

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Joint Application of)	
)	
Acceris Management and Acquisition LLC)	
)	
and)	
)	Case No. _____
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.)	

APPLICATION

First Communications, LLC (“First Communications”) and Acceris Management and Acquisition LLC (“Acceris”) (together, “Applicants”), by their counsel, request that the Missouri Public Service Commission (“Commission”) grant them the authority necessary to consummate a transaction involving the transfer of certain assets of Acceris to First Communications. Pursuant to the terms of an Asset Purchase Agreement (“Agreement”) dated July 11, 2006, between First Communications and Acceris, First Communications will acquire certain assets of Acceris relating to its large business customer enterprise business (“Business”), including various equipment and Business customers; however, First Communications will not acquire any of Acceris’s telecommunications authorizations. Thus, as First Communications is not currently authorized to provide telecommunications service in Missouri, it must obtain an authorization from the Commission to provide service in Missouri.

Pursuant to RSMo Section 329.410, Section 392.440, 4 CSR 240-3.510, and all other relevant Statutes, Rules and Regulations of the Commission, First Communications respectfully requests that the Commission grant it a Certificate of Service Authority to provide resold interexchange telecommunications services throughout the State of Missouri. First Communications also requests the Commission to classify the company and its services as competitive pursuant to RSMo. Section 392.361 and in conjunction therewith waive certain statutes and regulations. Applicants further request, pursuant to RSMo Section 392.300 and 4 CSR 240-3.520, and all other relevant Statutes, Rules and Regulations, that the Commission approve the transfer of assets, including customers, from Acceris to First Communications.

After consummation of the transactions, Acceris will retain its authorization to provide telecommunications services in Missouri in order to provide service to its customers not related to the Business. The assets and customers related to the Business will be acquired by First Communications. 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.

In support of this Application, the Applicants provide the following information:

I. APPLICANTS

A. First Communications, LLC

1. First Communications, LLC is a privately held Ohio limited liability company headquartered at 3340 West Market Street, Akron, Ohio, 44333, (216) 468-1614. First Communications is qualified to conduct business within the State of Missouri as a foreign limited liability company. A copy of the qualifying document is attached hereto as ***Exhibit A***.

2. First Communications is a common carrier that provides local, private line and long distance services to both business and residential customers in several states. Currently, First Communications provides telecommunications services to approximately 100,000 customers located primarily in Ohio, Michigan, Indiana, Illinois, Pennsylvania and Florida. First Communications' 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 Communications' telecommunications services are provided primarily on a resale basis using the facilities and switches that are owned and operated by other telecommunications carriers.

3. First Communications is authorized to provide intrastate long distance telecommunications services in California, Florida and Kentucky. First Communications 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. First Communications has not been denied a request for certification to provide telecommunications services by any jurisdictional authority. With years of experience in the states mentioned above,

First Communications has the financial, managerial and technical qualifications needed to provide quality telecommunications services to the Business customers in Missouri acquired from Acceris. First Communications is also authorized by the Federal Communications Commission to provide domestic interstate and international telecommunications services. By this Application, First Communications is requesting authority from the Commission to provide long distance resale services in order to be able to serve the Business customers being acquired from Acceris.

B. Acceris Management and Acquisition LLC

4. Acceris Management and Acquisition LLC, a Minnesota limited liability company, is headquartered at 9530 Padgett Street, Suite 101, San Diego, CA 92126, (858) 547-5700. Acceris 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.

5. Currently, Acceris is authorized to provide long distance telecommunications services in the contiguous 48 states, Hawaii and the District of Columbia, including Missouri,¹ except in Alaska. Acceris also is authorized to provide long distance and competitive local exchange telecommunications services in 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 retain its telecommunications authorization in Missouri in order to continue to provide telecommunications services apart from the Business being acquired by First Communications.

¹ 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 that case and is incorporated herein by reference pursuant to 4 CSR 240-2.060.

