

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Joint Application of)	
)	
Qwest Communications Corporation)	
)	
and)	Case No. TM-2006-0452
)	
OnFiber Communications, Inc.)	
)	
For Approval to Transfer Control of)	
OnFiber Carrier Services, Inc., to)	
Qwest Communications Corporation)	
and For Other Necessary Relief)	

JOINT APPLICATION AND MOTION FOR EXPEDITED TREATMENT

By this Joint Application and pursuant to Section 392.300, RSMo., and the Rules of the Missouri Public Service Commission ("Commission") including 4 CSR 240-2.060, 4 CSR 240-2.080 (16) and 4 CSR 240-3.520 through 3.535, and contingent on the Commission accepting jurisdiction over this matter,¹ Qwest Communications Corporation ("QCC") and OnFiber Communications Inc. ("OnFiber Inc.") (together, the "Applicants"), hereby request Commission approval of, or such authority as may be necessary or required for, the proposed transfer of control of OnFiber Carrier Services, Inc., a wholly-owned subsidiary of OnFiber Inc. certificated by this Commission, to QCC (the "Transfer of Control").

Although the proposed transaction will result in a change in the ownership of OnFiber Carrier Services, Inc., no transfer of certificates, assets or customers will

¹ As described more fully below, Applicants believe that the proposed Transfer of Control may not be within the jurisdiction of the Commission. Nevertheless, Applicants file this Application out of an abundance of caution should the Commission determine otherwise.

occur as a consequence. Accordingly, this transaction will be transparent to the customers of OnFiber served in Missouri.

Applicants request that the Commission act expeditiously so that Applicants can consummate the proposed Transfer of Control as soon as possible in order to meet important business objectives. In requesting expedited treatment of this Joint Application, Applicants state that this Joint Application is being filed as soon as was possible. Negotiations resulting in this transaction were only very recently concluded. All necessary regulatory approvals are now being sought as expeditiously as possible by the Applicants.

Applicants emphasize that the proposed indirect transfer of control will be seamless and completely transparent to OnFiber's customers, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. Accordingly, Applicants request that the Commission commence its examination of the proposed transfer as soon as possible.

In support of their Application, the Applicants state as follows:

I. INTRODUCTION AND SUMMARY

On May 12, 2006, QCC and OnFiber Inc., together with certain of their parents and affiliates, entered into an Agreement and Plan of Merger ("Agreement") pursuant to which QCC will become the direct corporate parent of OnFiber Inc. and, as a result, the indirect corporate parent of OnFiber Carrier Services, Inc. (the "Transaction").² The terms and conditions of the Agreement are summarized in Section IV below.

² In the event the Commission assumes jurisdiction over the Transfer of Control, or upon request by the Commission, the Applicants will provide a copy of the Agreement, subject to its redaction and protection as a Highly Confidential document.

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 operates in 19 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.³

The Transaction will have no material impact on the market for telecommunications services in Missouri because only one OnFiber enterprise/wholesale customer is served by OnFiber in Missouri, and, as explained more fully in Section V below, that customer today benefits from multiple competitive alternatives.

The Transaction is intended to ensure that the post-Transaction company will be better positioned to succeed in the highly competitive and increasingly global telecommunications marketplace. In the key markets in which OnFiber operates, both companies must compete against much larger, better-financed competitors such as AT&T, BellSouth, Verizon and other carriers. By combining forces, Applicants will have a better opportunity to compete against these carriers.

Both QCC and OnFiber's operating subsidiary, OnFiber Carrier Services, Inc., already are authorized to provide intrastate telecommunications in Missouri, and the financial, managerial and technical capabilities of QCC and its affiliates are a matter

³ Some of these customers lease only dark fiber from OnFiber.

of record before the Commission.⁴ In short, prompt approval of the Transfer of Control will serve the public interest.

II. DESCRIPTION OF APPLICANTS

A. QCC

QCC is a Delaware corporation whose principal office and place of business is located at 1801 California Street, Denver, Colorado 80202, attention Jeff Wirtzfeld, Telephone 303-896-0032, Fax 303-896-2726, email j.wirtzfeld@qwest.com. QCC is in the business of providing telecommunications services. **QCC** is an indirect, wholly-owned subsidiary of Qwest Communications International Inc. ("QCII," and together with QCC, "Qwest"), a Delaware corporation whose stock is publicly traded on the New York Stock Exchange under the symbol "Q." A copy of QCII's most recent annual report on SEC Form 10-K is available upon request, and can also be found at <http://www.sec.gov/Archives/edgar/data/1037949/000119312506033720/d10k.htm>.

