

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UM 1908, UM 2206

IN THE MATTER OF  
LUMEN TECHNOLOGIES

INTERVENOR'S PRE-HEARING BRIEF  
ON ORDERS NO. 22-340 AND NO. 22-422

Intervenor Priscilla Weaver submits this brief in support of Order No. 22-340 as modified by Order No. 22-422, and in opposition to Lumen's request that these Orders be overturned.

The Public Utility Commission's justification for the Orders is straightforward and unequivocal: "[W]e find this modified order is necessary for the public health and safety." (Docket UM 1908/2206, Order No. 22-422, p.1). This statement reflects the strong public policy of adherence to public health and safety, a considered policy judgment that provides additional support for the Orders. Only after months of internal analysis of Lumen's record of non-compliance, including the historical pattern of Lumen's disregard for safety and reliability even in the face of prior Commission action (Order No. 22-422, p. 3), on-site visitation, a public workshop and several public meetings, did the Commission issue the Orders. Lumen's appeal presents no countervailing justification for withdrawing or watering down the Orders, particularly in the face of the strong public policy centering public health and safety.

The Orders' requirement of a dedicated reporting line is well within the Commission's authority to "represent the customers" of Lumen and "to protect such customers, and the public generally ... and to obtain for them adequate service." ORS 756.040 (1). Lumen ignored customers' requests for a dedicated line over a period of eight years (Pet. to Intervene p. 2;

Order No. 22-422, p. 3) until the initial Order 22-No. 340 was entered on September 23, 2022. Only under the threat of fines for non-compliance did Lumen finally act in a way consistent with public safety and put a dedicated line in place so that customers could report multiple-household outages and hope to get timely restoration of their land line service and access to 911 in emergencies. This timeline confirms the effectiveness of, and necessity for, the Commission's actions. In short, the requirement for a dedicated line is entirely consistent with the law requiring "safe, adequate, and reasonably continuous service" from Lumen (OAR 860-023-0005) and with the public policies underlying the law, most notably public safety. The Commission explicitly referenced the "routine danger" posed by Lumen's "[c]urrent service quality issues" and "history of ... issues with service quality" in issuing Order No. 22-340 (Att. A, p. 5). The Commission also took notice of the "even greater danger if land line service is not working" in the face of "wildfires and heavy smoke" being experienced in southern Oregon.

The modified Order, No. 22-422, was equally explicit in emphasizing the public health and safety basis for an effective and enforceable way for customers to report new outages and receive prompt repairs:

The record demonstrates that the Little Applegate area has experienced consistent, serious service issues; that adequate service is necessary for public health and safety in this area; and that adequate service is necessary for residents of this area to access essential services, including medical services." (Order No. 22-422, p. 3)

The second prong of the Orders, establishing a mechanism for imposing fines/penalties if Lumen continues its pattern of non-responsiveness to outage reports, also reflects the Commission's focus on public safety as a matter of public policy. Notably, the requirement for 48-hour resolution of outages is not new. OAR 860-023-0055. Lumen is not being singled out for unfair treatment. Instead, the Orders put Lumen on notice that if it fails to live up to its

obligation to provide “responsive and fast resolution of outage reports” (Order No. 22-340, App. A, p. 9), then and only then will the fines be imposed. Whether or not Lumen incurs the fine is entirely within Lumen’s control to avoid.

Lumen’s argument that the Commission was required to let Lumen submit a “corrective action plan before penalties are assessed” (Request for Hearing, Sept. 27, 2022, p. 2) ignores the fact that the Commission did issue an earlier performance plan (Order No. 22-422, p. 3), but the problems persisted. In fact, the service issues have only intensified to the point where there were twelve outages in 2021, one of them lasting eight days, and including the Labor Day weekend and Christmas Day, and a month-long malfunction involving dropped calls throughout September 2022. There is nothing in the governing law and nothing consistent with public policy that requires the Commission to engage in yet another futile “performance” plan before holding Lumen to account.

