

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1908, UM 2206

In the Matters of

LUMEN TECHNOLOGIES,¹

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).

ORDER

DISPOSITION: ORDER NO. 22-340 MODIFIED

I. INTRODUCTION

In this order, we modify Order No. 22-340, issued September 23, 2022, finding that clarification of our order for the restoration of service in the Little Applegate and surrounding area is appropriate. We acknowledge Lumen's request for a hearing consistent with ORS 756.515 and direct the Administrative Hearings Division (AHD) to schedule a hearing on the modified order.

Pursuant to ORS 756.515(6), we find this modified order is necessary for the public health and safety and it remains in effect pending our decision following the hearing in this matter.

We also determine that the price plan investigation in docket UM 1908 should continue in this consolidated docket as a contested case with a schedule running parallel to proceedings associated with Lumen's request for a hearing concerning Order No. 22-340. We direct AHD to develop a schedule within this docket for the price plan investigation.

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

II. BACKGROUND

A. Modification of Order No. 22-340

On October 11, 2022, the Administrative Law Judge (ALJ) issued a ruling in this docket establishing a “Schedule for Consideration of Modifications to Order No. 22-340.” Parties to this docket were provided the opportunity to offer comment on a proposed modification no later than October 20, 2022. In the ruling, the ALJ notified parties that the Commission was considering modification of the second sentence of the second paragraph of Order No. 22-340 as follows:

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 at no additional customer cost, within 48 hours of creation of the ticket until the service issues in the area are remedied.

Lumen, Staff, and Priscilla Weaver all filed comments on the proposed modification. Priscilla Weaver supports the modification as a clarification and supports the change to the order that would give Lumen the option to provide a substitute service in the event Lumen does not restore service in the 48-hour period specified in the order.

Staff states that the proposed modification could be further clarified by defining the phrase “functionally equivalent substitute service” and that customer-sided issues that may prevent or delay repairs should be addressed. Staff recommends that the modification include language describing functionally equivalent service as “defined by Lumen’s current tariffs.” Staff anticipates that in implementing this order, factual disputes may arise over whether a reported service quality issue has been properly remedied in 48 hours. To address this, Staff would clarify that the order applies until the Commission finds the remedy is no longer needed to protect the safety and health of populations, and that Lumen “provide documentation of a customer-premise side issue preventing” the functional repair or service.

Lumen states that the proposed modification does not address its objections to Order No. 22-340. Lumen asserts that the Commission cannot modify the order prior to the hearing it has requested on Order No. 22-340, or that the Commission must provide a hearing on the modified order. Lumen also argues that it does not have adequate notice and opportunity to be heard prior to a modification. Lumen states that should the order be modified, Lumen must be entitled a “different or additional” hearing consistent with ORS 756.515(5), which would also suspend the modified order. Lumen repeats arguments made in previous filings that the Commission cannot enforce Order No. 22-340 and should withdraw it.

We determine that the second sentence of Order No. 22-340 should be modified to clarify the service restoration expectations set for Lumen. We agree with Staff that alternatives should be defined by Lumen’s current tariffs, and that documentation of customer-sided

issues preventing repairs or the restoration of service should be documented. We determine that the ruling of October 11, 2022, notified all parties of a pending Commission modification of Order No. 22-340, and provided opportunity for written comment or response from all parties. Lumen is correct that a hearing for the modified order should be provided, and we direct AHD to schedule a hearing associated with the modified order.

B. Public Health and Safety

We determine that the modified order shall remain in effect pending a Commission decision following the to-be-scheduled hearing. 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.

In December 2021, docket UM 2206 was opened at the request of Staff to investigate the provision of service by Lumen in the Jacksonville, Oregon and surrounding service area. Staff requested we open the investigation under our general powers, with specific reference to OAR 860-023-0005, which provides that: “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.”

In its request to open the investigation Staff noted that according to service complaints received, 60 to 80 customers had been impacted with 11 outages ranging from 4 to 8 days before restoration was complete in the recent past. In these service complaints, customers explained that Jacksonville is a very rural community, and that many customers do not have internet or cellular service options at homes.² Accordingly, telephone outages present a very dangerous circumstance if there were to be an emergency. As an example, customers described that on October 24, 2021, one customer in this area had a life-threatening situation that required them to call emergency services. This occurred on a day that the telephone service was operating, but customers described that services dropped in the area the very next day. Customers also described that given the rural nature of the area, cell service is unreliable and driving twelve to twenty-five minutes to get access to cell service is not uncommon.

