ITEM NO. RA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 22, 2022

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: September 14, 2022

TO: Public Utility Commission

FROM: Marc Hellman, Heide Caswell, and Jill Goatcher

THROUGH: Bryan Conway **SIGNED**

SUBJECT: LUMEN:
Docket No. UM 1908
Proposed Commission action pursuant to ORS 756.515 to suspend and investigate Lumen's price plan.

STAFF RECOMMENDATION:

Staff recommends that the Commission modify, through extension, the original four-year term of Lumen's (formerly QWEST CORPORATION, UNITED TELEPHONE COMPANY OF THE NORTHWEST, CENTURYTEL OF OREGON, and CENTURYTEL OF EASTERN OREGON) price plan, that was approved in Order No. 18-359 (Price Plan), for a period not to exceed nine months in order for the Commission to investigate whether the Price Plan is in the public interest according to the criteria set forth in ORS 759.255(2); and if not, what change in provisions are recommended. To address service quality issues experienced by customers in Jacksonville in the near-term, Staff also recommends that the Commission direct Lumen to set up, staff, and report on a 24/7 Dedicated Line for the duration of the investigation.

DISCUSSION:

Issue

Whether further adjustments to or termination Lumen's Price Plan is required by the public interest according to the criteria set forth in ORS 759.255 due to issues that Lumen customers and Staff have reported in Docket No. 2206, Investigation Regarding the Provision of Service in Jacksonville, Oregon, and Surrounding Areas.

Applicable Rule or Law

ORS 756.515(1) provides that whenever the Commission believes that "any service is unsafe or inadequate, or is not afforded, or that an investigation of any matter relating to any public utility or telecommunications utility…the Commission may on motion summarily investigate any such matter, with or without notice." Upon investigation, without notice or hearing, the Commission may make any findings and orders it deems justified or necessary as provided in Subsection (4).

ORS 759.255 allows a telecommunication utility to petition the Commission for Price Plan under which the Commission regulates the prices the utility charges without regard to the return on investment of the utility. Subsection (2) of the statute states that the Commission must find that the plan is in the public interest before approving the plan. The statute directs the Commission to consider, among other things, four criteria for whether the plan: (1) Ensures prices for telecommunications services that are just and reasonable; (2) Ensures high quality of existing telecommunications services and makes new services available; (3) Maintains the appropriate balance between the need for regulation and competition; and (4) simplifies regulation.

The Commission approved the Price Plan that is currently in effect for Lumen in Order No. 18-359. Under the terms of the stipulation, the Price Plan will automatically renew for another four-year term on September 28, 2022. The terms of the current Price Plan for Commission Review include the following:

> i) The Commission shall review CenturyLink's performance under the Plan every four years on the basis of the Performance Report described in Section 3(c), any other relevant evidence regarding the competitiveness of the market for suitable services and any other relevant factors.
>
> ii) The Commission may open an investigation at any time pursuant to ORS 756.515 to determine whether further adjustments to the Plan or termination of the Plan is required by the public interest/ according to the factors set forth in ORS 759.255(2). The Commission may order further adjustments to the Plan or termination of the Plan only after providing CenturyLink with notice and the opportunity for a hearing. In any such investigation and proceeding/ the Joint Parties agree that the Commission should first attempt to identify and require adjustments to the Plan such that the continuation of the Plan is in the public interest before it orders termination of the Plan.

iii) If the Commission orders termination of the Price Plan/ CenturyLink may thereafter pursue any form of price regulation or relief therefrom then permitted under Oregon law, including but not limited to: exemptions from regulation pursuant to ORS 759.052; price listing pursuant to ORS 759.054, 759.056/ and/or 759.195; rate regulation pursuant to ORS 759.175-759.190; another price plan pursuant to ORS 759.255; price cap regulation pursuant to ORS 759.405-759.410, or any other relevant statute.

iv) If the Commission orders early termination of the Price Plan/ the Parties agree that the Commission may also/ in the same proceeding/ adjust CenturyLink's rates to ensure that CenturyLink's rates are just and reasonable/ and the Parties agree not to advocate for rates that are lower than those that were in effect one year prior to the initiation of the proceeding to terminate the Plan. CenturyLink would no longer be able to increase its rates as it was permitted to do under the Price Plan, but CenturyLink would be allowed to decrease its rates subject to any applicable price floor.[1]

