

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1484**

**In the Matter of**

**CENTURYLINK, INC.,**

**Application for Approval of Merger  
between CenturyTel, Inc, and Qwest  
Communications International, Inc.**

**JOINT CLEC OPPOSITION TO  
CENTURYLINK'S MOTION FOR  
HIGHLY CONFIDENTIAL  
PROTECTIVE ORDER**

**JOINT CLEC OPPOSITION TO CENTURYLINK'S  
MOTION FOR HIGHLY CONFIDENTIAL PROTECTIVE ORDER**

Pursuant to OAR 860-013-0050(3)(d), the Joint CLECs<sup>1</sup> submit this opposition to the Motion for Highly Confidential Protective Order filed by CenturyLink on June 18, 2010. The Highly Confidential Protective Order that CenturyLink proposes the Commission issue in this docket is overly restrictive and would require parties with limited resources, including the Joint CLECs, to engage outside experts in order to review information designated as highly confidential. This approach should be rejected because it would make intervenor participation in this proceeding unduly burdensome and expensive. Nor is CenturyLink's overly restrictive proposal necessary to provide adequate protection to highly confidential information. The Joint CLECs recommend that the Commission instead issue in this docket a Protective Order for Highly Confidential Information modeled on the one that was issued in the recent Frontier-Verizon merger docket (Order No. 09-271, OPUC docket UM 1431). A copy of that Protective Order is attached as Exhibit A. In addition, the Joint CLEC's recommend the Commission also

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<sup>1</sup> Joint CLECs: XO Communications Services, Inc., tw telecom of oregon, llc, Integra Telecom of Oregon, Inc., Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc. d/b/a Unicom, Covad Communications Company, PriorityOne Telecom, Inc., & Charter Fiberlink OR-CCVII, LLC.

include a provision relating to “small companies” similar to that included in the Commission’s recently issued Modified Protective Order in docket UM 1486. *See* Order No. 10-216 at 5, ¶4 (entered June 16, 2010). A copy of that Protective Order is attached as Exhibit B.

The Highly Confidential Protective Order proposed by CenturyLink would limit disclosure of information designated as highly confidential to outside counsel and outside consultants only. *See* CenturyLink’s Motion for Highly Confidential Protective Order, Proposed Protective Order, p. 2, ¶6. This is considerably more restrictive than the Protective Order the Commission issued to protect highly confidential information in docket UM 1431, which permits access to in-house personnel under certain limited circumstances. *See* Order No. 09-271, Attachment A, p. 2, ¶6. Paragraph 6 of the UM 1431 Highly Confidential Protective Order affords access to in-house personnel on a strict “need-to-know” only basis, and only to those in-house persons who are “not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers.” This approach provides ample protection to highly confidential information without unduly increasing the burden and cost of participation in the docket.

In addition, the Joint CLECs recommend the Commission include specific rules for “small companies”, similar to the provision found at paragraph 4 of Order 10-216, the Amended Protective Order the Commission recently adopted for use in pending docket UM 1486, *i.e.*, Qwest’s “Petition for Commission Approval of 2010 Addition to Non-Impaired Wire Center.” In that Amended Protective Order, the Commission has recognized the difficulties inherent for smaller companies where personnel with the requisite expertise are involved in multiple aspects of the company’s operations. The “small company” provision allows for companies with fewer than 5000 employees to seek authorization from the disclosing party for employees who would

not otherwise qualify, as well as a provision for a small company to seek resolution from the Administrative Law Judge in the event that the disclosing party refuses to provide the requested authorization. This flexibility will allow small companies a meaningful opportunity to participate in the proceeding while continuing to protect highly confidential information.

For the foregoing reasons, the Joint CLECs request that the Commission deny CenturyLink's Motion for Highly Confidential Protective Order. The Joint CLECs propose that the Commission instead issue a Protective Order for highly confidential information based on Order 09-271 in OPUC docket UM 1431 that also includes a "small company" provision similar to that contained at Paragraph 4 on page 5 of Order 10-216 in pending OPUC docket UM 1486.

Respectfully submitted this 23rd day of June, 2010.

DAVIS WRIGHT TREMAINE LLP



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Of Attorneys for Joint CLECs

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1431

In the Matter of

VERIZON COMMUNICATIONS INC. and  
FRONTIER COMMUNICATIONS  
CORPORATION

Joint Application for an Order Declining to Assert  
Jurisdiction, or, in the alternative, to Approve the  
Indirect Transfer of Control of VERIZON  
NORTHWEST INC.

