

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1908, UM 2206

IN THE MATTER OF
LUMEN TECHNOLOGIES

INTERVENOR PRISCILLA WEAVER'S
CLOSING BRIEF

What a daunting task it is to ask the Public Utility Commission to reject its own staff's recommendation in order to keep the Jacksonville Orders operative, even if it means putting aside the proposed Price Plan as not in the public interest.

The more so because, on first blush, the Stipulating Parties paint such an appealing picture of their proposed Price Plan. They characterize it as having the "same" protections for 4000 customers statewide that the Jacksonville Orders now provide to just a fraction of them. Repairs will be "prioritized" and "escalated" for us rural Jacksonville customers. They say the remedies are just as good on "roughly the same timetable." They talk about a new "automatic mechanism" for detecting problems "without the need for customers to raise concerns." My community is promised fiber first, with dissatisfied customers able to "vote with their feet" and switch carriers. And the ultimate carrot? Maybe even subsidies for some of those same customers to get speedy broadband.¹

There's only one problem with this rosy scenario: almost none of it is true. There certainly is not enough substance in the actual language in the Stipulation and the Price Plan to

¹ Staff Resp. Test. (Beitzel), pp. 5, 11, 13, 16, 17, 24, 25; CenturyLink Reply Test. (Gose), pp. 11, 14; Nov.15, 2023, Hearing Trans. pp. 41, 63, 77 (Gose) and 42, 67, 78 (Beitzel); Stip. Parties Opening Brief, pp. 2, 5, 7-10, 14.

justify stopping the protections and the effective remedy in the Jacksonville Orders at the outset of what we now know is a miniscule RDOF build.

Lumen's goal is not at all subtle: get rid of the Orders and the threat of certain fines as soon as possible, even though it means agreeing to a core pricing metric that Lumen argues is antiquated and essentially bogus. Lumen's testimony gives no hint whether its take-it-or-leave-it stance² is motivated by restive shareholders, a skeptical potential buyer for the CenturyLink business in Oregon, nervous lenders, second-guessing their decision not to further appeal the Orders, or other business goals. None of these internal corporate calculations, however, justify the risk to public safety of lifting the Jacksonville Orders before the RDOF build and before all the now-protected fixed wire phone customers in rural Jacksonville³ have the old copper wire delivery system to their homes replaced or sustainably upgraded.

What I cannot imagine is the pressure Staff felt to come up with a Price Plan, any Price Plan, to present to the Commission. Lumen obviously took full advantage of that pressure. Only if the Staff agreed to ignore Staff's extensive findings incorporated in the Jacksonville Orders and agreed to abandon the demonstrably vulnerable rural Jacksonville customers would Lumen acquiesce to the plan. Lumen was perfectly clear on this point.⁵ I can think of no other reason Staff would put forward a recommendation that can only be rationalized with descriptions that are untrue, especially about the "same" protections and remedies.

² Because Lumen's obligation to provide reliable and safe fixed wire phone line service will not go away or be lessened one whit if the Orders stay in place, its position should be treated as just what it is, a bullying tactic.

³ The Commission described us in Order 22-340 (p. 1) as "customers in Jacksonville, Applegate, and surrounding areas in southern Oregon." Lumen chose to describe the area as the 97530 zip code. Rather than parsing this now, I refer to the customers covered by the Jacksonville Orders as simply "rural Jacksonville."

⁵ See, e.g., Gose Reply Test. p. 2.

In these circumstances, the Commission should take the uncommon and uncomfortable step of rejecting Staff's recommendation. The Commission should not adopt the Price Plan unless the Jacksonville Orders remain in place during the RDOF build and related conversion away from copper wire.

The truth is that the Price Plan (including the Stipulation) contains none of the vital protections in the Jacksonville Orders.⁶ Notwithstanding the pages of formulas and graphs and new reports, the proposed Price Plan is silent on the central questions:

1. How soon will CenturyLink's most vulnerable land line customers in rural Jacksonville have their service restored during the next year and a half while Lumen strings fiber? There is no need to speculate here, simply look back at the year before the Orders: Four days for a bad cable and bad card (Oct. 25-29, 2021). Nine days for a box repair (Aug. 30-Sept. 7, 2021). The entire month of September 2022 riddled with dropped calls until the Orders took effect.
2. What language in the Price Plan insures we can reach emergency help within 48 hours when our phones go dead?

There are no circumstances out here to suggest we will have fewer outages during the RDOF build, even with the long overdue T1 repair CenturyLink crows about. In fact, there is nothing at all in the Price Plan about dealing with specific outages, as there is in the Jacksonville Orders. The Price Plan speaks only of accumulating monthly outage and "clearing" data, 4-6 weeks more for data analysis, then deciding whether something should be done about "emerging trends" after a minimum of three consecutive months of non-compliance.

Meanwhile, health, fire and safety emergencies in rural Jacksonville will not be "suspended" during the RDOF build.

⁶ See CUB and Weaver Objections, Opening Testimony and Reply Testimony, Opening Briefs, and factual record contained therein.

Mr. Gose testified for Lumen that the Stipulation includes Lumen's agreement to "prioritize making certain that [Protected Customer] repairs are escalated."⁷ Neither the Stipulation nor the Price Plan says anything about prioritizing repairs – not a word.⁸

Staff and Lumen call our objections "quibbling." How insulting, and how telling. In my community, and I believe throughout Oregon, basing decisions on the facts about health and safety and the public interest in reliable basic phone service is deadly serious business.

