

FOR THE WORLD

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 REPLY IN SUPPORT OF  
REQUEST FOR HEARING PURSUANT  
TO ORS 756.515(5)**

9 Pursuant to the Ruling issued Sept. 29, 2022, Lumen Technologies, Inc., on behalf of itself and  
10 several of its operating companies,<sup>1</sup> respectfully submits this reply in support of its request for hearing  
11 pursuant to ORS 756.515(5). Because the Commission entered Order 22-340 (the “Order”) without holding  
12 a hearing, Lumen has an absolute right to a hearing under ORS 756.515(5), and no party argues otherwise.  
13 Additionally, the Order has been automatically suspended under ORS 756.515(6) and the suspension  
14 continues for the pendency of this short proceeding (the Commission is required to hold a hearing within 60  
15 days under ORS 756.515(5)), unless and until the Commission finds that the Order is necessary for the  
16 public health or safety.<sup>2</sup> ORS 756.515(6).

17 Both Staff and intervenor Priscilla Weaver (“Weaver”) argue that the Commission should make  
18 such a finding. However, there is insufficient evidence in the record to support a finding that  
19 maintaining the Order in place pending the outcome of the hearing is necessary for the public health or  
20 safety. First, the Order is plainly invalid. For this reason alone, it should not remain in place. Second,  
21 there is no substantial evidence to support a finding that the Order is necessary for the public health or  
22 safety during the weeks until the Commission holds a hearing.

23  
24 <sup>1</sup> Lumen Technologies, Inc. is the parent of operating companies Qwest Corporation, United Telephone Company  
25 of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon. “Lumen,” as used in this Reply,  
includes all of these operating companies.

26 <sup>2</sup> Preventing the dissipation of assets is the other basis for reinstating an order under ORS 756.515(6); however,  
no party argues this applies here.

1 **I. THE ORDER SHOULD REMAIN SUSPENDED BECAUSE IT IS PLAINLY INVALID.**

2 **A. The Commission May Not Modify the Price Plan Without a Hearing.**

3 The Order modifies Lumen’s Price Plan which the Commission approved in Order No. 18-359.  
4 The Price Plan, however, requires the Commission to provide notice and the opportunity for a hearing  
5 before it may order adjustments to the Plan (“The Commission may order further adjustments to the Plan  
6 or termination of the Plan only after providing CenturyLink with notice and the opportunity for a  
7 hearing.”). Order No. 18-359, Appendix A at 10. This specific requirement of the Price Plan precludes  
8 the Commission from relying on ORS 756.515(4) to issue an order without providing Lumen notice and  
9 the opportunity for a hearing. It is undisputed that Lumen has not yet had the hearing it is entitled to  
10 before the Commission may amend the Price Plan. Thus, the Order is plainly invalid and may not  
11 remain in place pending the outcome of the hearing.

12 **B. The Commission May Not Impose a Service Quality Standard Uniquely on Lumen  
13 or Without Following Notice and Comment Rulemaking.**

14 The Order also requires Lumen to address all tickets and make repairs “to the satisfaction of  
15 customers” within 48 hours of creation of the ticket. The imposition of this service quality standard is  
16 plainly invalid for a number of reasons, including that (a) it is a rule that was adopted without compliance  
17 with applicable rulemaking procedures; (b) it exceeds the Commission’s statutory authority as ORS 759.450  
18 requires service quality standards to be “nondiscriminatory” and “apply to all telecommunications carriers;”  
19 and (c) ORS 759.450(2) also requires any changes to the service quality standards to be made “by rule.” It is  
20 undisputed that the Commission has not followed notice and comment rulemaking procedures to impose this  
21 unique service quality standard on Lumen.

22 The Order is also invalid because (d) it requires repairs to be made “to the satisfaction of customers”  
23 which impermissibly delegates Commission authority to customers with no objective standard to be applied;  
24 and (e) it is inconsistent with Lumen’s lawful and Commission-approved tariffs, including specific remedies  
25 for failure to provide service. While these issues will be addressed in the hearing, these serious observations  
26

1 and concerns regarding the validity of the Order emphasize the importance of not applying this invalid  
2 requirement pending the outcome of the hearing.

3 **II. THERE IS NO SUBSTANTIAL EVIDENCE THAT THE ORDER IS NECESSARY FOR**  
4 **PUBLIC HEALTH OR SAFETY.**

5 Staff does not specifically argue that the Order is “necessary for the public health or safety,”  
6 which is the only basis on which the Commission may end the suspension of the Order pending a  
7 hearing. Weaver does make that argument; however, no substantial evidence in the record supports such  
8 a finding.

