

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

Joint Application of	)	
	)	
Acceris Management and Acquisition LLC,	)	
New Access Communications LLC	)	
	)	
and	)	
	)	Case No. _____
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	)	

**APPLICATION**

First Communications, LLC (“First”), Acceris Management and Acquisition LLC (“Acceris”) and New Access Communications LLC (“New Access”) (collectively, “Applicants”), by their counsel and pursuant to RSMo Section 392.300 and 4 CSR 240-3.520, request that the Missouri Public Service Commission (“Commission”) grant them the authority necessary to consummate transactions involving the transfer of assets of Acceris and New Access to First. After consummation of the transactions, First will provide telecommunications services to all of the former customers of Acceris and New Access. Acceris and New Access will cease operations in Missouri and surrender their authorizations.

## **I. INTRODUCTION**

1. On September 28, 2006, in Case No. TA-2007-0067, the Commission approved the transfer of Acceris' large business customer enterprise business ("Business") to First. At that time, Acceris did not surrender its authorization to provide telecommunications services in Missouri because it intended to continue to serve customers apart from the Business. First obtained authorization in Missouri, and in other states where necessary, to provide long distance resale service to the Business customers it intended to acquire from Acceris. Applicants are filing the instant application because the Applicants have agreed that First will also acquire certain of the remaining assets of Acceris, including the remaining long distance resale customers. Thus, the Applicants request Commission approval for the transfer of assets, including customers, from Acceris to First. First is already authorized to provide long distance resale services in Missouri and is ready, willing and able to acquire the assets and continue serving the remaining Acceris customers in a seamless manner. Upon consummation of the transfer of customers from Acceris to First, Acceris requests Commission approval to voluntarily surrender its authorization to provide telecommunications services in Missouri.

2. In addition to the acquisition of the remaining Acceris customers, the Applicants have agreed that First will acquire certain of the assets and all of the customers of New Access, an authorized telecommunications carrier in Missouri. Thus, the Applicants request Commission approval for the transfer of assets, including customers, from New Access to First. The customers that First intends to acquire from New Access are long distance resale customers. First is already authorized to provide long distance resale services in Missouri and is ready, willing and able to acquire the assets and continue serving the New Access customers in a seamless manner. Upon consummation of the transfer of customers from New Access to First,

New Access requests Commission approval to voluntarily surrender its authorization to provide telecommunications services in Missouri.

3. After consummation of the transactions, First will provide service to the Acceris and New Access customers. These customers will not experience any loss or impairment of service. They will continue to receive their existing services at the same rates, terms and conditions as at present. Future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. The only material change will be in the customers' service provider. Notice of the change will be provided to customers in accordance with Commission and federal rules.

4. The closing of the transactions are contingent upon the receipt of the necessary regulatory approvals, among other things. Therefore, the Applicants request that the Commission grant all relief sought herein as expeditiously as possible so that the Applicants can close the transactions as soon as practicable, but no later than *March 15, 2007*, to enable the Applicants to meet critical business objectives.

## **II. APPLICANTS**

### **A. First Communications, LLC**

5. First Communications, LLC is a privately held Ohio limited liability company headquartered at 3340 West Market Street, Akron, Ohio, 44333, (330) 835-2323.

6. First is a common carrier that provides local, private line and long distance services to both business and residential customers in several states. Currently, First provides telecommunications services to approximately 100,000 customers located primarily in Ohio, Michigan, Indiana, Illinois, Pennsylvania and Florida. First's services include, in addition to traditional local and long distance services, toll-free services, conference calling packages,

calling cards, prepaid calling cards, Internet access and dedicated and private line services. First's telecommunications services are provided primarily on a resale basis using the facilities and switches that are owned and operated by other telecommunications carriers.

7. First currently is authorized to provide intrastate long distance telecommunications services in all contiguous states except for the following states in which authority is pending: Arizona, Louisiana, North Dakota, Oklahoma, South Carolina, Vermont and Wyoming. First is authorized to provide intrastate long distance and competitive local exchange telecommunications services in Illinois, Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. In Missouri, First is authorized to provide long distance resale services.<sup>1</sup> With years of experience in the states mentioned above, First has the financial, managerial and technical qualifications needed to provide quality telecommunications services to the customers to be acquired from Acceris and New Access. Indeed, the Commission has already examined the qualifications of First to be an authorized telecommunications provider in Missouri. First is also authorized by the Federal Communications Commission to provide domestic interstate and international telecommunications services.

