

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1908, UM 2206

IN THE MATTER OF  
LUMEN TECHNOLOGIES

INTERVENOR PRISCILLA WEAVER'S POST-  
HEARING BRIEF

The Public Utility Commission should not accept the proposed Price Plan. To do so would in substance nullify without cause its three Jacksonville Orders.<sup>1</sup> The “protections” in the Price Plan are almost non-existent, and nowhere close to the same as in the Jacksonville Orders. Lumen’s failing equipment and infrastructure will continue to deteriorate during the RDOF build. The Commission’s 21 pages of findings in UM 2206<sup>2</sup> that led to the necessity for the orders call for the same result now: the Orders must remain operative and enforceable during the RDOF build to assure rural Jacksonville CenturyLink customers receive safe and reliable land line service.

The Commission may choose to approve the plan to test whether the significant financial incentives are sufficient protections for customers in other areas. But our community should not be sacrificed in such an experiment. To put our health and lives back at risk as an additional Incentive for Lumen to agree to this Price Plan and start stringing new cable, would be manifestly unjust for the reasons stated in my numerous prior filings, most recently in my

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<sup>1</sup> Order No. 22-340 as modified by Order No. 22-422 and affirmed by the Commission in Order No. 23-109 (Mar. 21, 2023 (“Jacksonville Orders”).

<sup>2</sup> Order No. 23-109.

Comment submitted on September 20, 2023, regarding the terms of and need for a robust outage reporting and repair prioritization mechanism, and my October 24, 2023, submitted written testimony.

Lumen and Staff laid out in their Response Testimonies and at the evidentiary hearing why they believe I am wrong and why the deal they struck does provide adequate protection to my community. Judge Spruce cut right to the chase on this point: is the Price Plan “sufficient” regarding health and safety for Jacksonville to warrant removing the protections of the Jacksonville Orders during the RDOF build?<sup>3</sup> Staff and Lumen are unequivocal on this dispositive point: they say that the Price Plan creates an “unprecedented” “special emphasis” on “health and safety issues,”<sup>4</sup> with protections in the Price Plan for all vulnerable rural customers, including my community, that are “almost identical” to the protections in the Jacksonville Orders.”<sup>5</sup> Whether the Price Plan is sufficient is best determined by comparing the text in the two documents – Orders vs. Price Plan.

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<sup>3</sup>UM 1908/2206 Hearing, Nov. 15, 2023 (“Hearing”), p. 67.

<sup>4</sup> *E.g.*, Stipulating Parties Exhibit 100: Joint Testimony, Oct. 9, 2023 (“Joint Test.”) p. 7 line 23; Stipulating Parties Exhibit 200: Staff Response Testimony, Nov. 7, 2023 (“Beitzel”), p. 3 line 11, p. 8 lines 6-9, p. 10 lines 10-11; CenturyLink Exhibit 200: Reply Testimony of CenturyLink in Support of the Stipulation, Nov. 7, 2023 (“Gose”), p. 11 line 14.

<sup>5</sup> Hearing, p. 67 lines 22-23; Joint Test. p. 25 lines 3-6 (protections present in the Jacksonville Orders were directly incorporated into Price Plan); Beitzel p. 17 lines 9-10 (Price Plan incorporates “the same protections” as in Jacksonville Orders).

**The Provisions for a Dedicated Outage Reporting and Repair Prioritization System**

Requirement/Protection <sup>6</sup>	Jacksonville Orders	Price Plan
"24/7 dedicated line ... including holidays"	UM 22-340 App. A p. 8	Not included
"Callers may report service issues for multiple addresses"	UM 22-340 p. 1	Not included
Calls to "support line ... create multiple repair tickets"	UM 22-340 p. 1	Not included
Calls to dedicated line "result [] [" in "immediate initiation of onsite repair" and "outage reports will be treated as high priority for immediate resolution"	UM 22-340 p. 1 and App. A p.8	Not included

Lumen and Staff chose not to put any of these provisions in their proposed Price Plan. Instead, the entirety of the supposedly "dedicated" outage reporting and repair prioritization system in the Price Plan<sup>7</sup> is contained in one sentence: "The Company shall maintain a dedicated customer service contact number for Protected Customers to submit trouble reports."<sup>8</sup> "Almost identical"? I do not think so. "Totally absent" is more accurate.

