

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1908, UM 2206

In the Matter of)	
)	
LUMEN TECHNOLOGIES, ¹)	OPENING BRIEF OF THE OREGON
)	CITIZENS' UTILITY BOARD
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).)	
)	
Price Plan Investigation)	

I. INTRODUCTION

Pursuant to Administrative Law Judge (ALJ) Spruce’s September 27, 2023 Ruling, the Oregon Citizens’ Utility Board (CUB) hereby submits this Opening Brief in the above-captioned proceeding. On October 10, 2023, Lumen Technologies, Inc. (Lumen or the Company) and Staff of the Oregon Public Utility Commission (Staff) (together the Stipulating Parties) negotiated and filed a Stipulation and Price Plan in this matter, with Joint Testimony in Support. On October 24, 2023, CUB filed its Objection to the Stipulation and Testimony in Opposition. The Stipulating Parties filed separate Reply Testimony on November 7, 2023. The Oregon Public Utility Commission (Commission) held a hearing on this matter on November 15, 2023.

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

As stated in CUB’s Objection to the Stipulation, CUB does not oppose the entirety of the Stipulation and Price Plan presented by the Stipulating Parties. Rather, CUB only objects to the Stipulation’s removal of the protections in place from Order No. 22-340, as modified by 22-422, and as affirmed by Order No. 23-109 (the Jacksonville Orders).² Because Lumen is relying on broadband as a solution even though it may not be available until late December 31, 2024, and has not provided a plan to address near-term service quality issues, the Stipulation does not offer a remedy to the service quality issues that have been plaguing Oregonians receiving telephone service provided by Lumen in the Jacksonville, Applegate, and surrounding areas in southern Oregon. Accordingly, the Stipulation and Price Plan are not in the public interest as the Commission’s reasons for suspending the current Price Plan, historical and ongoing safety and reliability issues in the Jacksonville area, have not been resolved. In order to ensure the Price Plan is in the public interest, CUB respectfully requests the Commission 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 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. CenturyLink 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.

II. STANDARD OF REVIEW

A telecommunications company like Lumen may petition for and receive a plan under which the commission regulates prices charged by the utility, without regard to the return on

² UM 1908, UM 2206 – Objections of the Oregon Citizens’ Utility Board at 4 (Oct. 24, 2023).

investment of the utility. Prior to approval, the Commission must find that this price plan is in the public interest and the statute provides four factors that at a minimum the Commission must consider in its decision. If approved, the Commission must establish objectives of the plan and conditions for review during its operation.

The Commission has the authority to “approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility.”

ORS 759.255 provides limitations on the Commission’s authority:

(2) Prior to granting a petition to approve a plan under subsection (1) of this section, the commission must find that the plan is in the public interest. In making its determination the commission shall consider, among other matters, whether the plan:

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

Accordingly, CenturyLink and/or the Stipulating Parties bear the burden of showing the proposed Price Plan is in the public interest.

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

In reviewing a stipulation, the Commission determines whether the overall result of the stipulation results in fair, reasonable, and just rates. The Commission reviews settlements on a

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).

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.⁴

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. 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.⁵

III. BACKGROUND

A. Investigation into the Provision of Service in Jacksonville and Surrounding Areas

On November 21, 2021, the Oregon Public Utility Commission (PUC) received a complaint from two customers living in the Jacksonville, Oregon area expressing concerns with ongoing safety and reliability issues with their Lumen telephone service, stating that recently, 60-80 customers experienced eleven outages that took four to eight days for service to be restored. Notably, on October 24, 2021, one of these customers had a life-threatening emergency and had to call emergency services—the very next day, the area experienced another outage.⁶

As you know we are all having dropped calls in our area. When this first started, I tried to call 911 on my landline and I could not get through. This is a HUGE problem when you live alone and have a heart issue far from neighbors who can't hear you... I can't do video calls with my doctor because of this plus I worry I won't be able to call 911.⁷

⁴ *Id.*

⁵ *Id.*

⁶ Staff/100, Bartholomew/3 (citing Staff/105, Bartolomew/98-111) (Oct. 23, 2017).

⁷ CUB/226 at 7-8.

Staff investigates customer complaints to determine compliance with Commission rules and the Company's tariffs, and whether a violation has occurred. Service complaints include service reliability and associated repairs, National Electrical Safety Code (NSEC) or line clearance concerns, or other safety issues.⁸ Customer service violations can be missed commitments on service repair, extending due date commitments, and billing issues. Staff found customers in the Jacksonville area have been making complaints to the PUC about Lumen's service quality and reliability issues since at least 2014,⁹ and that "[s]ince 2018, service complaints are increasing, and 2022 is on track to be [the year with the] highest number of service complaints in past five years,"¹⁰ particularly in the Jacksonville area:

- 2015: 23 service complaints;¹¹
- 2016: 32 service complaints (including 24 customer complaints in December 2016);¹²
- 2017: 12 service complaints;¹³
- 2018: 1 billing complaint;¹⁴
- 2019: 2 complaints (1 billing and 1 service complaint);¹⁵
- 2021: 5 complaints (1 customer service and 4 service complaints);¹⁶
- 2022: 13 complaints (1 billing, 4 customer service, and 13 service complaints).¹⁷

PUC Staff have received the following number of complaints about Lumen company's service quality statewide:

- 2018: 276 complaints (39 for customer service, 120 for service reliability);
- 2019: 234 complaints (30 for customer service, 122 for service reliability);
- 2020: 319 complaints (60 for customer service, 178 for service reliability);
- 2021: 411 complaints (81 for customer service, 249 for service reliability);
- 2022: 470 complaints (123 for customer service, 283 for service reliability).¹⁸

⁸ *Id.* at Staff/200, Nottingham/5.

⁹ Order No. 23-109 at 11.

¹⁰ Staff/200, Nottingham/5.

¹¹ UM 1908 – Staff/200, Nottingham/7.

¹² *Id.*, Staff/100, Bartholomew/4 (citing Staff/105, Bartholomew/1-15).

¹³ UM 1908 – Staff/200, Nottingham/7.

¹⁴ *Id.*

¹⁵ *Id.*; see also Section III(A)(2) of this brief.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ UM 1908 – Staff/200, Nottingham/5.

Upon review of customer complaints, in December 2021, Staff recommended that the Commission open an investigation into Lumen's service in the Jacksonville, Little Applegate, and Southern Oregon, stating:

In December of 2016 alone, the Consumer Services section at the PUC received 24 related customer complaints. Staff has been in contact with Centurylink regarding potential solutions since early 2017. At that time, the Company informed Staff that they were working on a solution to permanently fix the plant issues. In Order No. 17-175, the Commission placed Centurylink on an ORS 759.450(5) performance plan. The issues faced by customers in Jacksonville are described in the "Jacksonville Area - Case Study" section of the Staff memo attached to that order. 1 In its related performance plan filed on June 29, 2017, Centurylink cited a number of actions it had taken or planned to take to address issues in the Jacksonville exchange. 2 Finally, in Order No. 18-198, the Commission approved a six-month extension of the performance plan adopted in Order No. 17-175. 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.¹⁹

The Commission described the significant service issues affecting public health and safety, including:

outages ranging from four to eight days; potentially being unable to reach emergency services during medical emergencies; the need to drive twelve to twenty five minutes to get cellular phone service; Lumen "clearing" repair tickets despite customers continuing to be without voice service; rapidly spreading wildfires nearby during periods without phone service; statements from Lumen confirming that much of the company's equipment in the area is at the end of its life; and customer difficulties in reporting service outages.²⁰

Staff added that another frequent comment was "difficulty reporting outages without phone service, Lumen representative[s] reporting no outages in the area, prolonged wait times, and long talk or chat times before a repair ticket is issued."²¹ Staff also found that Lumen's history of non-

¹⁹ *In the Matter of QWEST CORPORATION, Investigation Regarding the Provision of Service in Jacksonville, Oregon and Surrounding Areas*, OPUC Docket No.UM 2206, Order No. 21-470, Appendix A at 3 (Dec. 20, 2021).