Staff noted that the area has experienced periodic service issues dating back to 2014. For example, Staff received 24 related complaints in 2016 and began working on solutions with the company in 2017. Ultimately, the Commission placed Lumen on an ORS 759.450(5) performance plan, extending that by 6 months in 2018. In requesting the opening of the UM 2206 investigation in December 2021, Staff noted that:

Unfortunately, the solutions implemented in response to the performance plan adopted in Order No. 17-175 do not appear to have provided a

² UM 2206, Staff Report for the December 14, 2021 Public Meeting at 2 (Dec 9, 2021).

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. Most recently, on August 30, 2021, [Lumen] dispatched a team to try and remediate the cable plant, but the issues remain unsolved.³

Staff updated the Commission on the docket UM 2206 investigation in February 2022, documenting ongoing service issues in the region. Lumen contended that it had taken steps to address the service issues, and Staff asserted that they were inadequate, and also noted that customers in a different part of the state were experiencing similar issues. At this same time, Jacksonville area customers Laura Wenzel, James Curtis, Jackie Morris writing on behalf of themselves and four other customers, as well as Priscilla Weaver, all provided detailed descriptions of sometimes extensive outages experienced in late 2021 through early 2022.⁴

On August 30, 2022, the Commission held a Special Public Meeting to review in part, service quality issues in Jacksonville. At this time, Priscilla Weaver collected and outlined numerous complaints on behalf of Erin Volheim and other customers, stating on September 1, 2022, that:

As of this morning, we have been without working phones for at least four days and perhaps longer. Customers reporting through the standard mechanism are being told their repair tickets have “cleared.” Others have had several tickets dropped with no one showing up.⁵

These complaints included notes that service was insufficient to make a 9-11 call, stating: “You may not know this but we are in extreme fire season, with dense smoke from nearby fires affecting people’s health. Does someone have to die out here to get Lumen’s attention?”⁶

On Friday, September 2, 2022, Commission Staff was copied on the following message from customer Priscilla Weaver to representatives of Lumen:

Our phones are still out and have been for several days. We are 3 hours away from a 3-day holiday weekend when presumably your crews, if they are working at all to resolve this issue, will shut down. We are in extreme wildfire danger with a fast-growing wildfire nearby. We are engulfed in health- and life-threatening smoke with no end in sight.

Temperatures are in the high 90s and the forecast is for the temperatures to rise above 100F by Monday. As you know, many people affected by the

³ *Id.* at 3.

⁴ UM 2206, Laura Wenzel Comments (Feb 18, 2022); James Curtis, Jackie Morris, and Priscilla Weaver Comments (Feb 22, 22, 2022).

⁵ UM 2206, *See* Customer Comments filed by Priscilla Weaver Comments at 3 (Sep 1, 2022).

⁶ *Id.* at 7.

lack of land line access \\are reliant solely on their land lines to reach 911 in case of a wildfire, health, smoke, criminal trespass, automobile or farm accident, or any other emergency. We will do everything in our power to hold Lumen/CenturyLink responsible for any harm to the people of this area or to their property by the ongoing, knowing refusal of Lumen to restore our phone system to full functionality and keep it that way. You have been on notice for many years and you are still on notice. Priscilla Weaver, on behalf of the residents of Little Applegate Road, Yale Creek Road, Sterling Creek Road, and all others part of the ongoing PUC investigation UM 2206⁷

On September 18, 2022, customers Priscilla Weaver, James Horner and Kathleen Horner shared additional information outlining why lack of land-line service in their area is so concerning. They explained to the Commission, in part, that:

OUR LIVES DEPEND ON OUR LAND LINES

No cell service through towers. We are located in a small river valley with no good sight lines (geographically). Our numbers are small compared to larger, more lucrative markets (economics). For these reasons, there are no towers to provide us with direct cell phone service.