Why does the inclusion in the Price Plan of a detailed outage reporting and prioritization of repair mechanism, matter? First and foremost, it is what the Commission and Staff already found necessary after a thorough and lengthy investigation. Second, without such a provision,

<sup>6</sup> These are the four "aspects" of the Jacksonville Orders Mr. Beitzel testified are "the same" in the Price Plan and the Orders. Beitzel p. 1 lines 5-8.

<sup>7</sup> Beitzel p. 8 lines 6-9; Joint Test. p. 24 lines 10-11 and fn. 25 (referencing Section 11 as the place where "remediation steps" are found in the Price Plan.).

<sup>8</sup> Stipulations, Attachment A: Proposed Price Plan, Oct. 9, 2023 ("Price Plan") § 11 (c).

there is no assurance our outages will be prioritized. Getting to speak first to an operator, without the rest of the repair initiation provisions, is meaningless. There is not a word anywhere – not in the Stipulation, the Price Plan, the Joint Testimony, or Reply/Response testimonies<sup>9</sup> -- about Lumen prioritizing repair.

To be sure, when CUB’s counsel and Judge Spruce pointed out the obvious omission, Mr. Beitzel and Mr. Gose<sup>10</sup> assured Judge Spruce it was “everyone’s intent” to require multiple reporting and it was “Staff’s understanding” multiple reporting would be “enforceable.” I do not wish to disparage these witnesses, but after years of Lumen ignoring its obligations under Oregon law, the seven years in which my community tried without success to persuade Lumen to give us a dedicated line, and the ten more months it took to get the requirement of an effective repair prioritization mechanism made mandatory in the Jacksonville Orders, my community and I are not prepared to take Lumen’s word for it.

As for relying on Staff’s assurances: they investigated and reported the urgency of our situation to the Commission, and they authored most of the language about the dedicated outage and repair prioritization requirements in the Jacksonville Orders. And yet they traded away the protection of prompt repairs initiated immediately from a dedicated line in exchange for Lumen accepting potential limitations on their rate increases<sup>11</sup> In these circumstances, Staff cannot expect us to rely on after-the-fact assurances outside the Price Plan itself.

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<sup>9</sup> Mr. Gose assured Judge Spruce that the Stipulation includes this key commitment (Hearing p. 41), but I could not find it. Repairs of any kind are only talked about in terms of monthly reports and aggregated statistics. The only “prioritization” is how long customers have to wait to start talking to an operator. Joint Test. pp. 21-22 (“priority access” to the dedicated line). Just an oversight in finalizing their Stipulation and Price Plan documents? I doubt it. Staff knows how key this provision is. They wrote it and the Commission adopted it in Order No. 22-340.

<sup>10</sup> Hearing pp. 33-39.

<sup>11</sup> Beitzel p. 18 lines 1-2 (suspension of Jacksonville Orders “is not a crucial element of the overall Stipulation and Price Plan in terms of its impact to the customers of Jacksonville”). I have news for Mr. Beitzel: it is crucial to us.

**The Provisions for Compliance and Non-compliance**

	Pre-Jacksonville Orders & Pre-2024 Price Plan	Jacksonville Orders	2024 Price Plan for Protected Customer Class	
Time to repair	Within 48 hours as per OAR 860-023-0055	Within 48 hours	Within 48 hours as per existing OAR 860-023-0055 <sup>12</sup>	
Repair standard and timing	Per OAR 860-023-0055 and OAR 860-034-0390, reported monthly	Per outage: repair “within 48 hours of creation of the ticket” (Order No. 22-422 p. 2)	Same as existing OARS, reported monthly §11(d)	
Reporting	Per repair center, reported on sliding 12-month period and monthly	Call to dedicated line must result in “immediate initiation of onsite repair” (Order No. 22-340, App. A p. 8	Single statewide report summarizing trouble report clearing data monthly § 11(b) [to detect “trends”	
How to know if there is a violation?	OAR 860-023-0055	Failure to remedy service issues in the area within 48 hours of trouble report to dedicated line (Order No. 22-422 p. 2)	Failure of <u>both</u> standard OAR metrics (not more stringent pricing RCTs and TTS) <u>for 3 consecutive months</u> [i.e. “sustained non-compliance”] for entire Protected Customer class <u>statewide</u> , not at a wire center or RT level §11(d)	

