BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1908, UM 2206

In the Matter 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). Price Plan Investigation.	OREGON CITIZENS' UTILITY BOARD'S RESPONSE TO LUMEN'S MOTION TO AMEND ORDER NO. 24-041 TO EXTEND SUSPENSION PERIOD

I. INTRODUCTION

In accordance with Administrative Law Judge Spruce's ruling on December 31, 2024, CUB submits its Response to Lumen's Motion to Amend (Motion). CUB appreciates the opportunity to respond and respectfully requests that the Commission deny Lumen's Motion. A simple review of the Commission's Order No. 24-041 (Price Plan Order) shows Lumen cannot request an *extension* of the suspension of Order Nos. 22-340 and 22-422 (Jacksonville Orders) because those orders were never suspended to begin with. Both the Commission in the Price Plan Order and Lumen in its Stipulation indicated that the Jacksonville Orders would be suspended only upon commencement of the Rural Development Opportunity Fund (RDOF) build, and the Commisison clearly indicated the public process necessary for it to decide that the RDOF build had indeed commenced. As outlined in this Response, Lumen did not follow the Commission's

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

procedure, nor its own commitment in the Stipulation and as such, the Jacksonville Orders have not been suspended. CUB respectfully requests that the Commission deny Lumen's Motion and direct the Company to take certain steps as outlined below.

II. BACKGROUND

The Jacksonville Orders were put in place to remedy repeated service quality issues, including ongoing outages and Lumen's lackluster response to customer trouble tickets (complaints) from Lumen's rural customers. These issues are magnified for these customers due to the rural, wildfire-prone landscape and limited cellphone service range in their communities. On February 9, 2024, the Oregon Public Utility Commission (Commission) adopted a modified Stipulation and Price Plan as proposed by the Commission Staff (Staff) and Lumen Technologies (Lumen, CenturyLink, or the Company) (together the Stipulating Parties) under Order No. 24-041 providing a means to suspend the Jacksonville Orders.[2] Order No. 24-041acknowledged that under the Stipulation, the Jacksonville Orders could only be suspended upon "commencement" of the Rural Development Opportunity Fund (RDOF) project in Lumen's service territory.[3] Because it was undefined by the Stipulating Parties, the Commission defined "commencement" as "the day that Lumen *demonstrates* that on-site construction *has begun* on the RDOF build."[4] The Commission outlined its expectation for a formal notification from Lumen, directing the Company to "file sufficient information regarding the project for Staff to recommend that the Commission determine, in a public meeting (by consent or regular agenda), that the project has

[2] Order No. 24-041, 1 (Feb. 9, 2024). CUB, as well as intervening CenturyLink customer, Priscilla Weaver, objected to the terms of the Stipulation that would suspend and ultimately terminate Orders No. 22-340 and 22-422 (Jacksonville Orders). *Id.* at 11.
[3] *Id.* at 24-25, and the Stipulation at Appx. A, 4, ¶ 14.
[4] *Id.* 25 (emphasis added).

commenced and the Jacksonville Orders are suspended."[5] Notification requirements are further captured in Appendix C of the Stipulation, which states:

> CenturyLink shall formally notify the Commission at the beginning of RDOF construction and shall provide monthly status reports during the construction period. CenturyLink shall be responsible for notifying the Commission of the completion of RDOF construction work.[6]

The Commission further held that, with few exceptions, following commencement, if Lumen did not complete this RDOF build by December 31, 2024, the Jacksonville Orders would go back into full effect.[7]

III. ARGUMENT

A. The Commission cannot extend the suspension of the Jacksonville Orders because those Orders have not been suspended.

The Commission's decision is simple. It must deny Lumen's request because it cannot be granted since the Jacksonville Orders were never suspended. Lumen has not filed any information—sufficient or otherwise—that the RDOF construction began. A phone call to Staff in November is not a formal notification to the Commission.[8] The terms of notification were clearly laid out in the Stipulation and Order No. 24-041, as referenced above. The Commission has not determined that the RDOF project has commenced. Both the Stipulation and the Order clearly distinguish between "Staff" and the "Commission" which overcomes any argument about confusion of whom Lumen is to notify and who would make the determination of "commencement".[9] Further, Staff lacks the information to be able to make a recommendation to bring to a public meeting for the Commission to consider. As far as CUB knows, no "monthly

