

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 11th day of January, 2007.

Joint Application of Acceris Management and )  
Acquisition, LLC, New Access Communications, LLC )  
and First Communications, LLC for (i) Approval of the )  
Transfer of Assets, Including Customers, of Acceris )  
Management and Acquisition, LLC and New Access ) **Case No. TM-2007-0203**  
Communications, LLC to First Communications, LLC; ) Tariff No. YX-2007-0422  
and (ii) the Voluntary Surrender of the Authorizations )  
of Acceris Management and Acquisition LLC and )  
New Access Communications, LLC )

**ORDER APPROVING THE TRANSFER OF ASSETS AND APPROVING  
TARIFF**

Issue Date: January 11, 2007

Effective Date: January 19, 2007

**Syllabus:** This order approves the transfer of assets of Acceris Management and Acquisition LLC and New Access Communications LLC to First Communications, LLC, and directs Acceris Management and Acquisition LLC and New Access Communications LLC to surrender their current authorizations to provide long distance telecommunications services in Missouri upon completion of the transfers. The order also approves First Communications, LLC's tariff, effective January 19, 2007.

**Background and Procedural History**

On November 29, 2006,<sup>1</sup> First Communications, LLC ("First"), Acceris Management and Acquisition LLC ("Acceris") and New Access Communications LLC ("New Access")

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<sup>1</sup> All dates throughout this order refer to the year 2006 unless otherwise noted.

(collectively, “Applicants”) filed an application, pursuant to RSMo Section 392.300<sup>2</sup> and 4 CSR 240-3.520, requesting that the Commission grant them the authority necessary to consummate transactions involving the transfer of the assets of Acceris and New Access to First. First states that after consummation of the transactions, it will provide telecommunications services to all of the former customers of Acceris and New Access, and that Acceris and New Access will cease operations in Missouri and surrender their authorizations.

First is a privately held Ohio limited liability company headquartered at 3340 West Market Street, Akron, OH 44333. First is a common carrier providing local, private line and long distance services to both business and residential customers and is currently authorized to provide long distance resale services in Missouri.<sup>3</sup> First is also authorized by the Federal Communications Commission to provide domestic interstate and international telecommunications services.

Acceris Management and Acquisition LLC, is a Minnesota limited liability company also conducting business as Acceris Communications or WorldxChange, and is headquartered at 9530 Padgett Street, Suite 101, San Diego, CA 92126. Acceris is authorized to provide long distance telecommunications services in Missouri.<sup>4</sup> Acceris is also authorized by the Federal Communications Commission to provide domestic and international telecommunications services.

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<sup>2</sup> All statutory references throughout this order are to RSMo 2000 unless otherwise noted.

<sup>3</sup> See Case No. TA-2007-0067, Tariff File No. JX-2007-0085 effective September 25, 2006.

<sup>4</sup> See Case No. TA-2005-0507, Tariff No. YX-2005-1166 effective August 14, 2005.

New Access Communications LLC, a Minnesota limited liability company, is headquartered at 801 Nicollet Mall, Suite 350, Minneapolis, MN 55402. New Access provides competitive local and long distance telecommunications services to primarily residential customers and is authorized to provide long distance resale telecommunications services in Missouri.<sup>5</sup> New Access is also authorized by the Federal Communications Commission to provide domestic and international telecommunications services.

On November 30, the Commission issued notice in this matter and set an intervention deadline. The Commission ordered that any person wishing to intervene in this case file an application to do so no later than December 20. No applications to intervene were filed.

On December 20, Applicants filed a memorandum and revised tariff sheets bearing an effective date of January 19, 2007. Applicants had stated in their application that it would file said tariffs “to include the same services, rates terms and conditions as in the existing Acceris and New Access tariffs for the interexchange customers being acquired by First.” Applicants maintain that the customers being transferred from Acceris and New Access to First will not experience any change in their telecommunications services.

### **Description of the Asset Transfers**

The Applicants state that their agreement provides for the acquisition by First of (i) the assets of Acceris (except for certain cash equivalent assets retained by Acceris), including the remaining long distance resale customers and any remaining personal property; and (ii) the assets of New Access (except for certain cash equivalent assets retained by New Access), including all local and long distance customers and any personal

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<sup>5</sup> See Case No. TA-2001-0560, Tariff No. 200101049 effective May 18, 2001.

property such as equipment, switches, and a certain level of working capital (excluding accounts receivable). The Missouri customers being acquired are long distance resale customers only. After completion of the transactions, First will provide telecommunications services to the Acceris and New Access customers directly pursuant to its own telecommunications authorization.

