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3 **BEFORE THE PUBLIC UTILITY COMMISSION**  
4 **OF OREGON**

5 UM 1908

6 In the Matter of

7 LUMEN TECHNOLOGIES,

8 Proposed Commission action Pursuant to ORS  
9 756.515 to Suspend and Investigate Price Plan  
10 (UM 1908), and

11 QWESST CORPORATION,

12 Investigation Regarding the Provision of  
13 Service in Jacksonville, Oregon and  
14 Surrounding Areas (UM 2206),

15 Hearing Relating to Order Nos. 22-340 and  
16 22-422.

STAFF POST-HEARING BRIEF

17 Lumen Technologies (Lumen or Company) requested a hearing pursuant to ORS  
18 756.515(5) to determine whether Commission Order No. 22-340 as modified by Order No. 22-  
19 422 (collectively the “Modified Order”) should remain in effect.<sup>1</sup> Provisions of the Modified  
20 Order require Lumen to create a reliable way for customers in the Jacksonville area to report  
21 service quality issues, through dedicated customer support line, have those issues promptly  
22 addressed by the Company, and provide the Commission reports on how issues are being  
23 resolved. After testimony, briefs, and the December 21, 2022 hearing, it is clear that the  
24 Commission’s decision requiring near term actions to address service quality issues in the  
25 Jacksonville is both a lawful exercise of the Commission’s regulatory function and necessary to  
26 protect public safety.

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<sup>1</sup> Docket No. UM. 1908, *Lumen’s Request for Hearing Pursuant to ORS 756.515(5)*, Sept. 28, 2022.

1 Prior to and during the investigation into service in the Jacksonville area, customers  
2 reported of significant issues with outages and intermittent service.<sup>2</sup> However the data provided  
3 by Lumen did not mirror the magnitude and severity of issues reported by customers. Oregon  
4 Public Utility Commission Staff (Staff) encountered significant hurdles in resolving this  
5 disparity, including the Companies failure to provide all the data requested via information  
6 request. In January 2022, Staff issued information requests to Lumen seeking more information  
7 on service issues experienced by customers in the Jacksonville area and steps that the Company  
8 has taken to remediate issues. Nearly a year later, Lumen has still not provided all the data  
9 requested by Staff.<sup>3</sup> Without reliable information the Commission is unable to determine  
10 compliance with applicable service quality standards and otherwise serve its regulatory  
11 functions. Lumen should not be allowed to escape its obligations to provide safe and adequate  
12 service by refusing to provide accurate and reliable information to the Commission.  
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14 Indeed, this process has been demonstrative of Staff’s struggle in obtaining complete and  
15 reliable information from Lumen. While Lumen relied upon dedicated customer service line call  
16 volume to justify why Modified Order is no longer necessary, the Company failed to provide  
17 required dedicated customer service line reports to the Commission, Parties, and ALJ.<sup>4</sup> When a  
18 bench request was issued, Lumen again failed to provide the information and instead noted that it  
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22 <sup>2</sup> Customers detailed challenges in reporting issues, fatigue with creating multiple repair tickets, having  
23 trouble tickets being closed by the Company without resolution of the issue, and technicians who fail to  
24 keep scheduled appointments. These struggles are exacerbated for customers experiencing intermittent  
25 service quality issues such as dropped calls busy signals and static on the line because they may or may  
not be occurring when a repair technician is present. Staff/200, Nottingham/10 and 14; see also, Staff/104,  
Bartholomew/6-8, 17-18, 41-47.

26 <sup>3</sup> Staff/100, Bartholomew/7-8; *see generally* Staff/103 for information requests and responses provided.

<sup>4</sup> Lumen/100, Gose/16, Mr. Gose’s testimony relying on “the small number of calls to the dedicated toll-  
free customer repair line ...” was filed on Nov. 23, 2022, while the report required by the Modified Order  
on calls made to the dedicated customer service line had not been submitted to the docket as required.

1 had “substantially complied” by sharing similar information elsewhere.<sup>5</sup> An additional Bench  
2 Request was needed before Lumen filed information in the docket,<sup>6</sup> and even then, the  
3 information filed failed to include all the data required.<sup>7</sup> The Company’s continued obfuscation  
4 of information demonstrates that the Modified Order is necessary for the Commission to obtain  
5 reliable information to perform its regulatory functions.

