



PUBLIC NOTICE

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DA 06-1291
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DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF ONFIBER, INC. TO QWEST COMMUNICATIONS CORPORATION

NON-STREAMLINED PLEADING CYCLE ESTABLISHED WC Docket No. 06-111

Comments Due: July 5, 2006
Reply Comments Due: July 12, 2006

On May 22, 2006, OnFiber Communications, Inc. (“OnFiber Inc.”) and Qwest Communications Corporation (“QCC”) (together, “Applicants”) filed an application pursuant to section 63.04 of the Commission’s rules¹ requesting authority to transfer control of OnFiber Carrier Services, Inc., OnFiber Carrier Services–Virginia, Inc., and Info-Tech Communications (collectively, and together with OnFiber Inc., “OnFiber”) to QCC.² Each of the three transferors is a wholly-owned operating subsidiary of OnFiber Inc. and is authorized to provide domestic interstate services.

OnFiber Inc., a Delaware corporation, is the parent corporation. The three wholly-owned operating subsidiaries of OnFiber Inc. are: (1) OnFiber Services Inc., a Delaware corporation; (2) OnFiber Carrier Services–Virginia, Inc., a Virginia corporation; and (3) Info-Tech Communications, a California corporation. According to the Applicants, OnFiber provides customized, high-bandwidth dedicated services and other services to approximately 250 enterprise and carrier customers nationwide. It serves customers over all-fiber facilities in 19 major metropolitan areas, including Atlanta, Austin, Boston, Chicago, Cincinnati, Dallas, Houston, Los Angeles, Miami, New York, Philadelphia, Sacramento, San Francisco/San Jose, and Washington, D.C. Additionally OnFiber has unlit facilities in Orlando, Tampa, San Diego and St. Louis. According to the Applicants, although OnFiber operates metropolitan fiber facilities in five of the largest cities in the Qwest region, namely Denver, Portland,

¹ 47 C.F.R § 63.04; *see* 47 U.S.C. § 214.

² *See* Joint Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to the Transfer of Control of OnFiber Carrier Services, Inc., OnFiber Carrier Services–Virginia, Inc., and Info-Tech Communications to Qwest Communications Corporation, WC Docket No. 06-111 (filed May 22, 2006); Amendment to Joint Application to Transfer Control of Domestic Section 214 Application, WC Docket No. 06-111 (filed June 14, 2006). The Applicants have filed a simultaneous application for Commission consent to transfer control of OnFiber’s millimeter wave band license, call sign WQBE975. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

Phoenix, Seattle, and Salt Lake City, the large majority of OnFiber's customers and facilities are located outside the 14-state Qwest Corporation region. OnFiber does not provide any switched voice services.

The following entities own or control 10% or more of the equity of OnFiber: Bear Stearns Merchant Banking (11%) and Kleiner Perkins Caufield & Byers (30%).

QCC, a Delaware corporation, is a wholly-owned subsidiary of Qwest Communications International Inc. ("Qwest"), a holding company and its ultimate corporate parent. QCC is authorized to provide domestic interstate and international telecommunications services to customers in the United States. QCC is also authorized by various state commissions to provide intrastate telecommunications services throughout its areas of operation. Qwest operates as an incumbent local exchange carrier in a 14-state region that includes all or a portion of the following states: Arizona, Colorado, Idaho, Iowa, Montana, Minnesota, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

The following U.S.-based entities or persons own or control 10% or more of the equity in QCC or Qwest: Philip F. Anschutz (16%); Capital Research and Management Company (15%); Investment Adviser Subsidiaries of Legg Mason, Inc. (14%), and FMR Corp. (13%).