9 Every finding of fact in a Commission order, whether made in a contested case or other-than-  
10 contested case, must be supported by substantial evidence. ORS 183.482(8)(c); 183.484(5)(c). Weaver  
11 asserts that the 48-hour repair requirement, backed by the threat of penalties (which are unjustified by  
12 law), is necessary to provide customers with access to emergency services. However, no substantial  
13 evidence supports that argument. All that exists is a handful of comments about what appear principally  
14 to be intermittent service quality issues.

15 The comments that have been filed do not constitute “evidence” because they have not been  
16 submitted under oath. They also include hearsay, as well as double and triple hearsay, which is not the  
17 type of evidence that “would permit a reasonable person to make that finding” of necessity. ORS  
18 183.482(8)(c); 183.484(5)(c).

19 Even if the comments were “evidence,” they still do not amount to substantial evidence  
20 sufficient to support a finding that the Order is “necessary for the public health or safety.” For example,  
21 some comments refer to absence of dial tone for five minutes and clicking on the line; however, these  
22 comments do not justify the drastic measures required by the Order. There is also no substantial  
23 evidence that these intermittent service interruptions prevent customers from accessing emergency  
24 services. Plainly Weaver, as well as other customers who have filed comments with the Commission  
25 and communicated with Weaver, have alternative access to communications services that permit them to  
26 send emails, appear at Commission proceedings remotely, and speak telephonically. This access may be

1 through cell phone or satellite service as well as through landlines that appear to have only sporadic  
2 interruptions in service, and customers may use those services to access emergency services.

3 Furthermore, no evidence supports the conclusion that ordering Lumen to make repairs to the  
4 satisfaction of customers within 48 hours will be effective to restore access to emergency services.  
5 While Lumen fully intends to address customer outages in the Little Applegate area promptly and  
6 thoroughly, and has assigned additional resources to the area to bolster its repair capabilities, Lumen is  
7 still hampered by the availability of spare parts and technical staff to comply with such a stringent repair  
8 requirement. For all these reasons, the comments on file do not support a finding that imposing a 48-  
9 hour repair requirement is “necessary for the public health or safety.”

10 Weaver also asserts that the Order must be in effect pending the outcome of the hearing because  
11 the dedicated customer access line is also necessary for public health or safety. While Lumen disagrees  
12 that is the case, Lumen has already implemented the line and will voluntarily keep it in place pending  
13 the outcome of the hearing. Thus, the Order is not required to maintain that condition.

### 14 **III. NO RESPONSE IS REQUIRED TO THE OTHER ARGUMENTS.**

15 Staff asserts that “If the Order remains suspended, then the Commission’s legal authority to issue  
16 the Order should be addressed as a threshold issue.” As Lumen argued in the pre-hearing conference,  
17 the issues presented for decision in the hearing are mixed questions of fact and law that must be  
18 addressed at the hearing. Indeed, with the hearing to be held within six weeks of this submission, the  
19 issue will be addressed very soon and no purpose would be served by an additional round of briefing on  
20 this issue.

21 Staff also asserts that Lumen’s request for hearing should not delay Staff’s investigation into  
22 Lumen’s price plan. Lumen has not asserted that Staff’s investigation should be delayed. Lumen only  
23 asserts that Staff’s investigation and any Commission proceedings must comply with applicable legal  
24 requirements.

1 Finally, Weaver states that Lumen should be required to “go first” in filing testimony at the  
2 hearing. That issue will be addressed in the ALJ’s scheduling order and is not relevant to this briefing.

3 **IV. CONCLUSION**

4 For all the foregoing reasons, the Commission should not find that the Order is necessary for the  
5 public health or safety pending the outcome of the hearing.

6 DATED: October 11, 2022.

7  
8 **PERKINS COIE LLP**

9  
10 By: s/ Lawrence H. Reichman  
11 Lawrence H. Reichman, OSB No. 860836  
12 LReichman@perkinscoie.com  
13 1120 N.W. Couch Street, Tenth Floor  
14 Portland, OR 97209-4128  
15 Telephone: 503.727.2000  
16 Facsimile: 503.727.2222

17 Attorneys for Lumen Technologies, Inc.

18  
19 **LUMEN TECHNOLOGIES, INC.**

20  
21 By: s/ William E. Hendricks  
22 William E. Hendricks, III, OSB No. 116944  
23 Tre.Hendricks@lumen.com  
24 902 Wasco Street  
25 Hood River, OR 97031  
26 Telephone: 541.387.9439