6 Lumen’s request for a hearing on the Modified Order has only further strengthened the  
7 record and shown how the disparity of information has hindered the Commission’s ability to  
8 assess the ongoing public safety threat posed by Lumen’s service quality issues in the  
9 Jacksonville area; determine compliance with applicable service quality standards; or evaluate  
10 whether the Company still meets the requirements for regulation under a price plan. The record  
11 demonstrates the Jacksonville area has experienced consistent, serious service issues and that  
12 adequate service is necessary for public health and safety in this area, including access essential  
13 emergency and medical services. Lumen contends that the calls to the dedicated Jacksonville  
14 area service line, resolution of reported issues, and presence of competitors in the 246 square  
15 mile wire center indicate that there is no public health and safety concern.<sup>8</sup>

16 As clarified at the hearing, Mr. Gose did not perform any analysis of the service tickets  
17 received by the dedicated customer service line<sup>9</sup> nor could he speak to how the issues shown in  
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23 <sup>5</sup> Docket No. UM 1908, *Lumen’s Response to Bench Request*, Dec. 15, 2022.

24 <sup>6</sup> Docket No. UM 1908, *ALJ John Mellgren on behalf of Chief ALJ Nolan Moser issues Memorandum*,  
Dec. 16, 2022.

25 <sup>7</sup> Docket No. UM 1908, *CUB’s reply to Lumen’s Bench Request Responses*, Dec. 20, 2022 (as noted by  
CUB the information provided by Lumen does not explain what actions were taken to resolve the service  
26 issue or provide information on the results and required, nor does it include any information about  
customer contacts regarding the issue.

<sup>8</sup> Lumen/100, Gose/16-17.

<sup>9</sup> Transcript of December 21, 2022 hearing (*hereinafter* Transcript), Peter Gose, p.152 ln.1-4.

1 the customer service line report were resolved.<sup>10</sup> However, Mr. Gose's testimony and Lumen's  
2 dedicated customer service line reports do demonstrate the discrepancy between customer  
3 reports and data provided by the Company. Despite Mr. Gose's pre-filed testimony that all  
4 reported customer issues had been resolved, he acknowledged that there is a known and ongoing  
5 service issue in the Jacksonville area.<sup>11</sup> Another concern is illustrated by public comments of a  
6 Jacksonville area customer submitted to the UM 1908 docket detailing their experience calling  
7 the dedicated customer service line multiple times and having their ticket closed without the  
8 issue being resolved.<sup>12</sup> Mr. Gose testified that he did not know if it was Lumen's policy to close  
9 tickets without confirming the service quality issue is resolved.<sup>13</sup> Ultimately the information Mr.  
10 Gose relied upon regarding the dedicated customer service line and resolution of reported issues  
11 is unclear at best.  
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13 Similarly, information provided about competition in the wire center is unhelpful. Mr.  
14 Gose based his testimony on FCC data showing other providers in the wire center but  
15 acknowledged that he was unsure of the methodology used to make such determinations.<sup>14</sup> While  
16 the FCC data indicates that other providers are available somewhere within the 246 square mile  
17 area, it does not provide any information on if impacted residents in the Jacksonville area can  
18 access that service.<sup>15</sup> Indeed, customers have reported consistently that they do not have access  
19 to other telecommunications services, that cellular service is unreliable, and that they depend on  
20 their landlines for emergencies including 911 access.<sup>16</sup>  
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23 <sup>10</sup> *Id.* at Peter Gose 112-115, Mr. Gose was unable to explain how calls to the customer service line were  
24 resolved or what the specific codes meant in the customer service line report.

<sup>11</sup> Transcript, Peter Gose, p.116.

<sup>12</sup> Staff/203, Nottingham/47; *see also* Transcript, Priscilla Weaver p.80-81.

<sup>13</sup> Transcript, Peter Gose, p.119.

<sup>14</sup> *Id.*, at Peter Gose, p.120-122.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; Transcript, Priscilla Weaver, p.77 and 84-85.

1 As discussed in Staff’s pre-hearing brief, issuance of the Modified Order is lawful  
2 exercise of the Commission’s regulatory function and within the Commission’s range of  
3 discretion under ORS 756.040, ORS 756.515, ORS 757.035, and ORS 756.105. In Lumen’s Pre-  
4 Hearing Brief the Company appropriately recognizes that

5 [u]nder ORS 756.040, for instance, the Commission is tasked with obtaining  
6 “adequate service” for utility customers and authorized to “do all things necessary  
7 and convenient” in the exercise of its power to “supervise and regulate” utilities.  
8 ORS 756.040(1)-(2). Similarly, under ORS 759.035, the Commission must ensure  
9 that utilities provide “adequate and safe service.” See also OAR 860-023-0005  
10 (“Each . . . large telecommunications utility. . . must have and maintain its entire  
11 plant and system in such condition that it will furnish safe, adequate, and  
12 reasonably continuous service.”). And, under ORS 756.515, “[t]he commission  
13 may, after making an investigation on the commission’s motion . . . make such  
14 findings and orders as the commission deems justified or required by the results  
15 of such investigation.” ORS 756.515(4).<sup>17</sup>

