

1 BEFORE THE PUBLIC UTILITY COMMISSION

2 OF OREGON

3 UM 1908

4 In the Matter of

5 LUMEN TECHNOLOGIES,

6 Proposed Commission Action Pursuant to
7 ORS 756.515 to Suspend and Investigate
8 Price Plan.

**LUMEN’S POSITION ON PROPOSED
MODIFICATION OF ORDER NO. 22-340**

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10 On October 11, 2022, the ALJ issued a Ruling and Memorandum (the “Ruling”) requesting the
11 parties’ positions on a proposed modification of Order No. 22-340 (the “Order”).¹ Lumen Technologies,
12 Inc., on behalf of itself and several of its operating companies,² respectfully submits its position.

13 The proposed modification of the Order is inappropriate because it does not change the
14 fundamental infirmities of the Order that Lumen identified in its previous filings in this docket,
15 including Lumen’s Request for Hearing filed September 27, 2022, Lumen’s Reply in Support of Request
16 for Hearing filed October 11, 2022, and Lumen’s Proposal for Managing These Dockets and Their
17 Underlying Investigations filed October 12, 2022. Principal among these infirmities is the
18 Commission’s imposition of a requirement to address all repair tickets within 48 hours, whether that
19 requires repairs “to the satisfaction of customers,” as provided in the Order, or repairs to a different
20 standard or providing customers “with a functionally equivalent substitute service at no additional
21 customer cost,” as proposed in the Ruling. As discussed in Lumen’s prior filings, imposition of this new
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24 ¹ The Ruling states that the Commission is considering modifying the second sentence of the second
paragraph of the Order. It appears to Lumen that the proposal is to modify the second sentence of the *third*
paragraph of the Order, and that is how Lumen responds.

25 ² Lumen Technologies, Inc. is the parent of operating companies Qwest Corporation, United Telephone
26 Company of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon. “Lumen,” as used in this
Position, includes all of these operating companies.

1 service quality requirement is invalid for a number of reasons and has no place in this price plan docket.
2 The proposal also does not address several other infirmities in the Order that Lumen has raised.

3 Moreover, there is no factual record, let alone substantial evidence, that could support modifying
4 the Order. For example, there is no evidence regarding the feasibility or cost for Lumen to provide a
5 “functionally equivalent substitute service” or what would satisfy that standard. Nor has the
6 Commission built an evidentiary record that—consistent with due process, the APA, and the
7 Commission’s own rules—it can rely upon to make a finding regarding the necessity or effectiveness of
8 the new proposed standard.

9 The proposal also raises a number of procedural concerns. It is unclear from the Ruling whether
10 the proposal is to modify the Order before the hearing the Commission must hold under ORS 756.515(5)
11 or after the hearing. If the proposal is to modify the Order before the hearing, it is unsound. First, the
12 Order is currently suspended pending the outcome of a hearing based upon Lumen’s request for hearing
13 under ORS 756.515(5), so the Commission does not have the authority to modify the Order at this time.
14 Second, even if the Commission had authority to modify the Order at this time, ORS 756.568 requires
15 the Commission to provide notice and an “opportunity to be heard as provided in ORS 756.500 to
16 756.610” before it may amend any order. The Ruling does not provide adequate notice and opportunity
17 to be heard as required by ORS 756.568. Third, if the Commission were to modify the Order without a
18 hearing, then Lumen would be entitled to request a hearing on the modified order under ORS
19 756.515(5), which would suspend the modified order and require a different or additional hearing.

20 As demonstrated by the numerous filings the Order and ensuing rulings have required, the
21 Commission’s currently-suspended Order has unleashed a flurry of activity which is necessary to protect
22 Lumen’s rights, but is not helpful to address any underlying service issues. The Commission should not
23 continue to issue and amend orders without holding hearings and providing Lumen its due process
24 rights. Rather, the Commission should proceed in a deliberate and measured way to address any service
25 quality issues that have been identified, consistently with governing law and the Commission’s rules.

1 For all of these reasons, the Commission should not modify the Order as proposed. Instead, the
2 Commission should accept Lumen's proposal filed October 12, 2022, and:

- 3 1. Address alleged Little Applegate service quality issues in Docket UM 2206;
- 4 2. If the Commission intends to pursue new or additional service quality standards, it should
5 do so in Docket AR 624;
- 6 3. Investigate any proposed adjustments to the Price Plan in UM 1908; and
- 7 4. Withdraw Order No. 22-340.

8 DATED: October 20, 2022.

9 **PERKINS COIE LLP**

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