

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1908, UM 2206

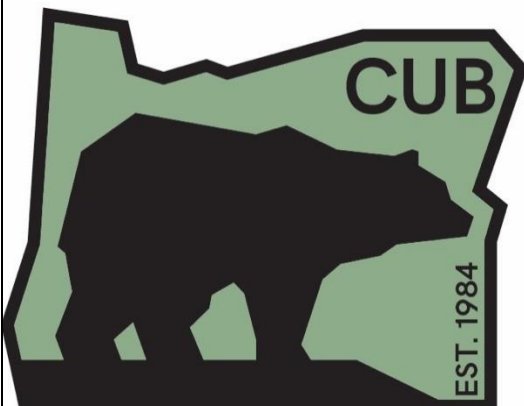
In the Matter of)
LUMEN TECHNOLOGIES,)
)
Proposed Commission Action Pursuant to)
ORS 756.515 to Suspend and Investigate)
Price Plan (UM 1908),)
)
and)
)
QWEST CORPORATION,)
)
Investigation Regarding the Provision of)
Service in Jacksonville, Oregon, and)
Surrounding Areas (UM 2206).)

CLOSING BRIEF

OF THE

OREGON CITIZENS' UTILITY BOARD

December 22, 2023



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)	
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_____)	

I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Spruce’s September 27, 2023, Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits this Closing Brief in the above-captioned proceeding. CUB reiterates our position that the Stipulation proposes to prematurely suspend and terminate Order No. 22-340, as modified by Order No. 22-422, and affirmed by Order No. 23-109 (the Jacksonville Orders) which is a threat to the public health and safety of Lumen Technologies’ (Lumen or the Company) customers in its service territory in Jacksonville, Oregon, and Surrounding Areas (Jacksonville area) and accordingly, is not in the public interest and does not meet the Commission’s standard for approval. CUB specifically objects to the provisions of the Stipulation that allow for:

¹ Formerly known as Qwest Corporation, United Telephone Company of the Northwest, CenturyTel of Oregon, and CenturyTel of Eastern Oregon.

- 1) Suspension of the Jacksonville Orders upon commencement of Lumen's Jacksonville Rural Opportunity Development Fund Project (RDOF build);
- 2) Termination of the Jacksonville Orders and cessation of the investigation Regarding the Provision of Service in Jacksonville, Oregon, and Surrounding Areas upon completion of the RDOF build or December 31, 2024; and
- 3) Monthly reporting of an amalgamation of the TT/100 Performance and RCT metrics' data for Protected Customers.²

CUB and the Stipulating Parties began settlement conversations in this docket nearly a year ago. CUB, like the Stipulating Parties, spent many days and many hours in those negotiations. There are several encouraging provisions in the Stipulation, including provisions to incentivize the Company to improve service quality for its customers. Unfortunately, the Stipulation does not adequately hold Lumen accountable to uphold its statutory mandate to achieve long-overdue reliable service for all of its customers, especially those the Jacksonville area. The Stipulation rolls back the Commission's efforts to protect the public health and safety of Lumen's customers before a solution to those decade-long dangerous conditions is in place.

CUB requests that the Commission modify the Stipulation to allow for the Jacksonville Orders to remain in place until the Stipulating Parties' proposed solution to the persistent service quality issues in the Jacksonville area has been implemented and its efficacy reviewed by the Commission. CUB respectfully asks the Commission to modify the Stipulation as follows:

- 1) The Jacksonville Orders will remain in effect until Lumen has notified the Commission that it has completed the RDOF build and taken any other steps necessary to make its service for Jacksonville area customers reliable and compliant with Oregon standards, and
- 2) Upon Lumen's notification in UM 1908 and no sooner than six months after the RDOF build is completed, the Commission will hold a public hearing to assess whether the Jacksonville Orders are still necessary, and
- 3) Lumen will file its monthly service quality reports by wire center as required under OAR 860-023-055(5) & (6) in UM 1908 and identify those wire centers serving Protected Customers.

² Trouble Ticket (TT) and Repair Clearing Time (RCT) as defined under OAR 860-023-0055.

II. STANDARD OF REVIEW

Under OAR 860-001-0350, the Commission may adopt, reject, or propose to modify a stipulation. If the Commission proposes to modify a stipulation, the Commission must explain the decision and provide the parties sufficient opportunity on the record to present evidence and argument to support the stipulation.³

The Commission reviews a stipulation to determine whether overall it results in fair, reasonable, and just rates. The Commission reviews settlements on a holistic basis to determine whether they serve the public interest and result in just and reasonable rates. A party may challenge a settlement by presenting evidence that the overall settlement results in something that is not compatible with a just and reasonable outcome. Where a party opposes a settlement, we will review the issues pursued by that party, and consider whether the information and argument submitted by the party (which may be technical, legal, or policy information and argument) suggests that the settlement is not in the public interest, will not produce rates that are just and reasonable, or otherwise is not in accordance with the law. To support the adoption of a settlement, the stipulating parties must present evidence that the stipulation is in accord with the public interest and results in just and reasonable rates.⁴

Oregon law provides that the Commission may approve a Price Plan, the plan for prices charged to customers of a large telecommunications company, without regard to the return on investment of the utility if the Commission finds the plan is in the public interest.⁵ When making a public interest determination, the Commission must, at a minimum, consider if this Price Plan:

- a. Ensures prices for telecommunications services are just and reasonable;

³ *In re Northwest Natural Gas Company, dba NW Natural, Request for a General Rate Revision*, Advice 20-19, Schedule 198 Renewable Natural Gas Recovery Mechanism, Docket Nos. UG 435, ADV 1215, and UG 411, OPUC Order No. 22-388 at 6 (Oct. 24, 2022).