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 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.

⁴ Because QCC is acquiring OnFiber in its entirety, the customers of OnFiber – all of whom are, as previously noted, sophisticated large consumers of telecommunications who purchase services pursuant to negotiated contract – will not experience any change in provider and their rates, terms and conditions of service will not change. As a result, no anti-slamming or bulk customer transfer rules are implicated by the Transfer of Control.

In Missouri, Qwest is authorized to provide basic local, interexchange and private payphone service under two corporate names, Qwest Communications Corporation and Qwest Interprise America, Inc., under certificate of service authority granted by this Commission.⁵ Information concerning the legal, technical, managerial and financial qualifications of QCC to provide telecommunications service in Missouri was submitted with Qwest's applications for certification and is, therefore, a matter of public record. Qwest respectfully requests that the Commission take official notice of that information and incorporate it herein by reference pursuant to 4 CSR 240-2.060(1)(G).

A copy of QCC's Certificate of Authority to Transact Business in Missouri is also on file as a matter of public record with this Commission. Applicants respectfully request that the Commission take official notice of that certificate and incorporate it herein by reference pursuant to 4 CSR 240-2.060(1)(G).

B. OnFiber

OnFiber Inc. is a Delaware corporation whose principal office and place of business is located at 11921 N. Mopac Expressway, Suite 100, Austin, Texas, 78759, attention Jonathan Radin, Telephone 512-651-7300, Fax 512-651-7310, email jonathan.radin@onfiber.com. OnFiber is in the business of providing telecommunications services. OnFiber Inc. is a privately-held company whose principal investors include financial institutions and venture capital funds. As explained in

⁵ See, Qwest Communications Corporation (basic local exchange service), MoPSC Case No. TA-2000-309 (Order effective June 13, 2000); Qwest Interprise America, Inc. (IXC), MoPSC Case No. TO-2002-168 (Order effective November 15, 2001); and Qwest Interprise America, Inc. (Payphone), Case No. TA-2002-119 (Order effective October 1, 2001).

Section I, OnFiber serves only the highly competitive retail and wholesale markets for customized, point-to-point data services for single- and multi-location enterprise customers and carriers. OnFiber does not serve any aspect of the residential market and does not provide 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 large corporate enterprise customers and providers of communications services.

OnFiber is authorized by the FCC to provide interstate telecommunications services, and OnFiber's operating subsidiaries are authorized to provide various forms of telecommunications services in a total of 26 states⁶ and the District of Columbia. In Missouri, OnFiber Carrier Services, Inc. is authorized to provide interexchange and non-switched local exchange telecommunications services pursuant to certificate of service authority issued by this Commission.⁷ A copy of OnFiber Carrier Services, Inc.'s Certificate of Authority to Transact Business in Missouri is also on file as a matter of public record with this Commission. Applicants respectfully request that the Commission take official notice of that certificate and incorporate it herein by reference pursuant to 4 CSR 240-2.060(1)(G).

⁶ OnFiber Inc.'s operating subsidiaries currently hold authority in the District of Columbia and the following states: Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington and West Virginia.

⁷ See, MoPSC Case No. TA-2000-709 (Order effective March 26, 2001).

III. CONTACT INFORMATION

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

For QCC:	For OnFiber:
<p>William D. Steinmeier Mary Ann (Garr) Young William D. Steinmeier, P.C. 2031 Tower Drive Jefferson City, Missouri 65109 Tel: (573) 659-8672 Fax: (573) 636-2305 wds@wdspc.com myoung0654@aol.com</p> <p>Lynn A. Stang Associate General Counsel Qwest Services Corporation 1801 California Street Denver, Colorado 80202 Tel: (303) 383-6611 Fax: (303) 295-7069 Lynn.Stang@qwest.com</p>	<p>Jonathan Radin Vice President, Legal and External Affairs OnFiber Communications, Inc. 3031 Corvin Drive Santa Clara, CA 95051 Tel: (408) 962-2915 Fax: (408) 962-2919 Jonathan.Radin@onfiber.com</p>
<p>Peter A. Rohrbach Yaron Dori Hogan & Hartson L.L.P. 555 13th Street NW Washington, D.C. 20004 Tel: (202) 637-5600 Fax: (202) 637-5910 PARohrbach@hhlaw.com YDori@hhlaw.com</p>	<p>Suzanne Toller Treg Tremont Davis Wright Tremaine, LLP One Embarcadero Center, Suite 600 San Francisco, CA 94111-3611 Tel: (415) 276-6500 Fax: (415) 276-6599 SuzanneToller@dwt.com TregTremont@dwt.com</p>