II. DESIGNATED CONTACTS

6. The designated contact for this application is:

Carl J. Lumley
Leland B. Curtis
Curtis, Heinz, Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Telephone: (314) 725-8788
Facsimile: (314) 725-8789
Email: clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

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

Mary Cegelski
FIRST COMMUNICATIONS, LLC
15166 Neo Parkway
Garfield Heights, OH 44128
Telephone: (216) 468-1614
Facsimile: (216) 468-1680
E-Mail: mcegelski@firstcomm.com

Drew S. Backstrand, General Counsel
Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, Minnesota 55402
Tel. (612) 465-0265
Fax: (612) 455-1022
backstrand@ncequity.net

Copies of all correspondence, notice, inquiries and orders relating to tariffs, pricing and customer complaint issues should be sent to:

Mary Cegelski
FIRST COMMUNICATIONS, LLC
15166 Neo Parkway
Garfield Heights, OH 44128
Telephone: (216) 468-1614
Facsimile: (216) 468-1680
E-Mail: mcegelski@firstcomm.com

Copies of all correspondence, notice inquiries and orders relating to consumer issues, billing issues, technical service quality issues should be sent to:

Andre Duckworth
Manager, Customer Relations
First Communications, LLC
3340 W. Market Street
Akron, OH 44333
Telephone: (330) 835-2312
Toll Free: (800) 274-1015
Facsimile: (888) 274-1015
E-mail: aduckworth@firstcomm.com

First Communications' registered agent in Missouri is:

CSC
221 Bolivar Street
Jefferson City, MO 65101

III. DESCRIPTION OF ASSET TRANSFER

7. First Communications and Acceris have reached an Agreement providing for First Communications' acquisition of certain assets of Acceris relating to the Business, including personal property such as equipment and switches, customer contracts and working capital (including accounts receivable), but not including any federal or state telecommunications

authorizations. A copy of the Agreement is attached hereto as highly confidential **Exhibit B.**² After consummation of the transactions, First Communications will provide telecommunication services to the Acceris customers directly pursuant to its own telecommunications authorizations.

8. The proposed transfer of customers to First Communications will have no adverse impact on customers. The Acceris 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 Communications 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 notification letter that will be sent to the affected Business customers is appended hereto as **Exhibit C.**

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

IV. QUALIFICATIONS OF FIRST COMMUNICATIONS

10. By this Application, First Communications seeks authority to provide a full array of resold interLATA and intraLATA interexchange telecommunications services to business and residential customers in the State of Missouri. Specifically, First Communications seeks authority to provide basic "1+" long distance services, otherwise known as Message Telecommunications

² Applicants have submitted herewith their Motion for Issuance of a Protective Order to preserve the confidentiality of their Agreement. The Agreement is highly confidential under the terms of a standard order, concerning market-specific information relating to services offered in competition with others, and in any case is proprietary private business information.

Service (“MTS”), travel card services, and toll-free services. At a later date, First Communications may expand its long distance offerings, to include a broader range of interexchange products and services, and may, as economic conditions permit, seek authority to provide local exchange services. First Communications seeks authority to provide interexchange telecommunications services on a statewide basis. First Communications will not provide operator assisted services and plans to provide its service on a resale basis. At this time, First Communications has no plans to construct outside plant or loop distribution facilities or any other facilities.

11. As demonstrated by its existing operations in other states, First Communications is well-qualified managerially, technically and financially to provide the competitive interexchange telecommunications services for which authority is requested in this Application.

12. First Communications has a toll free number available for its customers to contact the company with billing and service related issues: 1-800-274-1015. Customers may contact the company with billing related issues between the hours of 8AM - 10PM EST (Monday to Friday) and 8AM – 5PM EST (Saturday and Sunday) by using the toll free number noted above or by writing to First Communications, LLC, 3340 W. Market Street, Akron, OH 44333.

V. TARIFF

13. First Communications has appended hereto as ***Exhibit D*** its proposed initial tariff. As required by Commission rule, the proposed effective date is at least 45 days from the issue date. This tariff includes the same Business services, rates, terms and conditions as the existing Acceris tariff. Thus, the Business customers being transferred from Acceris to First Communications will not experience any change in their telecommunications services. The only change will be the new service provider.