<sup>12</sup> Joint Test. p. 21, fn. 22) and chart re repair timelines.

Staff and Lumen say there is an “automatic investigation mechanism”<sup>13</sup> for addressing service quality issues in the Price Plan and that it is in Section 11. The only “investigation” mechanism included in the Price Plan is the possibility of a remedial action plan, but only after three consecutive months of non-compliance with the same quality metrics that were applicable at the time the Commission found them insufficient for the rural Jacksonville situation. This “protection” in the Price Plan obviously is not “the same” as what the Commission found was necessary under our circumstances.

Staff now says they will rely on a sentence in a later appendix about a report “at the individual customer level.”<sup>14</sup> Even if that sentence is now added to Section 11, there is no mechanism in Section 11, much less an objective standard, for how the lists in Appendix E will be used. Three months of summarized individual reports? How many months of data will it take, and how will Staff have the time to prioritize and focus on it before deciding to do what, open a new docket? Initiate a new investigation? The lists still only apply “in the event of sustained non-compliance”<sup>15</sup> and do nothing to prevent the long outages that have plagued the rural Jacksonville area.<sup>16</sup>

It doesn’t take a telecommunications expert to know that waiting weeks and months for “emerging trends”<sup>17</sup> or “sustained non-compliance” is not “almost identical” to the certainty of the Orders. When our phones are out, we cannot wait while Staff wades through statewide

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<sup>13</sup> Beitzel. p. 5 line 3.

<sup>14</sup> Beitzel p. 8, lines 16-17.

<sup>15</sup> Joint Test. p. 10 lines 11-12.

<sup>16</sup> The examples of older, faster dockets in Mr. Beitzel’s Response Testimony (p. 16 lines 14-18) dealt with entirely different situations, nothing like the long and documented history of Lumen’s failure to keep land lines operating in the rural Jacksonville area.

<sup>17</sup> Beitzel p. 8, line 22.

“summaries” or even lists of every single call. We are not talking about “trends” here – we are talking about getting our land lines fixed so we can reach help before it is too late.

**Remedies for Non-Compliance/Violations**

Pre-Jacksonville Orders & Pre-2024 Price Plan	Jacksonville Orders	2024 Price Plan for Protected Customer Class
Mandatory “performance plan” with notice, etc. OAR 860-023-0055 and OAR 860-034-0390	Penalties for each violation in amounts not to exceed \$50,000. Order No 22-340 pp. 1-2	Require a “resolution plan” §11(d)(i)
“Other relief authorized by Oregon law.”	Order No. 23-109, p. 8. <sup>18</sup>	“Any additional remedies available to the Commission outside the Price Plan.” §11(d)(ii)

The remedies in the Price Plan are not remotely like the certainty of fines for violations of the Jacksonville Orders. Even assuming an assessment mechanism capable of accurately and timely alerting the PUC to an extended (*i.e.*, dangerous) outage or even a developing trend could now be formulated and added to a revised Plan, here’s the problem.

Staff says, “A performance plan is not required for Protected Customers,”<sup>19</sup> referencing Section 11, presumably because Section 11 does not require the full array of notice and hearings in a formal performance plan. Whatever the differences between the procedures for initiating a “performance” versus a “response” plan, the results from this kind of corrective action have already proven not to work in the rural Jacksonville area. We know this because

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<sup>18</sup> See pages 11-12 below.

<sup>19</sup> Beitzel p. 16 line 9.

