

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1908

4
5 In the Matter of

6 LUMEN TECHNOLOGIES,

7 Proposed Commission Action Pursuant to
8 ORS 756.515 to Suspend and Investigate Price
9 Plan (UM 1908).

STAFF RESPONSE TO LUMEN'S REQUEST
FOR A HEARING

10 Staff of the Public Utility Commission of Oregon files this response to Lumen's request
11 for a hearing and the Administrative Law Judge (ALJ's) September 29, 2022, memorandum
12 amending the timeline for response and reply. Staff has coordinated with the Parties and
13 received no objection to submitting this response one day past the ALJ's deadline.

14 On September 27, 2022, Lumen filed a request for a hearing pursuant to ORS 756.515(5)
15 to determine whether the Commission's Order No. 22-340 (the "Order"), entered September 23,
16 2022, should continue in effect. Staff understands that Lumen is challenging both the factual
17 basis for the Commission's determination as well as the Commission's authority to enact the
18 following measures during Staff's investigation into the price plan:¹

- 19 i. requiring Lumen to deploy a toll free, 24/7 dedicated customer support line no
20 later than Wednesday, September 28, 2022, to support customers in Jacksonville,
21 Applegate, and surrounding areas in southern Oregon;
- 22 ii. allowing callers to the customer support line to report service issues for multiple
23 addresses and create multiple repair tickets;

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26 ¹ Order No. 22-340, In the Matter of Lumen Technologies, UM 1908, Staff's Recommendation Adopted as
Amended, entered Sept. 23, 2022; See Lumen Request for a Hearing Pursuant to ORS 756.515(5), page 1, filed Sept.
27, 2022.

- 1 iii. requiring Lumen to address all tickets and make repairs “to the satisfaction of
2 customers” within 48 hours of creation of the ticket; and
3 iv. potentially leveling penalties for violations of the Order for each instance in
4 amounts not to exceed \$50,000.

5 In response Staff notes that it believes two matters that should be addressed at the outset
6 of the proceeding: (1) whether the Order should remain suspended during the duration of these
7 proceedings and (2) whether the proceeding should delay Staff’s investigation into the price plan
8 pursuant to the Order.

9 **1. ORS 756.515(6) does not require that the Order remain suspended through the**
10 **duration of the proceedings**

11 While ORS 756.515(6), automatically suspends the Order when a request for hearing is
12 submitted, the order may remain in effect during proceedings if the Commission finds that the
13 Order is necessary for the public health and safety or to prevent the dissipation of assets. Staff
14 notes that the Commission may make a finding that Order is necessary at any time and believes
15 that the record supports a finding a finding that the Order should remain in effect. This should
16 be considered a threshold matter because a Commission finding that the Order should be
17 enforced at a later point in the proceeding has the potential to create confusion and add additional
18 issues that might be best addressed in this proceeding. Staff understands that such a finding
19 would likely include a conclusion that the Commission has the legal authority to implement the
20 Order.

21 If the Order remains suspended, then the Commission’s legal authority to issue the Order
22 should be addressed as a threshold issue. If the Commission lacks the legal authority to issue the
23 Order, as alleged by Lumen, then the other challenges to the Order are moot. Consequently, the
24 proceeding should first determine if the Commission had the legal authority to issue the Order,
25 likely as part of the determination on whether the Order should remain in effect. Alternatively, if
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1 the Commission’s legal authority to issue the Order is not addressed as a threshold matter, then
2 the schedule for the proceedings should be expedited to reach a quick conclusion.

3 **2. Lumen’s request for a hearing should not delay Staff’s investigation into**
4 **Lumen’s price plan**

5 Staff’s investigation into Lumen’s price plan should not be delayed by this proceeding.
6 Lumen does not challenge the Commission’s authority to open an investigation into the price
7 plan. The terms of the current price plan include that the Commission may open an investigation
8 at any time pursuant to ORS 756.515 to determine whether further adjustments to the Plan or
9 termination of the Plan is required by the public interest/according to the factors set forth in ORS
10 759.255(2). Though Lumen is challenging the Order, the investigation into the price plan is
11 separate and distinct from the provisions of the Order at issue and should be allowed to proceed.

12 DATED this 6th day of October 2022.

13 Respectfully submitted,
14 ELLEN F. ROSENBLUM
15 Attorney General

16 */s/ Natascha Smith*
17 _____
18 Natascha Smith, OSB No. 174661
19 Assistant Attorney General
20 Of Attorneys for Staff of the Public Utility
21 Commission of Oregon