²⁰ Order No. 23-109 at 11.

²¹ Staff/200, Nottingham/14.

conformance with OARs related to pole safety and maintenance justified a public interest investigation.²² As such, Staff recommended an investigation into Lumen's price plan to see if it is in the public interest "in its current form, or should be modified or terminated."²³ Noting, "[t]o be in the public interest, the Price Plan must ensure a high quality of existing service and make new service available to customers."²⁴

Joe Bartholomew, a Senior Telecommunications Analyst at the PUC with over 17 years of experience in the telecommunications industry personally inspected Lumen's facilities in the Jacksonville area.²⁵

Mr. Bartholomew provided extensive testimony on his personal inspection of Lumen's system in the Jacksonville and Applegate areas. 62 During the inspection, Mr. Bartholomew identified bonding and grounding repairs that needed to occur. 63 "I noticed a lot of grounding issues-well, I noticed a lot of the cables weren't grounded in the pedestals. I noticed one pedestal didn't even have a ground bar at all, which I brought it to their attention."

Mr. Bartholomew inspected thirty or forty pedestals, and reiterated the importance of hardening them, as "the cable's really brittle to where if you touch it, it might break, or* * it might cause a short or it might cause one-person outage, or when you fix one person, you might cause another outage because the cable's so brittle. " 65 As a result of hardening, "the cable becomes more like new condition because it hasn't oxidized, it hasn't been introduced to the elements, it's underground three feet*** [and] it induces reliability on that portion of the cable plant."66 Mr. Bartholomew also explained that one of the issues with Lumen's system "could be a lot of their repeaters" because "**[y]ou really just have to replace if they go bad because they don't manufacture them anymore.**"²⁶ (emphasis added)

Staff found that Lumen had only taken two actions between 2014 and 2021 to resolve service quality issues:

(1) hardening of cable plant inside certain pedestals, and (2) the replacement of backup batteries in the remote terminal."55 Staff did not believe these actions were sufficient, as

²² *Id.* at 6.

²³ *Id.* at 7.

²⁴ *Id.* (citing ORS 756.515(2)(b)).

²⁵ *Id.* (citing Staff/100, Bartholomew/7; Staff/104, Bartholomew/9; Staff/101, Bartholomew/1-3; Lumen/100, Gose 10).

²⁶ Order No. 23-109 at 12-13.

Lumen only "hardened the cable plant in three separate pedestals" out of over sixty pedestals total. 56 According to Staff, this meant "customers [would] likely continue to experience outages until the Company harden[ed] all of its pedestals."57 Staff was further concerned that at the time, Lumen did not have backup batteries. 58 As a result of these concerns, Staff provided recommendations to Lumen with steps the company could take to "bring the cable plant to 'like new' conditions."59 Lumen did not follow Staff's suggestions. 60²⁷

Staff again found that service quality in the Jacksonville and surrounding areas threatens public safety and that residents feel unsafe from unreliable service, some do not have access to alternative services, and without phone service, the Jacksonville residents are cut off from emergency services.²⁸ Accordingly, Staff recommended Commission action as necessary to ensure public safety, secure reliable phone service for customers, and guarantee that issues are addressed in a timely manner.²⁹

Staff found that the "historical and ongoing service quality issues were the reason that Staff requested to open an investigation into the service quality in Jacksonville and the surrounding areas."³⁰ In its investigation, Staff determined that despite the Commission's efforts to work with Lumen to resolve these issues for nearly ten years, "the solutions implemented in response to the performance plan adopted in Order No. 17-175 [did] not appear to have provided a durable solution to the issues present in the Jacksonville exchange" and that "unresolved issues remain."³¹ Subsequent to Staff's investigation into service quality issues in Jacksonville, Staff concluded that:

1. Staff remained concerned about the ongoing service quality issues reported by customers, particularly because of the inability of past performance plans to rectify ongoing issues

²⁷ *Id.* at 12.

²⁸ *Id.*; Staff/100, Bartholomew/6.

²⁹ UM 1908 – Staff/100, Bartholomew/6-7, 18.

³⁰ UM 1908 – Staff/104, Bartholomew/43.

³¹ *In the Matter of QWEST CORPORATION, Investigation Regarding the Provision of Service in Jacksonville, Oregon and Surrounding Areas*, OPUC Docket No.UM 2206, Order No. 21-470, Appendix A at 3 (Dec. 20, 2021).

with system age and quality, frequency of the outages, and the Company not addressing problems in a timely manner.³²

2. Lumen was not taking appropriate steps to ensure near-term compliance with service quality standards, including:
 - a. choosing not to follow the six-step cable plant restoration process suggested by Staff, stating instead that the work the Company performed, adding battery backups, was sufficient;
 - b. relying on broadband as a solution even though it may not be available until late Q2 or early Q3 in 2023;
 - c. and not providing a plan to address near-term service quality issues.³³
3. Service quality in the Jacksonville and surrounding areas threatened public safety and that
 - a. residents feel unsafe from unreliable service,
 - b. some do not have access to alternative services, and
 - c. without phone service, the Jacksonville residents are cut off from emergency services.³⁴

Accordingly, Staff recommended Commission action as necessary to ensure public safety, secure reliable phone service for customers, and guarantee that issues are addressed in a timely manner.³⁵

The Commission agreed and issued the first of the Jacksonville Orders, Order No. 22-340 on September 28, 2022.

B. The Jacksonville Orders

The “Jacksonville Orders” refer to Order No. 22-340, as modified by Order No. 22-422, and as affirmed by Order No. 23-109. Ultimately, Staff found, and the Commission agreed, that ongoing service quality issues in the Jacksonville, Applegate, and surrounding areas in southern Oregon justify an investigation into whether the existing Price Plan was in the public interest.³⁶

Staff came to this conclusion due to:

- the historical and ongoing service quality issues in Jacksonville and surrounding areas;
- that issues present at multiple wire centers that are not easily or permanently resolved;

³² UM 1908 – Staff/100, Bartholomew/18.

³³ *Id.*

³⁴ *Id.*; Staff/100, Bartholomew/6.

³⁵ UM 1908 – Staff/100, Bartholomew/6-7, 18.

³⁶ UM 2206 – Order No. 22-340, Appendix A, pp 5-6 (Sept. 14, 2022).

