Center with a copy to parties on the service list entitled to receive the information by having signed the Protective Order. Those who have signed the Protective Order are designated on the service list with a (C) for Confidential and (HC) for Highly Confidential next to the party’s name. Include a certificate of service with the filing showing who was served.
- (e) Do NOT upload .zip files to HUDDLE for discovery purposes. Upload the files separately to HUDDLE pursuant to the standard practice for use of HUDDLE.

Access to Highly Confidential Information

7. Only persons qualified to access Highly Confidential Information under this Modified Protective Order may access Highly Confidential Information. Persons automatically bound and qualified to access Highly Confidential Information are:

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

8. The following persons are qualified to access Highly Confidential Information, subject to the terms of this Order, after completing and submitting Appendix B:

- (a) An employee or counsel of the Oregon Citizens' Utility Board; and
- (b) Counsel for a party.

A party seeking to designate a person as qualified to receive Highly Confidential Information under this paragraph 6 shall deliver an executed copy of Appendix B to counsel for the designating party before access is granted. Within five business days of receiving a copy of such an Appendix, the designating party must either provide the access to the requested information designated as Confidential Information or file an objection under Paragraph 9.

9. A party may seek to qualify other persons to access Highly Confidential Information by having those persons complete and sign Appendix C, and submitting that information to the designating party and the Commission. Within five business days of receiving a copy of Appendix C, the designating party must either provide the access to the requested information designated as Highly Confidential Information or file an objection under Paragraph 9.

10. Any person qualified to access Highly Confidential Information under this Order may also access Confidential Information.

Objections to Access to Protected Information

11. All persons qualified to have access to Confidential or Highly Confidential Information will have access to such Confidential or Highly Confidential 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, or objects to a person seeking qualification under Paragraph 3, 6 or 7, the designating party must provide the person and his or her counsel notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis.

12. 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 five business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within ten business days of the last filing. Pending the ALJ's decision, the specific Confidential or Highly Confidential Information may not be disclosed to the person subject to the objection.

Changes in Designation

13. A party may designate as Confidential or Highly Confidential Information any information previously provided by giving written notice to the Commission and other parties.

Parties in possession of newly-designated Confidential or Highly Confidential 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.

14. A designating party must make reasonable efforts to ensure that information designated as Confidential or Highly Confidential Information continues to warrant protection under this order. If designated information becomes publically 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.

Challenges to Designation of Information

15. A party may informally challenge any designation of Confidential or Highly Confidential 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) and that the “Confidential” or “Highly Confidential Information” designation is necessary. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

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

17. Within five business days of service of the objection, the designating party must either remove the challenged 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 ORCP 36(C)(1), the Oregon Public Records Act (ORS 192.311 *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.

18. 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 ten business days of service of the last filing.

Use of Protected Information

19. All persons who may be entitled to review, or who are afforded access to any Confidential or Highly Confidential Information by reason of this Order shall neither use nor disclose the Confidential or Highly Confidential Information for purposes of business or competition, or for any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket and any subsequent appeals, and shall keep the Confidential and Highly Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

20. All qualified persons must take reasonable precautions to keep Confidential and Highly Confidential Information secure. Qualified persons may reproduce Confidential and Highly Confidential Information only to the extent necessary to participate in these proceedings. A qualified person may discuss Confidential and Highly Confidential Information obtained under this Order only with other qualified persons who have obtained the same information under this Order.

21. Without the written permission of the designating party, any person given access to Confidential or Highly Confidential Information under this order may not disclose Confidential or Highly Confidential Information for any purpose other than participating in these proceedings.

22. 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.

23. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential or Highly Confidential 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. Any other person retaining Confidential or Highly Confidential Information must destroy or return it to the designating party within 90 days after final resolution of these proceedings unless the designating party consents in writing to retention of the Confidential or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

24. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Confidential or Highly Confidential by any party to Docket UM 2148 or by any person from whom the Commission is seeking information in Docket UM 2148.

Duration of Protection:

25. The Commission will preserve the designation of information as protected for a period of 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 designating party at least two weeks prior to the release of the Confidential or Highly Confidential Information. This Modified Protective Order shall continue in force and effect after this docket is closed.

APPENDIX A

DOCKET UM 2148

**Signatory Page for Persons Qualified to Access Confidential Information
under Paragraph 3**

I. Consent to be Bound

I have read the foregoing Modified Protective Order, Order No. 21-100, entered
April 2, 2021, in Docket UM 2148, and agree to be bound by the terms and conditions of
this Order.

By: Signature: _____ Date: _____

Printed Name: _____

Business Address: _____

Employer: _____

Job Title: _____

Party: _____

APPENDIX B

DOCKET UM 2148

Signatory Page for Parties and Persons Qualified to Access Highly Confidential Information under Paragraph 6

I. Consent to be Bound

_____ (Party) has read the terms of the Modified Protective Order, Order No. 21-100, entered April 2, 2021, in Docket UM 2148, and agree to be bound by the terms and conditions of that order.

By: Signature: _____ Date: _____

Printed Name: _____

Title: _____

II. Persons Qualified pursuant to Paragraph 6

I have read the Modified Protective Order, Order No. _____, entered April 2, 2021, in Docket UM 2148, and agree to be bound by the terms and conditions of that Order.

I certify that:

- a. I understand that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.
- b. The party I am associated with has a legitimate and non-competitive need for the Highly Confidential Information for this proceeding and not simply a general interest in the information.

By: Signature: _____ Date: _____

Printed Name: _____

Business Address: _____

Employer: _____

Job Title: _____

Party: _____

By: Signature: _____ Date: _____

Printed Name: _____

Business Address: _____

Employer: _____

Job Title: _____

Party: _____

By: Signature: _____ Date: _____

Printed Name: _____

Business Address: _____

Employer: _____

Job Title: _____

Party: _____

By: Signature: _____ Date: _____

Printed Name: _____

Business Address: _____

Employer: _____

Job Title: _____

Party: _____

By: Signature: _____ Date: _____

Printed Name: _____

Business Address: _____

Employer: _____

Job Title: _____

Party: _____

APPENDIX C

DOCKET UM 2148

Signatory Page for Parties and Persons Qualified to Access Highly Confidential Information under Paragraph 7

I have read the Modified Protective Order, Order No. 21-100, entered April 2, 2021, in Docket UM 2148, agree to be bound by the terms of the order, and provide the following information to seek access to information designated as Highly Confidential Information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If not an employee of a party, description of practice and clients, and reasons for access.		