To illustrate the futility of another performance plan, we need only look to Lumen’s own words. At the public meeting on September 20, 2022, when asked how Lumen intended to address the continuing outages and Lumen’s refusal to provide an effective reporting mechanism to at least get prompt repairs, Lumen’s representative fell back on Lumen’s standard response: their equipment is old and they “have a solution down the road,” a reference to vague promises of a future installation of fiber optic cables for faster internet in unspecified locations at unspecified dates in late 2023 at the earliest, with unspecified impact on land lines, and in the meantime Lumen would “do our best to keep [the land lines] running.”

(Order No. 22-422, pp. 6-7). That is not a plan; it is another attempt to avoid meeting their current obligations.<sup>1</sup>

Lumen's objection (Req. to Clarify, Oct. 14, 2022, pp. 2-4) to the inclusion of the evidence of their abysmal service reliability, including their ineffective general "800" and online outage reporting system, is not well taken. The voluminous and consistent customer comments and complaints fulfill the requirement of evidence "of a type relied upon by reasonably prudent persons in the conduct of their serious affairs" (OAR 860-001-0450), and is precisely the kind of evidence on which the Commission routinely relies. The many comments of individual customers about their personal interactions with Lumen personnel in attempting to report widespread outages and obtain prompt resolution of the outages are first-hand reports and include relevant statements made by a party – Lumen. The accumulated reports of these experiences submitted initially by complainants Ms. Weaver (me) and Mr. and Ms. Horner (UM 2206, Letter to PUC dated Nov. 21, 2021, Att. A to Staff Report, Dec. 9, 2021) and thereafter by numerous individual comments forwarded by Ms. Weaver in UM 2206 and UM 1908 are consistent with the Commission's policies and practices and are reliable and relevant.<sup>2</sup> All this

---

<sup>1</sup> Lumen's newest argument, that the Modified Order is no longer necessary (Lumen/100, Gose Testimony pp. 16-18), is also inconsistent with public policy and directly contradicted by the evidentiary record. During the entire month of September 2022, right when the Commission was considering whether to issue Order No. 22-340, the Lumen equipment servicing Jacksonville was dropping calls and otherwise malfunctioning. See Order No. 22-422, pp. 4-7. Dropped calls means no reliable service and no access to 9-1-1. The fact that, under the threat of fines for long outages, Lumen finally corrected this month-long malfunction by some time in October, does not justify lifting the Orders after only a few weeks of "compliance." The Orders should stay in place at least until the underlying statewide review of Lumen's performance in the Price Plan portion prong of docket UM 1908 is complete.

<sup>2</sup> See also UM 1908/2206, Intervenor's Resp. to Lumen's Request to Clarify, Nov. 1, 2022, noting Lumen's consistent failure to object to or challenge the validity of any of these dozens of comments and reports over the entire year, and several PUC meetings and a workshop, since the initial letter complaint was filed in November 2021.

evidence should be admitted, including the summaries of the comments and complaints in Staff testimony (Order No. 202-386, Att. A, PUC Internal Operating Guidelines, III.B.3).<sup>3</sup>

For the foregoing reasons, and the legal authorities relied on by the Public Utilities Commission in issuing the Orders and cited in their briefs, as well as the authorities cited in the briefs filed by the Oregon, Citizens Utility Board, Intervenor requests that Lumen's appeal be denied and that Orders No. 22-340 as modified by Order No. 22-422 be upheld in their entirety.

Respectfully submitted,



Dated: December 13, 2022

Priscilla Weaver, Intervenor  
6268 Little Applegate Road  
Jacksonville OR 97530  
541-899-1672  
priscilla@saltmarshranch.com

---

<sup>3</sup> Even if Ms. Weaver's second-hand reports of other customers' experiences with Lumen's standard outage reporting system were excluded, the remaining first-hand customer comments submitted directly to the Commission or forwarded by Ms. Weaver are ample evidence of Lumen's failure to provide the safe and reliable land line service they contracted for and are obligated to provide. One need look no further, for example, than the detailed records kept and submitted to the Commission by Lumen customer Susan Shaffer, included in Staff/200, Exhibit 203, as well as the shorter first-hand comments submitted to the Commission by other customers contained in the same exhibit, to find the Orders squarely within the public interest and policy.