HIGHLY CONFIDENTIAL  
PROTECTIVE ORDER

DISPOSITION: MOTION FOR HIGHLY CONFIDENTIAL  
PROTECTIVE ORDER GRANTED

On June 30, 2009, Verizon Northwest Inc. and Frontier Communications Corporation (collectively, Applicants) filed a Motion for Highly Confidential Protective Order (Motion). The Motion arises out of discussions held during the prehearing conference that were reflected in the June 19, 2009, Prehearing Conference Report: "The parties further agreed that a Joint Motion would be submitted establishing procedures for the treatment of especially sensitive and highly confidential information."

Applicants have worked with the other parties in the case and have reached agreement on the attached form and language. Given there should be no objection from the other parties, Applicants request the Commission issue the Highly Confidential Protective Order at its earliest opportunity.

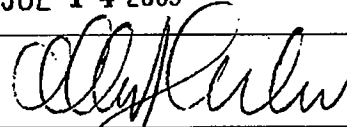
**Discussion.** Having reviewed the Motion and Protective Order, good cause having been shown, and no objections having been interposed to its adoption, the Motion should be granted.

**ORDER**

The Motion for Highly Confidential Protective Order filed by Verizon Northwest Inc. and Frontier Communications Corporation is GRANTED.

A Highly Confidential Protective Order is affixed to this Order as Attachment A and made a part hereof.

Made, entered, and effective on JUL 14 2009



Allan J. Arlow  
Administrative Law Judge



BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1431

In the Matter of )  
 )  
VERIZON COMMUNICATIONS INC., and )  
FRONTIER COMMUNICATIONS )  
CORPORATION )  
 )  
Joint Application for an Order Declining to Assert )  
Jurisdiction, or, in the alternative, to Approve the )  
Indirect Transfer of Control of )  
VERIZON NORTHWEST INC. )

**HIGHLY CONFIDENTIAL PROTECTIVE ORDER**

**Scope of this Order-**

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

**Definition-**

2. "Highly Confidential Information" is competitively-sensitive confidential 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 and Disclosure of Highly Confidential Information.**

3. Intervenors in this proceeding may include competitors, or potential competitors. Moreover, 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 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 Order.

4. Parties must carefully scrutinize responsive documents and information and 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 a stamp that reads: "**Highly Confidential Subject to Protective Order**".

5. Placing a "Highly Confidential" stamp 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 and provided under seal also must be stamped "Highly Confidential" and submitted on light blue paper with references (*i.e.*, highlighting or other markings) to show where Highly Confidential Information is redacted in the original document.

6. 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 a Highly Confidential Information Agreement, in the form prescribed by this Order, certifying that the person requesting access to Highly Confidential Information:

Has a need to know for the purpose of presenting its party's case in this proceeding and is not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and

Has read and understands, and agrees to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Highly Confidential Protective Order.

7. The restrictions in paragraph 6 do not apply to Commission Staff employees or attorneys in the Office of the Attorney General representing Commission Staff. However, Commission Staff 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.

8. 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.

9. 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.

10. Staff of designated counsel and staff of designated 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. 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.

11. 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 for including such documents or information following consultation with the parties.

12. 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).

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

**Preservation of Confidentiality-**



14. 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 necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

#### **Duration of Protection-**

15. The Commission shall 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 shall notify the party desiring confidentiality at least two weeks prior to the release of Highly Confidential Information.

#### **Destruction After Proceeding-**

16. 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**

17. 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 released, shall not be disclosed pending the Commission's ruling on the motion.

HIGHLY CONFIDENTIAL INFORMATION AGREEMENT  
DOCKET NO. UM 1431

I, \_\_\_\_\_, as

- ☐ In-house attorney
- ☐ In-house expert
- ☐ Outside counsel
- ☐ Outside expert

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

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and is not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Highly Confidential 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

ORDER NO. 09-271

HIGHLY CONFIDENTIAL PROTECTIVE ORDER  
DOCKET NO. UM 1431

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

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1486

In the Matter of

QWEST CORPORATION

Petition for Commission Approval of 2010  
Addition to Non-impaired Wire Center  
List.

MODIFIED  
PROTECTIVE ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE  
ORDER GRANTED

On June 14, 2010, PacifiCorp dba Pacific Power (Pacific Power, PacifiCorp, or Company) filed, with the Public Utility Commission of Oregon (Commission), a petition for Commission approval of 2010 additions to non-impaired wire center list for the Bend wire center.

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

1. (a) 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)(7) shall be placed in the envelope container. The envelope/container shall be marked "CONFIDENTIAL-SUBJECT TO MODIFIED PROTECTIVE ORDER, ORDER NO. 10-\*\*\*, IN DOCKET UM 1486." The Commission's Administrative Hearings Division shall store the confidential information in a locked cabinet dedicated to the storage of confidential information. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRRO Proceedings"), and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review.

