

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

Joint Application of Qwest )  
Communications Corporation and )  
OnFiber Communications, Inc., for )  
Approval to Transfer Control of OnFiber )  
Carrier Services, Inc., to Qwest )  
Communications Corporation and for )  
Other Necessary Relief )

Case No. TM-2006-0452

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

COMES NOW the Staff of the Missouri Public Service Commission and for its motion states:

1. OnFiber Carrier Services, Inc., a commission-certificated telecommunications company, is a direct subsidiary of OnFiber Communications, Inc. The Applicants propose to merge OnFiber Communications with Quality Telecom, Inc., a direct subsidiary of Qwest Communications Corporation. OnFiber Communications will survive the merger and will become a direct subsidiary of Qwest Communications Corporation.

2. The Applicants filed their Application pursuant to Section 392.300 RSMo, contingent on the Commission accepting jurisdiction even though they believe that the Commission does not have jurisdiction over the proposed transfer of control.

3. The Commission's powers are limited to those conferred by statute, either expressly, or by clear implication as necessary to carry out the powers specifically granted. *State ex. rel Utility Consumers Council v. Public Service Commission*, 585 S.W. 2d 41, 49 (Mo. 1979). Neither convenience, expediency or necessity are proper matters for consideration in the determination of whether or not an act of the Commission is authorized by the statute. *Id.*

4. Section 392.300.1 forbids a telecommunications company to sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise,

facilities or system, necessary or useful in the performance of its duties to the public, or by any means, direct or indirect, to merge or consolidate such line or system, or franchises, or any part thereof, without having first secured from the Commission an order authorizing it so to do.

5. Section 392.300.1 is not applicable to this case because OnFiber Carrier Services, Inc. is not disposing, encumbering or merging its assets. See *In the Matter of the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, for Approval of a Transfer of Control of Electric Lightwave, LLC*, Case No. TM-2006-0312, Order Dismissing Joint Application (May 12, 2006).

6. Section 392.300.2 forbids a stock corporation, other than a telecommunications company, to purchase, without Commission consent, more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state.

7. Section 392.300.2 is not applicable to this case because OnFiber Carrier Services, Inc., as a Delaware corporation, is not organized or existing under or by virtue of the laws of this state. See *Integra Telecom Holdings, supra*. Also, the Commission granted OnFiber Carrier Services, Inc., a waiver from Section 392.300.2 in Case No. TA-2000-709 (Order Approving Interexchange and Nonswitched Local Exchange Certificates of Service Authority and Order Approving Tariff).

WHEREFORE, the Staff requests the Commission to dismiss the Application for lack of jurisdiction.

Respectfully submitted,

/s/ William K. Haas  
William K. Haas  
Deputy General Counsel  
Missouri Bar No. 28701

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-7510 (Telephone)  
(573) 751-9285 (Fax)  
[william.haas@psc.mo.gov](mailto:william.haas@psc.mo.gov)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6<sup>th</sup> day of June 2006.

/s/ William K. Haas  
William K. Haas