

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

Joint        Application        of        First        )  
Communications, LLC and Renaissance        )  
Acquisition Corp. for Approval of a        )  
Transfer of Control        )

Case No. TO-2009-0111

**STAFF RECOMMENDATION**

COMES NOW the Staff of the Public Service Commission, through counsel, and for its recommendation in this matter, states:

1.        On September 23, 2008, First Communications LLC and Renaissance Acquisition Corp. filed an application (“Joint Application”) seeking approval of a transfer of control of First Communications, LLC to Renaissance.

2.        According to the Joint Application, the transfer of control will be achieved through two mergers of First Communications, Inc., the parent company of telecommunications company First Communications LLC, into subsidiaries of Renaissance. The Joint Application also indicates that no transfer of certificates, assets or customers will result from the transaction.

3.        Section 392.300.1 RSMo (2000) generally provides that no telecommunications company may sell, assign, lease or transfer “the whole or any part of its franchise, facilities or system” or merge its “line or system or franchises” with any other corporation, person or public utility without first obtaining permission from the Commission.

4.        However, as noted above, the Joint Application indicates that no transfer of certificates, assets or customers will result from the transaction. Thus, this statutory subsection does not apply to the transaction because the ownership of assets of a Missouri-regulated telecommunications company does not change under the terms of the transaction according to the applicants.

5. Section 392.300.2 RSMo (2000) generally provides that no stock corporation shall purchase or acquire more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by the virtue of the laws of this state, without the consent of the Commission.

6. However, First Communications, LLC is an Ohio entity. As a result, no “telecommunications company organized or existing under or by the virtue of the laws of this state” is being acquired as a result of the transaction presented in the Joint Application.

7. In the past, the Commission has dismissed for lack of jurisdiction under Section 392.300.2 RSMo (2000) applications seeking approval for the transfer of the stock of corporations not organized or existing by virtue of the laws of the state of Missouri.<sup>1</sup> “The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level.”<sup>2</sup> Indeed, the Commission has previously dismissed two similar applications involving First Communications, LLC. See Order Dismissing Application, *In the Matter of Joint Application of Lightyear Network Solutions, LLC and First Communications, Inc. for Approval of Transfer of Control and Joint Application of First Communications, LLC and First Communications, Inc. for Transfer of Control*, Case No. TM-2007-0202 (Dec. 19, 2006); and Order Dismissing Application for Lack of Jurisdiction, *Joint Application of First Communications, LLC, and Gores FC Holdings, LLC for Approval of Transfer of Control*, Case No. TM-2008-0023 (Aug. 19, 2007).

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<sup>1</sup> See, e.g., Case No. TM-2000-524, *In the Matter of NEXTLINK Missouri, Inc., and NEXTLINK Long Distance Services, Inc* (the acquired company was organized under the laws of the state of Washington); Case No. XM-2005-0219, *In the Matter of SBC Long Distance, Inc., and SBC Telecom, Inc.* (the acquired company was organized under the laws of the state of Delaware); Case No. TM-2007-0140 *In the Matter of Talk America Holdings, Inc., Talk America, Inc., LDMI Telecommunications, Inc., and Cavalier Telephone Corp.* (the acquired companies were organized under the state of Delaware).

<sup>2</sup> Order Closing Case, *In the Matter of the Proposed Merger of Verizon Communications, Inc. and MCI, Inc.*, Case No. TM-2005-0370 (May 3, 2005).

WHEREFORE, the Staff recommends that the Commission issue an order that dismisses the Joint Application for lack of jurisdiction.

Respectfully submitted,

/s/ William K. Haas

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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 1<sup>st</sup> day of October 2008.

/s/ William K. Haas