

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 13th day  
of June, 2006.

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

**ORDER DISMISSING JOINT APPLICATION**

Issue Date: June 13, 2006

Effective Date: June 23, 2006

**Syllabus:** This order dismisses the Joint Application filed by Qwest Communications Corporation (QCC) and OnFiber Communications, Inc., (OnFiber Inc.) due to a lack of jurisdiction.

On May 26, 2006, QCC and OnFiber, Inc., filed an Application in which they asked the Commission for authority to transfer control of OnFiber Carrier Services, Inc., a wholly owned subsidiary of OnFiber, Inc., from OnFiber, Inc., to QCC. OnFiber Carrier Services is certificated in Missouri as an interexchange and nonswitched local exchange telecommunications company. The proposed transaction would not result in a transfer of OnFiber Carrier Services' certificates, assets or customers, and the applicants describe the proposed transaction as being transparent to OnFiber Carrier Services' Missouri customers.

The Staff of the Commission filed a Motion to Dismiss Application for Lack of Jurisdiction. Staff states that Section 392.300.1, RSMo, does not apply to this transaction because OnFiber Carrier Services is not disposing, encumbering or merging its assets.

Moreover, Staff says that Section 393.300.2, RSMo, does not apply to this transaction because OnFiber Carrier Services is a Delaware corporation, and the statute applies only to Missouri corporations.

Section 392.300.1 states that no telecommunications company shall sell or otherwise dispose of its franchise, facilities or system, or merge or consolidate its system or franchise without first having Commission authority to do so. If the Commission approves this transaction, OnFiber Carrier Services will retain all of its assets, and will simply be owned by a different holding company. Thus, OnFiber Carrier Services is not disposing of its franchise, facilities or system. Therefore, Section 392.300.1 does not apply to this transaction.

Section 393.300.2 states that no stock corporation, other than a telecommunications company, may buy more than ten percent of the stock of a telecommunications company organized or existing under the laws of this state without first obtaining the Commission's consent. OnFiber Carrier Services, the telecommunications company to be purchased, was not organized under Missouri law, but is a Delaware corporation.<sup>1</sup> In addition, the Commission waived Section 392.300.2 for OnFiber Carrier Services in its certificate cases. Therefore, Section 392.300.2 does not give the Commission jurisdiction over this transaction. This result is in line with other Commission orders dismissing similar applications for the sale of telecommunications companies.<sup>2</sup>

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<sup>1</sup> See *In re OnFiber Carrier Services, Inc.*, Commission Case No. TA-2000-709, Order Approving Interexchange and Non-Switched Local Exchange Certificates of Service Authority and Approving Tariff (March 9, 2001).

<sup>2</sup> See *In re Integra Telecom Holdings, Inc.*, Commission Case No. TM-2006-0362, Order Dismissing Joint Application (May 2, 2006).

Because neither Section 393.300.1 nor 393.300.2, RSMo, gives the Commission jurisdiction, the Commission will dismiss the application.

**IT IS ORDERED THAT:**

1. The Joint Application filed by Qwest Communications Corporation and OnFiber Communications, Inc., on May 26, 2006, is dismissed for a lack of jurisdiction.
2. This order shall become effective on June 23, 2006.
3. This case shall be closed on June 24, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, and Appling,  
CC., concur.  
Gaw and Clayton, CC., dissent.

Pridgin, Regulatory Law Judge