

1 BEFORE THE PUBLIC UTILITY COMMISSION

2 OF OREGON

3 UM 1908, UM 2206

4 In the Matters of

5 LUMEN TECHNOLOGIES,

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

8 QWEST CORPORATION,

9 Investigation Regarding the Provision of
10 Service in Jacksonville, Oregon and
11 Surrounding Areas (UM 2206)

12 Hearing Relating to Order Nos. 22-340
and 22-422.

**CENTURYLINK'S PRE-HEARING
BRIEF**

13 **A. Introduction**

14 Qwest Corporation dba CenturyLink ("CenturyLink") respectfully submits this pre-
15 hearing brief demonstrating why Order No. 22-340 (the "Order"), issued under ORS 756.515(4)
16 without a hearing, should not remain in effect. Specifically, and perhaps most importantly, the
17 Order unlawfully imposes a new service quality standard requiring CenturyLink to clear all
18 trouble reports from customers in the Jacksonville, Applegate, and surrounding areas in southern
19 Oregon (the "Area") within 48 hours of the creation of a ticket. Respectfully, the Commission's
20 creation and imposition of this new requirement is unlawful for the following reasons:

- 21 1. The Commission acted beyond its authority by imposing a heightened service quality standard
22 exclusively on CenturyLink and without following mandatory rulemaking procedures.
- 23 2. The Commission exceeded its statutory authority and violated its own regulations by failing to
24 allow CenturyLink the opportunity to submit a corrective action plan to address any service
25 quality issues.
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- 1 3. The Commission exceeded its authority by amending the Price Plan to impose the new service
2 quality measure.
- 3 4. This new, ad hoc requirement exceeds the remedy for service interruptions in CenturyLink’s
4 Commission-approved tariffs, which have the force and effect of law and provide the exclusive
5 remedies for failure to repair service.

6 Rather than follow required and established procedures to address the service quality
7 issues investigated in Docket UM 2206, the Commission precipitously issued the Order creating
8 this new service quality measure, backed by Draconian penalties, without notice and an
9 opportunity for CenturyLink to be heard. In each of the circumstances identified above, the
10 Commission ignored and failed to follow remedies and procedures that are both statutorily
11 mandated and enshrined in the Commission’s own rules. For all of these reasons, the Order is
12 unlawful and should not be permitted to remain in effect.¹

13 **B. The Commission May Not Impose a Service Quality Standard Uniquely on**
14 **CenturyLink or Without Following Notice and Comment Rulemaking.**

15 The Commission acted beyond its authority when it imposed a modified service quality
16 standard exclusively on CenturyLink and without following rulemaking procedures. In its Order,
17 the Commission required CenturyLink to address all tickets and make repairs within 48 hours of
18 a ticket being created. Under OAR 860-023-0055, however, a telecommunications provider is
19 required only to “clear 90 percent of all trouble reports within 48 hours of receiving a report.”
20 OAR 860-023-0055(6). As described below, the Commission’s deviation from the service
21 quality standard in OAR 860-023-0055 exceeded the Commission’s authority for three reasons.

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23 ¹ In its Request for Hearing filed Sept. 27, 2022, CenturyLink also challenged the Commission’s stated
24 intention to impose penalties for any violation of the Order and to consider each day to be an additional violation,
25 which is plainly not authorized by ORS 759.990. To date, CenturyLink has fully and timely performed all of its
26 obligations under the Order and the Commission has not indicated any intention to impose penalties. For this
reason, CenturyLink does not address the potential imposition of penalties under the Order in this brief and the
Commission does not need to address the validity of those provisions of the Order in the pending hearing.
CenturyLink reserves the right to raise all available challenges to the imposition of penalties for violation of the
Order should that ever come to pass.