IV. DESCRIPTION OF THE TRANSACTION

Pursuant to the terms of the Agreement, Qwest has agreed to acquire all of the capital stock of OnFiber Inc. in exchange for \$107 million, with Qwest having the option up until closing to substitute up to \$35 million of Qwest shares for cash. To effectuate the acquisition, QCII will create a new, wholly-owned subsidiary called

Quality Telecom, Inc. (“Quality Telecom”), which will become a direct, wholly-owned subsidiary of QCC. Upon receipt of required regulatory approvals, satisfaction of various other conditions, and consummation of the 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 QCII. OnFiber Carrier Services, Inc. will remain a wholly-owned subsidiary of OnFiber Inc., and thus will be an indirect wholly-owned subsidiary of QCC. The boards of directors of Qwest and OnFiber have approved or ratified the Agreement.⁸

V. PUBLIC INTEREST STATEMENT

The Transfer of Control and the Transaction of which it is a part will serve the public interest because they will serve as a catalyst to the expansion and enhancement of QCC’s and OnFiber’s capabilities in Missouri. At its core, the Transaction marks the ongoing evolution of two competitive carriers – QCC and OnFiber – and is intended to improve their ability to compete against larger entities in the provision of interstate data services to corporations and carriers on a national scale. Absent the Transaction, QCC and OnFiber would have to compete individually and alone in these markets against much larger carriers who have far greater resources. QCC’s acquisition of OnFiber will ensure that the two companies together can grow their positions responsibly, ensuring that customers receive innovative, high-quality services from them at market rates.

⁸ Organizational charts depicting the corporate structure of QCC and OnFiber Inc. before and after the Transaction can be found in Exhibit A.

Meanwhile, the Transaction will not be detrimental to the public interest in Missouri. First, competition for intrastate services will not be adversely affected because, as previously noted, the customized, end-to-end services that OnFiber provides are used primarily for interstate applications. Second, competition will not be affected – even in the interstate market – because OnFiber Carrier Services, Inc. provides limited service only to one customer in Missouri. Third, the services OnFiber Carrier Services, Inc. provides and the market it serves in Missouri already are subject to significant competitive forces that would not be reduced materially as a result of the Transaction.

These facts, individually and in the aggregate, demonstrate that QCC's acquisition of OnFiber will result in no material reduction in the level of competition for the provision of customized, dedicated, point-to-point data services to enterprise and wholesale customers in Missouri. At the same time, the proposed combination will enhance the size, scale and resources of the combined company to enable it to better compete against larger competitors – particularly on a national scale.

Because control of OnFiber will transfer to QCC without any change in the structure of the existing OnFiber entities, the current customer of OnFiber Carrier Services, Inc. will continue to receive service under its current contract, without any change in the current rates, terms and conditions of service. For all these reasons, the proposed Transfer of Control will not result in a detriment to the public interest.

VI. ADDITIONAL INFORMATION REQUIRED BY RULES

Pursuant to the requirements of 4 CSR 240-2.060(K), Applicants state that they do not have any pending or unsatisfied final judgments or decisions against them

in any state or federal agency or court which involve customer service or rates, which action, judgment or decision occurred within the last three (3) years.

Pursuant to the requirements of 4 CSR 240-2.060(L), Applicants state that, to the best of their knowledge, they have no annual report or assessment fees that are overdue.

Pursuant to the requirements of 4 CSR 240-3.520(F), Applicants state that they do not anticipate that the proposed transaction will have any impact on tax revenues of any political subdivision in which structures, facilities or equipment of the Applicants are located.

VII. JURISDICTION OF COMMISSION OVER PROPOSED TRANSFER OF CONTROL

As described below, Applicants believe that the Commission does not have jurisdiction over the proposed Transfer of Control, which conclusion is consistent with prior Commission decisions. However, Applicants file their application for approval under Section 392.300 RSMo., out of an abundance of caution in case the Commission determines that the statute applies to the proposed transfer. Whether or not the Commission ultimately determines that it has jurisdiction over this transfer, Applicants request that such a decision be made promptly and if approval is necessary, that it be granted in an expedited fashion so that Applicants can complete their transaction in a timely fashion.