VI. REQUESTED REGULATORY TREATMENT

14. First Communications hereby agrees to abide by all applicable statutes and all applicable Orders, Rules, and regulations entered and adopted by the Commission. First Communications requests that the Commission classify it as a competitive provider of competitive telecommunications services in Missouri. Accordingly, First Communications respectfully requests that it be subject to the same streamlined regulatory treatment applicable to other competitive carriers. First Communications respectfully requests the following waivers:

<u>Statutes</u>	<u>Missouri Public Service Commission Rules</u>
392.210.2	4 CSR 240-10.020
392.240 (1)	4 CSR 240-30.040
392.270	
392.280	
392.290	
392.300.2	
392.310	
392.320	
392.330	
392.340	

The Commission has previously determined that there is good cause and reason for waiving these statutes and regulations for competitive companies and such determination remains sound. No public utility will be affected by the requested waiver of these statutes and regulations.

VII. PUBLIC INTEREST

15. A decision by the Commission to grant First Communications authority to provide resold interexchange telecommunications services is in the public interest. The company is well qualified to operate as such a service provider in Missouri. Consumers of telecommunications

services in Missouri will receive the benefits of downward pressure on prices, increased choice, improved quality of service and customer responsiveness, innovative service offerings, and access to increasingly advanced telecommunications technology. The market incentives for new and existing providers of telecommunications services will be improved through an increase in the diversity of suppliers and competition within the interexchange telecommunications market. Granting First Communications' Application would enhance the development of competition in the interexchange market and provide the consumers of Missouri with all of the benefits described above.

16. The transfer of assets to First Communications will serve the public interest. Acceris has determined that its operations with respect to the Business are no longer consistent with its long-term interests. First Communications is a strong company that will continue to provide high quality services to the Acceris customers. First Communications' purchase of the Acceris assets related to the Business will strengthen First Communications, enable it to expand and better ensure that it remains a viable long-term competitor in the telecommunications marketplace.

17. 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 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. Acceris primarily resells local and long distance services to residential and business customers and First Communications has extensive experience in providing these 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.

18. In addition, Acceris' exit from the Business does not present any competitive concerns. In the geographic markets in which the operations of First Communications and Acceris

overlap, the market share of First Communications post-close in the local service market will be less than 5 percent. In the geographic markets in which the operations of First Communications and Acceris do not overlap, First Communications will simply step into the shoes of Acceris 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.

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

20. 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.

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

WHEREFORE, the Applicants respectfully request that the Commission (i) grant First Communications, LLC a Certificate of Service Authority to provide competitive resold interexchange telecommunications services in the State of Missouri with related standard waivers of statutes and regulations, (ii) approve the transfer of assets, including customers, of Acceris Acquisition and Management LLC to First Communications, LLC, and (iii) grant such further relief that the Commission deems is appropriate to consummation 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 11th day of August, 2006.

/s/ Carl J. Lumley

Carl J. Lumley

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Jefferson City, Missouri 65102
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VERIFICATION

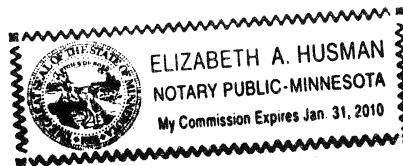
I, Drew S. Backstrand, am General Counsel of Acceris Management and Acquisition LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to Acceris Management and Acquisition LLC and its affiliates, except 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 18th day of
July 2006.

Elizabeth A. Husman
Notary Public

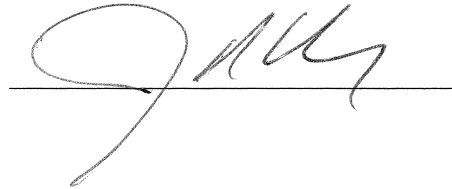


My Commission expires: _____

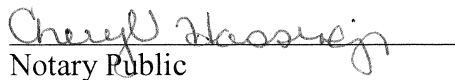
VERIFICATION

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.



Subscribed and sworn to before me this 18th day of July 2006.


Notary Public

Cheryl L. Hassinger
my commission expires
January 8, 2008

My Commission expires: _____