- the service quality issues present routine danger with Oregonians being unable to call emergency services given that customers in this area rely solely on landline telephone service;
- Lumen had been unresponsive to outage reports, including canceling repair times without responding to outages; and
- Geographically, these customers are placed at a higher risk of danger given that service territory is regularly at risk for wildfires.³⁷

The Jacksonville Orders require Lumen to:

- “[d]eploy a toll-free, 24/7 dedicated customer support line...to support customers in Jacksonville, Applegate, and surrounding areas in southern Oregon” which “must remain operational for the duration of Staffs investigation. and Applegate areas for the duration of the investigation;”³⁸
- Allow customers to report service issues for multiple addresses and create multiple repair tickets;³⁹
- “Lumen must address all tickets and make repairs in a manner that results in a consistent and functional dial tone and ability to reliably make and receive calls, or provide the customer with a functionally equivalent substitute service, as defined by Lumen's current tariffs, at no additional customer cost, within 48 hours of creation of the ticket until service issues in the area are remedied. Where repairs are not feasible because of a customer-premise issue preventing such dial tone and the ability to receive and make calls, Lumen must provide documentation of such issue to the customer and the Commission's Consumer Services Division;”⁴⁰
- Lumen must track and retain information on all tickets generated through this customer support line. The information to be tracked must include but is not limited to the address, name, and contact information for the customer for whom the ticket has been generated; a description of the service issue, logs of customer contact regarding the service issue, actions taken to resolve the service issue, and information on the results. Dates and times for all of the foregoing information must be logged;
- Lumen must file a report with this information in the UM 2206 docket every two weeks.⁴¹

Notably, the Order also stated that the Commission intended to level penalties for violations of the order for each violation in amounts not to exceed \$50,000 per violation.⁴² And on September

³⁷ *Id.*

³⁸ Order No. 22-340 at 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Order No. 22-422 at 9.

⁴² Order No. 22-340 at 1.

27, 2022, Lumen filed a request for hearing under ORS 756.515(5) to determine whether Order No. 22-340 should remain in effect.⁴³

Order No. 23-109 affirmed the two underlying Jacksonville Orders, finding that Order No. 22-422 “articulated extensive documentation from Staff and Lumen customers regarding service quality issues and public health and safety issues requiring consistent and dependable telephone service, in particular to access emergency services in a high wildfire risk area.”⁴⁴ The Commission concluded that:

As a result of Mr. Bartholomew's inspection and the continued service quality investigation, which included continued customer complaints, Staff concluded it "continues to have concerns about service quality issues in Jacksonville and surrounding areas due to the amount of customer complaints the Commission's Consumer Services Group continues to receive." These concerns were based on Staff's conclusions that "past performance plans did not rectify ongoing issues with system age and quality; outages were too frequent; and Lumen was not addressing problems in a timely manner." Staff further believed "Lumen was not taking appropriate steps to ensure near term compliance with service quality standards" and that "[s]ervice quality in the Jacksonville area threatened public safety."

Regarding public safety, Staff explained that because "Jacksonville is a very rural city, many customers do not have internet or cellular service as an option at their homes, and as a result, rely on their landlines for communications, which include those of a critical nature." This dynamic leads to telephone outages "present[ing] a very dangerous circumstance if there were to be an emergency of any kind."

Ultimately, Staff concluded "Commission action was required to ensure public safety, secure reliable phone service for customers, and guarantee that issues are addressed in a timely manner."⁴⁵

The Commission acknowledged that Lumen admitted there were ongoing service quality issues in the area, and explained this was due to four primary causes:

“certain sections of older vintage copper cables with internal paper insulation [being] prone to periodically become wet[;]" batteries nearing the end of their useful life; remote

⁴³ *Id.*

⁴⁴ Order No. 23-109 at 3.

⁴⁵ *Id.* at 13.

terminals being more than forty years old; the cable plant "required occasional maintenance that impacted service."⁴⁶

Accordingly, the Commission affirmed its decision, finding that:

Lumen has not provided credible evidence that customer trouble tickets in the area have been resolved within 48 hours. While the company asserts it has, it was not able to respond to questions about disconnects between information Lumen provided and Staff provided, nor could Lumen's representative explain what actions were taken to resolve trouble tickets and whether service problems were actually resolved. Conversely, Staff presented evidence that customers were experiencing continued service issues with their telephone service and that at least some trouble tickets were not resolved within 48 hours. Lumen's proffered evidence failed to rebut those assertions.

We conclude that Lumen's customers in these areas continue to suffer service quality issues and that the record demonstrates why the modified order must continue in effect.

Even if Lumen is correct that it has resolved all service quality issues in the area, we conclude that leaving the modified order in place ensures Lumen will continue to maintain phone service to customers in this area during the pendency of the orders. Absent the provisions of the orders, Lumen customers were suffering from frequent and serious service quality issues and was not completing repairs in a timely manner. Even if all repair tickers are now being resolved within 48 hours, we conclude this is at least in part because of the modified order and justifies it remaining in effect until such time as we determine appropriate.⁴⁷

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 emergency services, including medical services.⁴⁸

C. The Stipulation and proposed Price Plan.

The Stipulation and Price Plan offered by the Stipulating Parties offers several provisions related to service quality issues. It acknowledges that Lumen intends to initiate construction of its Rural Opportunity Development Fund (RDOF) project in the Little Applegate area and, despite Staff's findings in the investigation, it provides that Order No. 22-340, as modified by 22-422, and as affirmed by Order No. 23-109 (the Jacksonville Orders) will be suspended once Lumen begins

⁴⁶ *Id.*

⁴⁷ *Id.* at 16-17.

⁴⁸ Order No. 22-422 at 3 Order No. 22-422 at 3 (*affirmed by Order No. 23-109 (March 21, 2023)*).

construction, allows the termination of the Jacksonville Orders once the RDOF project is complete.⁴⁹ It also includes provisions that allow the Company to receive price increases based upon a tiered system of coming into compliance with Commission service quality rules and allows a maximum increase of three dollars per year, for up to four years, for a total of twelve dollars for the four years following approval of the Stipulation and Price Plan.⁵⁰ CUB filed a partial objection to the Stipulation, specifically the provision of the Stipulation that proposes to suspend and terminate the Jacksonville Orders and offered a modification to keep the Jacksonville Orders in place until the Commission determines that the stipulated proposal actually resolves the ongoing service quality issues caused by the outdated infrastructure in Jacksonville, Applegate, and surrounding areas in southern Oregon, as mentioned above.

IV. DISCUSSION

By failing to ensure that the Stipulation will result in reliable service across the Company's service territory, including in the Jacksonville Area, the Stipulating parties have not met their burden to demonstrate that the Stipulation is in accordance with law⁵¹ and that the Price Plan offered is in the public interest.⁵² The Stipulating Parties have not offered evidence that the service quality issues addressed in the Jacksonville Orders have been resolved by the Stipulation and Price Plan to the degree that would warrant a change to those Orders, as contemplated in the Stipulation. While the Company may show that it has been responding more quickly to service quality issues in its 97530 service territory, contrary to what the Stipulating Parties claim, the agreement strips important protections for the customers in this region—important protections

⁵¹ ORS 759.506(1), a telecommunications utility with allocated territory is obligated to “[p]rovide adequate and safe service to the customers of this state.”; OAR 860-023-0005 provides: “Each energy utility, large telecommunications utility, and intrastate toll service provider must have and maintain its entire plant and system in such condition that it will furnish safe, adequate, and reasonably continuous service.”