16 This is the same authority the Commission relies upon in issuing the Modified Order.<sup>18</sup>

17 Lumen mischaracterizes the Modified Order when it argues that 1) ORS 759.450, setting  
18 minimum service quality standards for large telecommunications utilities, constrains  
19 Commission authority; 2) enforcement of minimum service quality standards require a corrective  
20 action plan, or performance improvement plan, under OAR 860-023-0055,<sup>19</sup> and 3) that the  
21 Modified Order amended Lumen’s price plan; or 4) Lumen’s tariff provides the only remedy for  
22 service interruptions.

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23 <sup>17</sup> Docket No. UM 1908, *CenturyLink’s Pre-Hearing Brief*, p.5, Dec. 13, 2022.

24 <sup>18</sup> The Commission also relies upon ORS 756.150 as discussed in Staff’s pre-hearing brief.

25 <sup>19</sup> Even if the Modified Order was considered an enforcement of minimum service quality standards it is  
26 factually unlikely that approximately 12.5 percent of customers located in the impacted Jacksonville area  
creates more than 90 percent of trouble tickets for the repair center. Consequently, compliance with the  
Modified Order- by resolving all Jacksonville area trouble tickets within 48 hours- would not result in a  
deviation from the minimum service quality standard of resolving 90 percent of all trouble reports for  
each repair center within 48 hours pursuant to OAR 860-0880-0055. Percentage of customers determined  
from 75 customers in remote terminals 2600 and 2900, Lumen/100, Gose/7, and 600 access lines in  
applicable remote terminal, Lumen’s Oregon Service Quality Report for Oct. 2022.

1 Responses to Lumen’s first three arguments are discussed at length in Staff’s Pre-Hearing  
2 Brief.<sup>20</sup> Lumen’s final argument asserts that its PUC Oregon No. 33 tariff provides exclusive  
3 remedy for access lines that are out of service. While the Company’s tariff may contain the only  
4 monetary remedy to customers for failure to provide service it does not constrain the  
5 Commission’s regulatory authority. Notably, while the tariff provides customer bill credits for  
6 missed appointments or guaranteed commitments, nowhere does it assert to be the exclusive  
7 remedy for failure to provide safe and adequate service. Lumen grossly misapplies the filed rate  
8 doctrine in this instance and seems to be under the impression that the Modified Order contains  
9 some sort of monetary reparations to customers. This is patently false and clear from the plain  
10 text of the modified order. As cited by Lumen in its pre-hearing brief when multiple laws apply a  
11 court will construe them in a way to give effect to all of them, which is exactly what should be  
12 done here.<sup>21</sup> Constraining service quality remedies to bill credits for customers would make the  
13 entire minimum service quality regime void and superfluous and substantially limit the  
14 Commission’s authority to ensure adequate and safe service. To do so would be an  
15 “unreasonable result” which must be avoided.<sup>22</sup>  
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18 The requirements of the Modified Order are within the Commission’s authority and are  
19 necessary to appropriately assess the ongoing public safety threat posed by Lumen’s service  
20 quality issues in the Jacksonville area, determine compliance with applicable service quality  
21 standards, and assists in the evaluation of whether the Company still meets the requirements for  
22 regulation under a price plan. Neither the Company’s legal or factual arguments have changed  
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25 <sup>20</sup> See Docket No. UM 1908, *Staff’s Pre-Hearing Brief*, p.10-14, Dec. 13, 2022.

26 <sup>21</sup> Docket No. UM 1908, *CenturyLink’s Pre-Hearing Brief*, p.6; *Powers v. Quigley*, 345 Or 432, 438 (2008) (quoting ORS 174.010).

<sup>22</sup> *Id.*, at p.6; statutes must be read to avoid an “unreasonable result.” *State v. Bordeaux*, 220 Or App 165, 175 (2008).

1 that the record demonstrates that service provided in the Jacksonville area poses significant  
2 reliability and public safety concerns and that the requirements of the Modified Order and the  
3 proposed penalties are a lawful exercise of the Commission's regulatory authority.

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6 DATED this 6<sup>th</sup> day of January 2023.

7  
8 Respectfully submitted,

9 ELLEN F. ROSENBLUM  
10 Attorney General

11 /s/ Natascha Smith

12 \_\_\_\_\_  
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14 Assistant Attorney General  
15 Of Attorneys for Public Utility Commission of  
16 Oregon.