[5] *Id.* at 25.
[6] *Id.*, Appx. A at 22.
[7] *Id.* at 25.
[8] *See* Lumen Motion to Amend Order No. 24-041 to Extend Suspension Period, 2 (Dec. 31, 2024).
[9] See as distinguished on the first page of the Stipulation "This Stipulation is by and between…and Staff of the Public Utility Commission of Oregon ("Staff")…" and "The Commission approved the Price Plan currently in effect for CenturyLink in Order No. 18-859…" (Order 24-041, Appx. A, 1).

status reports" have been generated since they have not been filed. These reports which were explicitly intended to keep the Commission in the loop about "any potential delays or issues with the project that could cause the project to continue past December 31, 2024, and any steps the company is taking to mitigate potential delays."[10] The Commission clearly wanted to be on notice of potential delays well in advance of a request the day of the Company's own deadline for completion of the RDOF project.

As such, it appears Lumen unilaterally determined that the Jacksonville Orders were suspended and started operating under the new Price Plan, without regard to the Commission's Order No. 24-041. While CUB is disappointed, we are not surprised given Lumen's history of disregard for Commission Orders.[11] Lumen has set a low standard of self-expectation, and has yet again failed to meet it.

It is also no surprise to CUB that once the immediate threat of penalties in the Jacksonville Orders was removed, Lumen became indifferent to its compliance with this Commission's Order. This Company has spent the better part of the last decade watching the Commission, its Staff, CUB, and its own customers jump through hoops and dance at its whim. The amount of time and resources it takes to get this Company to follow the law is unacceptable and frankly is not the best use of the Commission and its Staff's limited time and resources, nor CUB's—although we will continue to call for accountability and advocate for Lumen customers' right to safe and adequate service as often as necessary.

[10] *Id.*

[11] For brevity, rather than repeat the long history of the Commission's investigation of Lumen's historical and ongoing safety and reliability issues here, *see*: Priscilla Weaver's Submission Regarding Written Testimony (Nov. 23, 2022); CUB's Opening Brief at 3-9 (Dec. 13, 2022); Staff's Opening Testimony of Joe Bartholomew (Staff/100-105) (Nov. 23, 2022); and Staff's Opening Testimony of Melissa Nottingham (Staff/200-203) (Nov. 23, 2022); *see also* UM 2206 - *In the Matter of QWEST CORPORATION, Investigation Regarding the Provision of Service in Jacksonville, Oregon and Surrounding Areas*, Opened at the Request of Staff on Dec. 2, 2021.

CenturyLink and Lumen are sophisticated multimillion dollar companies with attorneys with far more resources at their disposal than either CUB or the Commission. As this Commission has previously determined, it is expected that counsel for a party be aware of requirements in a Commission Order and an oversight, even with an apology, is not sufficient to ignore a clear Commission directive.[12] The Company should not be permitted to avoid accountability again. The Commission has no choice but to deny Lumen's motion and affirm that the Jacksonville Orders have not yet been suspended.

B. Where are the reports?

In the Price Plan Order, the Commission accepted the Stipulation's novel approach creating an incentive mechanism for increasing customer rates with service quality metrics subject to Company statewide performance under Repair Clearing Time (RCT) and Trouble Ticket (TT/100) metrics.[13] Once the Price Plan was put into effect, Lumen was permitted to raise its prices based on its service quality performances based upon "the intersection of its RCT and TT/100 metrics for all customers, the intersection of its RCT and TT/100 metrics for customers in the protected customer class, and the weighted average age of its outstanding National Electrical Safety Code (NESC) violation reports."[14]

When the Jacksonville Orders were in place, Lumen was required to "file a report every two weeks that includes the tracked information on repair tickets and a confidential version that includes customer information."[15] The Commission acknowledged there was some confusion in