1 **1. The Commission unlawfully failed to utilize rulemaking procedures to**
2 **modify an existing service quality standard.**

3 *First*, the Commission must use rulemaking procedures to modify an existing service
4 quality standard. The plain text of ORS 759.450 unambiguously provides that “minimum service
5 quality standards” may only be modified “by rule.” ORS 759.450(2). As noted above, a
6 minimum service quality standard governing the “repair clearing time” for “trouble reports”
7 already exists. *See* OAR 860-023-0055(6) (requiring a utility to clear 90 percent of all trouble
8 reports within 48 hours). To “modify” that standard, as occurred here, requires the Commission
9 to act “by rule.” ORS 759.450(2). Indeed, the Commission has—until now—interpreted
10 ORS 759.450(2) as requiring it to adopt and modify service quality standards through
11 rulemaking procedures. *See, e.g.*, Order No. 05-1260 at 1 (“The purpose of the rulemaking is to
12 revise service quality standards . . . pursuant to the requirements of ORS 759.450.”); Order
13 No. 00-303 at 5 (“This rulemaking docket was opened to comply with the Legislature’s directive
14 in [ORS 759.450].”). Because the Commission modified an existing service quality standard
15 when it ordered CenturyLink to address and resolve all service tickets within 48 hours, it erred
16 by failing to follow rulemaking procedures.

17 **2. The Commission unlawfully imposed a new service quality standard only**
18 **on CenturyLink and not all telecommunications carriers.**

19 *Second*, when adopting or modifying minimum service quality standards, the
20 Commission must apply those standards to *all* telecommunications carriers. The plain and
21 unambiguous text of ORS 759.450 provides that “minimum service quality standards adopted
22 under this section shall apply to *all* telecommunications carriers” and must be
23 “nondiscriminatory.” ORS 759.450(1)-(2). The requirement that service quality standards apply
24 to all carriers is both a substantive directive and an additional way of saying that the standards
25 must be rules. *See* ORS 183.310(9) (defining a “rule” as any “standard” of “general
26 applicability” that “prescribes law or policy”). Moreover, as with the rulemaking requirement,

1 the Commission has—until now—interpreted ORS 759.450(2) as “require[ing] that the
2 Commission’s service quality standards . . . apply to *all* carriers.” Order No. 01-1084 at 5, 7
3 (emphasis added); *see also* Order No. 00-303 at 13 (finding ORS 759.450 “unambiguous” in its
4 requirement that the Commission apply its service quality “standards to all telecommunications
5 carriers on a nondiscriminatory basis”). Because the Commission modified a minimum service
6 quality standard when it ordered CenturyLink to address and resolve all service tickets within 48
7 hours, it erred by applying that standard solely to CenturyLink.

8 **3. The Commission unlawfully failed to consider and apply statutory criteria.**

9 *Third*, when adopting or modifying minimum service quality standards, the Commission
10 must consider certain statutory criteria, which it failed to do in this case. ORS 759.450 provides
11 that, “[i]n adopting minimum service quality standards, the commission shall, for each standard
12 adopted, consider” the following six factors: (1) “General industry practice and achievement,”
13 (2) “National data for similar standards,” (3) “Normal operating conditions,” (4) “The historic
14 purpose for which the . . . network was constructed,” (5) “Technological improvements and
15 trends,” and (6) “Other factors as determined by the commission.” ORS 759.450(3). The
16 Commission has, in the past, adhered to this requirement when adopting service quality
17 standards. *See* Order No. 00-303 at 6 (“For each standard it proposed in its new rules, Staff
18 considered the criteria set out at . . . ORS 759.450(3).”). Because the Commission modified a
19 minimum service quality standard when it ordered CenturyLink to resolve all service tickets
20 within 48 hours, it erred by failing to consider these criteria.

21 That failure is prejudicial because application of those criteria should have resulted in
22 more relaxed standard or, at the bare minimum, retention of the existing standard. Concerning
23 general industry practice and national data for similar standards, CenturyLink informed the
24 Commission in 2017 that Oregon’s existing standard for clearing trouble reports is “the most
25 onerous” of the 37 states where CenturyLink operates. Staff/105, Bartholomew/25. Indeed, when
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1 the Commission properly conducted rulemaking to address service quality standards, it relaxed
2 this very standard. For example, the Commission revised OAR 860-023-0055(6) (the standard at
3 issue here) in 2014 “to provide regulatory relief by decreasing the objective service level of the
4 time-to-repair standard from 95 percent of all reports to 90 percent and by allowing for a longer
5 time for repair requests that would require consistently full weekend repair technician staffing.”
6 Order No. 18-375, Appendix A at 3. That was appropriate in 2014 to address the competitive
7 landscape and other factors listed in ORS 759.455(3). This trend strongly suggests that
8 application of the statutory factors in light of developing market conditions since 2014 requires a
9 further *relaxation* of the existing service quality standard, not a tightening of it.