Analysis

Background

Lumen petitioned the Commission to amend its Price Plan on December 27, 2017. In Order No. 18-359, on September 28, 2018, the Commission approved the Price Plan, stipulation, and supporting testimonies that parties submitted. The initial term of the Plan is four years, and it renews automatically for successive four-year terms unless suspended or modified by the Commission.[1] The Price Plan includes a section for Commission review of the Plan. That section sets out the process for investigation, modification, and suspension of the Plan. Additionally, the terms of the Plan state that the Commission may open an investigation at any time pursuant to ORS 756.515 to determine whether further adjustments to the Plan or termination of the Plan is required by the public interest, according to the factors set forth in ORS 759.255(2). The Commission may order further adjustments to the Plan or termination of the Plan only after providing CenturyLink with notice and the opportunity for a hearing. [2]

On December 9, 2021, Staff recommended that the Commission open an investigation into Lumen’s provision of telephone service in the area of Jacksonville, Oregon and surrounding areas based on historical and ongoing safety and reliability issues that experienced by customers. The Commission approved Staff’s recommendation in Order No. 21-470.

[1] See Order No. 18-359 at 2.
[2] See Order No. 18-359, Appendix A, Proposed Price Plan at 2-3.

On February 14, 2022, Staff gave a report to the Commission on the status of its investigation. In that report, Staff informed the Commission of steps that Lumen had taken to solve the service issues in Jacksonville, and what steps still needed to be taken to make sure that the service issues were adequately addressed. Staff also reported to the Commission that Lumen customers in other parts of rural Oregon had also been experiencing serious safety and reliability issues. The Commission directed Staff to update the Commission on these service quality issues and present options to solve ongoing service quality problems at a Special Public meeting on August 30, 2022.

At the Special Public Meeting, Staff reported on the status of Lumen's service in Jacksonville and the other rural areas experiencing service quality issues. During the Public Meeting, a Lumen customer who has represented the Jacksonville customers, Priscilla Weaver, offered public comments informing the Commission that they continue to experience severe service quality problems that endanger the health and safety of the customers in Jacksonville due to the lack of alternative telephone service or internet in the area. Additionally, Staff presented a report on the safety issues and violations posed by Lumen's facilities, including its poles. Lumen's representative spoke on steps that they are taking to address both the service quality issues and the pole safety violations, and stated they were unaware of the ongoing issues in Jacksonville.

Staff counsel presented the Commission with options it could consider to address the Company's issues with service quality and safety. These options included:

1. Investigating the Company's price plan to see whether further adjustments to the plan or termination of the plan is required by the public interest. One of the criteria that the Commission evaluates the plan for to determine whether the plan is in the public interest is whether the plan "[e]nsures high quality of existing telecommunications services and makes new services available."[3]
2. Resume work in Docket No. AR 624, revisions to telecommunications company service quality rules.
3. Address safety issues with electric utility attachment to Lumen poles through the Price Plan or fines.

The Commission invited Staff to present a formalized recommendation, which is the purpose of this memo.

Modification of Lumen's Price Plan to Extend the Original Term Period for Investigation
Under the terms of the Price Plan, the Price Plan automatically renews for an additional four-year term on September 28, 2022. Staff recommends that the Commission modify the original term of the Plan for a period not to exceed nine months. This modification

[3] ORS 756.515(2)(b).

would allow the Commission time to investigate whether the current Price Plan is in the public interest, while also giving Lumen a time frame wherein they can expect a Commission decision. Additionally, by extending the Price Plan Lumen would be precluded from increasing prices for residential customers. Staff has spoken with the Company and Lumen supports this request for extension thereby modifying the Price Plan.

Under the terms of the Price Plan, the Commission must provide the Company with notice and the opportunity for a hearing before ordering further adjustments to the Plan. This public meeting memo and public meeting provide the Company with the required notice and hearing before this temporary adjustment goes into place, satisfying the term of the Price Plan.