Staff laid out the facts in compelling detail in their testimony<sup>20</sup> in the earlier prong of this same docket:

“Customers in the Jacksonville area have been experiencing these issues since at least 2014. In December of 2016 alone, the Consumer Services section at the PUC received 24 related customer complaints regarding service quality in the Jacksonville area. ... As early as 2017, Staff began requesting Lumen for solutions to mitigate this unreliability, to which Lumen informed Staff that they were working on a solution to permanently fix the plant issues. In Order No. 17-175, the Commission placed Lumen on an ORS 759.450(5) performance plan. ... Finally, in Order No. 18- 198, the Commission approved a six-month extension of the performance plan, adopted in Order No. 17-175, due in part to two service quality metrics which were still out of compliance with Commission service quality standards. In the related memo, Staff noted that, at that time, Qwest had succeeded in bringing the two initial outlier wire centers, including Jacksonville, within standard for trouble reports. *Unfortunately, the solutions implemented in response to the performance plan adopted in Order No. 17-175 do not appear to have provided a durable solution to the issues present in the Jacksonville exchange. As evidenced by the information provided in the November 21, 2021, letter, unresolved issues remain.*” (italics added)

The Commission highlighted this testimony –as well as Lumen’s refusal to take Staff’s informal (i.e., outside a performance plan) recommendations for bringing parts of the system into compliance during the investigation-- as part of the Commission’s rationale for imposing an Order that included a remedy with teeth: fines for non-compliance.<sup>21</sup>

Nothing presented in the Stipulation and supporting testimony, not even the Commission’s expressed hope that the Jacksonville issues could be resolved in a Price Plan, justifies making us start all over again with another exercise in futility every time another “trend” of extended outages happens – as they surely will.

As for “any other remedies” in the Price Plan, it also would take us right back to where we were from 2014 until the Commission issued its first Order in September 2022 and affirmed it in March 2023 with strong language about Lumen’s known proclivity for relapsing into poor

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<sup>20</sup> UM 1908/2206 Staff Ex. 100: Staff Test, Nov. 23, 2022, Bartholomew pp. 4-6 (cited in Order No. 23-109 p. 11).

<sup>21</sup> Order No.23-109 p. 12.



service quality. Back in March, the Commission told Lumen in no uncertain terms the Commission meant what it said the first time: business as usual at the CenturyLink land line part of Lumen Technologies would no longer be tolerated in my community. The Commission should say so again now and leave the Orders in place.<sup>22</sup>

**No other rationale for gutting the Jacksonville Orders withstands scrutiny, either.**

Judge Spruce at the evidentiary hearing: “Why is it necessary to suspend the Jacksonville Orders during the build?” Lumen (via Mr. Gose): for certainty and finality, and because they carry a “punitive element,” and because “we have been meeting the repair clearing times” in the “entirety of the Jacksonville wire center for over a year, there is no need for those orders to continue.”<sup>23</sup>

I agree that lifting the Orders will create certainty and finality, but only because Lumen is certain to be free of the risk of being fined for leaving our health and lives at risk after just one year of making piecemeal repairs to keep their equipment and infrastructure in the rural Jacksonville area closer to operational after years of increasingly dangerous (lengthy) outages.

Do the Jacksonville Orders carry a punitive element? Not at all. The potential for fines is a deserved sanction that is within Lumen’s control to avoid. It is precisely this element that

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<sup>22</sup> Lumen also agreed, as a new “safety measure” in Section 11(e), that when its land line system fails in two pre-agreed wire centers somewhere in Oregon and they don’t fix it within two days, a handful of satellite-dependent phones stored somewhere in Oregon will be “deployed” to those two wire centers, but not if the outage is due to “force majeure conditions” (e.g. wildfires). There is no system or even rough outline of how Lumen is to accomplish this (Hearing pp. 48-49), and not surprisingly so. Staff and Lumen acknowledge (Joint Test. p. 20, fn. 20; Beitzel p. 6 lines 9-11), that “such phones were considered and rejected as viable alternatives to working land lines” based on “cost and lack of coverage.” See also, Hearing, pp. 48 (even the small number of phones available will vary because some of them “were perhaps inoperable”). Putting them back in the mix now sure sounds like a cynical attempt to find something to throw into the Price Plan that can be labeled an “additional safety measure.”

