

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of) DOCKET NO. 06-2204-01
Qwest Communications Corporation and)
OnFiber Communications, Inc., for)
Approval to Transfer Control of OnFiber) ORDER APPROVING TRANSFER OF
Carrier Services, Inc., to Qwest) CONTROL
Communications Corporation)

SYNOPSIS

The Commission finds the proposed transfer of control of OnFiber Carrier Services, Inc., to be in the public interest and approves the same.

ISSUED: July 25, 2006

By The Commission:

PROCEDURAL HISTORY

On May 26, 2006, Qwest Communications Corporation (“QCC”) and OnFiber Communications, Inc. (“OnFiber Communications”) (hereinafter jointly referred to as “Applicants”) filed a Joint Application (“Application”) pursuant to *Utah Code Ann.* §§ 54-4-28 and -29 seeking Commission approval of the proposed transfer of control of OnFiber Carrier Services, Inc. (“OnFiber Services”) (together with OnFiber Communications hereinafter referred to as “OnFiber”), a wholly owned operating subsidiary of OnFiber Communications, from OnFiber Communications to QCC. Applicants request expedited treatment of the Application to permit consummation of the proposed transaction as soon as possible.

On July 7, 2006, the Division of Public Utilities (“Division”) filed a memorandum of its investigation of the proposed transfer recommending approval of the same.

DISCUSSION, FINDINGS, AND CONCLUSIONS

QCC is a Delaware corporation whose principal office and place of business is located in Denver, Colorado. QCC is an affiliate of Qwest Corporation (“QC”), and both QCC and QC are wholly-owned by the same ultimate corporate parent, Qwest Communications International, Inc. (“QCI”, together with QCC and QC hereinafter referred to as “Qwest”), a Delaware corporation.

Qwest, through one or more affiliates, provides voice, video and data services throughout the United States. Qwest’s broadband network spans more than 180,000 miles across the U.S. and globally. Qwest, through one or more affiliates, is authorized by the Federal Communications Commission (“FCC”) to provide interstate and international telecommunications services and, through one or more affiliates, is authorized to provide various forms of telecommunications services in all 50 states and the District of Columbia. In Utah, QCC is authorized to provide public telecommunications services, including local exchange services, pursuant to a Certificate of Public Convenience and Necessity issued by the Commission on August 21, 1995, in Docket No. 94-2204-01.

OnFiber Communications is a Delaware corporation whose principal office and place of business is located in Austin, Texas. OnFiber Communications is a privately-held company whose principal investors include financial institutions and venture capital funds. OnFiber serves only the highly competitive retail and wholesale markets for customized, point-to-point high-capacity data services for enterprise customers and carriers. OnFiber does not serve any aspect of the residential market or sell switched voice services. OnFiber, through its

subsidiaries, creates, delivers and manages custom designed network infrastructure solutions using a full suite of optical transport technologies including Wavelength, Ethernet, and SONET Services. OnFiber provides these services through its AdaptiveBuild® process, through which OnFiber combines existing sources of fiber with new construction to design and implement optical end-to-end solutions for enterprise customers and providers of communications services.

OnFiber is authorized by the FCC to provide interstate telecommunications services, and OnFiber Communications' operating subsidiaries are authorized to provide various forms of telecommunications services in a total of 26 states and in the District of Columbia. In Utah, OnFiber Services is authorized to provide public telecommunications services pursuant to a Certificate of Public Convenience and Necessity issued by the Commission on July 19, 2004, in Docket No. 03-2323-01.

Pursuant to Applicants' Agreement and Plan of Merger, OnFiber Communications will become a direct, wholly-owned subsidiary of QCC, an affiliate of QC, and an indirect, wholly-owned subsidiary of QCI. OnFiber Services will remain a wholly-owned subsidiary of OnFiber Communications, and thus will be an indirect wholly-owned subsidiary of QCC.

Applicants assert the proposed transaction will serve the public interest as a catalyst to the expansion and enhancement of QCC's and OnFiber's capabilities out-of-region. It will also improve their ability to compete against larger entities in the provision of interstate data services to corporations and carriers on a national scale, ensuring that customers receive innovative, high-quality services at market rates. The transfer of control will not adversely affect

competition in Utah since OnFiber provides only jurisdictionally interstate services in Utah. Furthermore, the current customers of OnFiber will continue to receive service under current contracts, without any change in the current rates, terms and conditions of service. The Division concurs.

Utah Administrative Code Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission “determines that the matter can reasonably be expected to be unopposed and uncontested.” We note that more than a month has passed since Applicants filed their Application yet no party has sought intervention in this matter. We therefore view this matter as unopposed and uncontested and conclude it is in the public interest to proceed informally without hearing. Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Based upon the evidence submitted by Applicants, as well as the Division’s recommendation, and pursuant to *Utah Code Ann.* §§ 54-4-28 and -29, we find and conclude that the proposed transfer of control will not harm and can provide benefits to the State of Utah, its citizens, or to Applicants’ Utah customers and is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.

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2. The proposed transfer of control of OnFiber Carrier Services, Inc., is approved.
3. The transfer herein effected be, and it is, effective the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 25th day of July, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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