

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)	<u>DOCKET NO. 07-049-21</u>
Qwest Communications Corporation and)	
OnFiber Carrier Services, Inc., for)	<u>DOCKET NO. 07-2323-01</u>
Approval of Pro Forma Reorganization)	
and For Other Necessary Relief)	
)	<u>ORDER APPROVING PRO FORMA</u>
)	<u>RESTRUCTURING AND CANCELING</u>
)	<u>CERTIFICATE UPON SURRENDER</u>

SYNOPSIS

The Commission finds the proposed corporate restructuring involving Qwest Communications Corporation (“QCC”) and OnFiber Carrier Services, Inc. (“OnFiber”) to be in the public interest and approves the same. OnFiber and QCC having jointly requested cancellation of OnFiber’s certificate of public convenience and necessity (“certificate”) upon consummation of the proposed restructuring, and no detriment to the public interest appearing, the Commission approves said cancellation effective upon QCC’s surrender of said certificate.

ISSUED: August 1, 2007

By The Commission:

PROCEDURAL HISTORY

On June 6, 2007, Qwest Communications Corporation (“QCC”) and OnFiber Carrier Services, Inc. (“OnFiber”) (hereinafter jointly referred to as the “Applicants”) filed a Joint Application for Approval of Pro Forma Reorganization (“Application”) seeking Commission approval of an internal corporate restructuring of QCC and OnFiber whereby OnFiber; its immediate corporate parent, OnFiber Communications, Inc.; and its two affiliates, Info-Tech Communications and OnFiber Carrier Services–Virginia, Inc., will merge with and into QCC with QCC emerging as the surviving corporation. The Application further states QCC will notify the Commission once the proposed restructuring is complete and at that time

surrender OnFiber's certificate of public convenience and necessity ("certificate") to provide service in Utah. Thus, as part of its request for approval of the proposed restructuring, this Application also seeks Commission consent to surrender OnFiber's certificate and withdraw its state tariff(s) or price lists upon consummation of the restructuring, as well as any other relief necessary and appropriate to effectuate the restructuring.

On July 16, 2007, the Division of Public Utilities ("Division") filed a memorandum of its investigation of the proposed restructuring, recommending approval of the same conditioned upon QCC incorporating into its tariff or price lists the rates, terms and conditions of service in OnFiber's tariff or price lists to the extent those rates, terms and conditions do not already appear in QCC's tariff or price lists and subject to QCC's ability to modify them in the future pursuant to Utah law.

DISCUSSION, FINDINGS, AND CONCLUSIONS

QCC is a Delaware corporation whose principal office and place of business is located at 1801 California Street, Denver, Colorado 80202. QCC is an affiliate of Qwest Corporation ("QC"), an Incumbent Local Exchange Carrier in 14 western states, and both QCC and QC are wholly-owned by the same ultimate corporate parent, Qwest Communications International Inc. ("QCII"), a publicly traded Delaware corporation.

QCC is an indirect corporate parent of OnFiber and provides competitive voice, video and data services principally to retail and wholesale enterprise, government and business customers throughout the United States. QCC is authorized to provide various forms of telecommunications services in all 50 states, in Puerto Rico and in the District of Columbia. In

Utah, QCC is authorized to provide CLEC services pursuant to a certificate issued by this Commission on August 21, 1995, in Docket No. 94-2204-01.

OnFiber is a Delaware corporation whose principal office and place of business is located at 1801 California Street, Suite 5100, Denver, Colorado, 80202. OnFiber is a direct, wholly-owned subsidiary of OnFiber Communications, Inc. (“OnFiber, Inc.”), which in turn is a direct, wholly-owned subsidiary of QCC. OnFiber therefore is an indirect subsidiary of QCC, and, consequently, is wholly-owned by QCII, the same ultimate corporate parent that owns QCC.

OnFiber provides customized, point-to-point, high-capacity data transport services in the highly competitive retail and wholesale markets targeting enterprise customers and carriers. OnFiber does not serve any aspect of the residential market and does not provide switched voice services. OnFiber and its subsidiaries operate in 20 metropolitan markets across the U.S., serving a total of approximately 250 retail enterprise and wholesale carrier customers nationwide, each of which is served pursuant to a negotiated contract addressing its specific telecommunications needs.