[12] *See* UE 433 - *In the Matter of PacifiCorp dba Pacific Power, Request for a General Rate Revision,* Ruling, (Oct. 11, 2024). While a different matter, the sentiment is the same – it is expected that counsel for a party will act prudently in making the proper filing as directed in ruling or order in the docket.
[13] Order No. 24-041 at 22 and Appx. A at 9-12; *see also* Stipulating Parties' Errata to the Stipulation in Compliance with Order No. 24-041, Attach. A at 4-7 (Feb. 23, 2024).
[14] *Id.* at 7 and Appx. A at 10-12.
[15] Order No. 22-340 at 1-2 (Sept. 23, 2022).

the record as to what elements of the Jacksonville Orders were intended to be included in the Stipulation. In regard to reporting under the 2024 Price Plan, the Stipulating Parties stated:

> While the Stipulating Parties acknowledge that the Jacksonville Orders and Stipulation are not identical in all respects, protections for Protected Customers in the Stipulation were designed to largely mirror the Jacksonville Orders, **specifically with regard** to the dedicated support line and **reporting requirements**. In testimony, the Stipulating Parties compare the Protected Customer requirements with the Jacksonville Orders stating, "the Jacksonville and Little Applegate area is provided a dedicated, priority access, customer service line. **The Company is required to submit bi-weekly reports for trouble tickets and repair times related to that area**. The new Price Plan expands these requirements to an additional four thousand customers …." **Where the Stipulation differs from the Jacksonville Orders, even for Protected Customers, is the repair timeline.**[16]

For clarity and enforceability, the Commission directed the Stipulating Parties to submit a revised price plan that included a provision that Lumen file a monthly report on contacts to the dedicated line for protected customer calls, as described in Attachment E to the Stipulation.[17] Notably, the Company has not filed any reports in UM 1908 since its last bi-monthly report on July 25, 2024 (reporting through July 17, 2024).[18] CUB is confused and concerned about why the Company has stopped filing reports. If it is the Company's position that the Price Plan went into effect the day after its last reporting date, then the Company should have started filing the monthly reports it agreed to under the 2024 Price Plan with a start date of July 18, 2024.

Yes, CUB is concerned with this additional example of noncompliance from the Company, but it is more concerning that given the Company has appeared to have been operating as if the Jacksonville Orders are suspended, it has also neglected to continue to file these less

[16] Stipulating Parties Closing Brief, 11 (Dec. 22, 2023).
[17] Order No. 24-041 at 20, n. 61 ("Attachment E to the stipulation sets forth the reports that CenturyLink **must file**, including the "Protected Customer Statistics" report that includes substantially the same information as that required in the Jacksonville Orders. Specifically, this report must include the impacted area (wire center or remote terminal), call timestamp, customer contact number, customer name, caller name (if different than the customer), address, account number, circuit number, caller email (if provided), trouble ticket timestamp, trouble ticket number, cause of issue, and disposition of the issue." (emphasis added)).
[18] Hearing on Orders--CenturyLink's call logs from the toll-free, 24/7 dedicated customer support line for the period September 28, 2022, through July 17, 2024, in compliance with Order No. 23-109 (July 25, 2024).

frequent service quality reports. Further, CUB has heard from protected customers that calls to the dedicated line are in fact getting redirected to the regular customer service line rather than going through the dedicated line process as Stipulation and Order directed.[19]

We have also heard that at least some customers in the Jacksonville area have had their Lumen bills increase as of September of this year. CUB is concerned that if Lumen's service quality reports are inaccurate or insufficient, and the Company has not met the standard for a particular price increase, customers may have been overcharged and if so, should be refunded any improper price increases. CUB is only able to speculate here because the Company has failed to file the required service quality reports. CUB believes the Company should immediately file the past due monthly reports and also report on whether any price increases have occurred for its residential customers and provide support for its ability to implement those price increases.

