BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1908

In the Matter of LUMEN TECHNOLOGIES, Proposed Commission action Pursuant to ORS 756.515 to Suspend and Investigate Price Plan (UM 1908), and QWESST CORPORATION, Investigation Regarding the Provision of Service in Jacksonville, Oregon and Surrounding Areas (UM 2206), Hearing Relating to Order Nos. 22-340 and 22-422.	**STAFF RESPONSE TO LUMEN MOTION TO AMEND ORDER 24-041 TO EXTEND SUSPENSION PERIOD**

Staff off the Oregon Public Utility's Commission (Staff) respectfully submits this response to Lumen's Technologies' Motion to Amend Order 24-041 (the Motion) filed XXX.

Lumen (Lumen or Company) Motion asks the Commission to extend the period of suspension of Order Nos. 22-340 and 22-422 (the Jacksonville Orders) for six months. The Commission approved Stipulation includes provisions permitting an extension of the Suspension of Commission Orders in Conjunction with Jacksonville RDOF Build where the Company has "reasonably demonstrated that circumstances beyond its control have delayed completion of the RDOF build."[1] While Staff does not factually dispute the delays outlined by the Company in the

[1] Order No. 24-041, *Stipulation Adopted Subject to Modification*, Docket No. UM 1908, Attachment C to the Stipulation, Feb. 09, 2024.

Department of Justice 1162
Court Street NE Salem, OR
97301-4096 (503) 947-4520 /
Fax: (503) 378-3784

Motion, it does note that such delays may have been reasonably anticipated, or otherwise avoided.

The Stipulating Parties agreed to the concept that suspending the Jacksonville Orders, for a defined period of time, would provide incentive to the Company to complete the RDOF build in a shorter timeframe than mandated by the Federal Communication Commission ("FCC").[2] Staff is disappointed in delays to the installation of the fiber optic cable that is intended to solve the known issues with the current telecommunications facilities. Given that the first deployment milestone for the Jacksonville RDOF Build required 40 percent deployment by the end of 2025, Staff may be unable to support additional extensions to the extent that they are inconsistent with the intent to incentivize completion on an expedited timeline.

The Company's timing in filing the Motion impedes Staff's ability to evaluate the reasonableness of its request. Staff understands that to date Lumen has completed approximately 12.3 miles, or 28 percent of the Jacksonville RDOF Build. It is unclear why the Company chose to wait until the day the suspension expired to file its Motion. This timing, and the request for an expedited decision, impinges upon Staff's ability to assess the reasonableness of the request.

In Order 24-041 the Commission clarified that it would "consider whether any such basis for the delay was unforeseen or unable to be mitigated in a timely manner in determining the reasonableness of the extension request."[3] The Company sites as the source of delay which justifies the request for extension; design modifications and permitting delays. Staff is unable to attest to the reasonableness of these delays. It is unclear to Staff if the discovery of solid rock in

[2] Docket No. UM 1908, Staff 200/Beitzel 18, Nov. 7, 2023.

[3] Order No. 24-041, *Stipulation Adopted Subject to Modification*, Docket No. UM 1908, p. 25, Feb. 9, 2024.

Department of Justice 1162
Court Street NE Salem, OR
97301-4096 (503) 947-4520 /
Fax: (503) 378-3784

the sections of the fiber feeder route constitutes a circumstance that the Company should not have reasonably anticipated. Staff notes that Lumen's contractor RBC Construction advertises its capability of trenching through such material[4]. It is not clear if the Company considered options which would allow the placement of underground cables as initially designed, or what impact the switch to arial cables may have on service quality and reliability. During a Teams meeting with Lumen held on December 30, 2024, Staff recommended having RBC Construction complete other tasks that are part of the fiber build while waiting on supplies to install aerial feeder cable. Lumen responded that they would mention it at their next meeting with RBC Construction.

Similarly, it is unclear why the Company chose to wait until October 2024 to apply for a United States Army Corp of Engineers (USACE) permit required for a project scheduled for completion in December of the same year. Without understanding details the complexity of the permit Lumen applied for, Staff cannot evaluate the reasonableness of the Company's expectation that a permit would be issued within 60 days of its application. In addition, Staff is unclear if permitting delays will actually delay construction of the RDOF build since Lumen has between 22.9 and 30.77 miles, depending on the order in which they complete certain routes, of fiber feeder cable installation to complete before they reach the point of the installation requiring a permit.

An extension of the suspension period for the Jacksonville Orders does not alter service quality obligations or customer protections in the Price Plan. The approximately 4,100 customers considered Protected Customers under the price plan, including the approximately 100

[4] Robinson Brothers Construction, LLC, Rock Excavation Webpage, available at https://www.rbc-utility.com/rock-excavation/.

Department of Justice 1162
Court Street NE Salem, OR
97301-4096 (503) 947-4520 /
Fax: (503) 378-3784

customers currently covered by the Jacksonville Orders, [5] are not impacted by an extension of the suspension of the Jacksonville Orders

The price plan provides Protected Customers with protections designed to mirror, but not tied to, customer protection provisions in the Jacksonville Orders. These protections include access to a dedicated, priority access, customer service line, allowing customers to report service issues for multiple addresses and create multiple tickets, and priority resolution of trouble tickets. These protections appear to be improving service quality in the Jacksonville area. Since the price plan has come into effect, August 1, 2014, Staff's Consumer Services division of has only received three complaints from Jacksonville area customers.

An extension of the suspension period for the Jacksonville Orders does not alter the Commission's authority to enforce its service quality rules. As clarified by the Stipulating Parties, the Commission retains identical authority to seek penalties under ORS 759.990 for violations of the administrative rules or a Commission order.[6] The Commission's statement in the Jacksonville Orders, indicating intent to levy penalties, did not alter the evidentiary threshold for levying such penalties. The requirements for levying such penalties are the same with or without the Jacksonville Orders.

If service quality problems experienced by Protected Customers necessitated the imposition of penalties. The price plan's requirements support the Commission's exercise of enforcement authority by requiring the Company to report service quality metrics, expressly

---

[5] Docket No. UM 1908, Stipulating Parties/100, Beitzel-Gose/20-21, Oct. 10, 2023.

[6] ORS 759.990(6) ("A telecommunications carrier, as defined in ORS 759.400, shall forfeit a sum of not less than $100 nor more than $50,000 for each time that the carrier: (a) Violates any statute administered by the Public Utility Commission; (b) Commits any prohibited act, or fails to perform any duty enjoined upon the carrier by the commission; (c) Fails to obey any lawful requirement or order made by the commission; or (d) Fails to obey any judgment made by any court upon the application of the commission.")

Department of Justice 1162
Court Street NE Salem, OR
97301-4096 (503) 947-4520 /
Fax: (503) 378-3784

defining Protected Customers as a group with limited voice service options, and establishing service quality provisions more stringent than those contained in the administrative rules.

CONCLUSION

For the foregoing reasons Staff does not object to Lumen's Motion.

DATED this 14t^{h} day of January 2025.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

/s/ *Natascha Smith*
_____
Natascha Smith, OSB # 174661
Assistant Attorney General
Of Attorneys for Public Utility Commission of Oregon.

Department of Justice 1162
Court Street NE Salem, OR
97301-4096 (503) 947-4520 /
Fax: (503) 378-3784