10 **4. The Commission may not rely on more general authority than ORS 759.450**
11 **in imposing a service quality standard uniquely on CenturyLink.**

12 The Order does not rely on any statutory authority other than ORS 759.255 and 759.515.
13 If the Commission were to try to justify the Order on the basis of its general authority to issue
14 remedial orders and ensure safe and adequate service for consumers, that would be unavailing
15 because a more general authority does not exempt the Commission from the more specific
16 requirements governing the modification of minimum service quality standards. Under ORS
17 756.040, for instance, the Commission is tasked with obtaining “adequate service” for utility
18 customers and authorized to “do all things necessary and convenient” in the exercise of its power
19 to “supervise and regulate” utilities. ORS 756.040(1)-(2). Similarly, under ORS 759.035, the
20 Commission must ensure that utilities provide “adequate and safe service.” *See also* OAR 860-
21 023-0005 (“Each . . . large telecommunications utility. . . must have and maintain its entire plant
22 and system in such condition that it will furnish safe, adequate, and reasonably continuous
23 service.”). And, under ORS 756.515, “[t]he commission may, after making an investigation on
24 the commission’s motion . . . make such findings and orders as the commission deems justified
25 or required by the results of such investigation.” ORS 756.515(4). This last provision is the only
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1 one cited by the Commission as authority for ordering CenturyLink to address and resolve all
2 service tickets within 48 hours.

3 None of these general authorities—including ORS 756.515(4)—allows the Commission
4 to circumvent the more specific requirements in ORS 759.450. As described above,
5 ORS 759.450 provides detailed substantive and procedural instructions for modifying service
6 quality standards, including the requirement that such standards be adopted “by rule,” apply to
7 “all” utilities, and reflect the consideration of specific criteria. It also provides a detailed
8 remedial scheme for addressing violations of those standards. It is beyond dispute that the
9 Commission did not comply with these requirements when, contrary to an existing service
10 quality standard, it ordered CenturyLink to clear all trouble reports within 48 hours. If the
11 Commission were to find that it acted within its authority despite this fact, it would render
12 ORS 759.450 superfluous. That is, it would allow the Commission to rely on general grants of
13 authority—not specific to modifying service quality standards—as justification for ignoring the
14 more specific requirements in ORS 759.450.

15 Reliance on general grants of authority to supersede more specific mandates is improper
16 for several reasons. *First*, “when multiple statutory provisions are at issue in a case, [a] court, if
17 possible, must construe those statutes in a manner that ‘will give effect to all’ of them.” *Powers*
18 *v. Quigley*, 345 Or 432, 438 (2008) (quoting ORS 174.010). The only way to give effect to both
19 the Commission’s general authorities and the specific requirements in ORS 759.450 is to find
20 that the latter limits the former in the specific circumstances to which it applies. This reading is
21 consistent with how courts have previously avoided conflicts between the Commission’s general
22 authorities and more specific statutory directives. *See, e.g., Citizens’ Util. Bd. v. Pub. Util.*
23 *Comm’n*, 150 Or App 702, 715–17 (1998) (“[W]here statutes containing specific provisions . . .
24 are applicable, they control and narrow PUC’s general authority in the specific circumstances to
25 which they apply.”). *Second*, “[w]hen a general statute and a specific statute both purport to

1 control an area of law,” the specific statute “take[s] precedence over an inconsistent general
2 statute related to the same subject.” *State ex rel. Juv. Dep’t of Multnomah Cnty. v. M.T.*, 321 Or
3 419, 426 (1995); *see also Powers*, 345 Or at 438 (“[I]f two statutes are inconsistent, the more
4 specific statute will control over the general one.”). Finally, statutes must be read to avoid an
5 “unreasonable result.” *State v. Bordeaux*, 220 Or App 165, 175 (2008). It would be unreasonable
6 to find that the Legislature enacted a detailed scheme governing service quality standards
7 knowing that the Commission could simply ignore that scheme. *See, e.g., State v. Vasquez-*
8 *Rubio*, 323 Or 275, 282 (1996) (holding that it would be “an absurd result” to read one statute in
9 a way that would render another “a nullity”).