Investigation of Lumen's Price Plan
Based on Staff's investigation and customer complaints throughout Docket No. UM 2206, Staff believes that Lumen is experiencing operational issues with service quality, and safety; and that the Price Plan should be investigated to determine whether it is in the public interest. Staff provides an overview of the service quality and safety issues that justify the Commission's investigation, as well as a recommendation for the scope of the Commission's investigation.

Service Quality Issues Justify an Investigation into the Price Plan
As explained above, historical and ongoing service quality issues were the reason that Staff requested to open an investigation into the service quality in Jacksonville and the surrounding areas. It has been clear to Staff that the service quality issues experienced by Lumen customers are present in multiple wire center locations of Lumen's service territory and are not easily—or permanently—resolved. In the Special Public Meeting, Staff Counsel outlined a history of Lumen and Lumen-owned Company issues with service quality. Current service quality issues experienced by customers present routine danger with being able to call for emergency services, as many of these customers rely solely on their land line service to contact such services. As demonstrated by customer comments, wildfires, and heavy smoke present even greater danger if land line service is not working.

In the time between the Special Public Meeting on August 30 and this memo, the customer representing Jacksonville, Priscilla Weaver, has filed a series of comments in this docket (included herein as Attachment A). In her comments, Ms. Weaver requests immediate action from the Commission to provide interim relief to customers in Jacksonville that are still experiencing an outage in a time of heavy wildfire and smoke danger. On September 1, 2022, Ms. Weaver described how the Company has been unresponsive to customers' reports of outages, including cancelling repair tickets

without responding to the outage. On September 2, 2022, Ms. Weaver described how they had no phone service while engulfed in extreme wildfire danger from a wildfire nearby, with many customers solely relying on their non-functioning landline service to reach 911 in the case of wildfire, health, smoke, or any other emergency. On September 3, 2022, Ms. Weaver described customers in Applegate that had lost service on August 30, and were told that the repair would not take place until September 7.

In summary, Staff remains concerned about the service quality that Lumen is providing to its customers and believes that the Price Plan, in its present form, may no longer be in the public interest.

Safety Issues Justify an Investigation into the Price Plan
Lumen has demonstrated what appears to be a history of non-conformance with OARs related to pole safety and maintenance. Since 2008, operators in Oregon have been required to inspect ten percent of their poles or attachments annually to ensure compliance to OAR 860-024, which reference the National Electric Safety Code. These operators are required to subsequently correct defects or violations to resolve any non-compliance with the rules, the timing of which is included in Division 24 (for self-identified issues). Since many poles are jointly used by power and telecommunications operators, OAR 860-028 describes the process for notification of found violations and the timing for correction or response should an extension be required, which results in a plan of correction that must be approved by other affected parties on or owning the pole. At the end of 2017, the entire state should have been fully Inspected and given the correction timeframe (generally a two-year period, at most). By the end of 2019, many areas should have shown visibly fewer non-compliances with the regulations.

A key deliverable provided by the Commission Safety Staff is periodic audits around the state to determine the level of compliance to the code. The process for these audits is the following: Staff begins by identifying areas inspected more than two years before, and requests maps displaying locations of assets. After the field visit is conducted, Staff requests records for each visited pole and compare records against their field observations. This is then summarized in a report, focusing on evaluating the inspection accuracy as well as the correction accuracy and completeness which is communicated to each operator. Generally, the reports specify corrections are to be completed within 180 days. However, if there is a dispute about the citation, the recipient is advised to submit in writing within 30 days of receipt. Coordination between operators may be required which can create challenges meeting the 180-day deadline. Therefore, recipients are offered the opportunity to request a deadline extension by written submittal.

With that background, the performance delivered by Lumen has resulted in concerns regarding several different aspects. First, Lumen is a substantial owner of poles across the state, with almost 100,000 poles. It also is a large joint user on poles owned by other utilities. Second, it is a large joint user on 250,000 poles that are owned by investor-owned electric utilities.

For those poles Lumen owns, it has an obligation to ensure they are structurally sound. During Docket No. AR 628, Commission Safety Staff requested information from the electric utility regarding their inventory of poles owned by telecommunications companies, including Lumen. It was found that approximately 900 poles had been identified by the electric utility as structurally unsound and that Lumen was notified. In some cases, Lumen had been notified of the issues with their poles as early as 2014, and the electric utilities have still not received a response. OPUC Safety Staff have just received information on these structurally unsound poles, but there appears to be substantially different findings from the same contracting organization, leading to some concern by Staff.