Under ORS 759.255(2), the Commission may approve a price plan for a telecommunications facility but must first find that the plan is in the public interest, which includes a consideration of whether it ensures prices for telecommunications services that are just and reasonable. Price increases outside of what has been approved by the Commission are not allowed and are certainly not just and reasonable. If increases were implemented in contravention to the 2024 Price Plan terms, the Company should immediately issue refunds to those customers, and issue a filing confirming its plan for refund and another when the refund process is complete.

[19]*See* Order No. 24-041 at 10, 19-21, 27 and Stipulation, Attach. E at 2; and Stipulating Parties Closing Brief at 11-12.

IV. CONCLUSION

Recall that the Jacksonville Orders were put in place after the Commission opened an investigation into Lumen's service quality in Jacksonville and the surrounding areas due to years of ongoing service quality issues. Its customers in this rural region live in communities susceptible to wildfires, mostly without access to other reliable telecommunication devices. These customers were going days without service, including when wildfire evacuation orders were imminent. And the remote geographic location of this service territory makes timely communication for emergency services that much more important. As Priscilla Weaver, a Jacksonville Lumen (CenturyLink) customer and Intervenor, explained:

> The early morning of October 24, our neighbor [S.E.], who lives near the intersection of Little Applegate and Yale Creek Roads, experienced respiratory distress/failure. She was able to call 911 only because her land line happened to be working that day. It was determined that an ambulance would take too long, so she was airlifted and taken to intensive care in Medford. Just one day later, October 25, our land lines went down because of faulty CenturyLink equipment. If [S.E.'s] emergency had occurred that day, she would likely have died waiting for that help that could not be summoned.[20]

The Commission issued Orders in this docket to demand the Company do its job to protect its customers whose lives can depend on reliable telephone service—service they reliably pay for each month. These Orders have the force and effect of the law and Lumen continues to view Commission Orders as merely an inconvenience to not follow, and ask for forgiveness later. These customers are Oregonians with the highest need of adequate and reliable telephone service because their remote location and lack of other reliable communication devices which makes land line access a matter of life and death. The Commission Orders should not be treated like an

[20] Staff/203/Nottingham/32.

inconvenience. The Jacksonville community and other Lumen protected customers should not be treated like an inconvenience. Lumen must be held accountable.

The Commission should dismiss Lumen's Motion because the Jacksonville Orders have not been suspended. And as the Commission stated in Order No. 24-014, and particularly because of Lumen's disregard of that Order, keep the Jacksonville Orders in effect until the Commission determines otherwise at a public meeting.

Accordingly, CUB also requests that the Commission deny Lumen's Motion to Amend and reiterate that the Jacksonville Orders have not been suspended as explained above. Further, CUB requests that the Commission direct Lumen to:

- Immediately file past due reports starting from July 18, 2024, to present, consistent with the Jacksonville Orders, and as required upon 2024 Price Plan effective date, including as committed to in:
    - Section 11 - Service Quality and Safety of Attachment A to the Stipulation; and
    - Sections I, II, and III of Attachment E of the Stipulation;
- Continue the required reporting until the Commission issues a decision determining otherwise;
- Report on what, if any, elements of the Price Plan approved in Order 24-041 the Company has implemented and when, including but not limited to any customer bill increases;
- If Lumen has raised rates, a showing it has done so lawfully pursuant to the 2024 Price Plan;
- If Lumen improperly raised rates, direct the Company to file a plan to timely refund any customer bill increases that have thus been unjustly and unreasonably incurred, including any fees, charges, etc. associated with the wrongful bill increases;
- Report by address in a confidential filing, which addresses in its service territory covered by the Jacksonville Orders that will receive access to fiber optic and identify which addresses will have fiber brought directly to their home;
- Indicate which addresses will not receive access to fiber under the RDOF build project and explain the Company's plan to continue to offer these homes safe and reliable telephone service pursuant to Oregon law;
- Schedule a hearing directing the Company to show cause as to why it should not be fined for violating Order No. 24-041; and

- Any other remedy the Commission deems proper.

CUB also supports any recommendations made by Intervenor Priscilla Weaver.

Dated this 14th day of January 2025.

Respectfully submitted,

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