

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 21, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (M. Watts) *M. Watts*
Office of the General Counsel (R. Mann) *R. Mann*

RE: Docket No. 070335-TP – Joint application for approval of pro forma reorganization whereby OnFiber Carrier Services, Inc., holder of CLEC Certificate No. 7521 and IXC Registration No. TJ391, will merge with and into Qwest Communications Corporation, holder of CLEC Certificate No. 5801 and IXC Registration No. TI215; request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C.; request for cancellation of CLEC Certificate No. 7521 and IXC tariff and Registration No. TJ391; and request for other necessary relief.

AGENDA: 07/10/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\070335.RCM.DOC

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Case Background

On May 24, 2007, OnFiber Carrier Services, Inc. (OCS) and Qwest Communications Corporation (QCC), both competitive local exchange telecommunications companies (CLECs) and intrastate interexchange companies (IXCs), submitted a joint request for a waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code.

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OCS is merging with QCC, and QCC is acquiring 21 business customers currently served by OCS. QCC seeks the waiver so that it will not have to obtain each customer's authorization. With the waiver, QCC can protect itself from possible complaints of unauthorized carrier changes (slamming). Customers will benefit because they will not be subject to a loss of service during the transfer.

In the petition, OCS also requested that its IXC registration and CLEC certificate be canceled upon completion of the transaction. QCC stated in its petition that it would be responsible for OCS's 2007 IXC and CLEC regulatory assessment fees upon cancellation of OCS's IXC Registration No. TJ391 and CLEC Certificate No. 7521. This recommendation addresses only the requests for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, for the transfer of customers served pursuant to each certificate/registration.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of OnFiber Carrier Services, Inc.'s customers to Qwest Communications Corporation?

Recommendation: Yes, the Commission should approve the request for waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. **(M. Watts/R. Mann)**

Staff Analysis: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXC's.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part;

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and

subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

QCC has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to OCS' customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, QCC stated in its petition that it would be responsible for resolving any outstanding complaints from OCS customers should any arise. To date, the Commission has not received any customer complaints against OCS for local or long distance service.

Further, neither OCS nor QCC has any outstanding regulatory assessment fees, penalties or interest associated with its IXC registration or CLEC certification.

Staff believes that in this instance it is appropriate to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their local and long distance services. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of OnFiber Carrier Services, Inc.'s customers to Qwest Communications Corporation.

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Issue 2: Should this docket be closed?

Recommendation: This docket should remain open pending notification from the company of the completion of its merger transaction and the cancellation of CLEC Certificate No. 7521 and IXC Registration No. TJ391. Upon completion of these actions, this docket should be closed administratively. **(R. Mann)**

Staff Analysis: This docket should remain open pending notification from the company of the completion of its merger transaction and the cancellation of CLEC Certificate No. 7521 and IXC Registration No. TJ391. Upon completion of these actions, this docket should be closed administratively.