<sup>23</sup> Hearing, pp. 72-73.

accounts for the shortened outages Mr. Gose points to. Lumen was, and will remain if the Orders stay in place, free to use the fines numbers to do internal cost/benefit analyses of whether to incur the expense to repair an outage quickly or pay an amount certain if they don't. That decision is Lumen's alone to make.

By contrast, we know what Lumen's response will be once they put the first fiber "shovel in the ground" and the certainty of fines is removed. How do we know? Because they did it before with another remedial plan. Lumen obviously calculated in 2017 that the cost to remain in compliance after the plan was lifted was greater than the risk of another slap on the wrist.

As things stand now, the Commission is asked to roll the dice on important assumptions and pervasive hedging in the Price Plan:<sup>24</sup> Will Lumen really install fiber optic cable? Where exactly will it go? What about the many customers who will not have fiber connected to their homes, or even hung on the poles on the road passing their homes? Which of the hypothetical replacement fixed wire phone services will those customers actually receive? Will they be able to get "voice-only service" as Mr. Gose says (p. 3, lines 12-13), or will they be forced to buy Lumen's other products (e.g., internet) in order to get phone service?<sup>25</sup> The list goes on.

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<sup>24</sup> For example, the "Agreement on Suspension" (Price Plan, Attachment C) is rife with speculation and purposeful hedging: Lumen "intends" to move forward, "as many as practically possible," Lumen "will use best efforts" to find and "potentially subsidize," "extreme costs and [unnamed] other factors," "as possibly adjusted," "may include" and so on. The only firm comment in the entire agreement is that Lumen "shall" notify the commission when the build starts and when it ends. It is not hard to figure out why this provision is the one on which Lumen is willing to make a firm commitment: it is the trigger for getting rid of the Jacksonville Orders. For further hedging, see Gose p. 7 lines 16-21.

<sup>25</sup> See website cited in Gose p. 3 fn. 1 (to get even "basic" voice service, Lumen's "Fiber Internet subscription" also is "required.").

And most basic, is the new “Protected Customer” system enough to keep Lumen’s land lines promptly repaired during the months or years it will take Lumen to both string the fiber optic cable and put in place the new delivery systems?

Whether or not the Price Plan’s pricing metrics and the added “protections” are novel, unprecedented, outdated, or otherwise imperfect, they definitely remain untested. If the Commission concludes that the RCT and TT metric scheme might fairly measure whether Lumen should receive the full amount of rate increase, the Commission take Staff and Lumen at their word and adopt the Price Plan and find out whether it works . . . but not by eliminating the proven protections of the Jacksonville Orders just because Lumen unrolls the first spool of fiber.

Continuing to enforce the Jacksonville Orders during the RDOF build and the follow-on conversion of customers’ delivery systems will not create an unfair advantage for the rural Jacksonville area if the Commission takes Lumen at its word that the Pricing Matrices will work and are agreed to in good faith and are not just a ruse for getting rid of the Jacksonville Orders.<sup>26</sup> For starters, all parties agree<sup>27</sup> that the Commission has already “determined” that “heightened requirements” in the Jacksonville Orders were “necessary” to protect our “health and safety” and that “no such determination exists more generally for Protected Customers located throughout the state.” Except for a few piecemeal repairs made only after the Orders took hold, we still have that same unreliable buried copper wire and antique infrastructure.

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<sup>26</sup> Stipulation par. 16, p. 4 lines 17-22; Joint Test. p. 5 line 13.

<sup>27</sup> Joint Test. p. 23 lines 6-9.