On May 12, 2006, QCC and OnFiber Inc., together with certain of their parents and affiliates, entered into an agreement and plan of merger pursuant to which QCC will become the direct corporate parent of OnFiber Inc. and, as a result, the indirect corporate parent of OnFiber Inc.'s operating subsidiaries. Pursuant to the terms of this agreement, QCC and its parent, Qwest, have agreed to acquire all of the capital stock of OnFiber Inc. in exchange for \$107 million, with QCC and Qwest having the option until the closing date of substituting up to \$35 million of Qwest's shares for cash. Qwest will create a new, wholly-owned subsidiary called Quality Telecom, Inc. ("Quality Telecom"), which will become a direct, wholly-owned subsidiary of QCC. Following consummation of the proposed transaction, OnFiber Inc. will be merged with and into Quality Telecom whereupon OnFiber Inc. will emerge as the surviving entity and the separate corporate existence of Quality Telecom shall cease. As a result, OnFiber Inc. will become a direct, wholly-owned subsidiary of QCC and an indirect wholly-owned subsidiary of Qwest. The boards of directors of Qwest and OnFiber Inc. have approved or ratified the agreement, as appropriate. The Applicants have recognized that this application does not qualify for streamlined treatment but request expedited processing to permit an early closing.

Applicants state that the proposed transaction will serve the public interest, convenience, and necessity because it will enhance Qwest's ability to compete in the enterprise and carrier markets outside of its 14-state region. As discussed above, the application states that OnFiber today owns or controls metropolitan fiber network facilities, typically in the form of fiber rings, in 14 of the nation's largest markets outside of Qwest's region, with expansion facilities in four additional out-of-region markets. Applicants claim that, of OnFiber's approximately 250 customers nationwide, all but 39 obtain service outside the Qwest incumbent local exchange region. Similarly, the Applicants state that, of the approximately 483 buildings nationwide served today by OnFiber, the overwhelming majority are outside of the Qwest region.

Further, the Applicants state that the transaction will not have an adverse effect on competition within the Qwest region, since OnFiber faces competition from other carriers, such as AT&T and Verizon/MCI, which operate larger fiber rings than OnFiber in each of the five Qwest in-region cities where OnFiber operates. Finally, the Applicants state that OnFiber has fiber into only 71 buildings in the

Qwest region, and alternative providers are present in all but five of those buildings where OnFiber has lit fiber and provides service to a customer.³ In the case of those five buildings in which Qwest and OnFiber are currently the only providers, the Applicants state that at least one other third party owns or controls a cable nearby.

GENERAL INFORMATION

The transfer of control application referenced herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies.

Pursuant to section 1.1200(a) of the Commission's rules,⁴ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.⁵

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁶ More than a one- or two-sentence description of the views and arguments presented is generally required.⁷ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.⁸ We urge parties to use the Electronic Comment Filing System ("ECFS") to file *ex parte* submissions.⁹

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments **on or July 5, 2006** and reply comments **on or before July 12, 2006**.¹⁰ Persons and entities that file comments become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a

³ Additionally, the Applicants state that OnFiber has lit fiber to one building but does not currently have any customers. In that case, the Applicants state that at least one other third party owns or controls a cable nearby. Finally, the Applicants identify 11 buildings where OnFiber leases dark fiber to a customer where there are no additional fiber providers to the building.

⁴ 47 C.F.R. § 1.1200(a).

⁵ *Id.* § 1.1206.

⁶ *See* Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Rcd 19945 (2000).

⁷ *See* 47 C.F.R. § 1.1206(b)(2).

⁸ *Id.* § 1.1206(b).

⁹ *See* discussion *infra*.

¹⁰ *See* 47 C.F.R. § 63.03(a).

protective order,¹¹ seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

¹¹ *See* Qwest Communications Corporation and OnFiber Communications, Inc. *Application for Approval of Transfer of Control*, Protective Order, DA 06-XXX (rel. XXX, 2006).

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- 1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- 2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: Cecilia.seppings@fcc.gov;
- 3) Gail Cohen, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C111, Washington, D.C. 20554; e-mail: gail.cohen@fcc.gov;
- 4) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: jim.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, please contact Cecilia Seppings at (202) 418-1588, or Gail Cohen at (202) 418-0939.

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