BEFORE THE PUBLIC UTILITY COMMISSION

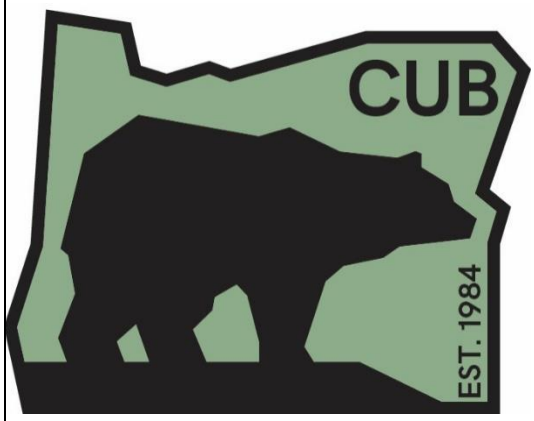
OF OREGON

UM 1908, UM 2206

In the Matters of	)
	)
LUMEN TECHNOLOGIES	)
	)
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

TESTIMONY IN OPPOSITION TO STIPULATION



October 24, 2023

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I. INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is John Garrett. I am a Utility Analyst of the Oregon Citizens' Utility Board (CUB). CUB's business address is 610 SW Broadway, Ste. 400, Portland, Oregon 97205.

Q. Please describe your educational background and work experience.

A. My witness qualification statement is found in exhibit CUB/101.

Q. What is the purpose of your testimony?

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

A. My testimony details CUB's opposition to the Stipulation entered into by Lumen Technologies (Lumen or the Company) and Staff of the Public Utility Commission of Oregon (Staff) (together, the Stipulating Parties) and filed with the Public Utility Commission of Oregon (Commission) on October 10, 2023. CUB's opposition centers on accountability. As much as we appreciate the level of detail and effort that went into crafting this Stipulation, CUB does not believe its terms and conditions are sufficient to result in a Price Plan that is in the public interest and objects to parts of the Stipulation. Specifically:

1) Suspension of Order No. 22-340, as modified by Order No. 22-422 and as affirmed by Order No. 23-109 ("the Jacksonville Orders");
2) Termination of the Jacksonville Orders and cessation of the investigation Regarding the Provision of Service in Jacksonville, Oregon, and Surrounding Areas upon completion of the RDOF build or December 31, 2024; and
3) Monthly reporting of an amalgamation of the TT/100 Performance and RCT metrics' data for Protected Customers.

II. DISCUSSION

Q. Please summarize your testimony

A. While CUB believes the Stipulation as filed contains likable elements and reflects effort by the Stipulating Parties to incentivize the Company to improve service quality for its customers, the Stipulation does not adequately hold Lumen accountable in achieving results, i.e. reliable service, which at this point is long overdue. The Stipulation continues to expose customers to the risk of Lumen's noncompliance with Commission rules. This testimony will explain why suspending Order No. 22-340, as modified by Order No. 22-422, and as affirmed by Order No. 23-109 ("the Jacksonville Orders") and allowing the Company to increase its rates while remaining in noncompliance with service quality rules is fundamentally not in the public interest.

The Stipulation exchanges the known strength of the Jacksonville Orders for new customer protections in the Price Plan and promises from the Company to build some fiber infrastructure, which it is already required to do through a federal program. CUB argues the Price Plan does not provide the same degree of incentive as the Jacksonville Orders and believes the Commission should keep the Jacksonville Orders in place until the Commission has had a chance to review whether the Company's fiber project, and any other infrastructure upgrades needed, adequately address the service quality issues experienced by customers in the Jacksonville area. Given the Company's alarming history of noncompliance with service quality obligations over a ten-year span, CUB cannot support an agreement that reduces pressure on the Company based on loose planning and before any comprehensive infrastructure upgrades have begun.

I conclude my testimony with a discussion of CUB's proposed changes to the Stipulation, which if implemented, would address our greatest concerns and reverse our opposition to the Stipulation.

Q. What is the background of CenturyLink service quality issues?

A. Customers in the Jacksonville area have been experiencing unreliable telephone service since at least 2014. The history of the Commission review of Lumen's service quality issues statewide and in its Jacksonville service territory in particular, are well documented, particularly when it comes to meeting the Commission's trouble ticket and repair clearing time reporting standards. Likewise, the record shows the numerous opportunities the Company has had to address these chronic issues over the years,

through performance plans and Price Plan stipulations. CUB's Opening Brief[2] and Staff's Opening Testimony[3] in UM 2206 provides an overview of this nearly ten year timeline.

Q. What is a Price Plan and what are the requirements that must be met in order for the Commission to approve a price plan?

A. A telecommunications company like Lumen may petition for and receive a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility.[4] Prior to approval, the Commission must find that this price plan is in the public interest and the statute provides four factors that at a minimum the must Commission must consider in its decision. If approved, the Commission must establish objectives of the plan and conditions for review during its operation.

Q. What is the public interest standard?

A. The Commission has the authority to "approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility."[5] ORS 759.255 provides limitations on the Commission's authority:

> (2) Prior to granting a petition to approve a plan under subsection (1) of this section, the commission must find that the plan is in the public interest. In making its determination the commission shall consider, among other matters, whether the plan:
>
> (a) Ensures prices for telecommunications services that are just and reasonable; (b) Ensures high quality of existing telecommunications services and makes new services available;
>
> (c) Maintains the appropriate balance between the need for regulation and competition; and
>
> (d) Simplifies regulation.

[2] UM 1908 – CUB's Opening Brief at 3-9 (Dec. 13, 2022);
[3] UM 1908 – Staff/100, Bartholomew/1-19 (Nov. 23, 2022).
[4] ORS 759.255.
[5] ORS 759.255(1).

The language of ORS 759.255 makes clear that the Commission, in choosing to approve a Price Plan, has the duty to regulate prices in order to ensure that the plan is in the public interest. The legislative history supports this interpretation of the statute, clearly indicating that the legislative intent was to provide the Commission with another option other than rate of return regulation, but regulation, nonetheless.

Additionally, the Commission has acknowledged that it must "balance the tasks of promoting competition and keeping residential rates affordable."[6] At best, if approved as currently written, CenturyLink's proposed price plan would put the Commission in the position of being reactive, rather than proactive, in ensuring reliable service. Putting the Commission in such a position is bad policy, as it places customers in the position of being harmed before the Commission is able to act. Such a scheme would also place the burden on customers, intervenors, and Commission Staff to put forth a case demonstrating that the Price Plan as implemented is not in the public interest.

Q. The Stipulating Parties liken the customer protections in the Price Plan to the customer protections in the Jacksonville Orders. Does their comparison offer a complete picture of the tradeoffs between these two customer protections?

A. No. The Stipulating Parties provided a table comparing the protections, services, and rights of the Jacksonville Orders to the Stipulated Price Plan.[7] However, the table and associated discussion raises concerns for CUB as it omits key protections for Jacksonville

[6] OPUC Order No. 01-810 at 62.
[7] UM 1908 – Stipulating Parties/100, Betzel and Gose/21.

customers that would be lost. We have added the missing elements to Table 1 below in their own rows or supplemented **in bold.**

Table 1 – Jacksonville Orders and Stipulated Price Plan Compared

Requirement	Jacksonville Orders	Price Plan
Dedicated Suppor Line	Deploy a toll-free, 24/7 dedicated customer support line to support customers in Jacksonville, Applegate, and surrounding areas in southern Oregon[8]	Section 11(c): maintain a dedicate customer service contact number for Protected Customers to submit trouble reports
	Allow customers to report service issues for multiple addresses and create multiple repair tickets[9]	Not included.
	Provide notice to each Affected Customer informing them of the new Dedicated Line, how use it, and what Lumen's response to calls will be.[10]	Not included.
	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 cop 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.[11]	Not included.
Trouble Report Repair Timeline	address all tickets and make repairs or provide substitute service within 48 hours of creation of the ticket until the service issues in the area are remedied[12]	Section 11(a) and 4: continue to be subject to the Commission's servic quality rules with pricing flexibility being tied to performance
Reporting Requirements	track and retain information on all tickets generated through the customer support line and submit reports every two weeks until the conclusion of the investigation, **including but not limited to: the address, name, and contact information for the customer for whom the ticke has been generated; a description of the service issue, logs of customer contact regarding the**	Section 11(b): provide a single report summarizing trouble report clearing data on a monthly basis fo all Protected Customers. The data will be made available as a single Protected Customer category, as opposed to providing it at a wire center or RT level.

[8] UM 1908 – Order No. 22-340 at 1 (Sept. 23, 2022).
[9] *Id.*
[10] *Id.*, Appx. A at 8.
[11] *Id.* at 8.
[12] *Id.* at 1.

Requirement	Jacksonville Orders	Price Plan
	service issue, actions taken to resolve the service issue, and information on the results.[13]	Detailed reporting requirements are not included.
	Dates and times for all of the foregoing information must be logged.[14]	Not included.
	A confidential version of the reported information, with no redaction, filed under a general protective order. Filings should summariz how tickets are routed and prioritized.[15]	Not included.
	Penalties for violations of this order for each instance in amounts not to exceed $50,000. Each day a ticket is not resolved in the 48-hour period specified in this order will be a violation, for each customer and each day.[16]	Defers to service quality rule performance plan review process.

Q. The Stipulating Parties claim that the Stipulated Price Plan "should sufficiently protect customers covered by the Jacksonville Orders." Does the Price Plan sufficiently protect these customers? Does it provide equal or better protection for customers than the Jacksonville Orders?

A. The Stipulating Parties claim that "upon adoption by the Commission the Price Plan should sufficiently protect customers covered by the Jacksonville Orders."[17] Yet, they have not shown any evidence that service quality has improved in the Jacksonville and surrounding areas to warrant suspending or terminating the Jacksonville Orders. The Stipulated Price Plan does not sufficiently protect these customers. Notably, and somewhat troubling, the Stipulation states the Company "intends" to move forward with

[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 1–2.
[17] UM 1908 – *Price Plan Hearing-- Stipulating Parties' Testimony in Support of Stipulation of Russ Beitzel and Peter Gose*, Stipulating Parties/100 Beitzel and Gose/20 (Oct. 10, 2023).

the RDOF build, rather than offering a firm commitment to the project.[18] CUB highly recommends this language be changed to make this commitment a requirement, using "shall" or "will", instead.

The Commission found that the Jacksonville Orders were necessary to protect the health and safety of the Jacksonville area\ customers. The only thing that has changed since those orders were put in place is that Lumen is, in theory, responding to all those customers trouble tickets within 48 hours. The Stipulating Parties' proposed solution to these service quality issues is fiber and that fiber is not yet installed. Accordingly, the risks to customers remain and removing the protections of the Jacksonville Orders is not justified.

The Stipulating Parties offer that the Stipulation provides sufficient protections for Jacksonville customers. Yet, they recommend a return to the standard service quality review process under the Commission rules. A process was not working for Jacksonville customers, thereby necessitating the Jacksonville Orders.[19] Returning to OAR 860-023-0055 standards and ORS 759.450 will require Commission review of Lumen's monthly trouble report and repair clearing time statements, direction to Lumen to submit a performance plan, and Commission review and approval or disapproval of the plan. If the performance plan is disapproved or the Company does not meet the goals of the plan

[18] Docket No. UM 1908, *In the Matters of LUMEN TECHNOLOGIES, 1 OF OREGON UM 1908, UM 2206 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, Stipulating Parties' Testimony in Support of Stipulation of Russ Beitzel and Peter Gose*, ¶ 14 (Oct. 10, 2023).
[19] UM 1908 – Order No. 23-109 at 8-10.

within six months, then the Commission may assess penalties against Lumen.[20] When Lumen did not meet the service quality standards stipulated to in its 2014 Price Plan in January 2017, the review process took one year and three months to come to a resolution. That resolution was a stipulation among the parties which deferred to the service quality rule process as resolution for the service quality issues. CUB has not been able to find a public record of that March 2018 compliance plan being filed, making it seem as if Lumen got out of filing that performance plan.

When Staff reviewed the Jacksonville customer complaints submitted in November 2021, they found that the Company's performance plan adopted in 2017 did not provide a durable solution to the service quality issues in the Jacksonville area given those issues still remained.[21] Despite agreeing in the last two Price Plans to comply with the Commission's service quality rules, Lumen was again found to be out of compliance. No penalties were assessed. The Stipulation also removes the Jacksonville customers' ability to report multiple customer issues and create multiple tickets. This protection is important to customers in this area given not all of those customers have alternative voice systems or may be out of cell phone range and therefore cannot contact the Company to report outages.[22] By removing the requirement for detailed trouble ticket reporting and repair clearing time reporting, the ability to observe the timeliness and quality of repair efforts, particularly related to patterns of inadequate service and noncompliance is removed for these customers. The Jacksonville Orders have motivated Lumen to move more quickly

[20] ORS 759.450(5).
[21] UM 2206 – Staff Report requesting to open investigation into the provision of service in Jacksonville, Oregon and surrounding areas, 6 (December 2, 2021).
[22] Order No. 22-422 at 3 (Oct. 28, 2022).

address trouble reports in its Jacksonville service territory and arguably accelerated Lumen's promises to build out fiber in this region. CUB argues the Jacksonville Orders are the reason the Company is moving toward compliance with the Commission's service quality rules in its Jacksonville area service territory.

Under the Jacksonville Orders, the Company is potentially liable for penalties up to $50,000 per violation per day. If 5 customers in Jacksonville are not provided adequate service for 5 days for unwarranted reasons, the Company is vulnerable to $1,250,000 in penalties. Conversely, under the Price Plan, the same incident for the same 5 customers would be diluted within the Company's aggregate service quality record for its 4,100 Protected Customers collectively. The Stipulating Parties did not present any evidence that shows how this Protected Customer modeling would offer same or similar protections to the Jacksonville Orders. Ultimately CUB believes the efficacy of the Price Plan will not be understood until it has been in effect and there are outcomes to observe. Thus, CUB is not convinced that the protections in the Stipulation are equal or better than the powerful protections in the Jacksonville Orders and those orders must remain in place until the Commission has had a chance to review whether or not the fiber solution resolves the service quality issues for customers in its Jacksonville service territory.

Q. Briefly describe the RDOF Program and Lumen's participation in it as it relates to this proceeding.

A. The RDOF Program exists within the Federal Communications Commission's (FCC) High Cost Program and "will disburse up to $20.4 billion over 10 years to bring fixed broadband and voice service to millions of unserved homes and small businesses in rural

America." The RDOF Program uses a two-phase, competitive reverse auction (Auction 904) to award funds to bidders, including incumbent telephone companies, cable operators, electric cooperatives, satellite operators and fixed wireless providers, to build out and offer broadband service to customers. The RDOF Phase I Auction ended on Nov. 25, 2020 and awarded $9.2 billion in support to 180 winning bidders.[23]

Regarding funding dispersal and the expectations of winning bidders (*emphasis added*):

> While RDOF support will be disbursed over a period of 10 years, carriers must complete deployment by the end of the eighth year to *all* locations in areas eligible for support and must meet interim deployment milestones along the way.

Figure 1 provided by Lumen in a data response provides further clarity regarding the "interim deployment milestones" and obligation of carriers to serve *100 percent* of locations:

[23] *See* Lumen's Response to Staff DR 43(a), CTL RDOF Project Funding and Lumen RDOF Project Funding Supplement.

Figure 1: Deployment Requirements of the RDOF Program[24]

Deployment Requirements

RDOF participants must offer stand-alone voice service and broadband service at speeds consistent with their winning bids (which must be at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps)) at rates reasonably comparable to those available in urban areas to all locations within an awarded area over eight years of the 10-year program. Initial interim deployment milestones are based on those adopted for the CAF Phase II Auction program. Carriers must complete:

- 40 percent of deployments by the end of year 3 (the end of the third full calendar year following funding authorization – which is the end of 2024 for carriers authorized in 2021, and at the end of 2025 for carriers authorized in 2022 or later)
- 60 percent of deployments by the end of year 4
- 80 percent of deployments by the end of year 5
- 100 percent of deployments by the end of year 6

The FCC will publish revised location counts by the end of year six, and winning bidders must serve 100 percent of revised location counts by the end of year eight. Carriers with new location counts that exceed the original location count by more than 35 percent will have the opportunity to seek additional support or relief from the FCC. Carriers with fewer locations must report this to the FCC no later than March 1 following the fifth year of deployment and must complete deployment by the end of year six. Carriers with new location counts that are less than 65 percent of the original location count will see support reduced on a pro-rata basis.

Lumen won RDOF BID ID: 16 OR-029-0030023 ("the Jacksonville RDOF") in the RDOF Phase I Auction. The FCC opened bidding for the Jacksonville RDOF at about $1,000,000 and Lumen won it with a bid of about $650,000.[25] It should be noted that Lumen's participation in the RDOF program was voluntary, and it was incumbent upon Lumen to determine the cost to provide fiber to all customers in the Jacksonville RDOF and set its bid for funds accordingly. In Lumen's RDOF Program application, Lumen represented that it has "access to funds for all project costs that exceed the amount of Rural Digital Opportunity Fund support to be received."[26]

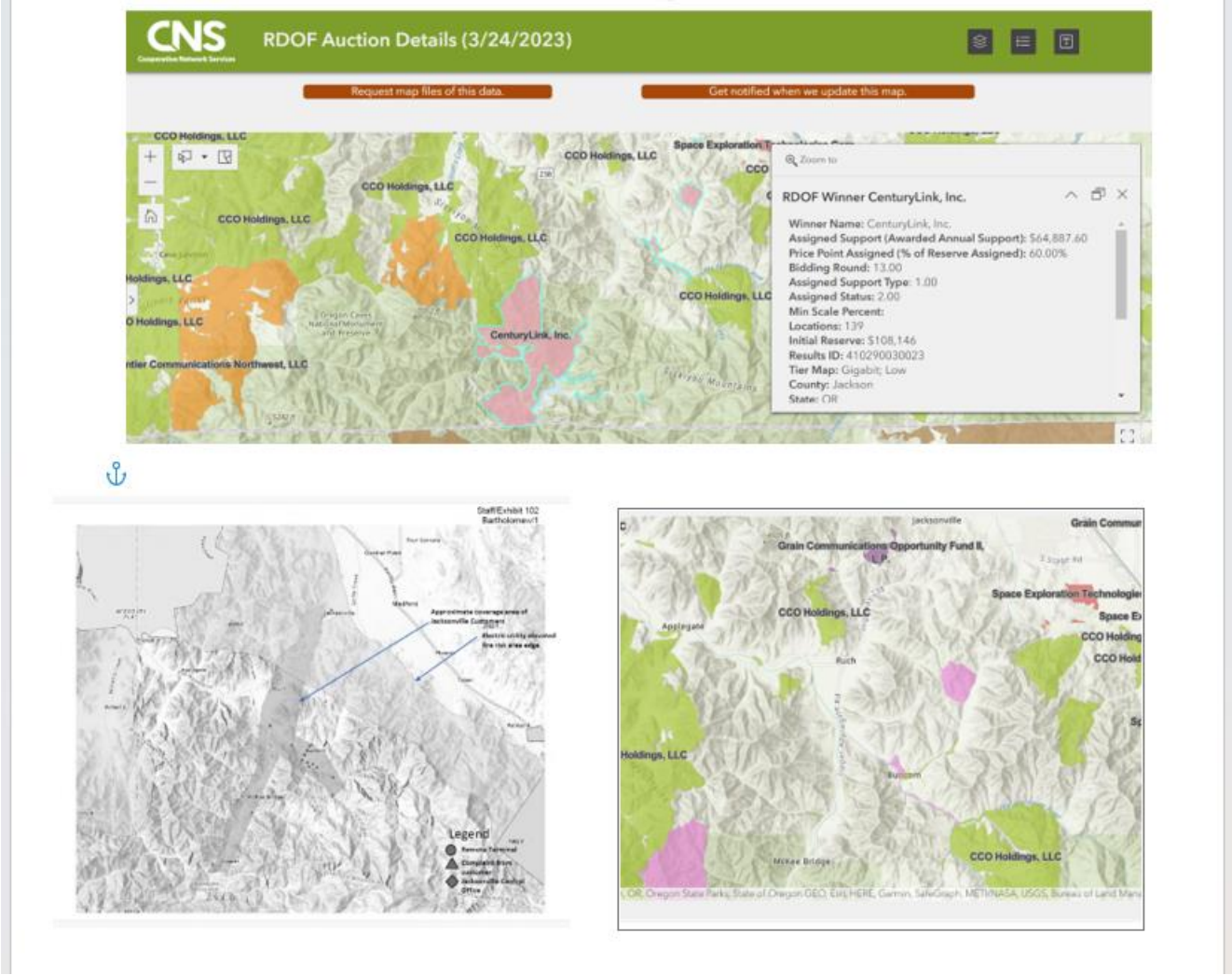
[24] *Id.*.
[25] *See* https://www.fcc.gov/reports-research/maps/auction-904-final-8oct20-eligible-areas/
[26] *See* Lumen's Response to Staff DR 43(a), CTL RDOF Project Funding and Lumen RDOF Project Funding Supplement.

A. Will the RDOF build provide fiber to all customers covered under the Jacksonville Orders?

No. The Stipulating Parties acknowledge this, although the number of customers that are covered by the Jacksonville Orders but will not receive access to fiber is not plainly stated. CUB expended considerable effort trying to understand exactly how many customers will or will not receive a fiber option through the RDOF build. CUB understands that some customers in the RDOF build area will not receive fiber and that "many" customers are outside the RDOF build area. Although the exact figure remains elusive, CUB offers the following figure, which compares the area covered by the Jacksonville Orders to the area of the RDOF build. Figure 2 shows that the RDOF build area[27] (the pink area of the image on the bottom right) only covers a fraction of the Company's Jacksonville service territory (shown in grayscale in the image on the bottom left[28]).

[27] *See* https://www.fcc.gov/reports-research/maps/auction-904-final-8oct20-eligible-areas/
[28] UM 1908 – Staff/Exhibit 102, Bartholomew/1.

Figure 2: Jacksonville Area RDOF Build Map



CUB suspects that a significant percentage of the customers covered by the Jacksonville Orders will not receive a fiber option and call upon the Stipulating Parties to plainly indicate how many Lumen customers covered by the Jacksonville Orders will not receive a fiber option through the RDOF build. This is a highly significant figure, because these customers will lose the protection of the Jacksonville Orders but still rely on varying amounts archaic infrastructure. And as the Commission acknowledged in Order No. 23-109:

> But, as CUB explains, it would be nonsensical to allow a telecommunications utility to ignore a small number of trouble reports indefinitely even if the utility were meeting the minimum service quality standards: "[t]o hold that the Commission does not have the power to protect customers from a utility's action or nonaction, whether the problems stem from 90%, 75%, or even 5% of the number of resolved service quality issues would be inconsistent with the Commission's role as a regulator.[29]

Q. For customers that don't receive a fiber option from the RDOF build, what is Lumen's plan and is it sufficient?

A. Service reliability for the customers who do not receive fiber remains a matter of speculation and uncertainty. The Stipulating Parties identify benefits *some* customers will receive based on the replacement of some central infrastructure through the RDOF build. They discuss what will be replaced but do not offer a complete account of what infrastructure will not be replaced or how many customers will still rely on it. The Stipulating Parties fail to identify the full scope of the remaining archaic infrastructure and the risk it will still pose to service reliability for the customers who will still rely on it.

Regarding a comprehensive solution for all customers, we are left to rely on Lumen's high-level plans. The Stipulating Parties state:

> For customers not within the RDOF build area, the Company plans to evaluate other technologies to improve service, such as a Adtran 1148VXP, Adtran TA5004, or TelLabs UMC1000.[30]

CUB is concerned that "plans to evaluate" technologies like this, with no timeline, cost analysis or assurances, will not result in urgently needed service reliability in a timely manner. CUB's concern is based on Lumen's history of simply invoking the possibilities of new technologies as a solution to an immediate issue, which resulted in the current

[29] Order No. 23-109 at 8.
[30] Stipulating Parties Testimony at Stipulating Parties/100 Beitzel and Gose/26.

predicament. If five or ten years ago it was understood that a fiber solution was still a long way off, and not a comprehensive cost-effective solution for the Jacksonville area, would stakeholders have tolerated Lumen's invocations that we must wait on fiber before implementing a proactive solution to the frequent service quality issues in Jacksonville?

Ultimately, CUB cannot rely on the Stipulating Parties' speculative assessment of how reliable Lumen's network will be for all customers after the RDOF build is complete. Customers should not be left without the full accountability of the Jacksonville Orders while Lumen is planning to evaluate the additional infrastructure upgrades required after the RDOF build. CUB argues that simply implementing the Price Plan and starting the RDOF build should not trigger suspension and/or termination of the Jacksonville Orders. No amount of planning should be sufficient; only *results* should suffice.

Q. How does the Stipulation build upon Lumen's existing obligations under the RDOF Program, if in fact it does?

A. The RDOF Program requires Lumen to offer fiber to *all* locations in the Jacksonville RDOF by the end of 2027 and complete 40% of deployments by the end of 2024.[31] CUB found evidence that program participants who default on their RDOF obligations can face steep penalties.[32]

First, it must be stated that the Stipulation does not require or incent Lumen to offer fiber to any customers beyond the RDOF build area, even though this means that many customers will still rely on archaic infrastructure. START CONFIDENTIAL [redacted]

[31] https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/
[32] *See* https://docs.fcc.gov/public/attachments/DOC-393039A1.pdf

[redacted] END

CONFIDENTIAL

Although the Stipulation does not attempt to up-negotiate the number of customers who will receive fiber, the Stipulation apparently attempts to accelerate Lumen's Jacksonville RDOF build timeline. The Stipulating Parties state:

[33] Lumen's Confidential Response to CUB DR 3(f).
[34] *See* https://www.fcc.gov/reports-research/maps/auction-904-final-8oct20-eligible-areas/

> The suspension of the Jacksonville Orders would happen at the start of the construction of the RDOF build. The suspension would last until the sooner of when the build is complete or December 31, 2024. A specific end date was chosen to incentivize the Company to act quickly related to this build.[35]

However, CUB argues that the Stipulation quite possibly has the opposite effect, and that the status quo provides greater incentive for Lumen to complete the RDOF build as soon as possible. Without the Stipulation, the Jacksonville Orders would continuously remain in effect, providing constant incentive for the Company to upgrade its archaic infrastructure, which is an imminent and potentially costly liability under the Jacksonville Orders. When viewed this way, the Stipulation offers Lumen two years of unwarranted *protection* from the Jacksonville Orders, and not added pressure to complete the RDOF build as soon as possible.

Furthermore, without the Stipulation, the Jacksonville Orders are not undermined by an agreement that the Orders will be terminated upon completion (according to a heretofore unclear standard) of the RDOF build. Rather, the Commission will retain the right to holistically determine if the Orders are still necessary *after* Lumen has completed the RDOF build *and* any other measures the Company must take to resolve the service quality issues in Jacksonville. The Stipulation deprives customers of a *results-based* Commission determination of whether the Jacksonville Orders are still needed, which they are currently entitled to, and replaces it with a significantly lower bar: Lumen completing its plans for the RDOF build.

[35] Stipulating Parties Testimony at Stipulating Parties/100 Beitzel and Gose/25.

Q. Does CUB have a proposal that would change its opposition to the Stipulation and if so, how does CUB's proposal address its concerns?