⁴ *Id.*

⁵ ORS 759.255(1-2).

- b. Ensures high quality of existing telecommunications services and makes new services available;
- c. Maintains the appropriate balance between the need for regulation and competition; and
- d. Simplifies regulation.⁶

In order for a Stipulated Price Plan to be approved, the parties proposing the Stipulation must show the Price Plan is in the public interest and results in just and reasonable rates.

III. ARGUMENT

The Stipulating Parties have not provided sufficient evidence to show it is in the public interest to allow suspension of the Jacksonville Orders under the terms of the Stipulation.⁷ The Stipulation deprives customers of a results-based Commission determination of whether the Jacksonville Orders are still needed for the public health and safety and replaces it with a significantly lower bar: Lumen completing its plans for the RDOF build. The Commission should retain the right to holistically determine if the Orders are still necessary after Lumen has completed the RDOF build and any other measures the Company takes to resolve the service quality issues in Jacksonville. As the past has indicated, failure to retain this right is likely to lead to inadequate service in direct contravention of Lumen’s statutory requirement.

The efficacy of the Stipulated Price Plan is uncertain and at the Company’s leisure—a strategy proven to harm Jacksonville customers time and time again. Unfortunately, the Stipulation puts Jacksonville area customers, the Commission, and intervenors like CUB back into a position of reactivity where customers must be harmed over a long period of time before corrective action may be taken against the Company—putting the burden on everyone but Lumen. The Stipulating Parties failed to show that Price Plan would equivalently incent Lumen relative to the Jacksonville Orders under various service quality incidents.

⁶ ORS 759.255(2).

⁷ See UM 1908 (Price Plan Investigation) – Stipulation, Attach. C. (Oct. 9, 2023).

A. Public interest demands that the Jacksonville Orders remain in full force and effect until the Commission has determined that they are no longer necessary to protect public health and safety.

Oregon law provides specific provisions for the Commission to consider when determining whether a Price Plan is in the public interest.⁸ In addition, the Commission can only approve a Stipulation upon finding that it is in the public interest and that it complies with applicable law.⁹ CUB filed a limited objection to the Stipulation, arguing that the Stipulating Parties have not shown how its provision to suspend the Jacksonville Orders is in the public interest. The Jacksonville Orders were meant to protect customers until Lumen came through on its promise to replace or repair its archaic infrastructure and provide reliable voice service, with its promise of fiber optic cable or otherwise. There have been no such upgrades or replacement of the “outdated” and “vintage” infrastructure in this area.¹⁰ Further, the record is clear that the planned RDOF build will not result in sufficiently reliable service for all of Lumen’s customers.¹¹

1. The Stipulation does not ensure high quality existing telecommunications services for customers protected under the Jacksonville Orders.

While time will tell if the Stipulation finally brings high quality telecommunications services to Lumen’s existing and future customers statewide, it removes that surety for at least three reasons. First, the Stipulation prematurely and dangerously removes the protections for customers covered by the Jacksonville Order. Second, by leaving it up to Lumen to determine whether to seek the incentives of the Stipulation, there is no guarantee it will act to improve services statewide, including in the Jacksonville area, leaving Lumen with all the power and

⁸ *Id.*

⁹ ORS 759.255(1-2).

¹⁰ UM 1908 (Hearing on Orders) - Staff/100, Bartholomew/14 (quoting Lumen representative Peter Gose’s response at the February 22, 2022, Public Meeting).

¹¹ UM 1908 (Price Plan Investigation) - CUB Opening Brief at 14 & 18; CenturyLink/200, Gose/7-8.

customers all the risk. Finally, the Stipulating Parties have not presented evidence that the RDOF build will—as Lumen has repeatedly represented—remedy the service quality issues for all customers in its service territory, as is required by law.

a. The Stipulation prematurely removes protections the Commission found were necessary to protect the public health and safety of customers in Jacksonville and surrounding areas.

The Stipulating Parties state “[t]he Stipulation introduces new service quality measures ensuring that Lumen customers will receive high quality service.”¹² CUB disagrees. The Stipulation removes the protections for customers covered by the Jacksonville Orders prior to implementation of the proposed service quality solution. The Protected Customer provisions in the Stipulation do not rise to the level of the protections the Commission found were necessary to protect the public health and safety in the Jacksonville Orders. The Stipulation removes and does not replace the 100% RCT requirement for Jacksonville customer complaints. It reduces Lumen’s liability for issues experienced by Jacksonville area customers by diluting the measurement of Jacksonville customers’ service quality experiences within a 4,100-customer “Protected Customer” grouping. Finally, it removes the immediate threat of \$50,000 fines for each violation of the protections in the Jacksonville Orders, or what CUB argues are the teeth of the Orders. Despite the Stipulating Parties’ assurances, the Stipulation removes the incentive that has finally gotten the Company to respond to service quality issues in a timely manner, and could potentially further incent the Company to implement a meaningful and robust infrastructure solution that resolves long-overdue and dangerous service quality issues experienced Jacksonville customers

¹² UM 1908 (Price Plan Investigation) - Stipulating Parties Opening Brief at 7, lines 10-11 (Dec. 1, 2023).

In Comments to the Commission, Jacksonville area resident Priscilla Weaver explained the difference the Jacksonville Orders have made in Lumen's response time. Ms. Weaver stated:

GOOD NEWS: the 48-hour deadline with fines for non-compliance works and is necessary. We learned from our two separate Labor Day weekend outages that the 48-hour repair requirement, with stiff fines for non-compliance, can work as you intended.¹³ (emphasis in original.)