A. Applicability of Section 392.300 RSMo

Under Section 392.300.1 RSMo, the Commission must approve the sale by any telecommunications company of “any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public” or any, direct or

indirect, merger of such line or system, or franchise, or any part thereof, with any corporation, person or public utility. This section would appear to apply to the transfer of assets of a telecommunications company or the merger of a telecommunications company with another telecommunications company. On its face, however, Section 392.300.1 does not apply to the instant Transfer of Control, which results in the transfer of an ownership interest in a certificated company (OnFiber) but does not otherwise affect the certificated entity or its assets. The Missouri-certificated telecommunications company here, OnFiber Carrier Services, Inc., is not selling any part of its franchise, facilities or system. Rather, the holding company which owns OnFiber Carrier Services, Inc. is being acquired by QCC. OnFiber will continue to do business in Missouri exactly as before the transaction. This transfer, therefore, falls outside the scope of Section 392.300.1.

The Commission has, under Section 392.300.2, jurisdiction over transactions in which a stock corporation intends to buy more than 10% of the capital stock issued by a telecommunications company organized or existing under or by virtue of the laws of Missouri. Neither OnFiber Inc. nor OnFiber Carrier Services, Inc. is organized or existing under or by virtue of the laws of Missouri, but under the laws of Delaware. Section 392.300.2, therefore, does not apply to the transfer of control at issue in this Application. In addition, the Commission specifically granted both QCC and OnFiber Carrier Services, Inc. waivers from the requirements of Section 392.300.2 in their certificates of service authority.

B. The Commission has Found a Lack of Jurisdiction Over Similar Transactions

The Commission has previously found that the Commission does not have jurisdiction over transactions similar to the Applicants' proposed Transfer of Control. Earlier this month, the Commission determined that it lacked jurisdiction over the acquisition of a Missouri-certificated telecommunications company by a foreign telecommunications company in a case with virtually identical facts to the instant one, emphasizing that "the transfer of control does not affect the operations of the certificated entity." *In re the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC for Approval of a Transfer of Control of Electric Lightwave, LLC*, Order Dismissing Joint Application, Case NO. TM-2006-0362 (May 2, 2006). In its *Order Dismissing Joint Application* in that case, the Commission conducted an evaluation of the application of Sections 393.300.1 and 393.300.2 to the facts, an evaluation that fits the instant facts, as well. Since OnFiber Carrier Services, Inc. will retain all of its assets after the transaction, and is a Delaware company, neither subsection of Section 393.300 applies to the facts of this case to give the Public Service Commission of Missouri jurisdiction.

In addition, "the Commission has consistently interpreted the Union Pacific case [*Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917)] as stating that the Commission lacks jurisdiction where the transfer of control does not affect the operations of the certificated entity."⁹ The transfer of control

⁹ *In re the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC for Approval of a Transfer of Control of Electric Lightwave, LLC*, Order Dismissing Joint Application, Case NO. TM-2006-0362 (May 2, 2006) (citing *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917)).

proposed in this case clearly would not affect the operations of the certificated entity. Commission precedent,¹⁰ therefore, dictates that the Commission should dismiss this Application for lack of jurisdiction.

VIII. CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by the Transfer of Control proposed herein. Applicants respectfully request that the Missouri Public Service Commission determine that the proposed transfer is not jurisdictional to the Commission; or, in the alternative, that the proposed transfer would not result in a detriment to the public interest under Missouri law and that this Joint Application should be approved by the Commission. Applicants respectfully request expedited treatment to permit Applicants to complete the Transfer of Control as soon as possible.

¹⁰ See also *In re Joint Application of NEXTLINK Missouri, Inc. and NEXTLINK Long Distance Services, Inc. for Approval of the Pro Forma Transfers of Control of NEXTLINK Missouri, Inc. and NEXTLINK Long Distance Services, Inc. from NEXTLINK Communications, Inc. to NM Acquisition Corp.*, Case No. TM 2000-524, Order Granting Staff's Motion to Dismiss for Lack of Jurisdiction (March 31, 2000).

Respectfully submitted,

/s/ William D. Steinmeier

William D. Steinmeier, MoBar #25689
Mary Ann (Garr) Young, MoBar #27951
WILLIAM D. STEINMEIER, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City, Missouri 65110-4595
Phone: 573-659-8672
Fax: 573-636-2305
Email: wds@wdspc.com
myoung0654@aol.com

ATTORNEYS FOR
QWEST COMMUNICATION CORPORATION
AND ONFIBER COMMUNICATIONS, INC.

Dated: May 26, 2006

Certificate of Service

I hereby certify that a copy of this document has been electronically transmitted to the Office of the General Counsel of the Missouri Public Service Commission, and to the Office of Public Counsel, on this 26th day of May 2006.