⁵² ORS 759.255.

the Commission determined were necessary for the health and safety of these customers.⁵³ Until the necessary repairs are made to remedy the 40+ year old infrastructure Lumen states is responsible for these ongoing service quality issues, the Jacksonville Orders must remain in place.⁵⁴

CUB wants to note that although the Company asserts that the Jacksonville Orders only apply to the customers served by the Company’s 2600 and 2900 Remote Terminals,⁵⁵ the scope of these orders is much broader. Order No. 22-340 specifically stated that the dedicated service line is to support customers in” Jacksonville, Applegate, and surrounding areas in southern Oregon.”⁵⁶ Lumen set up its dedicated service line for customers in the zip code for that area—this should be considered at least the floor for the scope of the customers protected by the Orders.⁵⁷ The scope of the Jacksonville Orders should at least cover the customers by the Jacksonville wire center, all [Start Confidential] [REDACTED]⁵⁸ [End Confidential] of them, but arguably should include Lumen’s Southern Oregon repair center service territory.

Rather than ensuring high quality telecommunications services, the Stipulation removes the Commission’s protections for customers in the Jacksonville, Applegate, and surrounding areas in southern Oregon. Accordingly, the Stipulation and Price Plan are therefore not in the public interest. CUB respectfully requests the Commission modify the Stipulation as follows:

⁵³ Order No. 22-422 at 9.

⁵⁴ Staff/100, Bartholomew/14-15.

⁵⁵ CenturyLink/200, Gose/5.

⁵⁶ Order No. 22-340 at 1.

⁵⁷ See CUB/212.

⁵⁸CUB/207. [Start Confidential] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End Confidential]

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 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. CenturyLink 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.

A. The Stipulation does not take sufficient appropriate steps to ensure near- and long-term compliance with Commission's service quality standards in Lumen's service territory covered in the Jacksonville Orders.

The issues that led Staff to request an investigation into Lumen's service quality in the Jacksonville, Applegate, and surrounding areas in southern Oregon remain unresolved with the Stipulation. **The Stipulation does not provide the finality and certainty of reliable telephone service for the customers protected by the Jacksonville Orders.**

Lumen states that the Company needs "finality and certainty" regarding the Jacksonville Orders. Lumen describes CUB's objection to changing the Jacksonville Orders as "shatter[ing]" the "finality and certainty" the Company seeks from the Stipulation.⁵⁹ Frankly, we find this statement bold-to-shocking. As this brief will show, Lumen's concept of finality and certainty centers around a definitive end to the Jacksonville Orders based on criteria that do not measure whether its customers actually have reliable service.

Undermining the Jacksonville Orders as the Stipulation does endangers Lumen's customers. As the record shows, Lumen's unreliable service has put rural, southern Oregonians' health and safety at risk for at least 10 years. As the Commission acknowledged, these customers do not have other reliable voice communication and must rely upon Lumen service in

⁵⁹ CenturyLink/200, Gose/11.

the event of an emergency at home.⁶⁰ Contrary to Lumen's claim that CUB seeks to retain the Jacksonville Orders "indefinitely", CUB's proposal maintains the Jacksonville Orders only until results showing a durable solution for Lumen's customers. Considering the hardships these customers have faced for 10 long years, this is eminently reasonable.

Regarding public safety, Staff explained that because "Jacksonville is a very rural city, many customers do not have internet or cellular service as an option at their homes, and as a result, rely on their landlines for communications, which include those of a critical nature." This dynamic leads to telephone outages "present[ing] a very dangerous circumstance if there were to be an emergency of any kind. " Accordingly, the Commission concluded:

Mr. Bartholomew's personal inspection of Lumen's facilities, expertise, conclusions, and recommendations provides substantial evidence to justify the modified order and to have it remain in effect as described below. However, additional support for this conclusion exists in the extensive public comments and complaints the Commission has received over the course of its investigation.⁶¹

The public interest is not served by removing these protections for these vulnerable customers, and therefore the Stipulation must be modified.

First and foremost, the Stipulation states that the company *intends* to move forward with the RDOF build.⁶² While it appears from the record Lumen does plan to move forward with the build, and is required to do so based upon its RDOF agreement. CUB would like to see more certainty and CUB's proposal provides that. Under CUB's proposal, if reliable service is ensured, Lumen could be free of the Jacksonville Orders in just six months after the Company has completed its RDOF build plan—the Stipulating Parties' structural solution to the service quality issues. Importantly, Lumen is required to complete under the FCC's RDOF program within a few

⁶⁰ Order No. 23-109 at 2.

⁶¹ *Id.*

⁶² UM 1908 - Stipulating Parties' Testimony in Support of Stipulation of Russ Beitzel and Peter Gose, Section 14 (Oct. 10, 2023).

years regardless of the Stipulation, and further incented to do quickly by the Jacksonville Orders— and any other measures necessary to provide reliable and compliant service. CUB’s proposal offers the Company a structured pathway to be relieved of the Jacksonville Orders, however, it also holds Lumen to producing results.

Rather, it is the customers in the Company’s service territories that need the finality and certainty of not just the telephone service they have paying for, with price increases every year despite service quality decline, but importantly, the finality and certainty of being able to call 911. CenturyLink’s assurance of “finality and certainty” is entirely up to the Company: make the necessary repairs or continue to be subject to the Jacksonville Orders.

Although Lumen’s Jacksonville area customers are a fraction of Lumen’s Oregon customers, the duration and intensity of their experience, and the precedent it sets for Lumen’s 4,100 protected customers in particular, compelled CUB to expend considerable effort to determine a just and reasonable outcome in this proceeding. Further, in Order No. 23-109, the Commission supported the notion that the number of customers affected is not a mitigating factor when considering a utility’s consistently unreliable service (emphasis added):

Finally, we note that while we can enforce minimum service quality standards as a means of regulating telecommunications utilities, 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. But, as CUB explains, it would be nonsensical to allow a telecommunications utility to ignore a small number of trouble reports indefinitely even if the utility were meeting the minimum service quality standards: “[t]o hold that the Commission does not have the power to protect customers from a utility's action or nonaction, whether the problems stem from 90%, 75%, or even 5% of the number of resolved service quality issues would be inconsistent with the Commission's role as a regulator.”⁶³ (emphasis added)

⁶³ Order No. 23-109 at 8.

That CUB remains adamant about establishing finality and certainty for Jacksonville area customers and this should come as no surprise.

The Company states that the RDOF build will provide fiber access to 10 of approximately 100 Lumen customers covered by the Jacksonville Orders.⁶⁴ For the remaining 90 customers, our expectations for service reliability after the RDOF build are either uncertain, partial improvement or no improvement, depending on the customer. The 72 customers who could receive a hybrid of fiber and archaic infrastructure if Lumen's RDOF build encompasses integrating these customers into the fiber network required by the RDOF program.⁶⁵ It is CUB's understanding that additional investments and technologies, such as those listed in Lumen's testimony as options Lumen is "planning to evaluate," are needed to interconnect fiber and legacy telephony infrastructure. Based on CUB's understanding of the RDOF program, Lumen is not required under the RDOF program to implement these technologies, which would impact customers outside the RDOF area. Thus, Oregon regulators may be reliant on Lumen to implement these technologies of its own accord and at its own pace, presenting considerable uncertainty regarding if and when these 72 customers will receive any improvement.