She explained that in 2021, customers in the Jacksonville area were without phone service for nine days, including the Labor Day weekend.¹⁴ In 2022, from August to September, customers were without reliable service for 30-45 days, only getting resolution the week the first Jacksonville Order was issued.¹⁵ This year, with the Jacksonville Orders in place, Ms. Weaver was without service for only two days.¹⁶

The Stipulating Parties have made several claims that the Stipulation's creation of Protected Customers offers sufficient protections for Jacksonville-area customers to suspend the Jacksonville Orders, including that the Stipulation "expands the protections for Protected Customers beyond what is required in the Jacksonville Orders."¹⁷ This is not the case. As CUB provided in Testimony and our Opening Brief, the Stipulation dilutes service quality issues of Jacksonville area customers and removes protections the Commission found were necessary to protect the public health and safety of customers in Jacksonville and surrounding areas. The Stipulation removes the 100% RCT requirement for Jacksonville customer complaints, returning to the minimum service quality standard. This provision and the threat of swift penalties for violation is arguably the reason Lumen has quickly responded to Jacksonville area service

¹³ UM 1908 (Price Plan Investigation) - Priscilla Weaver's Comments at 1 (Sept. 20, 2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ UM 1908 (Price Plan Investigation) - Joint Testimony, Stipulating Parties/100, Beitzel and Gose/22, lines 8-10.

quality issues at near-compliance with the Commission’s minimum service quality standard rules over the past year.¹⁸

While CUB disagrees with the Stipulating Parties contention that the record shows Lumen has fully complied with the Jacksonville Orders by responding to and resolving customer trouble reports within 48 hours, we believe the record supports the Jacksonville Orders, particularly the real threat of penalties for violation, have motivated Lumen to respond service quality issues in the Jacksonville area.

As CUB previously argued, and the Stipulating Parties admitted at the hearing in this matter, the protections for Protected Customers are not exactly the same as included in the Jacksonville Orders despite the Stipulating Parties claims they are. The Stipulating Parties have made several claims that the protections afforded the Protected Customers offer “sufficient” or “similar”¹⁹ or “enhanced”²⁰ or “expanding”²¹ the protections for Protected Customers beyond what is required in the Jacksonville Orders.

The Jacksonville Orders are a short-term solution to very specific issues related to health and safety in the Jacksonville area and were never intended to last indefinitely. The Price Plan provides a long-term solution to address these same potential issues at a state-wide level *by incorporating the same protections* and expand the protection to thousands more CenturyLink customers.²² (emphasis added).

This is not the case. These customers will lose the Jacksonville Orders’ protection of 100% of all trouble tickets being repaired within 48 hours and the immediate threat of \$50,000 fines. Instead, customers protected by the Jacksonville Orders revert back to the status quo standards that

[Begin Confidential] [REDACTED] **[End Confidential]**²³

¹⁸ CUB Opening Brief at 29, 30, and 3.3

¹⁹ Stipulating Parties Opening Brief at 8; UM 1908 (Price Plan Investigation) – Staff Response Testimony at Staff/200, Beitzel/24, line 4).

²⁰ Stipulating Parties Opening Brief at 2.

²¹ *Id.* at 12.

²² Staff/200, Beitzel/18, lines 6-11.

²³ CUB Opening Brief at 28-33; Staff/100, Bartholomew/18.

without facing monetary penalties, for at least 10 years. It does not make sense to remove these protections for these customers until the Company has improved the infrastructure that all parties agree is the cause of the ongoing service quality issues in this service territory. The loss of these significant protections calls into question whether the Stipulation will ensure that the Company meets its legal obligation to provide reliable service to customers. The Stipulation therefore fails to meet the standard for Commission approval.

b. The Jacksonville Orders must remain in place because Lumen’s commitment to the RDOF project and the incentive-value of the pricing flexibility is uncertain and customers should not bear that risk.

At a Public Meeting before the Commission in February 2022, Lumen’s representative, Peter Gose, stated that its persistently unreliable service was due to the “vintage” and “outdated” copper wire system bringing voice service to its Jacksonville area service territory.²⁴ The Company stated their solution for reliable landline service was to bring fiber optic voice service to the area with support from a federal RDOF grant.²⁵ When Commissioner Tawney asked when Lumen expected fiber to be an option, Mr. Gose indicated the federal government requested a “Ready for Service” date by the third quarter of 2023.²⁶ In September 2022, the Commission determined that Lumen’s unreliable service was a threat to the lives of its customers in Jacksonville, Oregon, and Surrounding Areas, and issued an order directing Lumen to take certain actions to address service quality issues in the Jacksonville area that present a danger to customers in the near-term.²⁷

²⁴ Staff/100, Bartholomew/15 (quoting Lumen representative Peter Gose at a Commission Public Meeting on February 22, 2022).

²⁵ *Id.*

²⁶ *Id.* at 17.

²⁷ UM 1908 (Hearing on Orders) – Order No. 22-340, Appendix A, at 8.

The third quarter of 2023 has passed and a permanent and complete solution to the “existing outdated copper technology”²⁸ in the Company’s Jacksonville area service territory has not been implemented nor proposed by the Stipulating Parties in the Stipulation. The plan in the Stipulation only offers fiber to a small fraction of the Jacksonville area customers, a partial and highly uncertain solution for other customers, and no change at all for other customers. Further, while the Company maintains it “intends”²⁹ to implement the RDOF project which is expected to bring fiber service directly to 10 of its estimated [Begin Confidential] [REDACTED] [End Confidential]³⁰ customers and a partial solution to 72 of its customers in its Jacksonville area service territory, the Stipulation does not contain any clear commitment to implement this project in a timely manner, if at all.