Broadband not robust enough to support cell service. Other than a few of us lucky enough to get in on the nascent Starlink satellite service still in the testing stage, none of us have access to internet/broadband strong enough to support cell service, much less 24/7 service. There is no fiber optic cable and the existing satellite services often hover about 1Mbs.⁸

In response to these and other complaints, Lumen provided information to Staff on its efforts to address service issues on September 22, 2022. Lumen stated that it planned at 4:30 to 6:30 am to run “software and configuration updates at the central office in Jacksonville.” Afterwards, Lumen’s representative reported that they had:

Verified all spans tested good end to end on both DMS1 Urbans (2600 and 2900) Verified no alarms present in DLC’s Made sure all common cards were all active on same side at DLC’s Worked with tier 2 switch personnel to upgrade active and standby controller software in the DMS10 switch in Jacksonville Made 50 local test calls with no calls dropped. This was after software upgrade. Made 20 long distance calls with no calls dropped. This was after software upgrade. Researching switch out T-1 circuit pack at the host speech link in the DMS10 switch. I asked the techs to get in touch with Priscilla after the upgrade and do testing with her.⁹

⁷ UM 2206, See Priscilla Weaver Additional Comments at 1 (Sep 8, 2022).

⁸ UM 2206, See Priscilla Weaver’s Supplemental Comments (Sep 19, 2022).

⁹ UM 2206, Lumen’s update re: Maintenance in Service Window (Sep 22, 2022).

On Tuesday, September 20, 2022, we held a public meeting in docket UM 1908. Staff recommended that the Commission modify the original four-year term of Lumen's price plan and suspend and investigate it in part due to the historical and ongoing service issues associated with docket UM 2206. During the public meeting at which the Commission considered this step, Lumen customer Priscilla Weaver, provided comment. Ms. Weaver both emphasized the continued outages, and their impact and threat to customers. Specifically, she stated that:

[i]n case you have not heard from Staff, as of this morning our phones have been malfunctioning for 22 days * * *. There have been no storms, no trees down, no cars hitting the green junction boxes in those 22 days; just Century Link's equipment failing once again.¹⁰

And

Even when our calls can be placed part of the time, many of them drop after a few words * * *. If I need to call 9-11 because I am experiencing respiratory arrest, like my neighbor Sandy did last fall, or a heart attack, or a car crash on my road, or I spot a new wildfire, before the operator even finishes saying this is 9-11, may I have the address you are calling from, the call goes dead. If it's a life-threatening medical emergency, the caller also will go dead because she cannot reach help.

But wait, there's more. Another neighbor, Marion, obediently used the online outage reporting chat feature earlier this week, only to find out the so-called repair made it so much worse that now she cannot call out at all or receive calls at all * * *. Even her answering machine does not kick in. So, for example, if her doctor calls offering her a precious last-minute appointment she's been waiting for months, she will miss the opportunity.

We cannot sit quietly for another nine months or a year, hoping against hope there will not be a tragedy in our area, because Century Link has no incentive to spend the money to keep its landlines operational.¹¹

Subsequent to this presentation, Lumen provided a response. Lumen representative Peter Gose stated the following:

When we were last together three weeks ago, I represented to you the Commission that Lumen, we had this issue largely corrected in this particular area. And I'm grateful for Jill Goatcher acknowledging today that the Commission's expert Joe Bartholomew also was of that general opinion. During that last call I represented to the Commission that the telecommunications equipment is very old, perhaps close to end of life. And we do have a solution down the road. It's being worked on

¹⁰ Video Recording, Public Meeting Sep 20, 2022 at 21:31 (Comments of Priscilla Weaver).

¹¹ *Id.*

diligently, but to Ms. Weavers comments, obviously reliable service is needed in this area. And it appears that in this most recent outage that has occurred, there has been some sort of failure at that remote terminal box, with computer equipment inside, that's in excess of 40 years old. And we do our best to keep that running, it's been a challenge admittedly. And so we will be persistent and continue to address that vigorously.¹²

On Friday, September 23, 2022, Priscilla Weaver reported to the PUC that "Autumn McIvor and Erin Volheim at 4873 Little Applegate, * * * had a call drop yesterday around 8:00am," and "Kathy and Duane Bowman at 2131 LAR phone * * * had dropped calls yesterday as well."¹³

Days later, on September 26, 2022, Priscilla Weaver reported to PUC Staff that:

I started receiving text messages from neighbors that their phones are again malfunctioning, specifically, multiple dropped calls. I asked each of them to report using the general 800 number or online reporting. One customer's experience is reflected below. In other words, we are not able to set up the repair ticket system you requested while we are still dependent on the general 800 number. There are at least five individual customer violations so far.¹⁴

Ms. Weaver named the customers and their numbers.