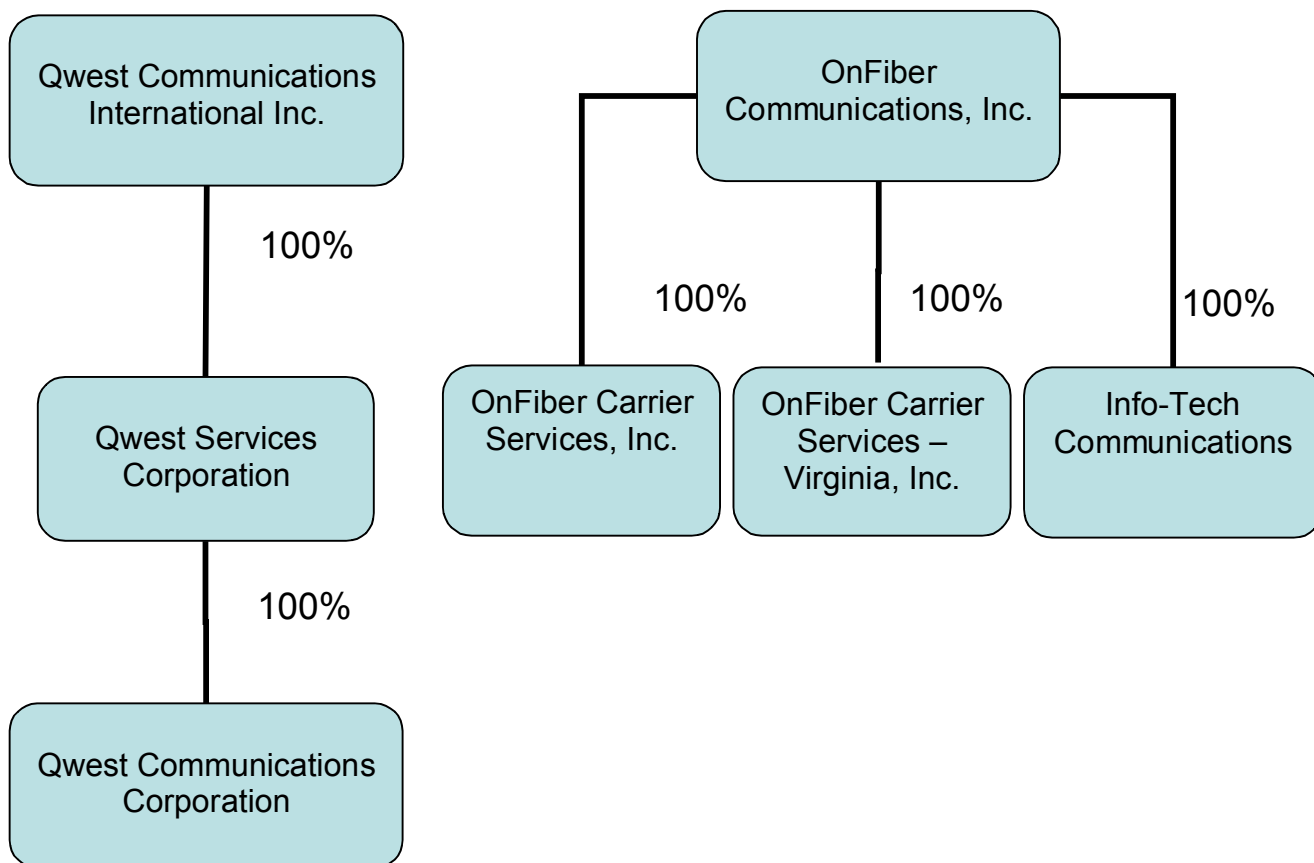
/s/ William D. Steinmeier

William D. Steinmeier

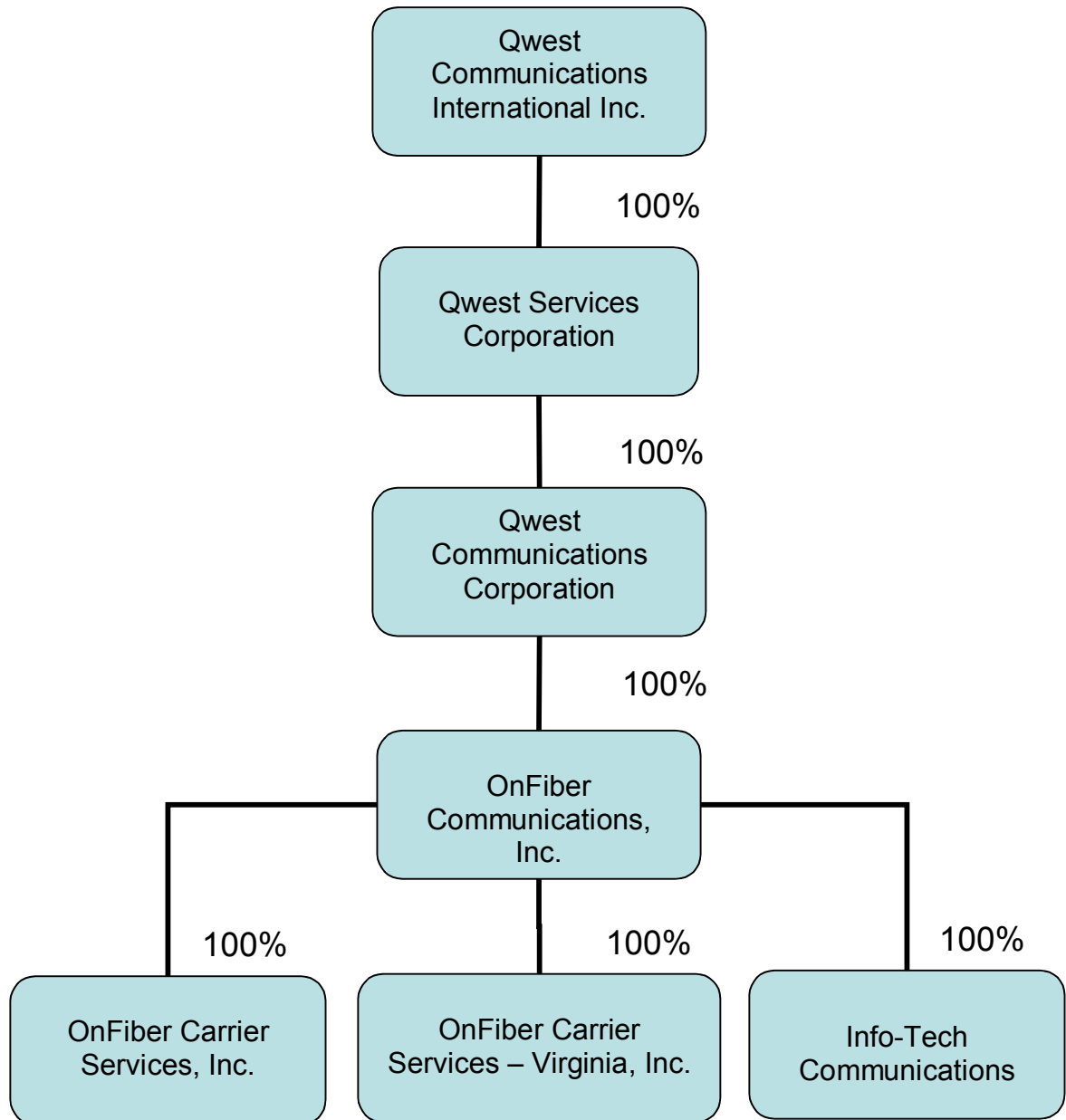
EXHIBIT A

Pre- and Post-Transaction Illustrative Charts (2)

PRE-TRANSACTION



POST-TRANSACTION



Verifications

VERIFICATION

I, Bill Johnston, being duly sworn according to law, depose and say that I am an officer of Qwest Communications Corporation; that I am authorized to and do make this verification for it; and that the facts set forth in the above Joint Application are true and correct to the best of my knowledge, information and belief.

NAME: Bill Johnston
Bill Johnston

TITLE: VP, Assistant Controller

SUBSCRIBED AND SWORN to me this 26th day of May, 2006.



My Commission Expires 5-17-07

Notary Public
Margarita A Ewing

VERIFICATION

I, Jonathan Radin, being duly sworn according to law, depose and say that I am an officer of OnFiber Communications, Inc.; that I am authorized to and do make this verification for it; and that the facts set forth in the above Joint Application are true and correct to the best of my knowledge, information and belief.

NAME: [Signature]

TITLE: VP, Legal and External Affairs

STATE OF CALIFORNIA)
)ss.
COUNTY OF Santa Clara

SUBSCRIBED AND SWORN TO before me on the 26th day of May, 2006.

[Signature]
Notary Public

My commission expires: Oct. 18, 2009



Missouri Verification