The RDOF program requires Lumen to start the RDOF projects this year with 40% completion by the end of 2024.³¹ year and completion The Company asserts it will complete the RDOF build, and in an expedited manner.³² Yet, a close look at the actual terms of the Stipulation corroborates CUB’s concern that the timeline for completion of this project could take longer, including due to “reasonable circumstances.”

CenturyLink *intends* to move forward with the Jacksonville Rural Development Opportunity Fund Project...and will make *good faith* efforts to complete fiber construction to as many of the living units within the originally planned RDOF build as *practically as possible*. CenturyLink may decline to build a small portion of units...but

²⁸ Stipulating Parties/100, Beitzel and Gose/26.

²⁹ Stipulation, Attach. C; CUB’s Opening Brief at 16.

³⁰ CUB’s Opening Brief at 14 and CUB/210 [Begin Confidential] [REDACTED]

[REDACTED] [End Confidential] As indicated in CUB’s Response to Lumen’s Response to Bench Request, we note that the actual number of CenturyLink customers in the service territory covered by the Jacksonville Orders is in dispute.

³¹ CUB’s Testimony in Objection at 16-18.

³² UM 1908 (Price Plan Investigation) - Reply Testimony of CenturyLink, CenturyLink/200, Gose/4.

will use *best efforts* to...find and *potentially* subsidize alternative services.³³ (emphasis added)

The Commission at its discretion may extend the extension period if CenturyLink has reasonably demonstrated that circumstances beyond its control have delayed completion of the RDOF build.³⁴

While the Federal Communications Commission (FCC) requires RDOF award winners to provide voice service to all customers in the RDOF award area the first day the provider has been fully authorized by the FCC, it is concerning that the Stipulation gives so much flexibility to the Company over implementation of this project.³⁵ Particularly given the Company's repeated assertions that the Commission does not have authority over Lumen's broadband development projects.³⁶ Lumen's commitment to the RDOF project is too uncertain to suspend the protections in the Jacksonville Orders. By keeping the Jacksonville Orders in place, there is a constant incentive for Lumen to act in a timelier manner than with the Stipulation. Suspending the Jacksonville Orders removes incentive to make infrastructure with the urgency it deserves to remedy the dangerous conditions its current system in its entire Jacksonville area service territory.

While CUB has not opposed the Stipulation's proposal to provide the Company to receive price increases based upon meeting service quality metrics set in the Stipulation, CUB is skeptical that the pricing flexibility will incentivize a company like Lumen to shift course significantly and start to comply with Commission service quality rules.³⁷ Finally, the Stipulating Parties have not shown that upon completion, the RDOF build will remedy the service quality issues for all customers covered in Jacksonville, Oregon, and surrounding areas.

³³ See Attach. C of Stipulation.

³⁴ *Id.*

³⁵ See CUB/201 at 5, Lumen's response to CUB Data Request 10; see also UM 1908 (Price Plan Investigation) CUB Errata Testimony in Opposition, CUB/100, Garrett/16.

³⁶ Stipulating Parties' Opening Brief at 11; DRs

³⁷ CUB/100, Garrett/21-22.

The Stipulating Parties argue that the pricing flexibility matrix protects customers because tying pricing flexibility to improvements in service quality and safety will finally motivate the Company to come into compliance with Commission rules.³⁸ While CUB appreciates and recognizes the novelty of the pricing matrix, and has not explicitly objected to this piece of the Stipulation, the efficacy of the pricing matrix is highly uncertain. As previously stated, we have expressed our concern over whether this revenue incentive is sufficient to motivate the Company to make improvements, or whether the experience of Jacksonville customers will be diluted in the Protected Customer grouping and enable never-ending poor service quality for a small group of customers without triggering any revenue reduction.³⁹

For example, the Company has not offered any evidence to suggest that the pricing flexibility will provide more motivation to act rather than the risk of penalties in the Jacksonville Orders. The record does not support Lumen's statements⁴⁰ that the Company has been meeting 100% of its repair clearing time at the Jacksonville wire center since the Jacksonville Orders have been in place. Notably, not only has Lumen been out of compliance with Commission service quality rules, but its service quality has *worsened* under the current price plan.⁴¹ While the Company's service quality metrics have improved somewhat in the Jacksonville area, it still fails to meet the Commission's minimum service quality standards, even with the Jacksonville Orders in place.⁴²

³⁸ Stipulating Parties' Opening Brief at 7; Stipulating Parties/100, Beitzel and Gose/29.

³⁹ CUB/100, Garrett/25.

⁴⁰ Price Plan Hearing Transcript at 72, lines 16-20 (Nov. 15, 2023); *Id.* at 72, lines 21-25 ("We have been meeting at 100% rate in the entirety of the wire center for over a year"); *Id.* at 72, line 25 to 73, line 1 ("There is no need for those orders to continue."); *See also* UM 1908 (Hearing on Orders) Lumen's Prefiled Direct Testimony (Hearing on Orders), Lumen/100, Gose/15 (Nov. 23, 2022).

⁴¹ CUB Opening Brief at 28-33.

