

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 PROPOSAL FOR
MANAGING THESE DOCKETS AND
THEIR UNDERLYING
INVESTIGATIONS**

9 Pursuant to the Memorandum issued October 7, 2022, Lumen Technologies, Inc., on behalf of
10 itself and several of its operating companies,¹ respectfully submits its proposal for managing these
11 dockets and their underlying investigations. In summary, Lumen proposes the following:

- 12 1. Little Applegate service quality issues should be addressed in Docket UM 2206, applying
13 the standards, procedures, and remedies in ORS 759.450 and the Commission’s service
14 quality rule, OAR 860-023-0055.
- 15 2. Any new service quality standards should be considered in Docket AR 624, applying the
16 standards in ORS 759.450 and following the procedures for formal rulemaking.
- 17 3. Any review of pole safety issues is not relevant to the Price Plan, and should be
18 addressed outside of Dockets UM 1908 and UM 2206.
- 19 4. Any investigation of proposed adjustments to the Price Plan should be addressed in
20 Docket UM 1908, applying the standards in ORS 759.255(2) and the procedures set forth
21 in the Price Plan adopted by the Commission in Order No. 18-359. The Commission
22 should withdraw Order No. 22-340 (the “Order”) pending any such investigation.

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25 ¹ Lumen Technologies, Inc. is the parent of operating companies Qwest Corporation, United Telephone Company
26 of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon. “Lumen,” as used in this Proposal,
includes all of these operating companies.

1 **I. DISCUSSION.**

2 **A. Little Applegate service quality issues should be addressed in Docket UM 2206.**

3 The Commission opened Docket UM 2206 in December 2021 to investigate service quality
4 concerns in the Little Applegate area. Staff investigated some issues and Lumen, customers, and others
5 filed comments. Staff’s investigation of service quality issues in the Little Applegate area should
6 continue, if at all, in Docket UM 2206.

7 Any further proceedings in UM 2206 must apply the Commission’s service quality standards in
8 OAR 860-023-0055. These are the only lawful standards that apply to Lumen and other large
9 telecommunications utilities. The specific standard at issue is for repair ticket clearing. The legal
10 standard is that “A large telecommunications utility must clear at least 90 percent of all trouble reports
11 within 48 hours of receiving a report for each repair center.” OAR 860-023-0055(6). The rule does not
12 require each ticket to be cleared within 48 hours, as the Commission required for Lumen in the Order.

13 If the Commission determines that Lumen is not complying with that standard, then any further
14 proceedings must comply with ORS 759.450 and OAR 860-023-0055(14). Specifically, the
15 Commission “shall require a ... telecommunications utility ... that is not meeting the minimum service
16 quality standards to submit a plan for improving performance to meet the standards.” ORS 759.450(5);
17 *see also* OAR 860-023-0055(14)(a) (“the Commission must require the large telecommunications utility
18 to submit a plan for improving performance as provided in ORS 759.450.”). If the Commission intends
19 to pursue any other remedies, the Commission must provide Lumen with notice and an opportunity for
20 hearing under OAR 860-023-0055(14)(b).

21 **B. Any revisions to the service quality standards should be considered in Docket AR
22 624.**

23 If the Commission determines that revisions to its existing service quality standards should be
24 considered, that must be addressed in formal rulemaking. ORS 759.450(2) provides that “The
25 commission *by rule* shall review and revise the minimum service quality standards as necessary to
26 ensure safe and adequate retail telecommunications services.” (Emphasis added.) This is required not

1 only by statute and applicable administrative procedures, it is also necessary to give all affected carriers
2 notice and an opportunity to be heard regarding any proposed revisions to the service quality rules which
3 must be “nondiscriminatory” and “apply to all telecommunications carriers.” ORS 759.450(1) & (2).

4 The Commission opened Docket AR 624 in 2018 to consider revisions to the service quality
5 rules, but there has been no activity in that docket in the past four years. Moreover, it is not a foregone
6 conclusion that the service standards should be made more stringent as the Commission has done for
7 Lumen alone in the Order. Indeed, when the Commission opened AR 624, Staff noted that the
8 Commission had already revised OAR 860-023-0055(6) (the standard at issue here) in 2014 “to provide
9 regulatory relief by decreasing the objective service level of the time-to-repair standard from 95 percent
10 of all reports to 90 percent and by allowing for a longer time for repair requests that would require
11 consistently full weekend repair technician staffing.” Order No. 18-375, Appendix A at 3. That was
12 appropriate to address competitive losses and other factors listed in ORS 759.455(3).

