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From: D'Amico, Kathleen A. [KDAmico@abelband.com]
Sent: Friday, June 22, 2007 12:28 PM
To: Filings@psc.state.fl.us
Cc: Denman, Steven; Melinda Watts; Barbara.brohl@qwest.com
Subject: Emailing: Corrected Joint Application for Approval of Pro Forma Reorganization.pdf

Attachments: Corrected Joint Application for Approval of Pro Forma Reorganization.pdf



Corrected Joint Application fo...

Please find attached the corrected joint application for approval of pro forma reorganization to be filed in Docket No.: 070335-TP. This document is being filed on behalf Qwest Communication Corporation and is 10 pages.

The message is ready to be sent with the following file or link attachments:

Corrected Joint Application for Approval of Pro Forma Reorganization.pdf

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<<Corrected Joint Application for Approval of Pro Forma Reorganization.pdf>>

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FPSC-COMMISSION CLERK

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Please refer to our file number: 12896-6

June 22, 2007

***Via Electronic Filing:***

Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

***Re: Qwest Communication Corporation and OnFiber Carrier Services, Inc.  
Joint Application for Approval of Pro Forma Reorganization  
Docket No.: 070335-TP***

Dear Ms. Cole:

At the request of staff, we are filing a Revised Joint Application for Approval of Pro Forma Reorganization (without attachments) and (*nunc pro tunc*) correcting typographical errors relating to rule citations in Section IV on Pages 7 and 8 regarding the above matter.

Thank you for your assistance in this regard and should you require any additional information, please do not hesitate to contact me.

Very truly yours,

ABEL BAND, CHARTERED

/s/ Steven H. Denman

Steven H. Denman

SHD:kd

Enclosure

Copy to: Barbara J. Brohl (via email)  
Melinda Watts (via email)

SARASOTA, FLORIDA

VENICE, FLORIDA

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Joint Application of )  
 )  
Qwest Communications Corporation )  
 )  
and ) Docket No. 070335-TP  
 )  
OnFiber Carrier Services, Inc. )  
 )  
For Approval of Pro Forma Reorganization, for a )  
Waiver of Rule 25-4.118, Fla. Admin. Code, )  
if necessary, and for Other Necessary Relief )

**CORRECTED JOINT APPLICATION FOR APPROVAL OF  
PRO FORMA REORGANIZATION**

By this Joint Application and pursuant to Fla. Stat. § 364.33 and Rule 25-4.118, *Fla. Admin. Code* (2005), Qwest Communications Corporation (“QCC”) and OnFiber Carrier Services, Inc. (“OnFiber”) (together, the “Applicants”), hereby request Commission consent to the proposed transaction, discussed below, which will be undertaken to effectuate an internal corporate restructuring of OnFiber and QCC. The restructuring transaction will not require transferring OnFiber’s Florida certificates to QCC. OnFiber also requests Commission consent to cancel OnFiber’s certificate of authority and registration and to withdraw OnFiber’s intrastate tariffs upon consummation of the restructuring transaction; and a waiver of Rule 25-4.118, *Fla. Admin. Code* (2005), to the extent such relief is necessary and appropriate, to allow for the transfer of customers from OnFiber to QCC.

Granting this Application will serve the public interest. The proposed corporate restructuring will decrease the number of certificated entities subject to the Commission’s oversight and will consolidate their operations into a single entity in Florida. Specifically, the

proposed restructuring will merge OnFiber, its immediate corporate parent,<sup>1</sup> and its affiliates<sup>2</sup> with and into QCC, with QCC emerging as the surviving corporation. The administrative burden on the Commission's resources presented by the separate existence of QCC and OnFiber, therefore, will be substantially reduced as a result of the restructuring. The restructuring also will benefit competition in Florida by permitting QCC and OnFiber, both of which operate in a fiercely competitive environment, to consolidate their operations. This restructuring will enable QCC to realize administrative efficiencies and to reduce the costs associated with maintaining multiple operating entities in Florida, thereby improving its ability to compete in an already highly competitive market for telecommunication services.

All OnFiber customers affected by the proposed restructuring will be notified of their transfer to QCC, and no material rates, terms or conditions of service enjoyed by these customers – all of whom are enterprise customers served pursuant to negotiated contracts and customized arrangements – will change as a result of the restructuring. In short, the proposed restructuring will benefit the Commission, the Applicants, and their customers. Granting this Application, therefore, is in the public interest.