Even if Lumen were to connect these 72 customers outside the RDOF area to the RDOF fiber infrastructure within the same timeframe it completes its RDOF build plan, these customers would still rely on Lumen's archaic infrastructure. Thus, replacing the remote terminal can be expected to fix the cause of 40 of 70, or about only half, of the incidents customers are experiencing. As for the remaining 18 customers, they apparently will not benefit from the RDOF build at all and will rely on the same problematic infrastructure they do today.

⁶⁴ CenturyLink/200, Gose/7.

⁶⁵ *Id.* at 7-8.

CUB is concerned that the RDOF build will not provide a durable solution for all customers covered by the Jacksonville orders. Only about 10% are guaranteed a service option that is free of Lumen's archaic and unreliable infrastructure. So while CUB agrees that protections for other vulnerable communities is an excellent goal and supports those efforts, we do not believe that should or needs to come at the expense of customers the Commission has already identified as some of the most vulnerable to harm in Oregon. Notably, Commission Staff has previously acknowledged that a future promise of broadband is not sufficient to address the near-term needs of these customers.⁶⁶

The Commission has acknowledged in this docket that Lumen must meet its Carrier of Last Resort Obligations (COLR) regardless if alternatives like cell phone service or fiber exists in its service territories.

We note that Lumen stated it "requested what they call a RFS Ready for Service date of late second quarter, early third quarter of 2023" for fiber to home that would provide its customers in the area with "symmetric 940 MB service" with "reliability * * * vastly superior to what it is today." 102 Lumen agrees "that fiber is going to be the ultimate fix to the issues in the Jacksonville area" and we would hope that service issues in the area will be eliminated as a result and the need for further action by the Commission unnecessary. 103 Notably, when given the opportunity at hearing, Lumen did not commit to pursue for the Jacksonville area what they characterized as "the ultimate fix" to the service problems. We note that whether fiber is the ultimate fix to the problems in the Applegate area or other actions by the company are required, it is the provision of voice service to customers that is required under state law and our rules, whatever method the company determines to use in order to do that.⁶⁷

Accordingly, the Jacksonville Orders should not be suspended or terminated until the Commission determines that this proposed solution is one that will provide an adequate resolution of the historic service quality and reliability issues and result in high quality of

⁶⁶ UM 1908 – Staff/100, Bartholomew/18.

⁶⁷ Order No. 23-109 at 17.

existing telecommunications for Oregonians in the Jacksonville, Applegate, and surrounding areas in southern Oregon, as is required for a Price Plan to be found in the public interest.

1. The Stipulation and Price Plan do not offer the same protections as the Jacksonville Orders.

In their Joint Testimony in support of the Stipulation, the Stipulating Parties state:

Primarily, the Stipulating Parties agree that the inclusion of the Jacksonville Orders' protections and reporting requirements into the proposed Price Plan as well as the extensive expansion of who is covered as a Protected Customer is a positive outcome for customers statewide...With the inclusion of UM 2206 into UM 1908, the Stipulating Parties were able to incorporate the protections present in the Jacksonville Orders directly into the proposed Price Plan.⁶⁸

This statement fails to pass basic levels of scrutiny, and the Stipulating Parties have also presented inconsistent statements on the topic. For example, Mr. Beitzel states that the Price Plan without the Jacksonville Orders results in “no change” in the Commission’s capacity to levy penalties and invokes the Commission’s standard process for levying penalties, which exist regardless of the Price Plan. Indeed, the Commission can levy \$50,000 penalties for non-compliance through standard regulatory processes without the Jacksonville Orders. However, CUB notes that the standard process for levying penalties failed Lumen’s customers over the last ten years. This is despite ongoing service quality issues endangering the health and wellbeing of Lumen’s customers. The reality is that the standard process involves several added steps, such as Lumen developing and following a performance plan, which the Company was directed to do in 2017 and 2018,⁶⁹ but to CUB’s knowledge, never did. The added steps and process for levying penalties under the standard process, while suitable for a utility that is generally compliant, is not suitable for a Company with Lumen’s unacceptable service record.

⁶⁸ UM 1908, UM 2206 - Stipulating Parties/100, Beitzel and Gose/25 (emphasis added).

⁶⁹ CUB’s Prehearing Brief at 4.

In Mr. Beitzel's Reply Testimony he states "[t]he Stipulating Parties agreed to take the reporting requirements from the Jacksonville Orders and expand them to include all Protected Customers." While the Stipulation offers a process for review of Protected Customer issues, as CUB addressed in Testimony, these protections are not as robust as the Jacksonville Orders. Without the Orders, the Jacksonville customers lose the 100% 48-hour repair clearing time requirement and the Company's immediate risk of a \$50,000 fine for each violation of the orders. And as CUB correctly acknowledged in our testimony and as was identified at the hearing on this matter, while the Stipulating parties claim some of those protections are covered in the Stipulation, because those statements are not in the Stipulation or Price Plan, there is no guarantee the Company will honor those provisions, despite any intent expressed by the Stipulating Parties. If, as Mr. Beitzel and Mr. Gose stated at the hearing, the Stipulating Parties intended to offer the extend the same protections in the Jacksonville Orders to the Protected Customers, then the Stipulation must be modified to explicitly reflect this intent. At the hearing on this matter, Mr. Beitzel stated:

[T]he intent in – in the overall negotiation was to extend the same to the – the entire Protected Customer Class, which now encompasses over 4,000 customers beyond what is currently in the Jacksonville Orders. But yes, if this is not stated explicitly, it has always been the intent through settlement and through discussions with the Company that this has been the – the intent of the Stipulating Parties.⁷⁰

When prompted by ALJ Spruce to add his thoughts, Mr. Gose stated "I would just concur, Judge Spruce, with what Mr. Beitzel's just said."⁷¹ If what the representatives for the Stipulating Parties said at the hearing is true, that the Protected Customers will receive the same protections the customers have in the Jacksonville Orders to the entire Protected Customer class, this is a game-changer.

⁷⁰ Hrg. Transcript p 36, lines 1-11.

⁷¹ Hrg. Transcript p 36, lines 14-15.

If that truly is the case, and the Stipulating Parties modify the Price Plan accordingly, it is highly likely that CUB could agree to the entirety of the Stipulation and Price Plan.

CUB offers Table 1 below that compares the protections between the Jacksonville Orders and the Price Plan.

Table 1 – Jacksonville Orders and Stipulated Price Plan Compared

Requirement	Jacksonville Orders	Price Plan
Dedicated Support Line	Deploy a toll-free, 24/7 dedicated customer support line to support customers in Jacksonville, Applegate, and surrounding areas in southern Oregon ⁷²	<u>Section 11(c)</u> : maintain a dedicated customer service contact number for Protected Customers to submit trouble reports ⁷³
	Allow customers to report service issues for multiple addresses and create multiple repair tickets ⁷⁴	Not explicitly stated-- does not appear to be included.
	Provide notice to each Affected Customer informing them of the new Dedicated Line, how to use it, and what Lumen's response to calls will be. ⁷⁵	Does not appear to be included.
	Within 14 days, Lumen shall provide the Commission a report confirming it took the steps laid out in No. 1. The report should include a copy of the notification to Affected Customers and a detailed description of the processes Lumen as put in place for assuring the immediate initiation of repair response when calls are received on the Dedicated Line. ⁷⁶	Does not appear to be included.
Trouble Report Repair Timeline	address all tickets and make repairs or provide substitute service within 48 hours of creation of the ticket until the service issues in the area are remedied ⁷⁷	<u>Section 11(a) and 4</u> : continue to be subject to the Commission's service quality rules with pricing flexibility being tied to performance
Reporting Requirements	track and retain information on all tickets generated through the customer support line	<u>Section 11(b)</u> : provide a single report summarizing trouble

⁷² UM 1908 – Order No. 22-340 at 1 (Sept. 23, 2022).