10 Accordingly, the Commission acted beyond its authority when, in contravention of the
11 controlling requirements in ORS 759.450, it imposed a modified minimum service quality
12 standard exclusively on CenturyLink and without following rulemaking procedures.

13 **C. The Commission Exceeded Its Statutory Authority and Violated Its Own**
14 **Regulations by Failing To Give CenturyLink the Opportunity to Submit a**
15 **Corrective Action Plan.**

16 Not only did the Commission violate ORS 759.450 when it created a new minimum
17 service quality standard applicable to CenturyLink alone and without following rulemaking
18 procedures, it also violated that statute by not affording CenturyLink the opportunity to submit a
19 corrective action plan. Moreover, the Commission violated the plain requirements of its own
20 rules.

21 The only lawful service quality standards that apply to CenturyLink and other large
22 telecommunications utilities are found in OAR 860-023-0055. The specific standard at issue here
23 is for repair ticket clearing, under which “a large telecommunications utility must clear at least
24 90 percent of all trouble reports within 48 hours of receiving a report for each repair center.”
25 OAR 860-023-0055(6).
26

1 If the Commission determines that CenturyLink is not complying with an effective
2 standard, then the controlling statute and the Commission’s service quality rule specify the
3 remedies that are available and the procedures that must be followed to enforce that standard.
4 ORS 759.450(5) provides that the Commission “*shall require* a ... telecommunications utility ...
5 that is not meeting the minimum service quality standards to submit a plan for improving
6 performance to meet the standards.” (Emphasis added.) Similarly, OAR 860-023-0055(14)(a)
7 provides that “the Commission *must require* the large telecommunications utility to submit a
8 plan for improving performance as provided in ORS 759.450.” (Emphasis added.)

9 ORS 759.450(5) uses a mandatory term, “shall require,” which does not leave any room
10 for Commission discretion. The Commission adhered to the statutory command in promulgating
11 OAR 860-023-0055(14)(a), which provides that “the Commission *must require* the large
12 telecommunications utility to submit a plan for improving performance as provided in
13 ORS 759.450.” Neither the statute nor the rule give the Commission any discretion to bypass this
14 important requirement.

15 The Commission must abide by statutory commands. *See Citizens’ Util. Bd. v. Pub. Util.*
16 *Comm’n*, 150 Or App 702, 714-18 (1998) (holding that the Commission is prohibited from
17 taking actions that are “specifically contrary” to a statutory directive); *see also Pac. Nw. Bell Tel.*
18 *Co. v. Katz*, 116 Or App 302, 309 n.5 (1992) (“Of course, PUC’s exercise of its authority is
19 limited by the boundaries of the legislature’s delegation.”). Nor may the Commission fail to
20 follow the plain and unambiguous terms of its own rules. *See Don’t Waste Or. Comm. v. Energy*
21 *Facility Siting Council*, 320 Or 132, 142 (1994) (holding that an agency’s interpretation of its
22 own rules may not “be inconsistent with the wording of the rule itself”). A reviewing court
23 would summarily reverse the Order because both the controlling statute and the Commission’s
24 own rules compel the Commission to require CenturyLink to prepare and submit a corrective
25 action plan. ORS 183.482(8)(a). *Id.* (holding that a court’s authority under ORS 183.482(8)(a) to
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1 review an agency’s “erroneous interpretation of law” includes interpretations of both statutes and
2 rules).