⁴² *Id.* at 29-30. **[Begin Confidential]**

And on a more cautionary note, CUB is concerned that the Stipulating Parties have referred to these provisions as “new service quality measures” and whether adoption of the Stipulation could be understood as a signal from the Commission that its service quality rules are in fact antiquated. If the Commission were to adopt the Stipulation, we ask the Commission to be clear that its approval is not an indication of its support of the Company’s argument that the Commission’s service quality rules should be changed or removed. CUB firmly believes that willful noncompliance with Commission rules is not evidence of their antiquation

Lumen has admitted that service quality issues in its Jacksonville service territory are due to “existing outdated copper technology,”⁴³ and has repeatedly lauded high-speed fiber internet as the answer.⁴⁴ And the Stipulating Parties assert the Stipulation offers high quality services because that the Company is “in the process of replacing traditional copper lines with high-speed fiber and will offer new services related to that upon completion.”⁴⁵ Yet, in their Joint Testimony, the Stipulating Parties state that that RDOF build does not cover all Jacksonville customers referenced in the Jacksonville Orders.⁴⁶ In fact, *when* the RDOF project is complete, of the 130 locations intended to be served by the project, it only has the potential to offer fiber directly to only ten of Lumen’s existing customers.⁴⁷ Ten of Lumen’s claimed 83 customers⁴⁸ on Little Applegate Road and Upper Little Applegate Road, approximately **[Begin Confidential]** [REDACTED]

[End Confidential]

⁴³ Stipulating Parties/100, Beitzel and Gose/26.

⁴⁴ Order No. 23-109 at 17 (“fiber is going to be the ultimate fix to the issues in the Jacksonville area”, *see* Transcript of December 21, 2022 Hearing, Peter Gose at 124 In 22-25, 125 In 1-2.)

⁴⁵ Stipulating Parties/100, Beitzel and Gose/29.

⁴⁶ *Id.* at Beitzel and Gose/25; UM 1908 (Price Plan Investigation) – Lumen’s Response to Bench Request at 2.

⁴⁷ CenturyLink/200, Gose/8; Stipulating Parties/100, Beitzel and Gose/26 (“Within the RDOF census blocks, the Company has indicated that up to 15 residents, of which only one is a CenturyLink customer, may not receive fiber to the premises as originally planned in the original RDOF build...”).

⁴⁸ CenturyLink/200, Gose/5-8.

[End Confidential]⁴⁹ of Lumen’s entire customer base served by the Jacksonville wire center.

And even then, there is no evidence offered by the Company that this will be an affordable solution, comparable in price to existing landline service.⁵⁰

The Company offers that it plans to evaluate other technologies to improve service for the significant number of remaining Jacksonville customers,⁵¹ but the absence of a plan committing to those improvements in the Stipulation is noteworthy. This includes the Company’s refusal to implement the six-step plant restoration plan Staff offered to Lumen in 2021.⁵² There is no evidence in the record that the Company has made meaningful investments into improving service quality in its Jacksonville service territory, or statewide for that matter, beyond its pre-existing commitment to the RDOF build it admits will offer high speed fiber internet to only 10 of its customers in the Jacksonville area.

Suspending the Jacksonville Orders removes that surety. It has only been with the Jacksonville Orders in place that Lumen’s service quality metrics have improved, and even then, they remain out-of-compliance with the Commission service quality rules. There is no evidence in the record that Lumen has made investments into its system to remedy the outdated copper technology, including with its proposed only solution of fiber optic cable. Accordingly, customers in Jacksonville, Oregon, and surrounding areas remain in the same situation that gave rise to the Commission’s finding that the Jacksonville Orders were necessary to protect the public health and safety of customers in Jacksonville and surrounding areas. Clearly the Jacksonville Orders have motivated the Company to quickly respond to service quality issues in

⁴⁹ **[Begin Confidential]** [REDACTED] **[End Confidential]**

⁵⁰ CUB/205

⁵¹ See Stipulating Parties/100, Beitzel and Gose/26 (“For customers not within the RDOF build area, the Company plans to evaluate other technologies to improve service...”); CenturyLink/200, Gose/7 (“Yes, it is possible [that CenturyLink will expand FTTP to other Jacksonville customers] and something the company is seriously investigating based on the availability of public funding.”)

⁵² See Staff/100, Bartholomew/10; Staff/104, Bartholomew/7; and Staff/105, Bartholomew/111.

its Jacksonville service territory. However, until the Company has invested in replacing the outdated technology that it admits is causing the service quality issues, the Jacksonville Orders must remain in place.⁵³ Given the Company's history of substandard service, it is not in the public interest to adopt the Stipulation based upon uncertain future expectations about the Company's "motivations."

c. The evidence in the record does not show that the RDOF build will remedy the service quality issues for all customers in its Jacksonville, Oregon, and Surrounding Area service territory.

While the Stipulated Price Plan may bring new high quality fiber internet services to potential customers, it does little to improve the quality of voice services for a significant majority of Lumen's existing customers in the Jacksonville area. The Stipulation prematurely removes what was supposed to be near-term protections for customers covered by the Jacksonville Orders prior to implementation of a long-term service quality solution. As such, even with the Stipulation public health and safety risks remain for the majority of Lumen's customers in Jacksonville, Oregon, and Surrounding Areas.