⁷³ UM 1908 – Stipulation, Attachment A at 10 (Oct. 10, 2023).

⁷⁴ *Id.*

⁷⁵ Order No. 22-340, Appx. A at 8.

⁷⁶ *Id.*

⁷⁷ *Id.* at 1.

Requirement	Jacksonville Orders	Price Plan
	<p>and submit reports every two weeks until the conclusion of the investigation, including but not limited to: the address, name, and contact information for the customer for whom the ticket has been generated; a description of the service issue, logs of customer contact regarding the service issue, actions taken to resolve the service issue, and information on the results.⁷⁸</p>	<p>report clearing data on a monthly basis for all Protected Customers. The data will be made available as a single Protected Customer category, as opposed to providing it at a wire center or RT level.</p> <p>Protected Customer Statistics information includes: customer name, caller name, address, caller email (if provided), contact number, cause of issue, disposition (has the issue been addressed, resolved...)</p> <p>Does NOT include: description of service issue, logs of customer contact regarding the service issue, actions taken to resolve the service issue</p> <p>See Stipulations, Attach E, p 2,</p>
	<p>Dates and times for all of the foregoing information must be logged.⁷⁹</p>	<p>Does not appear to be included. (See Attach E)</p>
	<p>A confidential version of the reported information, with no redaction, filed under a general protective order. Filings should summarize how tickets are routed and prioritized.⁸⁰</p>	<p>Does not appear to be included. (see Attach E)</p>
	<p>Penalties for violations of this order for each instance in amounts not to exceed \$50,000. Each day a ticket is not resolved in the 48-hour period specified in this order will be a violation, for each customer and each day.⁸¹</p>	<p>Defers to service quality rule performance plan review process.</p>

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 1–2.

The streamlined process for the Commission to levy \$50,000 penalties per customer per incident through the Jacksonville Orders is meaningful. CUB argues Lumen's extraordinary record of poor service quality and non-compliance over the last ten years instigated a firm yet necessary measure, the Jacksonville Orders, which increases the likelihood that penalties could be swiftly administered to Lumen by the Commission. This element of the Orders is essential to their efficacy.

Further suggestion that the Jacksonville Orders differ in effect from the Price Plan is the Stipulating Parties' aversion to CUB's proposal. Maintaining the Jacksonville Orders in addition to the Price Plan as CUB proposes presents an impasse for a reason, and CUB argues that the liability of Lumen actually incurring penalties exclusively under the Jacksonville Orders is a factor the Commission should consider seriously. The evidentiary record demonstrates that the Stipulating Parties' assertions that the Stipulation offers comparable customer protections to the Orders are utterly unfounded.

2. The Jacksonville Orders have been effective in causing Lumen to respond to service quality issues in a timelier manner.

Years of customer hardship and complaints; price plans; standard regulatory processes; and unmet performance plans, infrastructure plans, and promises from Lumen, bore no demonstrable improvements for Jacksonville area customers. However, over the last year, seemingly in response to the Jacksonville Orders, Lumen offers that its RCT metric was "100% compliant in the Jacksonville area." The RCT metric is one of two performance metrics integrated into the Price Plan's tiered rate structure, along with the TT/100. The RCT metric essentially measures how quickly Lumen responds to customer complaints and service outages. Thus, it can be said that in 2023 Lumen has responded to service outages and complaints faster in the Jacksonville area than in previous years.

However, Lumen has not invoked its TT/100 record for the past year in this case. The TT/100 metric measures trouble tickets per 100 customers and effectively indicates the reliability of Lumen's infrastructure. Here Lumen has yet to become a compliant service provider. This is unsurprising; the same infrastructure that has failed at unreasonable frequencies over the last 10 years is still in place.

Based upon these two metrics, it appears that Lumen has, after implementation of the Jacksonville Orders, executed a good contingency plan after many years of failing to do so, but has yet to establish reliable infrastructure and a durable solution for Jacksonville area customers. Were Lumen's day-to-day efforts to quickly put out fires, metaphorically speaking, to flag, customers would be in the same situation as before. Thus, while CUB believes the Jacksonville Orders have been more effective than previous regulatory measures, a sufficient impact has yet to be realized.

C. The Jacksonville Orders must remain in place because service quality in the areas covered by the Jacksonville Orders still threatens public safety for those customers who would continue to not have access to alternative communication services under the Stipulation.

1. Customers protected by the Jacksonville Orders remain concerned for their health and safety.

The record shows that Oregonians protected under the Jacksonville Orders continue to feel unsafe from reliable service and believe the Jacksonville Orders must remain in place until a permanent solution that provides reliable service is in place.

One customer commented on September 23, 2022:

Once again, my landline service is out. It was out all day yesterday and it is still out. We are going on 32 plus months of intermittent landline phone service. As I have reported to you countless times this is a lifeline for those of us who have limited, or no cell service. **This is a LIFE SAFETY ISSUE yet the problem persists with no end in site. If I have a medical (or other) emergency I am screwed, and it could cost me my life. Is anyone taking this seriously??? If I, or one of my fine neighbors die because we can**

not call 911 would it change anything??? WHERE IS OUR SUPPORT? Why are we paying taxes, and why are we paying CenturyLink and those taxes, only to be left hanging?⁸² (emphasis in original)

On September 20, 2023, another customer filed a comment in this docket:

For the record, my Labor Day outage on the 5th lasted 6-7 days, not 4 days. Also, please understand, you can't replace copper lines with "fiber" optic lines. The whole purpose of copper landline infrastructure is that it carries with it, its own power, and is not dependent on area power, or internet connectivity. There is no effective replacement for old school copper landlines. In the event of areawide power outages, landline calls can still be made, incoming and outgoing calls still work, reverse 911 still works and EMERGENCY 911 calls still work. **THEY NEED TO FIX AND MAINTAIN THE "COPPER" LINES INFRASTRUCTURE** PHONE COMPANIES / UTILITY COMPANIES ALL OVER THE COUNTRY ARE TRYING TO DO AWAY WITH COPPER. IF THIS HAPPENS RURAL AREAS AND REMOTE LOCATIONS WILL NOT BE ABLE TO MAKE OR RECEIVE CALLS DURING POWER OUTAGES OR INTERNET OUTAGES.⁸³ (emphasis in original)

And on November 6, 2023, a customer filed a comment saying:

Please do not remove the order protecting landline customers most impacted by service issues. We are paying customers who are not receiving the service we pay for. The fact that CenturyLink (LUMEN) will not replace ancient hardware out in rural Jackson County, where there is zero cell service for many miles, is criminal. Personally, I have to drive 20 miles one way to get cell service. With the landline regularly going dead, we have no 911 service to call if there is an emergency. Being told for 10 years that they will not replace hardware because of impending fiber optics installation is ridiculous. No fiber optics have been installed in rural Jackson County, nor will it be for years to come. As living citizens of Jackson County, we need to be ensured that we have 911 services available 24 hours a day; services we are paying for. Will one of us have to die, due to not being able to call 911? Is that what has to happen before the PUC takes action to help Jackson County citizens?⁸⁴

On November 7, 2023, this customer commented:

We have all been reporting for years that our CL landlines are not reliable. God forbid, we have a death as a result of not having the ability to call 911 for help (for which we are charged \$2.50/mo for Oregon 911). Our only salvation this past year has been the PUC Order. For each and every one of us who have reported outages to the PUC since the Order has been in place, can you tell me exactly 1) what sanctions have you enacted on CL?, and 2) how much CL has been fined? If they aren't held accountable with fines, they won't lift a finger to fix things, and if the PUC won't make good

⁸² CUB/226 at 112.

⁸³ *Id.* at 158.

⁸⁴ *Id.* at 194.

on the sanctions and fines as specified in the Order, what good are they doing? Who is left to help us?⁸⁵

Staff's investigation concluded that many customers in this area do not have access to cell phone service as an alternative. The customers in Jacksonville, Applegate, and surrounding areas in southern Oregon still maintain they need the protections of the Jacksonville Orders until a viable solution is in place. Removing the protections of those orders and the immediate threat of fines does not make sense and nothing in the record supports any changes since those orders were issued to support that change. **Evidence in the record shows the Company has not been addressing problems in a timely manner, including in the service territories covered by the Jacksonville Orders, so the Jacksonville Orders must remain in place until a resolution that ensures high quality of existing telecommunications services is available.**

2. [Start Confidential] [REDACTED]

[REDACTED].⁸⁶ [End Confidential] Pursuant to Commission Administrative Rule OAR 860-023-0055(6), a large telecommunications company like Lumen "must provide each customer making a network trouble report with a commitment time when the large telecommunications utility will repair or resolve the problem." It must also calculate the percentage of trouble reports cleared within 48 hours of receiving the report from the repair center and report these percentages to the Commission every month. Prior to 2014, a large telecommunications Company had to clear 95% of all trouble reports within 48 hours of

⁸⁵ CUB/226 at 198.

⁸⁶ CUB/220 at DRs 5A-5I.

receiving the report, for each repair center—the “repair clearing time” (RCT). In February 2014, the Commission rule changed to the current 90% RCT standard.

A “trouble report” is “a report of a malfunction that affects the functionality and reliability of retail telecommunications service on existing access lines, switching equipment, circuits, or features made up to and including the network interface.” Every month, a large telecommunications company Lumen must calculate the number of customer trouble reports received by wire center, except for those specifically excluded by the rule. For wire centers with more than 1,000 customer access lines, the monthly trouble report rate (TRR) may not exceed 2 per 100 working access lines more than three times during a 12-month sliding period. For smaller wire centers with 1,000 or less access lines, like the Jacksonville wire center, the TRR may not exceed 3 per 100 work access lines more than three times during a 12-month sliding period.⁸⁷

At the time of this briefing, 2021 service quality data for Lumen companies (Qwest Communications Corp., aka CenturyLink, and United Telephone Company of the Northwest) were available to access on the Commission’s website.⁸⁸ According to the website, Lumen’s CenturyTel was granted a waiver from service quality reporting in 2008.⁸⁹ CUB was able to obtain additional service quality reporting data on the Company’s monthly reporting through a data request to Staff. **[Start Confidential]** [REDACTED]

[REDACTED]

[REDACTED]

⁸⁷ OAR 860-032-0012(1)(o).

⁸⁸ <https://www.oregon.gov/puc/utilities/Pages/Telecom-Service-Quality.aspx>

⁸⁹ *Id.*

[REDACTED]

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⁹⁰ CUB/220, DR 5-F Workbook, Sheet “48 HRS (ten year data)”, columns DF–DQ.

⁹¹ *Id.* at columns DZ-EF.

⁹² CUB/220, DR 5-G Workbook 5-G, “48 HRS”.

⁹³ CUB/220, DR 5-F Workbook, Sheet “48 HRS”.

⁹⁴ CUB/220, Workbook 5-E, “48 HRS”.

⁹⁵ CUB/220, Workbook 5-D, “48 HRS”.

⁹⁶ CUB/220, Workbook 5-B, “48 HRS”.

⁹⁷ CUB/220, Workbook 5-A, “48 HRS”.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

⁹⁸ CUB/220, Workbook 5-F, Sheet “MO TRR”.

⁹⁹ CUB/220, Workbook 5-E, Sheet “MO TRR”.

¹⁰⁰ CUB/220, DR 5-D, Sheet “MO TRR”.

¹⁰¹ CUB/220, DR 5-C, “MO TRR”.

¹⁰² *Id.*

¹⁰³ CUB/220, DR 5-B, “MO TRR”.

¹⁰⁴ *Id.*

¹⁰⁵ CUB/220, DR 5-A, “MO TRR”.

¹⁰⁶ CUB/220, DR 5-S, “REP 48”.

¹⁰⁷ CUB/220, DR-R, “REP 48”.

¹⁰⁸ CUB/220, DR 5-Q, “REP 48”.

¹⁰⁹ CUB/220, DR 5-P, “REP 48”.

- [REDACTED]
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¹¹⁰ CUB/220, DR 5-O, “REP 48”.
¹¹¹ CUB/220, DR 5-N, “REP 48”.
¹¹² CUB/220, DR 5-M, “REP 48”.
¹¹³ CUB/220, DR 5-K, “REP 48”, DR 5-L, “REP 48”.
¹¹⁴ CUB/220, DR 5-J, “Rep 48”; *see also* CUB/207 at 334.
¹¹⁵ CUB/220, DR 5-S, “TRR”.
¹¹⁶ CUB/2017, DR 5-R, “TRR”.
¹¹⁷ CUB/220, DR 5-P, “TRR”.
¹¹⁸ CUB/220, DR 5-O, “TRR”.
¹¹⁹ CUB/220, DR 5-N, “TRR”.
¹²⁰ CUB/220, DR 5-M, “TRR”.

• [Redacted]

• [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] [End

Confidential]

Large telecommunications providers advocated for a decrease in the RCT standard from 90% to 95% and the Commission changed the rule. **[Start Confidential]** [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

¹²¹ CUB/220, DR 5-K, “TRR” and DR 5-L, “TRR”.

¹²² CUB/220, DR 5-J, “TRR”.

¹²³ CUB/207, p 3, 70, and 330.

