

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2360

In the Matter of the Joint Application of

Northwest Fiber Holdco, LLC, and BCE
Holding Corporation,

For an Order Declining to Assert
Jurisdiction Over, or, in the Alternative,
Approving the Transfer of Control of
Ziplay Fiber Northwest, LLC, and Ziplay
Fiber of Oregon, LLC to BCE Holding
Corporation.

MODIFIED PROTECTIVE ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On December 13, 2024, Northwest Fiber Holdco, LLC and BCE Holding Corporation filed an application for an order declining to assert jurisdiction over, or in the alternative, approving the transfer of control of Ziplay Fiber Northwest, LLC, and Ziplay Fiber of Oregon, LLC to BCE Holding Corporation. Also on December 13, 2024, Northwest Fiber and BCE Holding filed a motion for a modified protective order. On December 19, 2024, the Oregon Citizens' Utility Board (CUB) filed a notice of intervention.

Under our rules, I am to provide expedited review of any motion for a modified protective order and may issue a modified protective order to facilitate the filing of protected information and discovery.¹ In providing expedited review and issuing a modified protective order, it does not preclude parties from filing responses to the motion for a modified protective order.² If a response is filed to the motion for a modified protective order, I am to conduct a *de novo* review of the terms of the modified protective order and issue a ruling explaining my determination.³

Northwest Fiber and BCE Holding state the modified protective order is needed to prevent public disclosure of highly confidential information, including (1) trade secrets exempt from disclosure under ORS 192.345(2) regarding details of the merger agreement and technical network details; and (2) Northwest Fiber's audited and unaudited financial statements exempt from disclosure

¹ OAR 860-001-0080(3)(c).

² OAR 860-001-0080(3)(d).

³ OAR 860-001-0080(3)(e).

under ORS 192.345(19). The motion states the modified protective order would protect any highly confidential information attached as exhibits to the Joint Application and submitted in response to anticipated data requests. The proposed modified protective order would operate alongside the general protective order already in effect. The motion certifies that counsel for Northwest Fiber and BCE Holding conferred with counsel for Staff.

I note that the motion fails to comply with our rules in several respects, including that it fails to describe the specific reasons the requested relief is necessary beyond a general assertion that highly confidential information could be disclosed otherwise; it fails to include a detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient; and while the motion certifies that counsel for Northwest Fiber and BCE Holding conferred with counsel for Staff, the motion fails to indicate whether Staff supports the motion.

Despite these deficiencies, the motion for a modified protective order is granted to facilitate the timely exchange of material that may be exempt from disclosure under Oregon’s public records laws and which appear to be necessary for the resolution of this docket. The parties can raise any concerns with the modified protective order in response filings as contemplated by OAR 860-001-0080(3)(e).

Although the motion is granted, any party or proposed intervenor may file a response to the motion by 3:00 p.m. on January 9, 2025. If any responses are filed, Northwest Fiber and BCE Holding may file a reply by 3:00 p.m. on January 16, 2025. The modified protective order, attached as Appendix A, contains minor technical modifications to correct errors in the proposed modified protective order.

ORDER

IT IS ORDERED that the modified protective order, attached as Appendix A, is adopted.

Made, entered, and effective on Dec 23, 2024.



A handwritten signature in blue ink, appearing to read "John Mellgren".

John Mellgren
Administrative Law Judge

MODIFIED PROTECTIVE ORDER
DOCKET NO. UM 2360

Scope of this Order:

1. This order supplements General Protective Order provisions set in Order No. 23-132 and governs the acquisition and use of "Highly Protected Information" produced or used by any party to docket UM 2360.

Designation of Highly Protected Information

2. Any party may designate as Highly 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) or the exemptions under Oregon Public Records law, ORS 192.345 and 192.355 (OPRL);
- (b) Is not publicly available; and
- (c) Is not adequately protected by the general protective order.

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

HIGHLY PROTECTED INFORMATION
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 24-458

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information that satisfies paragraph 2 of this Modified Protective Order.