13 **C. Any review of pole safety is not relevant to the Price Plan and should be considered**
14 **in another manner.**

15 Another issue Staff raised for consideration in UM 1908 is Lumen’s compliance with
16 Commission regulations governing pole safety and maintenance. Order No. 22-340, Appendix A at 6-7.
17 However, pole safety, and safety in general, are not relevant considerations for price plans under ORS
18 759.225(2). The Commission has established procedures for addressing pole safety in Divisions 024
19 and 028 of its rules and those should be followed in any investigation pertaining to compliance with pole
20 safety regulations.

21 **D. The Commission may consider adjustments to the Price Plan in Docket UM 1908**
22 **but the Little Applegate service issues are not relevant.**

23 The Commission has authority to consider adjustments to the Price Plan at any time, according to
24 the factors set forth in ORS 759.255(2), and may order such adjustments only after providing Lumen
25 with notice and the opportunity for a hearing. Order 18-359, Appendix A at 10. However, the current
26 service quality issues being investigated in the Little Applegate area are not relevant to this

1 consideration. Thus, any such investigation should proceed in the thorough and unexpedited manner
2 that is typical for Commission proceedings of this kind, that provide adequate opportunity for a full
3 investigation, input by all concerned parties, and meaningful settlement discussions.

4 The Price Plan contemplated an opportunity for review every four years based on the
5 performance report Lumen is required to file by the end of year three of each four-year term. *Id.* Lumen
6 duly filed the first report on the third anniversary of the Plan, September 28, 2021. Nevertheless, the
7 Commission did not identify any potential adjustments based on that report or otherwise raise the
8 specter of adjusting the Plan until September 14, 2022, only two weeks before the Plan automatically
9 renewed on September 28, 2022. Regardless of the delay, the issues upon which the Commission relied
10 in the Order to adjust the Plan are not valid considerations.

11 A price plan under ORS 759.255 addresses how rates are set for utility services and the
12 flexibility offered by a price plan is intended to strike “the appropriate balance between the need for
13 regulation and competition” and to “simplify[y] regulation.” ORS 759.255(2)(c) & (d). ORS
14 759.255(2)(b) permits considering whether a price plan “Ensures high quality of existing
15 telecommunications services and makes new services available.” However, the Commission has agreed
16 that the Commission’s service quality rules provide the measure of service quality for purposes of the
17 Price Plan, and that development of a corrective action plan is the remedy identified in Order No. 18-
18 359 and the Price Plan for any failure to comply with service standards:

19 The parties state that CenturyLink will continue to be subject to our
20 service quality rules and will continue its reporting practices as prescribed
21 by the rules. These reports provide the means to monitor CenturyLink's
22 service quality and compare it with those competitors also subject to
23 reporting requirements. In the event that CenturyLink is found to be out of
24 compliance with individual service quality standards, the parties explain
25 that our service quality rules provide for the development of a corrective
26 action plan.

Order No. 18-359 at 5.

Adjustments to the Price Plan are not to be made to address isolated service quality issues. As
the Commission ruled in Order No. 18-359, Lumen’s service quality under the Price Plan must be

1 evaluated and addressed under the Commission’s service quality rule and also compared to that of
2 competitors subject to reporting requirements under that rule. Adjustments to the Price Plans are not
3 intended, and are not well-suited, to address isolated service quality issues as the Commission has
4 attempted to do in the Order.

5 Lumen has already identified several reasons why the Order is invalid. *See, e.g.*, Lumen’s Reply
6 in Support of Hearing Request filed Oct. 11, 2022. For the additional reasons outlined above, the
7 Commission should withdraw the Order and permit any investigation of the Price Plan to proceed
8 according to the relevant considerations and procedures set forth in ORS 759.255(2) and Order No. 18-
9 359.

10 **II. CONCLUSION**

11 For all the foregoing reasons, the Commission should adopt Lumen’s proposal and:

- 12 1. Address Little Applegate service quality issues in Docket UM 2206;
- 13 2. Consider whether any new service quality standards are required in Docket AR 624;
- 14 3. Investigate any proposed adjustments to the Price Plan in UM 1908; and
- 15 4. Withdraw Order No. 22-340.

16 DATED: October 12, 2022.

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