3 Submission of a corrective action plan is not a mere formality or empty gesture. As
4 Staff’s own testimony shows, CenturyLink previously addressed service quality issues in the
5 Jacksonville area through submission and performance of a corrective action plan, which was
6 successfully completed on November 30, 2018. Staff/100, Bartholomew/5-6, 43. At that time,
7 Staff correctly observed that under ORS 759.450(5), “*the Commission is required to direct a*
8 *telecommunications carrier, utility or competitive provider that is not meeting the minimum*
9 *service quality standards to submit a plan for improving performance to meet the standards. The*
10 *Commission is further required to approve or disapprove the plan.” Order No. 17-075,*
11 *Appendix A at 1 (Staff/105, Bartholomew/2) (emphasis added).*

12 The Commission did precisely what the governing statute and its own rules forbid. Rather
13 than require CenturyLink to submit a corrective action plan, the Commission ignored the
14 statutory command and its own rules and summarily ordered CenturyLink *immediately* to repair
15 all trouble reports within 48 hours, under threat of penalties of \$50,000 *each day*.

16 The Commission began its investigation of service quality issues in the Area in
17 December 2021 when it opened Docket UM 2206. At no time during the nine months before the
18 Commission issued the Order did it allow CenturyLink to prepare and submit a corrective action
19 plan for review and approval. Lumen/100, Gose/17. In fact, the Commission took no formal
20 action whatsoever in that service quality docket. Instead, it issued the Order in a completely
21 different case, UM 1908, which was opened in 2017 to consider CenturyLink’s Price Plan.

22 The Commission may have concluded that submission of a corrective action plan was not
23 even necessary to address these service quality issues. As Mr. Gose states in his testimony,
24 CenturyLink had been working steadily to improve service quality in the area since it first
25 became aware of such issues in September 2021. Lumen/100, Gose/8-10. By August 2022, those
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1 services were functioning well. *Id.* at 11. And, on August 30, 2022, both Mr. Gose and
2 Mr. Bartholomew of Staff reported to the Commission at an open meeting that the restorative
3 efforts “appeared to have corrected the issues.” *Id.* at 12. Thus, CenturyLink was able to resolve
4 the outstanding concerns by working cooperatively with Staff.

5 Nevertheless, three weeks later, the Commission summarily issued the Order. If the
6 Commission was dissatisfied with CenturyLink’s remedial efforts, it was required to order
7 CenturyLink to submit a corrective action plan for review. However, it bypassed that
8 requirement without explanation in the Order. Thus, the Commission’s action is plainly unlawful
9 and the Order may not remain in effect.

10 **D. The Commission Exceeded Its Authority in Amending the Price Plan To Impose**
11 **the New Service Quality Measure.**

12 The Commission is authorized to consider adjustments to the Price Plan at any time,
13 according to the factors set forth in ORS 759.255(2), but may order such adjustments only after
14 providing CenturyLink with notice and the opportunity for a hearing. Order No. 18-359 (the
15 “Price Plan Order”), Appendix A at 10. However, the current service quality issues being
16 investigated in the Area are not relevant to evaluating performance under the Price Plan. Rather,
17 the Commission agreed that its minimum service quality rules, not any new and heightened rules
18 specific to CenturyLink, provide the applicable measure of service quality for the Price Plan and
19 that submission of a corrective action plan is the remedy the Commission must pursue for any
20 violations.

21 The Price Plan contemplated an opportunity for review every four years based on the
22 performance report CenturyLink is required to file by the end of year three of each four-year
23 term. Order 18-359, Appendix A at 10. As required, CenturyLink duly filed the first report on the
24 third anniversary of the Plan, September 28, 2021. Nevertheless, the Commission did not
25 identify any potential adjustments based on that report or otherwise raise the specter of adjusting
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1 the Plan until September 14, 2022, only two weeks before the Plan automatically renewed on
2 September 28, 2022. Regardless of the delay, the issues upon which the Commission relied in the
3 Order to adjust the Plan are not valid considerations and the Commission did not provide
4 CenturyLink with adequate notice of the adjustments it wound up making.²

5 **1. The Commission’s minimum service quality rules provide the measure of**
6 **service quality and the applicable remedies for purposes of the Price Plan.**