4. All Highly Protected Information in OPUC Docket UM 2360 will be provided either through: (a) the Commission's discovery portal; (b) a password-protected and encrypted electronic ZIP file distributed to Qualified Persons who have signed the appropriate protective order; or (c) a password-protected file sharing software agreed-upon by Joint Applicants.

Each page of a document containing Highly Protected Information filed with the Commission or provided to Qualified Persons under this order, electronically or through a designated shared workspace, must be clearly marked as Highly Protected Information and maintained in a separate, secure folder. Any file or folder containing Highly Protected Information must be designated "Highly Protected." If the cells in a spreadsheet or other tabular document include information that has been designated as highly protected and that would be impractical or unduly burdensome to mark as required above, the party designating information as highly protected need not comply with this requirement but must identify that information in a way that reasonably provides the Commission and Qualified Persons with sufficient identification of the information to be protected.

5. Highly Protected Information disclosed by a designated party to a person qualified to access Highly Protected Information through informal discovery or by means of Commission's Huddle website will be marked "Highly Protected Information" and uploaded to a file folder designated "highly protected" in Huddle, if applicable.

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

7. A designating party must make reasonable efforts to ensure that information designated as Highly 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 Highly Protected:

8. A party may informally challenge any designation of Highly 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) and that the "Highly Protected Information" designation is necessary.

9. 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.

10. 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.

11. 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 Highly Protected Information:

12. Only Qualified Persons may access Highly Protected Information designated by another party under this Modified Protective Order. Persons automatically bound and qualified to access Highly Protected Information are:

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

13. Persons qualified to access Highly Protected Information upon a signing the Consent to be Bound section of Appendix B are:

- a. An employee or counsel of Joint Applicants, or their affiliates, or the Oregon Citizens' Utility Board;
- b. Any other party or party representative, upon the mutual agreement of that party and Joint Applicants, and subject to any additional restrictions mutually agreed-upon; or
- c. Any party or party representative that the ALJ determines should have access under paragraph

15. 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.

Objection to Access to Highly Protected Information:

14. All persons qualified to have access to Highly Protected Information will have access to Highly Protected Information unless the designating party objects as provided in this paragraph. Within five business days of receiving a copy of Appendix B, the designating party must either provide the access to the requested information designated as Highly Protected Information or file an objection. 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 13, 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.

15. 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 Highly Protected Information may not be disclosed to the person subject to the objection.

Use of Highly Protected Information:

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

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

18. 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.

19. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly 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.

Any other person retaining Highly Protected 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 Highly Protected Information. This paragraph does not apply to the Commission or its staff.

Duration of Protection:

20. The Commission will preserve the designation of information as Highly Protected Information 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 Protected Information or Highly Protected Information.

**APPENDIX B: QUALIFICATION OF PERSONS TO RECEIVE
HIGHLY PROTECTED INFORMATION**
DOCKET NO. UM 2360

I. Consent to Be Bound—Persons Qualified pursuant to Paragraph 13: Highly Protected Information

I have read the Modified Protective Order and agree to be bound by the terms in the order. 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. I certify that:

- (a) I am an employee of Northwest Fiber Holdco, LLC, or one of its affiliates, or of BCE Holding Corporation, or one of its affiliates, or the Oregon Citizens' Utility Board, and have a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information; or
- (b) I am not an employee of the Oregon Citizens' Utility Board or of Joint Applicants, or any of their affiliates, and I have come to a mutual agreement that I am qualified to receive Highly Protected Information; or
- (c) I am not an employee of the Oregon Citizens' Utility Board and the Administrative Law Judge has issued a ruling allowing my qualification to receive Highly Protected Information.

I provide the following information.

By: Signature: _____ Date: _____

Printed Name: _____

Physical Address: _____

Email Address: _____

Employer: _____

Associated Party: _____

Job Title: _____

If not employee of party, description of practice and clients:
