



# Oregon

Tina Kotek, Governor

**Public Utility Commission**

201 High St SE Suite 100

Salem, OR 97301-3398

**Mailing Address:** PO Box 1088

Salem, OR 97308-1088

503-373-7394

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BY EMAIL

Qwest Corporation, dba Centurylink QC

robyn.m.crichton@lumen.com

RE: Advice No. C02-2025

At the public meeting on May 27, 2025, the Commission adopted Staff's recommendation in this matter docketed as ADV 1714. The Staff Report is attached. Staff recommended the Commission take no action. If the Commission does not act within 90 days of the filings, the special contracts are deemed approved.

Alison Lackey

Chief Administrative Law Judge

Public Utility Commission of Oregon

(503) 400-2861



unbundled and priced separately from all other facilities and service elements in the contract. Such noncompetitive service elements shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms, and conditions.

ORS 759.210 states if the commission determines that a tariff filing under ORS 759.175 (filing rate schedules and data with commission) results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

- a. Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates; and
- b. Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the telecommunications utility.

ORS 759.260(1) states except as provided in ORS 759.265 (practices not constituting unjust discrimination), no telecommunications utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

- a. That prescribed in the public schedules or tariffs then in force or established; **or**
- b. It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances. A difference in rates or charges based upon a difference in classification pursuant to ORS 759.210 (Classification of service and rates) shall not constitute a violation of this paragraph.

## Analysis

### *Review Procedures*

Although the form of regulation that applies to Qwest changed November 12, 2008, pursuant to ORS 759.255 and the regulatory plan allowed by the Commission under Order Nos. 08-408 and 14-346 (UM 1354) and under Order Nos. 18-359 and 24-113 (UM 1908), its services offered through special contracts remain fully regulated. Thus, Qwest special contracts for its regulated services are still subject to ORS 759.250. This statute allows telecommunications utilities to enter into special contracts with customers without being subject to standard tariff filing procedures under ORS 759.175. In addition, these contracts are not subject to hearings (ORS 759.180) or suspension (ORS 759.185).

ORS 759.250 outlines the requirements for approval of telecommunications special contracts, which are as follows:

1. The contract service must be a new service with limited availability, respond to a unique customer requirement, or be subject to competition.
2. Prices must exceed the long run incremental cost (LRIC) of providing the service.
3. Telecommunications utilities are required to file special contracts no later than 90 days following the effective date of the contract. Contracts must not exceed five years, and ORS 759.250 does not permit automatic contract renewals.
4. The Commission shall issue an order on the filed contract within 90 days of the filing. If the Commission does not act within 90 days of the filing, the contract is deemed approved. Staff understands that if a telecommunications utility does not provide sufficient evidence to support the contract under ORS 759.250, staff may recommend that the Commission reject the contract.

Two areas of importance in assessing special contracts were identified in Order No. 92-651 in Docket No. UM 254, a generic docket to consider procedures and guidelines for special contract filings. The order specifies that in assessing special contracts the Commission must consider the reasonableness of the contract rates and whether the rates result in unjust discrimination. The statutes that underlie these areas of concern are ORS 759.210 (classification of service and rates) and ORS 759.260 (unjust discrimination).

Staff's analysis regarding conformance with ORS 759.210 is twofold. First, Staff determines if a special contract rate class is developed by the telecommunications utility for one or more of the following reasons: a) the quantity of the contract service used; b) the purpose for which the contract service is used; c) whether price competition or a service alternative exists; d) the contract service being provided; e) the conditions of contract service; or f) other reasonable considerations. Second, staff determines if the special contract results in revenue sufficient to prevent costs from being shifted to remaining customers.

To determine conformance with ORS 759.260, Staff determines if the special contract avoids unjust discrimination and is dependent upon the outcome of the analyses outlined above. The statute does not restrict the Commission from subsequent scrutiny of the reasonableness of special contracts for ratemaking purposes.

#### *Timeliness*

ORS 759.250(2) requires Qwest to file special contracts within 90 days after they become effective. However, in late 2024, Qwest became aware that numerous special contract arrangements dating back to 2020 had inadvertently not been filed with the

Commission. The contracts discussed in this memorandum were filed more than 90 days after their respective effective dates. However, Staff finds no evidence that the late filing caused harm to any party.

#### *Contracted Services*

Integrated Services Digital Network Primary Rate Service (ISDN-PRS) consists of 23 bearer (B)-channels and one data (D)-channel, for a total transmission rate of 1.544 Megabits per second (Mbps). It is designed for transmission through a T1 facility. Each 64 Kilobits per second (Kbps) B-channel carries user information such as voice calls, circuit-switched data, or video. The D-channel is a 64 Kbps channel that is used to carry the control or signaling information.

Metro Optical Ethernet Service (MOE) is a flexible transport service that uses established Ethernet transport technology. MOE allows customers to connect multiple enterprise locations within a service area using Ethernet protocol. MOE supports transmission speeds ranging from 5 Mbps (Megabits per second) to 1 Gbps (Gigabits per second) in increments of 10 Mbps (between 10 to 100 Mbps) and in increments of 100 Mbps (between 100 to 1,000 Mbps/1 Gbps).

#### *Contracts*

Qwest's tariff does not offer discounts that are as large as those proposed in these special contracts, and thus, the contracts provide the customer unique rates for the contract services. The company also considers the contract services to be competitive.<sup>1</sup> If Qwest does not provide the contract services, a number of competitors would be able to provide the services. The filings state that the company will give the discounted prices to any similarly situated customer requesting it.

The company submitted financial analyses that show the proposed rates cover the company's estimated LRIC for the contract service(s).

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<sup>1</sup> Commission Order No. 96-021 gave the company pricing flexibility, pursuant to ORS 759.050, in exchanges that comprise competitive zones.

**Docket No. ADV 1712/Advice No. C01-2025**

Qwest proposes approval of five 12-month contracts for ISDN-PRS, as follows.

<b>Effective Date</b>	<b># Units</b>	<b>Contract Rate</b>	<b>Tariff Rate</b>	<b>Discount</b>
2/21/2022	1	\$615.00	\$775.00	21%
9/27/2022	1	\$472.00	\$775.00	39%
8/4/2023	5	\$450.00	\$775.00	42%
2/27/2023	7	\$481.00	\$775.00	38%
8/23/2024	8	\$332.50	\$775.00	57%

These contracts were filed on March 5, 2025. Pursuant to ORS 759.250, the Commission has 90 days from the date of filing to terminate the effectiveness of a special contract. For this filing, the end of the 90-day statutory period would be June 3, 2025. However, Staff notes that, based on the effective dates and 12-month term length, only one of these contracts (beginning August 23, 2024) currently remains in effect.

**Docket No. ADV 1714/Advice No. C02-2025**

Qwest proposes approval of three 36-month contracts for ISDN-PRS, as follows.

<b>Effective Date</b>	<b># Units</b>	<b>Contract Rate</b>	<b>Tariff Rate</b>	<b>Discount</b>
7/25/2022	3	\$325.00	\$625.00	48%
7/25/2022	1	\$325.00	\$625.00	48%
11/9/2022	1	\$299.00	\$625.00	52%

These contracts were filed on March 12, 2025. Pursuant to ORS 759.250, the Commission has until June 10, 2025, to terminate the effectiveness of these contracts.

**Docket No. ADV 1717/Advice No. C03-2025**

Qwest proposes approval of two 12-month contracts for ISDN-PRS, as follows.

<b>Effective Date</b>	<b># Units</b>	<b>Contract Rate</b>	<b>Tariff Rate</b>	<b>Discount</b>
3/25/2022	1	\$554.00	\$775.00	29%
3/21/2022	2	\$550.00	\$775.00	29%

These contracts were filed on April 9, 2025. Pursuant to ORS 759.250, the Commission has until July 8, 2025, to terminate the effectiveness of these contracts. However, Staff

notes that based on the term length and effective dates, these contracts are no longer effective.

**Docket No. ADV 1718/Advice No. C04-2025**

Qwest proposes approval of three 36-month contracts for MOE, as follows.

<b>Effective Date</b>	<b># Units</b>	<b>Bandwidth</b>	<b>Contract Rate</b>	<b>Tariff Rate</b>	<b>Discount</b>
7/20/2022	1	200 Mbps	\$850.00	\$1,775.70	52%
10/18/2024	1	600 Mbps	\$1,150.00	\$3,778.30	70%
10/23/2024	1	600 Mbps	\$1,150.00	\$3,778.30	70%

The two contracts with a 600 Mbps bandwidth also provide Ethernet Virtual Circuits (EVC) at a monthly rate of \$25 each, which represents a 50 percent discount off the regular rate of \$50.

These contracts were filed on April 9, 2025. Pursuant to ORS 759.250, the Commission has until July 8, 2025, to terminate the effectiveness of these contracts.

Conclusion

Staff has investigated these filings and finds that they comply with Order No. 92-651 (Docket No. UM 254) and the memorandum of understanding between staff and the company referenced in the order, the contracted services are subject to competition, the contract prices cover the company's cost for each respective service, and the company would offer the discounted contract prices to any similarly situated customer requesting them.

**PROPOSED COMMISSION MOTION:**

Take no action with regard to these filings. Pursuant to ORS 759.250, if the Commission does not act within 90 days of the filings, these special contracts are deemed approved.