7 A price plan under ORS 759.255 addresses how rates are set for utility services, and the
8 flexibility offered by a price plan is intended to strike “the appropriate balance between the need
9 for regulation and competition” and to “simplify[y] regulation.” ORS 759.255(2)(c) & (d).
10 ORS 759.255(2)(b) permits considering whether a price plan “[e]nsures high quality of existing
11 telecommunications services and makes new services available.” However, the Commission has
12 agreed that the Commission’s minimum service quality rules provide the measure of service
13 quality for purposes of the Price Plan, and that development of a corrective action plan is the
14 remedy identified in the Price Plan Order and the Price Plan for any failure to comply with
15 service standards:

16 The parties state that CenturyLink will continue to be subject to
17 our service quality rules and will continue its reporting practices as
18 prescribed by the rules. These reports provide the means to
19 monitor CenturyLink’s service quality and compare it with those
20 competitors also subject to reporting requirements. In the event
21 that CenturyLink is found to be out of compliance with individual
22 service quality standards, the parties explain that our service
23 quality rules provide for the development of a corrective action
24 plan.

22 Order No. 18-359 at 5.

23 Adjustments to the Price Plan are not to be made to address isolated service quality
24 issues. As the Commission ruled in Order No. 18-359, CenturyLink’s service quality under the

25 ² The Commission issued the Order only in the Price Plan docket, UM 1908, so its additional
26 requirements are unquestionably modifications of the Price Plan.

1 Price Plan must be evaluated and addressed under the Commission’s service quality rules and
2 also compared to that of competitors subject to reporting requirements under those rules.
3 Adjustments to the Price Plan are not intended, and are not well-suited, to address isolated
4 service quality issues as the Commission has attempted to do in the Order.

5 **2. The Commission failed to provide CenturyLink adequate notice and**
6 **opportunity for a hearing before amending the Price Plan.**

7 The Commission amended the Price Plan to impose an unlawful service quality measure
8 without providing CenturyLink adequate notice and an opportunity for hearing. The Commission
9 did not identify any potential adjustments to the Plan based on the performance report
10 CenturyLink filed in September 2021, nor did it or Staff otherwise raise the specter of adjusting
11 the Plan until September 14, 2022. Even then, the only adjustments Staff recommended at that
12 time in its public meeting memo were extending the Plan for nine months and requiring
13 CenturyLink to implement a dedicated customer service line. Order No. 22-340, Appendix A
14 at 9. Other than those two adjustments, Staff recommended that the Commission “[o]pen an
15 investigation [into] CenturyLink’s Price Plan to determine whether the Price Plan is in the public
16 interest according to the criteria set forth in ORS 759.255(2); and if not, what modifications may
17 enable a finding that such a modified plan is in the public interest”. *Id.*

18 Staff also correctly stated in that memo that “[u]nder the terms of the Price Plan, the
19 Commission must provide the Company with notice and the opportunity for a hearing before
20 ordering further adjustments to the Plan. This public meeting memo and public meeting provide
21 the Company with the required notice and hearing before this temporary adjustment goes into
22 place, satisfying the term of the Price Plan.” While CenturyLink disagrees that the Sept. 14, 2022
23 memo provided CenturyLink with adequate notice and opportunity for hearing on the
24 adjustments proposed in the memo, it most certainly did not provide CenturyLink with any
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1 notice or opportunity for hearing on the 48-hour repair requirement, which was not mentioned or
2 even hinted at in the memo or otherwise.

3 The first time CenturyLink received notice that the Commission would adopt the
4 unlawful service quality measure was when the Commission entered the Order on September 23,
5 2022, memorializing its September 20, 2022 open meeting ruling, at which point CenturyLink
6 had no recourse but to request a hearing.³ The Commission departed from its decades-long
7 practice of announcing and allowing for input and dialogue on significant regulatory actions.
8 Regardless, the Commission may order adjustments to the Plan only after providing CenturyLink
9 with notice and the opportunity for a hearing. ORS 759.255(1); Order No. 18-359, Appendix A
10 at 10. Absent notice and an opportunity for hearing, the Order is unlawful and may not remain in
11 effect.

