

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

In the Matter of the Joint Application of Acceris)
Management and Acquisition LLC and First)
Communications, LLC for (i) Authority for First)
Communications, LLC, to Provide Competitive)
Resold Interexchange Telecommunications)
Services Throughout the State of Missouri; and (ii))
Approval of the Transfer of Assets, Including)
Customers, of Acceris Management and)
Acquisition LLC to First Communications, LLC.)

Case No. TA-2007-0067
Tariff File No. JX-2007-0085

STAFF RECOMMENDATION

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

1. First Communications, LLC and Acceris Management and Acquisition LLC filed an application generally requesting that the Commission (i) grant First Communications a certificate of service authority to provide competitive resold interexchange telecommunications services, and (ii) approve the transfer of the equipment and customers of Acceris's large customer enterprise business to First Communications.

2. In the attached Memorandum, labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant First Communications a certificate of service authority to provide intrastate, interexchange telecommunications services. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. Sections 392.430 and 392.440 RSMo. (2000).

3. The Staff also recommends that the Commission classify First Communications and the services it proposes to offer in its application as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is

subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.4. All the services a competitive company provides must be classified as competitive. Section 392.361.3.

4. The Staff further recommends that the Commission grant First Communications the waivers listed in the *Notice of Applications*. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392. Sections 392.185, 392.361.5 and 392.420.

5. The Staff has no objection to First Communications' proposed tariff (Tariff File No. JX-2007-0085) taking effect on September 25, 2006.

6. The Staff also recommends approval of the transfer.

7. 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).

8. 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 Communications. The Applicants submitted a proposed customer notification letter as Exhibit C to their application. The Staff has reviewed the letter and believes that it provides appropriate customer notice.

WHEREFORE, the Staff recommends that the Commission grant First Communications, LLC, a certificate of service authority to provide intrastate, interexchange telecommunications services; grant it the requested competitive classification; grant it the standard waivers listed in

the Commission's Notice of Applications; approve its tariff effective September 25, 2006; approve the transfer of the equipment and customers of Acceris's large customer enterprise business to First Communications; and direct the applicants to provide 30 days advance customer notice of the transfer.

Respectfully submitted,

/s/ William K. Haas

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

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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 14th day of September 2006.

/s/ William K. Haas

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. TA-2007-0067 File No. JX-2007-0085

From: Lisa Mahaney, Telecommunications Department
William Voight 9/12/06 /s/ William K. Haas 9/12/06
Utility Operations Division/Date General Counsel's Office/Date

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

Date: 9/11/06

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

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

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
Acceris Management and Acquisition LLC	X		X						
First Communications LLC		X		X	A				No. 1

*See attachment to Staff recommendation for further details associated with approving 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.

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.)

Applicant: First Communications, LLC

The applicant has met Staff's review of requirements for obtaining a certificate of service authority and tariff approval. Therefore, Staff recommends the applicant be granted the following certificate(s), as indicated below. The certificate shall be conditioned to become effective on the same date the tariff becomes effective; however no later than the approval date of the transaction involving the competitively classified companies.

☐ certificate to provide basic local exchange telecommunications services. Granting the certificate should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

☒ certificate to provide interexchange telecommunications services.

☐ certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

☒ No objection to tariff taking effect No. 1 (indicate PSC MO numbers)
9/25/06 Effective Date

Staff recommends the applicant and its services receive competitive classification. In addition, Staff recommends approval of the waivers normally granted to competitively classified companies (392.210.2, 392.240.1, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, 392.340, 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-3.550(5)(C) (this last rule only applies to companies providing basic local telecommunications service).

Certificate applications, if applicable:

- ☒ Statement of character of business performed.
- ☒ Application includes an affidavit.
- ☒ Applicant seeks waivers of rules or statutes previously granted to a competitively classified company.
- ☒ Applicant shows that grant of authority is in the public interest.

Additional review items for CLEC applications, if applicable:

- ☐ Possesses sufficient technical, financial and managerial resources and abilities.
- ☐ Identifies geographic area (no smaller than an exchange).
- ☐ Statement that applicant will offer basic local service as a separate and distinct service.
- ☐ Statement that applicant will give equitable access to all Missourians.

Tariff review items (applicable for all competitively classified companies):

- ☒ The tariff complies with requirements reviewed by Staff for any competitive telecommunications company tariff filing.

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Acquisition LLC to First Communications,)
LLC)

Case No. **TA-2007-0067**
File No. **JX-2007-0085**

AFFIDAVIT OF LISA MAHANEY

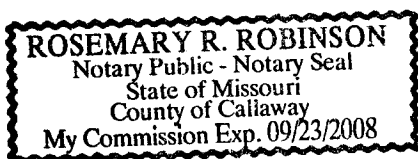
STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

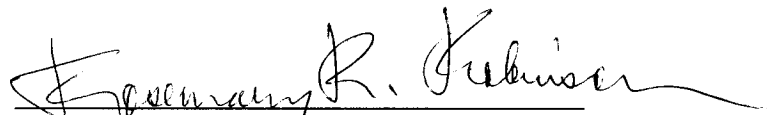
Lisa Mahaney, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in the preparation of the accompanying memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.



Lisa Mahaney

Subscribed and affirmed before me this 11th day of September, 2006,
I am commissioned as a notary public within the County of Cole, State of Missouri
and my commission expires on 9-23-2008





NOTARY PUBLIC