A. Yes. CUB proposes the following changes to the stipulation:

1. The Jacksonville Orders will remain in effect until Lumen has notified the Commission that it has completed the RDOF build and taken any other steps necessary to make its service for Jacksonville customers reliable and compliant with Oregon standards, and
2. Upon Lumen's notification in UM 1908 and no sooner than six months after the RDOF build is completed, the Commission will hold a public hearing to assess whether the Jacksonville Orders are still necessary, and
3. CenturyLink will file its monthly service quality reports by wire center as required under OAR 860-023-055(5) & (6) in UM 1908 and identify those wire centers serving Protected Customers.

CUB argues these changes are needed for the following reasons.

1. Under the current Stipulation, the Company could start the RDOF build but make no meaningful progress for two years, in which time the Jacksonville Orders would be suspended. This would nullify the stronger incentive of the Jacksonville Orders, leaving only the uncertain efficacy of the Price Plan and the RDOF Program's interim requirements, which exist outside the Stipulation. Conversely, CUB's proposal retains the full force of the Jacksonville Orders until the Commission determines that they are no longer necessary.
2. The Stipulating Parties have not shown that the RDOF build will comprehensively resolve Lumen's service quality issues for *all* or even *most* customers in the Jacksonville area. CUB has established that not all customers will receive a fiber option and it remains poorly investigated and unknown what service quality issues will remain for customers who do not receive fiber. Rather than speculate whether Lumen's RDOF build and the Price Plan will sufficiently resolve the service quality issues in Jacksonville, CUB argues that this should be assessed after Lumen has completed the RDOF build

and any other upgrades needed to provide reliable and compliant service. This shifts responsibility for the outcome of Lumen's plans onto Lumen, rather than transferring it customers, as the Stipulation does. CUB argues Lumen must remain responsible for the *outcome* of its plan and provide reliable service *before* the Jacksonville Orders are suspended or terminated. CUB's proposal sets this requirement.

It should be noted that CUB's proposal does not completely address our concerns and includes difficult concessions. First and foremost, our proposal accepts the Price Plan, even though we question the fairness in continuing to offer rate increases to a company that has failed to provide reliable service for over 10 years and has yet to begin implementing a comprehensive resolution. Allowing Lumen to receive rate increases while they remain in violation of the safety and service quality rules is a concession made on the backs of customers in order to try to incentivize compliance. There is a strong argument that allowing Lumen to receive rate increases while customers are not getting reliable service is not in the public interest. This concession is something CUB has struggled with and believes that to agree to this is a significant concession as part of a good faith effort to get Lumen to finally comply with the safety and service quality rules. We reluctantly accept this concession in the interest of establishing a long-term incentive for better service quality— i.e., tiered price increases tied to service quality performance metrics— although we are concerned that the strength of this new incentive is poorly understood, meaning it may be ineffective. Accordingly, we believe making the monthly report filing requirements public are central to ensuring the Company's accountability.

Further, guaranteeing Lumen the opportunity for a public hearing to assess the ongoing need of the Jacksonville Orders only six months after its RDOF build is complete is a

considerable concession on CUB's part. Lumen's current plan for the RDOF build will not provide fiber to all Jacksonville customers, meaning some customers will remain reliant on archaic infrastructure. If during the six-month period, the remaining archaic infrastructure is reliable, but shortly thereafter it falters, the Jacksonville Orders may already be terminated and the strongest incentive to Lumen to resolve the issues quickly will be gone. Jacksonville customers have endured unreliable service quality for years, putting their lives and livelihoods at risk, but Lumen may only have to wait six months after finally implementing its fiber plan to free itself of the Jacksonville Orders.

All told CUB seeks greater accountability from Lumen than the Stipulation provides and just incentives for Lumen to become a reliable service provider. CUB believes that while its proposal is not our preferred resolution, it is a significant improvement over the Stipulation. As a final note, CUB offers that the Commission may want to open an investigation into the adequacy of Lumen's Legacy Infrastructure statewide. Lumen has made similar promises to improve service quality in at least one other state and was determined to not follow its Stipulated commitment to comply with service quality rules. As a result, the Montana Public Service Commission has opened an investigation into the adequacy of the Company's Legacy Infrastructure.[36]

Q. Does CUB believe the Stipulation sufficiently address ongoing service quality issues statewide?

A. No. The Stipulation offers the Company price increases based upon service quality improvement metrics. CUB does not necessarily oppose concepts within the Price Plan.

[36] cite

CUB sees this as a novel mechanism to improve CenturyLink's long-term accountability. However, the revenue incentive under the Price Plan of various service quality scenarios are not clear. The revenue impacts under unacceptable service quality scenarios could easily be too weak to instigate sufficient reaction from CenturyLink. Put differently, under this new mechanism compliance is left to the will of the Company only and offers no guarantees of action. Accordingly, it results in weaker accountability than the Jacksonville Orders currently provide and arguably statewide.