OnFiber and its affiliates are authorized to provide various forms of telecommunications services in a total of 25 states and in the District of Columbia. In Utah, OnFiber is authorized to provide jurisdictionally intrastate services pursuant to certificate issued July 19, 2004, in Docket No. 03-2323-01. However, throughout the course of its business in Utah, OnFiber has only provided jurisdictionally interstate services, primarily customized, point-to-point, high-capacity data services.

QCC acquired OnFiber, together with its corporate parent and affiliates, on August 31, 2006. As a result of that acquisition, OnFiber became, and remains today, an indirect, wholly-owned subsidiary of QCC. Consistent with the requirements of *Utah Code Ann.* §§ 54-4-28 and -29, QCC and OnFiber sought and received the approval of the Commission prior to the consummation of their merger. The Commission approved QCC's acquisition of OnFiber on July 25, 2006, in Docket No. 06-2204-01.

Since acquiring OnFiber, QCC has concluded to undertake an internal corporate restructuring that will consolidate and streamline the operations of both companies. QCC and OnFiber intend to effectuate their internal corporate restructuring through the merger of OnFiber and its affiliates into OnFiber, Inc., and the simultaneous merger of OnFiber, Inc., into QCC.

Following the completion of these two steps, QCC will incorporate into its tariff the rates, terms and conditions of service in OnFiber's tariffs or price lists, to the extent those rates, terms and conditions do not already appear in QCC's tariffs or price lists and subject to QCC's ability to modify them in the future pursuant to Utah law. Applicants assert QCC's existing tariffs already can accommodate, to the extent necessary and appropriate, the provision of service under the same rates, terms and conditions as those in the OnFiber tariff(s). QCC will honor the current rates, terms and conditions of OnFiber's existing customer contracts during the terms of those contracts.

Applicants state the proposed restructuring will serve the public interest because it will reduce the administrative burdens associated with operating multiple entities whose businesses and operations overlap and thus are duplicative, producing a more efficient corporate

structure that will allow QCC and its affiliates to devote resources to the provision of improved services to end users and enhance QCC's ability to compete in the already fiercely competitive telecommunications marketplace. Applicants also assert the proposed restructuring will reduce the number of certificated entities subject to regulation by this Commission, thereby freeing up scarce public resources. Finally, Applicants state the proposed restructuring will in no way adversely affect competition in Utah since QCC and OnFiber already operate under the same corporate umbrella and because OnFiber currently provides only jurisdictionally interstate service in Utah such that the restructuring will have no effect on the number of competitors that are actively competing in the market for local or intrastate services in Utah. In addition, because OnFiber currently serves only one Utah customer, the market for interstate services in Utah will likewise be materially unaffected by the restructuring.

The Division concludes the proposed restructuring will not affect the services, terms, and conditions offered by OnFiber to its sole Utah customer and, therefore, recommends approval of the Application.

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 in the two months since filing of the Application 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 also 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.

Wherefore, 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 corporate restructuring will not harm and can provide benefits to the State of Utah, its citizens, and to Applicants' Utah customers and is in the public interest. Furthermore, as OnFiber currently serves only one commercial customer within the State of Utah and the rates, terms, and conditions upon which said customer obtains service will not change as a result of the proposed restructuring, it appears the requested surrender of OnFiber's certificate will cause no detriment to the public interest. Therefore, the Commission hereby issues the following

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.
2. The proposed corporate restructuring described *supra* whereby OnFiber Carrier Services, Inc., will merge with and into Qwest Communications Corporation is approved.
3. The approval granted herein is effective as of the date of this Order.
4. Upon consummation of the restructuring approved herein, Qwest Communications Corporation shall surrender to the Commission the Certificate of Public Convenience and Necessity issued to OnFiber Carrier Services, Inc., on July 19, 2004, in Docket

DOCKET NOS. 07-049-21 & 07-2323-01

-7-

No. 03-2323-01. Said Certificate shall be, and it is, cancelled and annulled effective the date of said surrender.

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 1st day of August, 2007.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#54077 Docket No. 07-049-21
G#54140 Docket No. 07-2323-01