At the February 22, 2022, and August 30, 2022, Commission Public Meetings, Lumen reiterated fiber as the solution to the service quality issues in the Jacksonville area. However, approximately [Begin Confidential] [redacted] [End Confidential] of the customers covered by the Jacksonville Orders will not receive access to the RDOF build fiber optic voice service solution. These customers will remain subject to the failing copper system that continues to create the dangerous risks that necessitated the Jacksonville Orders. Even if the 82 customers switch to fiber voice service and receive more reliable service, nothing in the record shows that voice service will be comparable in price to traditional telecommunication services. Importantly,

⁵³ See Order No. 23-109 at 13.

unlike with traditional telecommunications services that provides backup power for customers, when the power is out, the fiber service will be out. The reliability attributes of the two technologies are different. As the Commission previously acknowledged, the customers protected by the Jacksonville Orders are located in a rural area at risk of wildfires, creating a dangerous situation in the event their telephone service goes out.

CUB is concerned that if the Stipulation removes the stick of the Jacksonville Orders, and replaces it with the carrots in the Stipulation, will that be enough to motivate the Company to invest in the Jacksonville area in a timely manner? While CUB is appreciative of the Company's efforts to bring fiber to this region, it is notable that Lumen is not offering any concessions with its commitment to the RDOF project—the Company is required to perform under the RDOF build agreement or be subject to penalties. Further, the Stipulation does not require or incent Lumen to offer fiber to any customers beyond this area the Company has already committed to, or any non-fiber resolution. While the Company states it “continues to invest in maintaining and replacing its plant serving rural Jacksonville customers,” and has listed ideas it is potentially mulling over, CUB remains skeptical of the Company's commitment to other solutions given its history and the fact that the Stipulation contains no commitment by the Company to provide additional investments, fiber or otherwise.

A significant majority of customers in Lumen's Jacksonville area service territory will continue to be reliant upon the same outdated and vintage infrastructure that is responsible for the service quality issues threatening the public health and safety of the customers in the Jacksonville area. The danger to the customers protected by the Jacksonville Orders remains the same as when those orders were issued and accordingly, the Jacksonville Orders must remain in place until that decade-long problem has been resolved.

2. The Stipulating Parties have not shown that the Stipulation will simplify regulation for Jacksonville customers.

CUB is concerned that the corrective action provisions offered in the Stipulation are not fully developed and may cause delay and a more burdensome process than currently exists for the Jacksonville area customers. The record shows that the Stipulating Parties have not determined when and how compliance with Protected Customer metrics will be analyzed and reviewed, nor is it clear how quickly Staff can and will respond to service quality issues in the Jacksonville area in particular. Further, at the hearing on this matter, Lumen's witness, Peter Gose, acknowledged that the Company is currently not prepared to meet the Stipulation's reporting requirements and may not be able to at least until the Commission issues its decision. These uncertainties are troubling CUB. Accordingly, CUB is skeptical over how realistic Staff's assumptions of the length of time it would take to hold the Company accountable to noncompliance with the Stipulation's service quality metrics. The record shows that the Jacksonville Orders have an existing process that will provide a more efficient and transparent process for resolving service quality problems in the Jacksonville area in a timely manner.

a. The record shows it could take much longer for corrective action under the Stipulation than the Jacksonville Orders.

Under the Stipulation, Lumen will provide monthly data on trouble ticket and repairs for the Protected Customer class at the individual line level and will calculate RCT and Trouble Ticket reporting (TT) metrics for the purposes of price increase eligibility for the Protected Customer class as a whole. Staff will use the data and analyze and monitor Lumen's response time. If after three months in a row, Lumen fails to meet the RTC rule metric and the TT rule metric for the Protected Customer class as a whole, the Stipulation states that the Commission "may take action" which may include requiring the company to submit an implementation plan

and implement it within one month of Commission approval. The Stipulation also provides that the Commission may take advantage of any additional remedies at its disposal, which the Stipulating Parties assert includes the Commission's ability to issue penalties.⁵⁴

At the hearing on this matter on November 15, 2023, Mr. Beitzel stated that it would be reasonable to expect that the Company file its monthly reports up to six weeks after the month's end. If March 2024 is the first month being tracked, Staff may not receive the third monthly filing until six weeks from May 31, 2024, the middle of July 2024. Then Staff would complete their assessment of whether or not Lumen is meeting the service quality metric expectations for the Protected Customer class. Unless the customer contacts the Commission directly, the Commission will have to wait and see what Lumen's monthly reports provide, which could mean 4-6 weeks could pass from the date of the incident, leaving customers at risk during that time.

The record shows that hypothetically, it could take at least six months for the Company to be required to submit to corrective action for a violation of the Stipulation as it pertains to the Protected Customers service quality provisions. In the best case scenario, if Staff received the Company's Protected Customer metric data for March to May 2024 by June 7, 2024, given that it took Staff about two weeks to analyze and write its report for the two 2023 Labor Day outage incidents, a generous estimate would have Staff issuing its quarterly review and a report on any concerns one month later. And could schedule the matter for Public Meeting as soon as two weeks later, by the end of July 2024. At that time, Staff and/or Lumen could come to the Commission with a proposal for a resolution plan. When and if a resolution plan is approved at that meeting, per the Stipulation, the Company would have one month, or until the end of August 2024, to implement it and presumably come back before the Commission to determine if the

⁵⁴ Stipulation, Attch. A., Sec. 11, at 10-11.

issues have been resolved. In order to allow Staff the time to analyze the efficacy of the resolution plan and draft its recommendations for the Commission, it is reasonable to expect that this Staff Report could be issued by mid-September, with Commission review at the end of September 2024. And this is all assuming there are not any requests for extension or challenges by the Company or other interested parties to the process or Commission decisions. Therefore, it is possible that customers in the Jacksonville area will be continuing to experience service quality issues for six months before a resolution is in place and/or Lumen is subject to any fines for violating the Stipulation's service quality provisions.