12 **E. The Commission-Ordered Remedies Are Unlawful Because They Exceed Those**
13 **Found in CenturyLink’s Tariffs.**

14 For the Jacksonville, Oregon wire center that is served under the terms, conditions and rates as
15 set forth in Qwest Corporation P.U.C. Oregon No. 33 tariff, approved by the Commission, customers
16 may request credit for missed service appointments and exchange access lines that are out of service.
17 Lumen/100, Gose/16.⁴

18 Qwest’s tariff provides for Guaranteed Commitments to “[c]onnect a new or additional service
19 or change an existing service” and for “[r]epair of existing exchange service when a customer is unable
20 to receive and/or place a telephone call.” Section 2.2.2.B. Section 2.2.2.C.2 of Qwest’s tariff, in the
21 section titled “Credit For Missed Guaranteed Appointment or Guaranteed Commitment,” provides: “The
22 credit will be applied automatically to the customer’s account for failure to keep a Guaranteed
23 Commitment if the customer requests installation of a new or subsequent service or repair that is not
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25 ³ The Commission first mentioned the 48-hour repair requirement during its deliberation at the Sept. 20,
26 2022 open meeting following a closed executive session and with no further opportunity for CenturyLink to
comment on the proposal.

⁴ The tariffs may be found at https://www.centurylink.com/tariffs/or_qc_ens_t_no_33.pdf.

1 completed as agreed for Company reasons, subject to the exceptions below.” The amount of the credit
2 for a missed Guaranteed Commitment to residential customers is \$25.00, and the tariff provides: “Each
3 credit shall be limited to the amount specified above for each service order or trouble report.”

4 These Commission-approved credits provide the exclusive lawful remedy to customers for
5 failure to complete repairs pursuant to a company commitment. The Order’s requirement that
6 CenturyLink “make repairs in a manner that results in a consistent and functional dial tone and ability to
7 reliably make and receive calls, or provide the customer with a functionally equivalent substitute
8 service, as defined by CenturyLink’s current tariffs, at no additional customer cost, within 48 hours of
9 creation of the ticket until service issues in the area are remedied”⁵ requires additional remedies beyond
10 those provided in CenturyLink’s tariff and are therefore contrary to law.

11 The filed-rate doctrine, as codified in ORS 759.205 for telecommunications utilities, not only
12 requires a utility to charge its filed rates; it also prohibits a commission or court from ordering a remedy
13 that is inconsistent with a utility’s tariff. As explained by the Commission:

14 The filed rate doctrine, of which ORS 757.225 is an example, is based on
15 the idea that the rate filed with a commission “is the only lawful charge”
16 and that “[d]eviation from it is not permitted upon any pretext.” Rates
17 filed with a commission bind both utilities and customers “with the force
18 of law.” The Oregon Supreme Court recognized the doctrine in *Oregon-
Washington R. & Nav. Co. v. Cascade Contract Co.*, and applied the
19 doctrine in *McPherson v. Pacific Power & Light Cos.*, when it found the
20 “the Commission has no authority to award any reparations, either for
21 unreasonable or unjustly discriminatory rates, or for overcharges.”

22 Order No. 08-487 at 33. The *McPherson* court also said, “Turning to the statutes dealing with utilities,
23 § 112, Chapters 1-4, OCLA (now ORS title 57, ch 757), we find that the Commissioner has no authority
24 to award any reparations, either for unreasonable or unjustly discriminatory rates, or for overcharges,
25 and that the Commissioner is granted jurisdiction to hear complaints based only on allegations that rates
26 are unreasonable or unjustly discriminatory.” *McPherson v. Pacific Power & Light Co.*, 207 Or 433, 449
(1956). Accordingly, the Commission’s requirement that CenturyLink make repairs or provide a

⁵ Order No. 22-422 at 9.

1 functionally equivalent substitute service at no additional customer cost within 48 hours of a customer's
2 opening a trouble ticket is inconsistent with CenturyLink's Commission-approved tariff and, therefore,
3 unenforceable.

4 **F. Conclusion.**

5 The foregoing discussion shows that the Order is unlawful. For that reason alone, the
6 Commission should not let it continue in place. CenturyLink will also show at the hearing that the health
7 and safety of customers does not require the Order to remain in place in view of the network actions
8 taken by CenturyLink and the resulting level of service in the Area. See Lumen/100, Gose/16.

9 DATED: December 13, 2022.

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