(1) Confidential Information and Highly Confidential Information shall be provided to Commissioners, Administrative Law Judges, Commission staff counsel, Commission advisory staff members, and Commission employees when disclosure is necessary.

(2) Disclosure of both Confidential Information and Highly Confidential Information to consultants employed by Commission staff shall be under the terms and conditions described in paragraph 1(d) below. Court reporters who receive Confidential Information or Highly Confidential Information shall also be required to sign a nondisclosure agreement which shall be filed with the Commission.

(3) Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRRO Proceedings; (3) only those employees of the party who are directly involved in these TRRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in paragraphs 1(c)(2) and 1(c)(3) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Appendix "A." Persons described in paragraph 1(c)(1) are bound by the confidentiality requirements of this order but are not required to sign a nondisclosure agreement.

The nondisclosure agreement (hereafter Appendix "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. An Appendix "A" shall be delivered to counsel for the providing party before

disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Appendix "A" and a copy of all such signed Appendix "A"s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, shall be submitted as designated as in paragraph 1(a) of this Protective Order, and shall be destroyed after the final settlement or conclusion of the TRRO Proceedings in accordance with paragraph 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. 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, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain 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 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 a stamp that reads:

"HIGHLY CONFIDENTIAL—USE RESTRICTED PER  
MODIFIED PROTECTIVE ORDER, ORDER NO. 10-\*\*\*,  
IN DOCKET UM 1486."

Placing a "Highly Confidential" stamp 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. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Confidential Information" described in paragraph 1(a) of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Appendix "B" of the non-disclosure agreement identified in paragraph 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as "Highly Confidential." Disclosure of Highly Confidential Information shall be limited to Commissioners, Administrative Law Judges, Commission staff counsel, Commission advisory staff members, and Commission employees when disclosure is necessary. Disclosure of Highly Confidential Information to consultants employed by Commission staff shall be under the terms and conditions as described in paragraph 1(d). Court reporters who receive Highly Confidential Information shall also be required to sign a nondisclosure agreement, which shall be filed with the Commission. Appendix "B" also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the development, planning, marketing or selling of retail or wholesale services for the purposes of any party competing with or against any other party, strategic or business decision making non-regulatory strategic or business planning or procurement on behalf of the receiving party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Appendix "A" or "B" within three (3) business days after receiving the challenged individual's signed Appendix "A" or "B." Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Appendix "B." The in-house experts who have signed Appendix "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 7. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Small Company. Notwithstanding anything to the contrary in this Order, persons authorized to review Confidential Information and Highly Confidential Information on behalf of a company with less than 5,000 employees shall be limited to the following: (1) the company's counsel or, if not represented by counsel, a member of the company's senior management; (2) a company's witnesses and no more than five (5) employees engaged in the review of and preparation of testimony; and (3) independent consultants acting under the direction of the company's counsel or senior management and directly engaged in this proceeding. Such persons **do not** include individuals primarily involved in marketing activities for the company, unless the party producing the information, upon request, gives prior written authorization for that person to review the Confidential Information or Highly Confidential Information. If the producing party refuses to give such written authorization, the company may, for good cause shown, request an order from the Administrative Law Judge allowing that person to review the Confidential Information or Highly Confidential Information. The producing party shall be given the opportunity to respond to the company's request before an order is issued.

5. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

6. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials



pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;

- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
  - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
  - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
- (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by paragraph 6(b) above.
- (d) The record of said in camera hearing shall be marked “CONFIDENTIAL-SUBJECT TO MODIFIED PROTECTIVE ORDER, ORDER NO. 10-\*\*\*, IN DOCKET UM1486.” Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or instruction from the Administrative Law Judges and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Administrative Law Judge(s) should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

7. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:
- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
  - (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.
  - (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
  - (4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.
  - (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.
- (b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO MODIFIED PROTECTIVE ORDER, ORDER NO. 10-\*\*\*, IN DOCKET UM 1486" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL—USE RESTRICTED PER MODIFIED PROTECTIVE ORDER, ORDER NO. 10-\*\*\*, IN DOCKET UM 1486" and shall not be examined by any person except under the conditions set forth in this Order.
- (c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in

an in camera hearing, and shall be marked and treated as provided herein.