Lumen concedes that under the Price Plan, they only need to hit 90% compliance for the Protected Customers.<sup>28</sup> This is precisely why the Commission decided this standard is not sufficient to protect the situation in the rural Jacksonville area:

“[In addition to enforcing service quality standards], we must also be able to protect customers who are not receiving adequate service even if those customers represent a small portion of the total customer base. Under Lumen’s definition of adequate service, Lumen could ignore 1 percent of its customers suffering service quality issues indefinitely and the Commission would have no means to provide those customers with redress so long as the company was resolving at least 90 percent of its trouble reports within 48 hours. ...”<sup>29</sup>

Most important, the enforcement mechanism in the Orders is what is keeping our phones operating. They went out at alarming rates and for days and weeks at a time before the Orders, plain and simple. Whether our area is uniquely challenged by uniquely dilapidated equipment, or just more vocal in our protests of bad service, is one of the things the 18-month build period can help answer. We are, in a sense, the “control” group. Will we have more reliable service with the Orders in place than will the other Protected Customers under the Price Plan’s “protections,” or are Section 11 and the financial incentives in Section 4 sufficient? I believe the answer is obvious, but as long as the Orders stay in place, let the build begin and we all will find out.<sup>30</sup>

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<sup>28</sup> Joint Test. p. 23, lines 9-13.

<sup>29</sup> Order No. 23-109 p. 8.

<sup>30</sup> That said, it is hard to take at face value that Lumen entered this deal with Staff in good faith. Out of one side of its mouth, Lumen touts the Price Plan, and specifically the RCT and TT matrices, as “ensuring high quality by tying pricing flexibility to service quality,” Joint Test. p. 29 lines 13-14, and the RCT and TT-based pricing matrix as “robust.” Id. page 34, line 4. At the same time, Lumen used almost half its response testimony (Gose pp.1, 11-18) to trash the RTC metric, including laying the mattress that “there is no way” for Lumen “to comply with the RTC rule.” Gose p. 15 line 10. Good faith?

What about the statements that nothing in the Price Plan can be changed?<sup>31</sup> Is that just boilerplate or for real? If the no-changes position is taken off the table so Staff and Lumen can drop in a whole section to include the entire outage reporting/repair prioritization system from the Jacksonville Orders, the suspension of the Jacksonville Orders also should be on the table (and removed) and the continuing enforceability of the Jacksonville Orders affirmed.

On the other hand, If Lumen continues to stick to its position<sup>32</sup> that it will not agree to the Price Plan if the Orders stay in place, then the Commission should take the painful step of going against its Staff's recommendation, setting aside the hope for forestalling a full rate-making proceeding, and rejecting the Price Plan outright. The triple incentive of significant rate increases Lumen will get despite Lumen's sorry history across Oregon on issues of service quality, and of pole safety, and the full rate increases they should easily get because of the flawed RCT+TT scheme,<sup>33</sup> are more than enough without also playing Russian roulette with my community during the build.

Staff and Lumen call the Price Plan "balanced" and in the public interest. The rural Jacksonville area is part of that "public." Unlike Lumen's urban customers, we are not "free to vote with our feet"<sup>34</sup> and get another land line provider as Mr. Gose urges. Out here we may not know a T-1 from a T-bone, but we know what it means to be run roughshod over. We urge

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<sup>31</sup> Stip. Par. 16, p. 4.


<sup>32</sup> Gose p. 2, lines 16-19.

<sup>33</sup> Assuming Mr. Beitzel is correct (p. 9) that I mistakenly thought the RCT and TT metrics used for determining violations in Section 11 are the same as the RCT and TT metrics used for pricing in Section 4, I stand corrected. It does not matter either way. Using the standard RCT and TT metrics for determining violations is just as flawed as using the versions created for pricing would be. With their after-the-fact reporting, they cannot deal with ongoing outages. They are for assessing "trends." The TT metric, original or enhanced, cannot work because most rural Jacksonville customers and, by definition, all "Protected Customers" statewide, have no working phone with which to report "trouble."

<sup>34</sup> Gose p. 14 line 1.

the Commission in the most forceful terms not to allow Lumen to put our health and lives once again at risk.

Respectfully submitted,

  
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Dated: December 1, 2023

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