## **I. Description of the Applicants.**

### **A. QCC**

QCC is a Delaware corporation whose principal office and place of business is located at 1801 California Street, Denver, Colorado 80202. Copies of QCC's Articles of Incorporation and

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<sup>1</sup> OnFiber's immediate corporate parent is OnFiber Communications, Inc.

<sup>2</sup> OnFiber has two affiliates that also provide telecommunications services, although not in Florida. The first is *Info-Tech Communications*, which provides services only in California and the second is *OnFiber Carrier Services – Virginia, Inc.*, which provides services only in Virginia.

Certificate of Authority to Transact Business in Florida are on file as a public matter of record with this Commission.

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 Delaware corporation whose stock is publicly traded on the New York Stock Exchange under the symbol “Q.”<sup>3</sup>

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 Florida, QCC is authorized to provide alternative local exchange services, interexchange services, and operator services pursuant to Certificates of Public Convenience and Necessity issued by this Commission.<sup>4</sup>

#### **B. OnFiber**

OnFiber is a Delaware corporation whose principal office and place of business is located at 1801 California Street, Suite 5100, Denver, Colorado, 80202. Copies of OnFiber’s Articles of Incorporation and Certificate of Authority to Transact Business in Florida are on file as a matter of public record with this Commission.

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<sup>3</sup> A copy of QCII’s most recent SEC Form 10-K can be found at <http://phx.corporate-ir.net/phoenix.zhtml?c=119535&p=IROL-secToc&TOC=aHR0cDovL2NjYm4uMTBrd2l6YXJkLmNvbS94bWwvY29udGVudHMueG1sP2lwYWdlPTQ2NTE3MzEmcmVwbz10ZW5r>.

<sup>4</sup> See Docket No. 931054-TI (March 3, 1994) Certificate No. 3534; Docket No. 890381-TI (July 26, 1989) Certificate No. 2300; Docket No. 900300TI (October 11, 1990), Certificate No. 2479; Docket No. 990439-FOF-TX (March 25, 1999) Certificate No. 5801; Docket No. 96-0613-FOF-TX (May 29, 1996) Certificate No. 4400; Docket No. T-93-415 (August 19, 1993).

OnFiber is a direct, wholly-owned subsidiary of OnFiber Communications, 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,<sup>5</sup> 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.<sup>6</sup> In Florida, OnFiber is authorized to provide alternative local exchange services and interexchange services pursuant to Certificates of Public Convenience and Necessity issued by this Commission,<sup>7</sup> and is registered as an interexchange services carrier (IXC) pursuant to Rule 25-24.470, *Fla. Admin. Code* (2005).

## II. DESIGNATED CONTACTS

For the purposes of this Application, contacts for the Applicants are as follows:

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<sup>5</sup> Some of these customers only lease dark fiber from OnFiber.

<sup>6</sup> OnFiber and/or its affiliates currently hold authority in the District of Columbia and the following states: Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington and West Virginia.

<sup>7</sup> See Certificate No. 7521 (ALEC), Order PSC-00-1473-CO-TX (August 15, 2000), and Certificate No. 7522 (IXC), Order PSC-00-1555-CO-TI (August 28, 2000).

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Copies of all correspondence, notices and orders pertaining to this Application also should be sent to:

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### **III. DESCRIPTION OF THE INTERNAL CORPORATE RESTRUCTURING**

QCC acquired OnFiber, together with its corporate parent and affiliates, on August 31, 2006. As a result of that acquisition, OnFiber became – and to this day remains – an indirect, wholly-owned subsidiary of QCC. A diagram depicting the current corporate relationship between QCC and OnFiber can be found in Attachment 1.

Since acquiring OnFiber, QCC has concluded to undertake an internal corporate restructuring that will consolidate and streamline the operations of both companies. The



restructuring transaction will not require transferring OnFiber's Florida ALEC certificate to QCC. QCC and OnFiber intend to effectuate their internal corporate restructuring through the following successive and effectively simultaneous steps:

1. *Merger of OnFiber into OnFiber Communications, Inc.*

OnFiber, together with its affiliates, will merge with and into their immediate corporate parent, OnFiber Communications, Inc. ("OnFiber Inc."), with OnFiber Inc. emerging as the surviving corporation.

2. *Merger of OnFiber Inc. into QCC*

OnFiber Inc. will merge with and into QCC, with QCC emerging as the surviving corporation.