On the same day, customers Marion Hadden and Jim Sartorio reported that:

I have reported the problem using the 800 #. I first tried using the online system but after 2 attempts which aborted before completing I hung up and used our cell phone. [Lumen] acknowledged a problem exists and they are working on it. They did not provide a ticket number. At the end of the automated call I was told to wait on the line if I needed to speak to someone. I did so I could ask for the ticket number but no one ever came on. Dropped calls - 2 at about 8:50 am when we emailed you. 1 at 9:30 am. 1st 2 calls from cell phone in Medford, 9:30 call from Erin. We did have a 5 minute call at 9:00 am that did not drop. This was from southern CA.¹⁵

There have been repeated issues associated with Lumen's service in the Jacksonville area, apparently because the company's equipment is near its end of life. Customers have identified that service is at times unavailable, and have described how this situation creates a significant public health and safety risk because of the rural area and lack of cell service. Without landline service, some customers cannot reach needed emergency services, which endangers the public. We also observe the reported instances of failed

¹² *Id.* at 34:33 to 36:00 (Comments of Lumen Representative Peter Gose).

¹³ UM 2206, Priscilla Weaver Comments at 2 (Sep 23, 2022).

¹⁴ UM 2206, Priscilla Weaver Comments re new outage at 1 (Sep 26, 2022).

¹⁵ *Id.* at 2.

incoming calls and lack of cell service and note the risk created if emergency responders are attempting to utilize reverse 9-11 to effectuate an evacuation during a fast-moving wildfire. Accordingly, we find that consistent with ORS 756.515(6) our modified order is necessary for public health and safety and shall remain in place pending a subsequent order following Lumen's requested hearing.

C. Procedural Issues

On September 28, 2022, the ALJ assigned to this case consolidated dockets UM 2206 and UM 1908, incorporating the record of UM 2206 into this proceeding, and determining that the case would be contested going forward.

During the prehearing conference held on October 6, 2022, and again in a memo issued on October 11, 2022, the ALJ requested that parties propose procedural options for allowing the investigations in dockets UM 2206 and UM 1908 to move forward pending the resolution of all Lumen's challenges to Order No. 22-340. In the October 6, 2022 prehearing conference, all parties expressed interest in ensuring that these dockets could progress pending process necessary to address issues associated with Order No. 22-340.

Staff and Lumen responded to this request in separate filings submitted on October 12, 2022. Lumen proposed that Little Applegate service issues should be addressed in docket UM 2206, that new service quality standards be considered in docket AR 624, that any review of pole safety issues not relevant to the price plan investigation be addressed outside of dockets UM 1908 and UM 2206; and that any investigation of proposed adjustments to the Price Plan be addressed in docket UM 1908.

Staff states that the investigation into the price plan and any hearing necessary on Order No. 22-340 should proceed at the same time, and as an other than contested case so that it can facilitate broad participation. Staff asserts that any continued Commission review of Order No. 22-340 should be managed as a contested case. Staff did not offer comment on how docket UM 2206 should be managed.

All parties agree that the underlying investigation in docket UM 1908 should progress while Lumen's request for a hearing on Order No. 22-340 is addressed. Given that agreement, we determine that Lumen's price plan investigation should progress in this consolidated docket on a schedule separate from that which will be set for the hearing on Order No. 22-340. Our investigation into Lumen's price plan will be contested, though we note that Staff can facilitate customer involvement in the price plan as described in our internal operating guidelines, and customers may make comment, intervene, or monitor the case as interested persons. CUB is also encouraged to engage with customers as a way to facilitate customer participation in this proceeding. Little Applegate service issues may continue to be addressed in this docket as well, as they occur.

We agree with Lumen that pole attachment issues are best addressed in separate processes. Staff may determine if a new docket is necessary to address Lumen pole

attachment issues or if a general docket to address pole attachment issues associated with other companies is necessary.

III. ORDER

IT IS ORDERED that:

1. The second sentence of the second paragraph of Order No. 22-340 be modified as follows:

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.

2. The Administrative Hearings Division is directed to schedule a hearing on the modified order.
3. The Administrative Hearings Division is directed to hold a prehearing conference to set a schedule in this docket for investigating Lumen's price plan.

Made, entered, and effective Oct 28 2022.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.