- (d) Access to Record. Access to sealed testimony, records and information shall be limited to the Administrative Law Judges and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to paragraph 1(c) above and have signed an Appendix "A" or "B," unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Administrative Law Judge, the order of the Commission and/or final order of a court having final jurisdiction.
- (e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.
- (f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of the TRRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

8. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Administrative Law Judge(s) or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed

the nondisclosure agreement set forth in Appendix "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

9. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

10. 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 1486 or by any Competitive Local Exchange Carrier from whom the Commission is seeking information in Docket UM 1486.

11. This Protective Order shall continue in force and effect after docket UM 1486 is closed.

Made, entered, and effective on 16 June 2010, pursuant to OAR 860-012-0035(1)(k).



L-S.D. Nade for MG  
Michael Grant  
Chief Administrative Law Judge

A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

APPENDIX "A"

CONFIDENTIAL INFORMATION

DOCKET UM 1486

I have read the foregoing Modified Protective Order, Order No. 10--  
\_\_\_\_\_, entered June \_\_\_\_, 2010, in Docket UM 1486, and agree to be bound by the  
terms and conditions of this Order.

\_\_\_\_\_  
Full Name (Printed)

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

APPENDIX "B"

**HIGHLY CONFIDENTIAL INFORMATION**

DOCKET UM 1486

I have read the foregoing Modified Protective Order, Order No. 10-\*\*\*, entered June \*\*, 2010, in Docket UM 1486, and agree to be bound by the terms and conditions of this Order.

\_\_\_\_\_  
Full Name (Printed)

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**  
**UM 1484**

I hereby certify that the Joint CLECs Opposition to CenturyLink's Motion for Highly Confidential Protective Order was served on the following persons on June 23, 2010, by email to all parties and by U.S. Mail to parties who have not waived paper service:

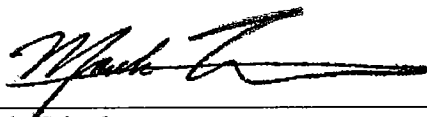
Kelly Mutch PriorityOne Telecommunications Inc. PO Box 758 La Grande, OR 97850-6462 <a href="mailto:managers@p1tel.com">managers@p1tel.com</a>	William E. Hendricks CenturyLink, Inc. 805 Broadway St. Vancouver, WA 98660-3277 <a href="mailto:tre.hendricks@centurylink.com">tre.hendricks@centurylink.com</a>
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G. Catriona McCracken Legal Counsel / Staff Attorney Citizens' Utility Board of Oregon 610 SW Broadway, Suite 308 Portland, OR 97205 <a href="mailto:catriona@oregoncub.org">catriona@oregoncub.org</a>	Raymond Myers Attorney Citizens' Utility Board of Oregon 610 SW Broadway, Suite 308 Portland, OR 97205 <a href="mailto:ray@oregoncub.org">ray@oregoncub.org</a>
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<p>Michel Singer Nelson  360Networks(USA), Inc.  370 Interlocken Blvd., Suite 600  Broomfield, CO 80021-8015</p>	<p>Penny Stanley  360Networks(USA), Inc.  370 Interlocken Blvd., Suite 600  Broomfield, CO 80021-8015  <a href="mailto:penny.stanley@360.net">penny.stanley@360.net</a></p>
<p>Rhonda Kent  CenturyLink  805 Broadway 8<sup>th</sup> Fl.  Vancouver, WA 98660  <a href="mailto:rhonda.kent@centurylink.com">rhonda.kent@centurylink.com</a></p>	<p>Marsha Spellman  Converge Communications Co.  10425 SW Hawthorne Ln.  Portland, OR 97225  <a href="mailto:marsha@convergecomm.com">marsha@convergecomm.com</a></p>
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<p>Karen L. Clauson  Vice President, Law &amp; Policy  Integra Telcom Inc.  6160 Golden Hills Dr.  Golden Valley, MN 55416-1020  <a href="mailto:klclauson@integratelecom.com">klclauson@integratelecom.com</a></p>	<p>Wendy McIndoo  Office Manager  McDowell Rackner &amp; Gibson PC  520 SW 6<sup>th</sup> Ave., Suite 830  Portland, OR 97204  <a href="mailto:wendy@mcd-law.com">wendy@mcd-law.com</a></p>
<p>Adam Haas  WSTC  10425 SW Hawthorne Ln.  Portland, OR 97225  <a href="mailto:adamhaas@convergecomm.com">adamhaas@convergecomm.com</a></p>	

Dated this 23<sup>rd</sup> day of June, 2010

A handwritten signature in black ink, appearing to read "Mark Trinchero", written over a horizontal line.

Mark Trinchero  
Davis Wright Tremaine, LLP  
1300 SW 5<sup>th</sup> Avenue, Suite 2300  
Portland, OR 97201