

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

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 )  
Communications, LLC to First Communications, )  
LLC; and (ii) the Voluntary Surrender of the )  
Authorizations of Acceris Management and )  
Acquisition LLC and New Access )  
Communications, LLC )

Case No. TM-2007-0203

Tariff No. YX-2007-0422

**STAFF RECOMMENDATION**

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

1. On November 29, 2006, First Communications, LLC (“First”), Acceris Management and Acquisition LLC (“Acceris”) and New Access Communications LLC (“New Access”) (collectively, “Applicants”) filed a joint application, pursuant to Section 392.300 RSMo and 4 CSR 240-3.520, requesting that the Commission grant them the authority necessary to consummate transactions involving the transfer of the assets and customers of Acceris and New Access to First. After consummation of the transactions, Acceris and New Access will cease operations in Missouri.

2. First has submitted tariff sheets (Tariff File No. YX-2007-0422) to amend its tariff to include the same services, rates, terms and conditions as in the existing Acceris and New Access tariffs for the customers being acquired by First.

3. In the attached Memorandum, labeled Appendix A, the Staff recommends approval of the transfer. The transfer of assets is governed by Section 392.300 RSMo (2000). Applicable case law provides that 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.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 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).

4. Commission rules 4 CSR 240-3.520 (2) and 4 CSR 240-33.150(4) read together direct the Applicants to notify affected customers through a bill notice at least 30 days prior to their transfer to First.

WHEREFORE, the Staff recommends that the Commission approve the transfer of assets and customers, approve First’s tariff sheets effective January 19, 2007, direct the Applicants to notify customers at least 30 days prior to their transfer to First, and direct the Applicants to file a pleading after the transfer has been consummated so that the certificates and tariffs of Acceris and New Access may be cancelled.

Respectfully submitted,

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

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Missouri Public Service Commission  
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### **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 9<sup>th</sup> day of January 2007.

/s/ William K. Haas

## Memorandum

To: Missouri Public Service Commission Official Case File  
Case No. TM-2007-0203 File No. YX-2007-0422

From: Lisa Mahaney, Telecommunications Department  
William Voight 1/9/07 /s/ William K. Haas 1/9/07  
Utility Operations Division/Date General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of  
Competitive Company Transaction**

Date: 1/9/07

**The Telecommunications Department Staff (Staff) recommends the Commission** (check, as applicable):

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> <b>Approve Merger</b><br><b>4 CSR 240-3.525</b>                                  | <input type="checkbox"/> <b>Approve Consolidation</b><br><b>4 CSR 240-3.525</b>                             | <input checked="" type="checkbox"/> <b>Approve Sale of Assets</b><br><b>4 CSR 240-3.520</b> |
| <input type="checkbox"/> <b>Approve Name Change</b><br><b>4 CSR 240-3.545(20)</b>                         |   |   |
| <input checked="" type="checkbox"/> <b>Cancel Certificate(s) &amp; Tariff(s)</b><br><b>392.410.5 RSMo</b> | <input checked="" type="checkbox"/> <b>Approve Certificate(s) &amp; Tariff(s)</b><br><b>4 CSR 240-3.510</b> |   |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- ☒ This transaction solely involves competitively classified companies.
- ☒ Customers have/will receive advance notice.
- ☒ Customers can switch to another provider.
- ☒ Customers will continue to receive service at the same rates, terms and conditions.
- ☐ Other:

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
First Communications		X		X					*
Acceris Management and Acquisition LLC	X		X		C			No. 1	
New Access Communications LLC	X		X		C			No. 1	

\*See attachment to Staff recommendation for further details associated with certificates or tariffs.

#### Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

☐ No

☒ Yes

☐ Customers have been notified.

☒ Customers will be notified at least 30 days prior to being switched to a different company.  
(4 CSR 240-3.525)

#### Company Name Change Notification

☐ Company has notified its customers of the name change.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

#### Competitive Company Transaction Review Items

##### Administrative:

☒ Application solely involves competitively classified companies.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☒ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☒ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No. TA-2007-0067

*Missouri corporations:* A Certificate of Good Standing.

*Foreign corporations:* Authorization to do business in Missouri.

*If business conducted under a fictitious name:* A copy of registration of the fictitious name.

- ☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).  
☒ A statement that no annual report or assessment fees are overdue for any applicant.

**Are there additional recommendations or special considerations?**

☐ No

☒ Yes

If yes, explain in an attachment.

- ☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.  
☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.  
(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:     )

## Attachment to Staff Recommendation

Is this transaction requesting the granting of certificates and approval of tariffs? ☒ No ☐ Yes  
(If yes, see below. Attach additional sheets, if necessary.)

### Attachment

First Communications submitted proposed tariff sheets, effective January 19, 2007, to add the same services, rates, terms and conditions, as in the existing Acceris and New Access tariffs for the interexchange customers being acquired by First Communications. The tariff sheets meet the requirements of all applicable statutes, specifically, one or more of the following sections: Sections 392.200(8), (12); 392.245; 392.455(3), (4); 392.515(1) and 392.500(2) RSMo. In addition, the tariff filing does not conflict with the following Commission rules: 4 CSR 240-3.545 (4), (6), (7), (8 C,G,H), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2), (3); 4 CSR 240-32.150(5), 32.160(1), (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).

The Staff is unaware of any other filing which affects or which would be affected by this tariff filing. Staff has no objections to the filing.

The applicants should be directed to file a pleading when the sale is closed so that the certificates and tariffs of Acceris and New Access may be cancelled.

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Surrender of the Authorizations of Acceris )  
Management and Acquisition LLC and New )  
Access Communications, LLC )

Case No. TM-2007-0203  
Tariff File No. YX-2007-0422

**AFFIDAVIT OF LISA MAHANEY**

STATE OF MISSOURI )  
 ) ss:  
COUNTY OF COLE )

Lisa Mahaney, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.

  
\_\_\_\_\_  
Lisa Mahaney

Subscribed and affirmed before me this 9<sup>th</sup> day of January 2007  
I am commissioned as a notary public within the County of Callaway,  
State of Missouri and my commission expires on 9-21-10



SUSAN L. SUNDERMEYER  
My Commission Expires  
September 21, 2010  
Callaway County  
Commission #06942086

  
\_\_\_\_\_  
NOTARY PUBLIC