If the Commission decides to stop enforcing the Jacksonville Orders at the inception of the RDOF build, the Commission should be transparent about what's in store for a sizable number of rural southern Oregonians. For example, CenturyLink's failing, copper-wire-based, delivery system will still be in place for many months, perhaps years. The rural Jacksonville area also is entitled to know that the Price Plan will allow Lumen to accumulate an undetermined number of outages lasting more than 48 hours in our area for at least three months. Meanwhile, the broken green boxes covered by orange plastic bags against the elements, bad cards, and intermittent dropped calls, can once again pile up, unchecked for days and weeks until the elusive "trends" develop.⁹

The Commission also should make clear that in exchange for everyone covered by the Jacksonville Orders losing our protections while Lumen strings fiber cable, only ten customers will receive fiber cable all the way to their homes. Yet everyone losing the protections will just

⁷ Hearing, Nov. 15, 2023, p. 41 lines 16-18.

⁸ As for the so-called "solidified" "dedicated line" reporting system, it was not important enough to include it in the Price Plan. Lumen's history of endless assurances about everything from rotten service to rotten poles precludes Lumen from making its case now with yet more after-the-fact blandishments about "intent."

⁹ It took almost two years for Lumen to reveal that its plan to use RDOF to "replace the network" (Lumen comment filed Jan. 10, 2022) would bring the new fiber optic cable to only 10 residences (Gose Reply Test. p. 6). One can only imagine how long Lumen will be able to stall making repairs to all the other customers without the threat of fines in the Jacksonville Orders.

have to keep fingers crossed that the remaining archaic equipment does not fail anywhere on Yale Creek Road, or on Little Applegate Road above Buncom, or on Upper Applegate Road beyond the remote terminal, or elsewhere in the affected area. I submit this is not a situation even remotely within the public interest.

Worse yet, the Jacksonville Orders will terminate entirely, and the docket with the entire history of Lumen's miserable performance and dogged efforts to avoid accountability will close, as soon as the 10 customers' fiber optic cable is in place.

What about Lumen's protestations of "improved" service quality and reliability for the vast majority of customers who will not receive fiber to the home and Lumen's "plans to discuss other options" for these customers and "plans to evaluate other technologies," leaving "only a few thousand feet of copper cable from the remote terminal to the customer premises"?¹⁰

Unfortunately, all of this is unenforceable hot air, nothing more. The language in the Stipulation and the Price Plan is unambiguous: the Orders are unenforceable starting on day one of the RDOF build and the Orders terminate entirely the day those 10 customers get fiber to their homes:

"14. "[U]pon commencement of the RDOF build, the Orders will be suspended... . Upon completion of the RDOF build, Orders 22-340- and 22-422 will terminate. "¹¹

There is no obligation on Lumen's part to do anything about all the rest of the customers, just a familiar-sounding litany of "intents" and vague "plans."

¹⁰ See Stip. Parties Opening testimony at, e.g., pp. 25-27.

¹¹ Stipulation, par. 14 p. 4.

It's all reminiscent of Alice in Wonderland turned upside down. The Jacksonville Orders should not be suspended at the outset, but only at the end of, the process.

There is a parenthetical in the "Agreement on Suspension" of the Jacksonville Orders (Att. C to Stipulation) that says it all. After a lengthy paragraph of hedging about what will not be in the RDOF build and another paragraph about what Lumen might do at some point about all its other rural Jacksonville customers, Lumen announces that it also could just keep "providing service over existing facilities," *i.e.*, the old damp copper wires.¹² In other words, for all the pages of rhetoric, Lumen is only obligating itself to set up 10 customers, with no recourse for all the other customers but to start all over again and wait months for another investigation, more Staff reports, more public hearings, etc.

Finally, there apparently is a wide discrepancy in the numbers being cited as to how many customers covered by the Jacksonville Orders will get fiber just part way to their homes, with "the last mile" or the last "few thousand feet"¹³ still copper wire and boxes waiting to fail. Or how many will get no fiber at all and still be entirely reliant on the old copper wires in the leaky green boxes. Whatever that number is, we are more than mere statistics. Lumen is just plain dishonest to invoke our small numbers and "competition" and "voting with our feet" by switching providers.¹⁴ Lumen knows full well we have no choice but to remain Lumen customers if we want to reach 911, reach our medical providers, conduct our businesses, or just talk with our families. After all, if we could "vote with our feet," we would not be in the "Protected" class in the Price Plan.

¹² Stip. Att. C, p. 1.

¹³ Stip. Parties Test. p. 26.

¹⁴ Gose Reply Test. p. 14.

Whether we number one hundred, two hundred, or three hundred, are we to be cast aside just so the Commission can announce a new metric for measuring long-term service quality in rural areas as a way to decide how much Lumen can raise our rates? Staff and Lumen propose agreed to use a metric so flawed that Lumen used its reply testimony to denounce it and to announce Lumen's campaign to have the RCT metric thrown out. Staff and Lumen call their proposal "unprecedented." Is this really a precedent the Commission wants to set?

What a mess. I do not envy the Commission's position or minimize the Commission's dilemma. But the Commission should not make it worse by making our safety the "price" for an experimental Price Plan. The Jacksonville Orders need to stay in place and be enforced until Lumen finishes the RDOF build, including whatever else is behind their vague "intent" to provide all rural Jacksonville customers with a new fixed wire telephone delivery system to their homes.

Respectfully submitted,



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