#### **B. Acceris Management and Acquisition LLC**

8. Acceris Management and Acquisition LLC, a Minnesota limited liability company also conducting business as Acceris Communications or WorldxChange, is headquartered at 9530 Padgett Street, Suite 101, San Diego, CA 92126, (858) 547-5700. Acceris

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<sup>1</sup> First received this authority in connection with an Asset Purchase Agreement dated July 11, 2006, between First and Acceris pursuant to which First acquired the Business from Acceris. *See* Case No. TA-2007-0067. Documentation regarding the authority of First to conduct business in Missouri was submitted in connection with that case and is incorporated herein by reference pursuant to 4 CSR 240-2.060.

is a broad-based communications company, serving residential, small and medium-sized business and large enterprise customers throughout the United States. The company provides a range of products from domestic and international long distance voice services to fully managed and integrated data services and enhanced services.

9. Currently, Acceris is authorized to provide long distance telecommunications services in the contiguous 48 states, Hawaii and the District of Columbia, including Missouri,<sup>2</sup> except in Alaska. Acceris also is authorized to provide long distance and competitive local exchange telecommunications services in California, Pennsylvania, New York, New Jersey, Florida and Massachusetts. Acceris is also authorized by the Federal Communications Commission to provide domestic and international telecommunications services. After consummation of the transactions, Acceris will surrender its telecommunications authorization in Missouri.

### **C. New Access Communications LLC**

10. New Access Communications LLC, a Minnesota limited liability company, is headquartered at 801 Nicollet Mall, Suite 350, Minneapolis, MN 55402, (858) 547-5700. New Access provides competitive local and long distance telecommunications services to primarily residential customers throughout the United States.

11. Currently, New Access is authorized to provide long distance resale telecommunications services in the contiguous 48 states, Hawaii and the District of Columbia,

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<sup>2</sup> See Case No. TA-2005-0507, Tariff No. YX-2005-1166, effective August 14, 2005. Documentation regarding the authority of Acceris to conduct business in Missouri was submitted in connection with that case and is incorporated herein by reference pursuant to 4 CSR 240-2.060.

not including Connecticut, Delaware, Maryland, New Hampshire, South Carolina, Tennessee and West Virginia. New Access is authorized to provide local services on a resale or facilities-based basis in the following states: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Texas, Virginia, Washington, Wisconsin and Wyoming. In Missouri,<sup>3</sup> New Access provides long distance resale services. New Access is also authorized by the Federal Communications Commission to provide domestic and international telecommunications services. After consummation of the transactions, New Access will surrender its telecommunications authorization in Missouri.

### **III. DESIGNATED CONTACTS**

12. The designated contact for this application is:

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13. Copies of all correspondence, notices, inquiries and orders in relation to this Application also should be sent to the following:

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<sup>3</sup> See Case No. TA-2001-560, Tariff No. 200101049, effective May 18, 2001. Documentation regarding the authority of New Access to conduct business in Missouri was submitted in connection with that case and is incorporated herein by reference pursuant to 4 CSR 240-2.060.

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#### **IV. DESCRIPTION OF ASSET TRANSFERS**

14. The Applicants have reached an agreement providing for (i) the acquisition by First of certain of the remaining 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 acquisition by First of certain of 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 property such as equipment, switches, and a certain level of working capital (excluding accounts receivable), but not including any federal or state telecommunications authorizations. In Missouri, the customers being acquired are long distance resale customers only. After consummation of the transactions, Acceris and New Access will surrender their telecommunications authorizations, and First will provide telecommunications

services to the Acceris and New Access customers directly pursuant to its own telecommunications authorization. A copy of the Agreement will be submitted as a supplement to this Application when available.

15. The proposed transfer of customers to First will have no adverse impact on customers. The affected customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the transfer and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. To ensure a seamless transition and avoid customer confusion or inconvenience, First 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. A copy of the proposed notice will be filed as a supplement to this Application when available.

16. The proposed transactions will not have any impact on the tax revenues of political subdivisions in Missouri.

## **V. QUALIFICATIONS OF FIRST COMMUNICATIONS, LLC**

17. As the Commission has already determined, First is well-qualified managerially, technically and financially to provide telecommunications services in Missouri. First's qualifications are on file with the Commission in connection with First's application for authority to operate as a long distance reseller as referenced herein. First's management team includes individuals with substantive experience in successfully developing and operating telecommunications business. Consequentially, the company has the adequate internal technical



resources to support its Missouri operations. First has access to the financing and capital necessary to conduct its telecommunications operations and to fulfill any obligations it may undertake with respect to the operation and maintenance of its services. First has successfully provided a range of local and long distance telecommunications services over the past several years.