¹²⁴ *Id.*

Regarding the monthly CUB has noticed some discrepancies and inconsistencies when compared to information provided by Staff, including information the Company has provided Staff and CUB in data responses. CUB has concerns about the accuracy of the customer numbers and trouble ticket reporting statistics claimed by the Stipulating parties, having found inconsistencies in the record. While based on Lumen's bi-monthly reports, it appears that most if not all service issues have been resolved within 48 hours.¹²⁷ However, when compared to Staff's record of complaints and the Repair Clearing Time (RCT) reports and Trouble Ticket Reports (TRR) to the Commission, this does not appear to be the case.¹²⁸

[Start Confidential] [REDACTED]

[REDACTED] **[End Confidential]**

The Company states that 84 of those trouble tickets were associated with customers served by the 2600 and 2900 RTs, with nearly half directly attributable to the copper T-1 facility.¹³⁰ **[Start**

Confidential] [REDACTED]

¹²⁷ CUB/214

¹²⁸ CUB/220, CUB/223.

¹²⁹ CUB/214.

¹³⁰ Reply Testimony of Peter Gose, CenturyLink/200, Gose/7.

¹³¹ CUB/210.

[REDACTED]

[REDACTED] [End Confidential]

¹³³ See CUB/226 at 43, 114, 118, 123-125, 130, 139-155, 158-159, 165-166, and 183.

¹³⁴ *Id.*

¹³⁵ *Id.* at 123-124.

¹³⁶ Order No. 23-356 at 1 (Sept. 28, 2023); See CUB's comments for the Public Meeting on September 21, 2023 (Sept. 20, 2023).

¹³⁷ CUB/223 [Start Confidential] [REDACTED] [End Confidential]

¹³⁸ *Id.* [Start Confidential] [REDACTED] [End Confidential]

This data shows Lumen’s persistent failure to meet the Commission’s existing service quality standards of the last ten years and failure to address service quality issues statewide, let alone in the service territory covered by the Jacksonville Orders. And furthermore demonstrates there are outstanding questions surrounding Lumen’s ability and desire to provide accurate reporting information given the incongruence of its information with the information available to Staff. Despite the importance of the service Lumen provides, and its obligations under Oregon Carrier of Last Resort (COLR) obligations to provide it,¹³⁹ the Company has not made any strides toward near-term resolution of the service quality issues plaguing the Jacksonville, Applegate, and surrounding areas in southern Oregon. Notably, the Company has not offered to revisit the Staff’s suggested six-step cable plant restoration process suggested by Staff on December 13, 2021, stating if completed would bring the cable plant to “like new” 5 conditions.¹⁴⁰

Rather, the Stipulation asks these customers to wait even longer for a solution that is expected to only benefit some of those customers directly, and even then, they will only be able to accept that service if they purchase internet from the Company. And most importantly, unlike telephone service which is expected to back-up batteries to terminals when the power goes out, thereby allowing customers to use their landlines, with fiber, if the power goes out, so does the ability to use the voice service.

¹³⁹ Order No. 23-109 at 17.

¹⁴⁰ Staff/100, Bartholomew/10; *see also* UM 1908 - Staff’s Six-Step Plan for Plant Restoration filed December 28, 2022.

D. CUB's Proposal is reasonable and necessary to bring the Stipulation and Price Plan provisions into the public interest.

CUB's proposal provides a thoroughly needed degree of *accountability* for Lumen's customers, who have wrongfully endured "unsafe and unhealthy" service for 10 years. CUB's proposal withholds terminating the Jacksonville Orders until durable *results* have been achieved and assessed, as opposed to relying on Lumen's plans, which historically have been unreliable and currently contain *significant* uncertainty for customers.

CUB does not oppose the rate increase structure of the Price Plan even though doing so offers rate increases to a utility with an extraordinary record of endangering customers and non-compliance over ten years. This was a challenging concession for CUB to make, yet CUB is focused on establishing a fairer future rather than being weighed down by the past. The tiered rate structure of the Price Plan offers definitive progress in terms of regulatory rate *structure*, albeit its actual capacity to impact Lumen's bottom line is neither modeled nor clear. CUB's impression is that the tiered rate structure poses limited risk to Lumen's bottom line, although this will not be well understood until its effects are observed. Thus, CUB is willing to explore the incentive-quotient of the Price Plan for a broader group of Lumen's customers, but does not rely on it.

CUB was clear about this in our Opening Testimony and maintains that we are engaged, clearly, in reaching a reasonable agreement with just attributes for all of Lumen's customers. Our proposal effectively shifts responsibility over the outcome of Lumen's plan to fix its Jacksonville area infrastructure from customers to Lumen. Under CUB's proposal, Lumen won't shed the Jacksonville Orders until durable *results* have been achieved.

If Lumen's plans to establish reliable and compliant service in the Jacksonville area do in fact provide a legitimate solution for its customers, then the public hearing CUB proposes six

months after the Company has implemented its long-awaited infrastructure solution will be uneventful. Historically, CUB and the Commission have been very reasonable with Lumen. Despite alarming service quality deficits and non-compliance, the Company has received rate increases and no penalties. It is Lumen's customers' turn to insist upon *finality* and *certainty*, and *accountability* as well. As such, CUB puts forth the need for our very simple proposed changes to the Stipulation to create a Price Plan that aligns with the public interest as it better ensures high quality of existing telecommunications services. Notably, if the Price Plan and existing standard regulatory protections effectively duplicate the Jacksonville Orders as the Stipulating Parties suggest, why not accept CUB's proposal and maintain the Jacksonville Orders too? Surely some regulatory redundancy would not be worth modifying the Stipulation, which took "extensive effort" to produce.

V. CONCLUSION

As the record shows, there has been a long history of ongoing service quality issues in Lumen's landline service territory in Oregon. Staff Joe Batholomew and Melissa Nottingham provided detailed summaries of the Company's persistent service quality issues and noncompliance with Commission rules in support of the investigation into the service quality in the Jacksonville, Applegate, and surrounding areas in southern Oregon. Both acknowledged that customers in the Jacksonville area had experienced historical and ongoing safety and reliability issues since at least 2014. And the record shows that Commissioners, PUC Staff (Staff), and CUB has been generous in giving the Company the opportunity to remedy these issues. However, Lumen has failed to meet the Commission's safety rules and provide adequate service to customers, particularly in Jacksonville, Applegate, and surrounding areas in southern Oregon.

As CUB has previously stated, while we have concerns that the tiered price increases incentives may not motivate the Company to accelerate its compliance with Commission rules, we have not objected to this aspect of the Stipulation and hope it does indeed change Lumen's behavior. However, given Lumen's history of not making meaningful efforts to come into compliance, and the resulting impacts on its customers, we strongly believe that the Jacksonville Orders must remain in place until we see if the Company comes through on its promises.

Accordingly, CUB respectfully requests the Commission 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 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. CenturyLink 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.

Lumen's customers have already waited 10 years for accountability, yet Lumen argues waiting just six months, or one twentieth of 10 years, is too long for Lumen to wait for *finality* and *certainty* after finally implementing an infrastructure solution. CUB's line-in-the-sand is that we cannot sacrifice *accountability* for the safety of Jacksonville customers, in the interest of establishing protections for a broader customer base, particularly when the strength of those protections is poorly understood. We cannot treat the Jacksonville customers as sacrificial lambs. The Stipulation as-is does not provide the protections the Commission deemed necessary for the health and safety of customers in Jacksonville, Applegate, and surrounding areas in Southern Oregon and is therefore not in the public interest.

Dated this 1st day of December 2023.

Respectfully submitted,

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UM 1908 – CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of December 2023, I served the foregoing **CUB Opening Brief** in docket UM 1908 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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