Further, even though Staff has offered that a process to issue penalties has taken a month in two instances in dockets from 2001, there is no information on the record regarding the context behind those penalties or whether other action had taken place to lead up to the decision to impose penalties. Notably, that corrective action took place prior to the Price Plan process and Oregon law providing a telecommunications company be able to be able to submit and implement a performance plan.

b. It is unclear how Staff expects to respond to a widespread outage scenario under the Stipulation.

The Jacksonville Orders require Lumen to follow particular provisions or be subject up to \$50,000 in penalties for each violation for each customer protected under the Orders. If the Company does not resolve a customer trouble report issue within 48 hours, it could be subject to a \$50,000 penalty for each customer and each violation. Under the Jacksonville Orders, many customers filed comments to this docket regarding the 2023 Labor Day outages because they are aware of their ability to do so under the Jacksonville Orders. It was the barrage of these outage complaints prompting near-immediate action by the Company and Staff, issue was brought before the Commission just under three weeks from the date of the first outage.

As the 2023 Labor Day outages demonstrated, under the Jacksonville Orders, a widespread outage could be reviewed by Staff within a week and brought before the Commission within three weeks. Notably, Staff and CUB were quickly aware of the severity of the outages because customers were filing comments in this docket. Although final resolution of this matter is not expected until a Commission Public Meeting next month, CUB expects that if Staff made a finding of fault, review of Staff's analysis of the events would not have been extended to a later date.

It is unclear what the process will look like for responding to a similar outage and determining Lumen's compliance with the service quality rules. Will Staff respond to widespread outages for Protected Customers similarly as it did for the 2023 Labor Day outages? The language in the Stipulation provides a plan for corrective action if the Company is not meeting the Stipulation's service quality standards 3 months in a row. Staff also asserts that a performance plan is not required for violations of the Stipulation's Protected Customer metrics. However this is not explicitly stated in the Stipulation and without this clarity, CUB is reasonably concerned the Company may challenge any adverse decision against the Company without offering it the opportunity to submit a performance plan pursuant to ORS 759.450(5), as it has done previously in this docket, adding more delay to a resolution to service quality issues in the Jacksonville area. Accordingly, the record does not show any indication of what will happen for Jacksonville customers in the event of a widespread outage prior to a 3-month review of the Protected Customer metrics. Legally, it appears the process would defer to the ORS 759.450(5) and start the process the Jacksonville customers all over again.

As CUB has previously discussed, amalgamating service quality metrics of the entirety of the Protect Customer class can dilute persistent intermittent outage issues in smaller communities

like Jacksonville, if other Protected Customer service territories are performing at much higher levels.⁵⁵ To alleviate this concern, CUB requests the Commission to direct the Company to file its monthly TT and RCT reports by wire center, as required under OAR 860-023-055, in this or a new docket, for timely public review and identify which wire centers contain service territories of Protected Customers.⁵⁶ While CUB understands that monthly report summaries are provided by Staff on the Commission’s website, as of this date, those reports have not been updated since mid-2021 and CUB believes a timelier public review is appropriate.⁵⁷

Until these customers have reliable telephone service as they are afforded under the law—most importantly reliable access to 911 which they are not guaranteed under the existing archaic copper wire system, the Jacksonville Orders must remain in place because the danger to the health and safety of these rural Oregonians remains.

c. CUB remains concerned that the Stipulation does not ensure prices for telecommunications services that are just and reasonable.

CUB notes that the Stipulation’s provision to offer price increase incentives while the Company out of compliance with the rules is a concession on the backs of Lumen customers who have been paying for reliable service they have received for years. There is a strong argument that allowing Lumen to receive rate increases while customers are not getting reliable service is not just and reasonable, as it does not fairly balance the interests of the Company and its customers, particularly for those customers covered by the Jacksonville Orders. CUB’s preference would be that until the Company starts following the baseline, it should not be rewarded with price increases. However, given these provisions represent an attempt to incentivize Lumen’s compliance, CUB has not objected to this provision, albeit reluctantly.

⁵⁵ CUB/100, Garrett/23-24.

⁵⁶ Hrg. Tr. at 62, lines 10-11.

⁵⁷ CUB/200, Staff’s response to CUB DR 5.

3. CUB’s proposal to modify the Stipulation is in the public interest and results in a just and reasonable outcome.

The burden is on the Stipulating Parties to present evidence that the stipulation is in accord with the public interest, and results in just and reasonable rates.⁵⁸ The Commission also looks to whether the “stipulation represents a reasonable resolution of the issues and contributes to an overall settlement in the public interest.”⁵⁹ Where a party opposes a settlement, the Commission reviews the issues pursued by that party, and considers whether the information and argument submitted by the party suggests that the settlement is not in the public interest, will not produce rates that are just and reasonable, or otherwise is not in accordance with the law. The Commission does not review a Stipulation with the lens of whether a stipulating party may withdraw its agreement or any party’s assertions of negotiating parties’ understandings and commitments in a settlement process, nor does the law prescribe the Commission must give weight to the length of time it took to reach a settlement.

Under the current Stipulation, the Company could start the RDOF build but make no meaningful progress, leaving Jacksonville customers with the uncertain efficacy of the Price Plan’s remedies for two years.⁶⁰ CUB’s proposal retains the full force of the Jacksonville Orders until the Commission determines the threat to public health and safety no longer exists. The Stipulation places the risk of Lumen inaction and ongoing inadequacy on customers, whereas CUB’s proposal keeps the risk of the Stipulation failing on the Company. To suspend the Orders prior to any replacement of the archaic copper system serving Jacksonville customers is illogical in terms of incentive and unjust as well. No long-term solution has been put in place, so the

⁵⁸ *Id.*

⁵⁹ UE 416 -Order No. 23-476 at 9.