Additionally, further analysis by OPUC Staff audits was completed and Staff determined that Lumen had completed just under two thirds of the required corrections dating back to 2019, and that the average age of outstanding reports was approximately 357 days. Lumen did not request an extension or produce a plan of correction to provide clarity about its intentions to resolve these violations in any of these reports.

Staff believes that the safety issues posed by Lumen's failure to correct or even respond as required by the rules demonstrates that Lumen is not focused on its Oregon operations to the extent necessary to ensure the safety of its customers or in the provision of services. Staff recommends that this issue be investigated as a part of the Price Plan to determine whether the service quality of its poles are in the public interest, and if the Price Plan should be modified or terminated accordingly.

Proposed Scope of Investigation

In summary, based on the service quality and safety issues summarized above Staff recommends that the Commission investigate Lumen's Price Plan to determine whether the plan is in the public interest in its current form, or should be modified or terminated. To be in the public interest, the Price Plan must ensure a high quality of existing service and make new service available to customers.[4] Based on the UM 2206 investigation, Staff proposes the following scope for the Commission's investigation:

[4] Id.

1. Investigate the service quality issues reported by customers and identify what company-produced reports should be required to monitor service quality provided to customers.
2. Consider to what extent various pole inspection, maintenance and replacement issues pose a risk to safety or reliability and whether this activity should an added component to the Price Plan.
3. Develop specific service quality performance benchmarks as needed to capture issues of concern to customers and add them to the Price Plan.
4. Consider to what extend pricing flexibility afforded in the Price Plan should be subject to service quality and other Company performance.
5. Consider how the Price Plan interacts with the Oregon Universal Service Fund.
6. Meet with stakeholders and the Company to collaboratively develop recommendations to modify or terminate the current Price Plan, including revising current reporting requirements.

Immediate Company Action to Address Outages in Jacksonville
Staff agrees with Ms. Weaver's recommendations for near-term solutions to address the service quality issues that present immediate danger to customers in Jacksonville.[5] Staff recommends that the Commission direct the Company to do the following:

1. Within seven days, Lumen must:
    a. Establish a 24/7 dedicated number (Dedicated Number) for any customer that is experiencing an outage or service quality issue (Affected Customer) to call, including holidays;
    b. Ensure that the Dedicated Number is staffed so that immediate initiation of onsite repair results from calls;
    c. Take other steps as necessary to ensure the Affected Customers' outage/service quality reports will be treated as high priority for immediate resolution;
    d. Provide notice to each Affected Customer informing them of the new Dedicated Line, how to use it, and what Lumen's response to calls will be.
2. Within 14 days, Lumen shall provide the Commission a report confirming it took the steps laid out in No. 1. The report should include a copy of the notification to Affected Customers and a detailed description of the processes Lumen as put in place for assuring the immediate initiation of repair response when calls are received on the Dedicated Line.
3. The Dedicated Line and expedited response mechanisms will remain in effect until the conclusion of this investigation.

[5] See Attachment A.

Conclusion

Staff believes that the service quality and safety issues described above justify opening a Commission investigation into whether Lumen's price plan is in the public interest as required by ORS 759.255. To give the Commission time to investigate the Plan, Staff recommends that the Commission modify Lumen's Price Plan to extend the original term of four years to be no longer than four years and nine months. Finally, Staff recommends that the Commission direct Lumen to set up, staff and report on a 24/7 Dedicated Line so that customers have responsive and fast resolution of outage reports in the near-term.

Staff has discussed with Lumen representatives the proposal to extend the original four-year term of the current Price Plan by up to nine months for purposes of investigating the Plan and Lumen supports that recommendation.

PROPOSED COMMISSION MOTION:

1. Modify Lumen's Price Plan to extend the original term of four years to be no longer than four years and nine months;
2. Open an investigation Lumen's Price Plan to determine whether the Price Plan is in the public interest according to the criteria set forth in ORS 759.255(2); and if not, what modifications may enable a finding that such a modified plan is in the public interest; and
3. Direct Lumen to set up, staff, and report on a 24/7 Dedicated Line for the duration of the investigation.