Applicants assert that the proposed transfer of customers to First will have no adverse impact on customers, because the affected customers will continue to receive their existing services at the same rates, terms and conditions as before the transfer, and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. First represents that it will provide advance written notice to the affected customers at least thirty (30) days prior to the transfer, explaining the change in service provider in accordance with applicable Federal Communications Commission and Commission requirements for changing a customer's presubscribed carrier. The Applicants further state that the proposed transactions will not have any impact on the tax revenues of political subdivisions in Missouri, that the companies have no pending or final judgments against them from any state or federal agency that involve customer service or rates, and that they are current with Missouri assessments and fees and with filing their annual reports.

### **Staff's Recommendation**

Staff filed its verified recommendation and memorandum regarding the application on January 9, 2007. Staff's recommendation and supporting memorandum indicate that Staff has closely examined the proposed transaction. Staff concludes that the proposed transfer of assets is not detrimental to the public interest and recommends that it be

approved. Specifically, Staff notes that this transaction involves only competitively classified companies, that the customers involved will receive advance notice, that these customers will retain the option to switch to another provider, and that these customers will continue to receive the same service at the same rates, terms and conditions of their current service providers. Additionally, Staff states that the transaction will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F).

Staff further states that First's tariff sheets meet the requirements of all applicable statutes and do not conflict with any applicable Commission Rule.<sup>6</sup> Consequently, Staff also recommends that the tariff sheets submitted by First, assigned tariff number YX-2007-0422, effective on January 19, 2007, be approved. The Office of the Public Counsel, the other party to this case, has not filed a recommendation, and has not responded to Staff's recommendation.

## **Decision**

The transfer of assets of telecommunications companies is governed by Section 392.300. "The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest."<sup>7</sup> Based on the information provided in the verified application, and upon the verified recommendation and memorandum of Staff, which are hereby admitted into evidence, the Commission finds that the proposed transaction will not be detrimental to the public interest

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<sup>6</sup> See Sections 392.200(8) and (12), 392.245, 392.455(3) and (4), 392.515(1), and 392.500(2). See Commission Rules 4 CSR 240-3.545(4), (6), (7), (8CGH), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2) and (3); 4 CSR 240-32.150(5), 32.160(1) and (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).

<sup>7</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. 1980), *citing to*, *State ex rel. City of St. Louis v. Public Serv. Comm'n of Mo.*, 73 S.W.2d 392, 400 (Mo banc 1934).

and that the application should be approved. The Commission also finds that First's proposed tariff sheets should be approved to become effective on January 19, 2007.

**IT IS ORDERED THAT:**

1. The Joint Application for approval of the transfer of assets of Acceris Management and Acquisition LLC, and New Access Communications LLC, to First Communications, LLC, is granted.

2. The Applicants are authorized to do and perform, or cause to be done and performed, such other acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

3. The Applicants shall notify all subscribers of the change in carrier through a notice in each subscriber's bill, or by a special mailing, at least 30 days before the change in service.

4. So that the Commission may know when the approved transaction is completed and when the certificates of service authority and tariffs of Acceris Management and Acquisition LLC, and New Access Communications LLC, may be canceled, the Commission will direct the Applicants to file an appropriate notice in this case upon the closing of the approved transaction.

5. The tariff sheets filed by First Communications, LLC, on December 20, 2006, and subsequently amended or supplemented on January 4, 2007 and January 8, 2007, bearing the effective date of January 19, 2007, and assigned tariff number YX-2007-0422, are approved. The tariff sheets approved are:

**P.S.C. MO. NO. 1**

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**1<sup>st</sup> Revised Page No. 1, Replaces Original Page No. 1**  
**1<sup>st</sup> Revised Page No. 4, Replaces Original Page No. 4**  
**1<sup>st</sup> Revised Page No. 24, Replaces Original Page No. 24**  
**Original Page No. 25.1 through Original Page No. 25.3**  
**Original Page No. 26.1 through Original Page No. 26.3**  
**Original Page No. 27.1 through Original Page No. 27.3**  
**Original Page No. 28.1 through Original Page No. 28.3**  
**Original Page No. 31 through Original Page No. 34**

6. Nothing in this order shall be considered a finding by the Commission of the value of these transactions for ratemaking purposes. The Commission reserves the right to consider the ratemaking treatment to be afforded these financing transactions and their results in cost of capital, in any later proceeding.

7. This order shall become effective on January 19, 2007.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

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

Stearley, Regulatory Law Judge