⁶⁰ CUB/100, Garrett/19-21; *see also* Stipulation, Attach. C (“If the RDOF build is not completed by December 31, 2024, the Commission may at its discretion may extend the suspension period if CenturyLink has reasonably demonstrated...”).

“near-term” motivation of the Jacksonville Orders is necessary for the public health and safety of those Oregonians.

CUB reiterates that we are not objecting to the provisions of the Stipulation that offer additional protections for a Protected Customer class. We believe incentives to get the Company to meet the Commission’s service quality rules are worth trying. However, removing the Jacksonville Orders without evidence showing the dangerous conditions no longer exist is not a reasonable resolution of the issues, nor does it contribute to an overall settlement in the public interest. As the Commission previously acknowledged, it is nonsensical to overlook a small number of violations by the Company, even if the Company is performing well elsewhere.⁶¹ Accordantly, a smaller number of customers should not be sacrificed or diluted in a “greater good” number. Relatedly and as a final thought, CUB offers that the Commission may want to open an investigation into the adequacy of Oregon’s telecommunication companies’ legacy infrastructure statewide. As the record shows, unreliable service is not a problem specific to Jacksonville area. And many communities likely do not have the benefit of a leader like Priscilla Weaver. This is a much bigger issue and all Oregonians should be protected from public health and safety risks due to unreliable telephone service.

Regardless of the length of time spent in negotiations or concessions allegedly made, the Commission is not absolved of its obligation under the law. In this matter, the Stipulating Parties have not shown any evidence that suspending and later terminating the Jacksonville Orders is in the public interest. Nothing in the record supports removing the protections both Staff and Commissioners found were necessary to protect the health and safety of these customers prior to

⁶¹ Order No. 23-109 at 8.

remedying the archaic copper system causing the ongoing service quality issues in Lumen's Jacksonville service territory.

IV. CONCLUSION

The record shows there are at least [Begin Confidential] [Redacted] [End Confidential] Lumen customers covered under the Jacksonville Orders. The Stipulation terms provide that at 10-82 existing Lumen customers will receive benefits from the RDOF build, and Lumen expects at least 1 of its customers in the award area will not receive service. This is confusing because the FCC requires RDOF award winners to bring voice service to all customers in the award area. Further, there are at least [Begin Confidential] [Redacted] [End Confidential] customers in the Jacksonville area who will not receive any benefit of the RDOF build. So, where RDOF requires the Company to serve its 83 Lumen customers in the RDOF build area, under the Stipulation, the benefits of the build may only be realized by 10 customers, out of [Begin Confidential] [Redacted] [End Confidential]. Essentially, the Stipulation is an agreement that Lumen has to bring fiber services to less than what RDOF requires. And a missed opportunity to require Lumen to provide fiber services, the solution the Company has said is necessary for years, to more customers than it has already committed to serve under the RDOF build. This agreement leaves a significant majority of customers in the Jacksonville area right where they started.

CUB seeks greater accountability from Lumen than the Stipulation provides, along with just incentives for Lumen to become a reliable service provider. The Company states that it requires "finality and certainty," which apparently is a definitive end to the Jacksonville Orders regardless of whether all customers have received reliable service yet or not. Conversely, CUB argues Jacksonville customers need and deserve finality and certainty that their crucible will end. CUB's challenge to the Stipulation and proposal offer an opportunity for the Commission to favor the finality and certainty of Lumen's customers rather than the Company. CUB argues that

the customers who have endured dangerous service quality for 10 years deserve it more than the Company that has caused dangerous service quality for 10 years. CUB’s proposal is reasonable because it gives the Company an opportunity to earn freedom from the Jacksonville Orders just six months after implementing its solution. Six months is just one twentieth of 10 years. Relative to what customers have endured, CUB feels six months is *very* reasonable. Ultimately the Company wants a swift solution, and so do customers, but all parties must be clear about the solution being reliable service.

The Jacksonville Orders are intended to be a near-term solution, but this was not intended to be understood as an arbitrary term. The Jacksonville Orders are intended to remain in place until there is a solution in place that addresses the public health and safety issues that warranted the Jacksonville Orders in the first place—not any solution, no matter how long it took to get there. CUB respectfully asks the Commission to modify the Stipulation as proposed below.

- a. The Jacksonville Orders will remain in effect until Lumen has notified the Commission that it has completed the RDOF build and taken any other steps necessary to make its service for Jacksonville customers reliable and compliant with Oregon minimum service quality standards, and
- b. Upon Lumen’s notification in UM 1908 and no sooner than six months after the RDOF build is completed, the Commission will hold a public hearing to assess whether the Jacksonville Orders are still necessary for public health and safety, and
- c. CenturyLink will file its monthly service quality reports by wire center as required under 21 OAR 860-023-055(5) & (6) in UM 1908 and identify those wire centers serving Protected Customers.

CUB’s proposal shifts the risk of the Stipulation failing to resolve the Company’s service quality issues from customers to the Company and this is appropriate, and in the public interest.

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Dated this 22nd day of December 2023.

Respectfully submitted,

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UM 1908, UM 2206 – CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of December 2023, I served the foregoing **CUB Closing Brief** in docket UM 1908/UM 2206 upon the Commission and each party designated to receive confidential information pursuant to Order 22-352 by secure 7-zip file.

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