Q. Given the analysis you have provide above, do you believe the Stipulation in the public interest?

A. No. While we believe the Stipulation is a good start but given history of service quality issues in Lumen's service territories statewide and the reality of archaic copper line infrastructure, CUB does not believe the Stipulation goes far enough to be deemed in the public interest.

Q. Does the Stipulation ensure the high quality of existing telecommunications services?

A. No, for at least three reasons. First, the Stipulation removes the protections for customers covered by the Jacksonville Orders prior to the proposed service quality solution being in place. Second, by leaving it up to Lumen to determine whether to seek the incentives of the Stipulation, there is no guarantee they will act to improve services, leaving Lumen with all the power and customers all the risk. Third, the Stipulating Parties have not presented evidence that the RDOF build will remedy the service quality issues for all customers its service territory covering Jacksonville and surrounding areas.

Q. Does the Stipulation ensure prices for telecommunications services that are just and reasonable?

A. Not really. While these tiered increases should incentivize the Company to come into compliance with service quality rules, as addressed above, allowing price increases while the Company is out of compliance with the rules is a concession on the backs of Lumen customers who have been paying for reliable service which is not being delivered reliably. There is a strong argument that allowing Lumen to receive rate increases while customers are not getting reliable service is not in the public interest. CUB's preference would be that until the Company starts following the baseline, it should not be rewarded with price increases. However, given it is an attempt to incentivize compliance, we are willing to try it, but would like the Commission to direct the Company to file its monthly Trouble Ticket and Repair Clearing Time reports as required under OAR 860-023-055, in this docket for timely public review.

Q. Does the Stipulation simplify regulation?

A. No. As discussed above, suspending, and eventually terminating the Jacksonville Orders will require those customers or Intervenors to bring an action to the Commission to reinstate the orders or, after termination, open a new investigation. Whereas these processes could take from a few months to over a year to come to a resolution, keeping the Jacksonville Orders in place will provide a much quicker process as seen by the Commission's response to the Labor Day outages this year.

The Stipulation also dilutes the statewide wire center TT and RCT reporting into an average of statewide monthly reporting data and an average of the Protected Customer

report monthly data. Aggregating this reporting dilutes issues in smaller community service quality issues. Rather than submitting these averages' reports or requiring customers or Intervenors to request to review monthly reporting data, CUB's solution is to modify the Stipulation to state that the Company must file its monthly TT and RCT reports in this docket and identify which wire centers are serving Protected Customers. This, along with keeping the Orders in place, creates a more simplified process than the Stipulation provides.

Q. Does CUB have any other objections to the Stipulation?

A. No.

Q. What resolution would result in a decision that would be in the public interest?

A. As stated earlier in my testimony, CUB offers the following modifications to the Stipulation for the Commission's consideration in its order:

1. The Jacksonville Orders will remain in effect until Lumen has notified the Commission that it has completed the RDOF build and taken any other steps necessary to make its service for Jacksonville customers reliable and compliant with Oregon standards, and
2. Upon Lumen's notification in UM 1908 and no sooner than six months after the RDOF build is completed, the Commission will hold a public hearing to assess whether the Jacksonville Orders are still necessary, and
3. CenturyLink will file its monthly service quality reports by wire center as required under OAR 860-023-055(5) & (6) in UM 1908 and identify those wire centers serving Protected Customers.

CUB's proposal shifts the risk of the Stipulation failing to resolve the Company's service quality issues from customers to the Company. Put differently, if between the Price

Plan and the RDOF build, customers still aren't receiving adequate service, they are not left high and dry without the Jacksonville Orders. Instead, the Company will remain compelled to finish the job, and fulfil its service obligations, before the Jacksonville Orders are lifted. CUB argues that this level of customer protection is absolutely warranted given the unacceptable experience Jacksonville

III. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

WITNESS QUALIFICATION STATEMENT

NAME: John Garrett

EMPLOYER: Oregon Citizens' Utility Board

TITLE: Utility Analyst

ADDRESS: 610 SW Broadway, Suite 400
Portland, OR 97205

EDUCATION: Master of Public Policy
Oregon State University, Corvallis, OR

BA, Molecular Biology and Geography
Colgate University, Hamilton, NY

EXPERIENCE: Provided testimony on behalf of the Oregon Citizens' Utility Board (CUB) for docket UG 461 and comments for dockets LC 81, LC 83, UM 2056 and UM 2033. Worked as a Graduate Researcher for Oregon State University examining the socio-economic impacts of renewable energy development in Oregon. Worked as a Research Assistant for the Archbold Biological Station Agro-ecology Research Ranch examining the socio-economic impacts of conservation polices on Floridian agriculturalists.

MEMBERSHIP: National Association of State Utility Consumer Advocates