Following the completion of the two steps in this restructuring described above, QCC will incorporate into its tariff the rates, terms and conditions of service in OnFiber's tariffs, to the extent those rates, terms and conditions do not already appear in QCC's tariffs and subject to QCC's ability to modify them in the future pursuant to Florida law.<sup>8</sup> QCC will honor the current rates, terms and conditions of OnFiber's existing customer contracts during the terms of those contracts. QCC's Florida ALEC certificate and IXC registration will permit the provision of the same telecommunications services to OnFiber's customers as currently provided under OnFiber's Certificate No. 7521 and IXC registration.

As part of its request for approval of the proposed internal corporate restructuring, OnFiber seeks Commission consent to cancel its ALEC certificate of authority, pursuant to Rule 25-24.820, *Fla. Admin. Code* (1995), and to cancel OnFiber's IXC registration, pursuant to Rule 25-4.474, *Fla. Admin. Code* (2005), effective upon consummation of the restructuring transaction. As required by those rules, OnFiber provides the following information:

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<sup>8</sup> 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).

(a) QCC intends to pay any unpaid Florida regulatory assessment fees for OnFiber, including any associated penalties and interest, within thirty (30) days after closing the restructuring transaction.

(b) Upon consummation of the transaction, OnFiber proposes to cancel Certificate No. 7521 and its IXC registration in Florida, because the restructuring transaction described in this Application will result in the ultimate merger of OnFiber and its direct parent corporation with and into QCC, with QCC emerging as the surviving corporation. QCC's Florida ALEC certificate and IXC registration will permit the provision of the same telecommunications services to OnFiber's customers as currently provided under OnFiber's Certificate No. 7521 and IXC registration.

(c) Since QCC will be the surviving corporation, all customer deposits made by customers to OnFiber that have not been returned will be transferred to QCC. No final bills will be rendered as a result of this restructuring transaction.

(d) Since QCC will continue to provide telecommunications services to OnFiber's customers in Florida, no discontinuance of service is associated with this cancellation and it is unnecessary to provide any individual customer notice regarding discontinuance of service.

Upon consummation of the restructuring transaction, OnFiber and QCC will surrender OnFiber's Certificate No. 7521 and IXC registration to provide services in Florida.

As part of its request for approval of the proposed internal corporate restructuring, this Application also seeks Commission consent to withdraw OnFiber's Florida tariffs upon consummation of the restructuring transaction, as well as any other relief necessary and appropriate to effectuate the restructuring. A diagram depicting QCC's proposed post-transaction ownership structure can be found in Attachment 2. QCC will notify this Commission once the proposed internal corporate restructuring transaction has been completed.

#### **IV. COMPLIANCE WITH CUSTOMER AUTHORIZATION REQUIREMENTS**

As required by applicable FCC rules, 47 C.F.R. § 64.1120(e)(3), and Rule 25-4.118, *Fla. Admin. Code Ann.* (2006), OnFiber customers will be notified in writing of their proposed transfer from OnFiber to QCC. This written notification will be provided to affected customers at least thirty [30] days in advance of the proposed transfer. A copy of the form customer notice

letter to be provided, which complies with the disclosure obligations set forth in the FCC's rules, can be found in Attachment 3. To the extent Rule 25-4.118 provides for a different format or procedure for notifying affected customers, Applicants respectfully request a waiver of such requirements, in order to allow for the transfer of customers from OnFiber to QCC.

## **V. PUBLIC INTEREST STATEMENT**

The proposed internal corporate restructuring is being undertaken to further the integration of OnFiber and QCC. QCC acquired OnFiber principally as a catalyst to the expansion and enhancement of QCC's capabilities outside of the QC 14-state region in the western United States. By acquiring OnFiber – and now by consolidating its business and operations into one entity – QCC is continuing to improve its ability to compete against other, larger entities in the provision of services to corporations and carriers on a national scale.

The proposed restructuring also will reduce the administrative burdens associated with operating multiple entities whose businesses and operations overlap and thus are duplicative. In fact, a more efficient corporate structure will allow QCC and its affiliates to devote resources to the provision of improved services to end users. This, in turn, will enhance QCC's ability to compete in the already fiercely competitive market for telecommunications services to enterprise, government and other customers in Florida. The proposed restructuring also will reduce the number of certificated entities subject to regulation by this Commission, thereby freeing up scarce public resources.

## VI. CONCLUSION

For the reasons stated above, Applicants respectfully submit that grant of this Application will advance the public interest, convenience and necessity. In light of the undeniable benefits that will result from the proposed restructuring, Applicants respectfully request expedited review and approval of this Application and all other relief necessary or appropriate to effectuate the restructuring.

Dated: May 23, 2007

Respectfully submitted,

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