## **VI. TARIFFS**

18. In conjunction with this Application, First will submit a revised interexchange tariff 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. Thus, the customers being transferred from Acceris and New Access to First will not experience any change in their telecommunications services. The only change will be the new service provider: First Communications, LLC. Upon consummation of the customers transfers, Acceris and New Access request authority to withdraw their existing tariffs in connection with the surrender of their telecommunications authorizations in Missouri.

## **VII. PUBLIC INTEREST**

19. The transfer of assets to First will serve the public interest. Acceris and New Access have determined that their continuation as telecommunications service providers is no longer consistent with their long-term interests. First is a strong company that will continue to provide high quality services to the Acceris and New Access customers. First's purchase of the Acceris and New Access assets will strengthen First, enable it to expand and better ensure that it remains a viable long-term competitor in the telecommunications marketplace.

20. At the same time, the proposed transfer of assets does not present any anti-competitive issues. The Applicants emphasize that, following the transfer, the former Acceris and New Access customers will continue to receive services from an experienced and qualified carrier, which services will be consistent with the quality of services currently provided by Acceris and New Access. First has extensive experience in providing both local exchange and long distance telecommunications services. The Applicants anticipate that customers will experience a seamless transition of service provider. Further, these customers will be sufficiently notified of the transaction and their rights.

21. In addition, the exit of Acceris and New Access from the telecommunications marketplace does not present any competitive concerns. In the geographic markets in which the operations of First and Acceris or New Access overlap, the market share of First post-close in the local service market will be less than 5 percent. In the geographic markets in which the operations of First and Acceris or New Access do not overlap, First will simply step into the shoes of Acceris or New Access with respect to market share. The Applicants note that there are a number of other carriers operating in each market, including the incumbent carrier, which in each market controls a substantial market share.

22. In sum, grant of this Application will serve the public interest by strengthening the competitive position of First without negative impact to either Acceris or New Access customers or competition in the markets in which Acceris or New Access operates.

23. Applicants do not have any pending action or final unsatisfied judgments or decisions against them from any state or federal agency or court which involve customer service or customer rates, which action, judgment or decision has occurred within three years of the date of this Application.

24. Applicants do not have any overdue annual reports or assessment fees.

WHEREFORE, the Applicants respectfully request that the Commission (i) approve the transfer of certain assets, including customers, of Acceris Management and Acquisition LLC and New Access Communications LLC to First Communications, LLC; and (ii) approve the voluntary surrender of the telecommunications authorizations and tariffs of Acceris Management and Acquisition LLC and New Access Communications LLC upon consummation of the customer transfers, and such further relief that the Commission deems appropriate to consummate the transactions described herein.

Respectfully submitted,

Curtis, Heinz,  
Garrett & O'Keefe, P.C.

/s/ Carl J. Lumley

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this document was emailed to the parties listed below on this 29th day of November 2006.

/s/ Carl J. Lumley

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Carl J. Lumley

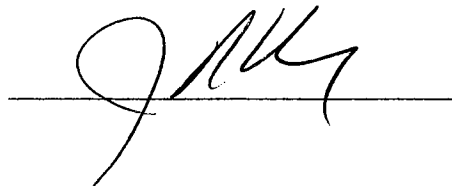
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## VERIFICATION

I, Joseph R. Morris, am Chief Operating Officer of First Communications, LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to First Communications, LLC and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in dark ink, appearing to be 'JRM', is written over a horizontal line.

Subscribed and sworn to before me this 15 day of  
November 2006.

A handwritten signature in dark ink, appearing to be 'Mary Cegelski', is written over a horizontal line.  
Notary Public

**MARY CEGELSKI**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Cuyahoga Cty.

My Commission expires: Oct 18 2011

## VERIFICATION

I, Drew S. Backstrand, am General Counsel of Acceris Management and Acquisition LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to Acceris Management and Acquisition LLC and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

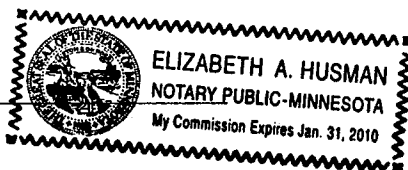
I declare under penalty of perjury that the foregoing is true and correct.

Drew S. Backstrand

Subscribed and sworn to before me this 22<sup>nd</sup> day of  
November 2006.

Elizabeth A. Husman  
Notary Public

My Commission expires: \_\_\_\_\_



## VERIFICATION

I, Drew Backstrand, am the General Counsel of New Access Communications LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to New Access Communications LLC and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

*Drew S. Backstrand*

Subscribed and sworn to before me this 22<sup>nd</sup> day of November 2006.

*Elizabeth A. Husman*  
Notary Public

My Commission expires: \_\_\_\_\_

