

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

In the Matter of the Joint Application of )	
Acceris Management and Acquisition )	
LLC and Acceris Communications Corp. )	
for Approval of the Acquisition of Certain )	Case No. TO-2005-0508
Assets of Acceris Communications Corp. )	
by Acceris Management and Acquisition )	
LLC )	

**STAFF RECOMMENDATION**

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

1. On June 30, 2005, Acceris Management and Acquisition LLC and Acceris Communications Corp. ("Joint Applicants") filed a joint application seeking approval for the former company to acquire Missouri assets of the latter company, including but not limited to Acceris Communications Corp.'s customer base.

2. In conjunction with this Staff Recommendation, Staff is filing a recommendation in Case No. TA-2005-0507. In that case, Acceris Management and Acquisition LLC has applied for a certificate of service authority to provide interexchange telecommunications service in the State of Missouri. Staff's favorable recommendation in this case is contingent upon the grant of authority in Case No. TA-2005-0507.

3. Acceris Communications Corp. was granted a certificate of service authority initially in Case No. TA-2000-847 as PT-1 Counsel, Inc. Its name has been changed three times since the Commission granted that initial certificate. See footnote 1 at page 3 of the *Joint Application for Approval of Transfer of Assets*.

4. The transfer of assets is governed by Section 392.300 and 4 CSR 240-3.520. 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 393, 400 (Mo. banc 1934).

5. In the attached Memorandum, labeled Appendix A, the Staff opines that the transaction between Acceris Management and Acquisition LLC and Acceris Communications Corp. is not detrimental to the public interest. Staff recommends that the Commission approve the transaction.

6. The Commission’s regulation at 4 CSR 240-33.150(4) governs changes in subscriber carrier selections as a result of merger or consolidation or the sale, assignment, lease or transfer of assets. In keeping with the principles set forth in that regulation, the Joint Applicants have indicated that the customers of Acceris Communications Corp. will be provided notice in their bill at least thirty days prior to the effective date of the change in providers. *Joint Application* at para. 16.

7. In the *Joint Application* at paragraph 19, the Joint Applicants state “[b]ecause ACCERIS will acquire substantially all of the assets of ACC and ACC will thereafter cease operations in this state, ACC will no longer require authority to provide service in this state.” Accordingly, Staff requests the Commission to require the Joint Applicants to notify the Commission when the transfer of customers has been completed so Acceris Communications Corp.’s certificate and tariff may be cancelled.<sup>1</sup>

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<sup>1</sup> At that time, as an administrative matter, Staff will also seek cancellation of Worldxchange Corp.’s MISSOURI P.S.C. NO. 1 and Worldxchange Corp. d/b/a Acceris Communications’ P.S.C.MO. TARIFF NO. 3, neither of which were cancelled over the course of the name changes leading up to the present Acceris Communications Corp.’s certification.

WHEREFORE, the Staff recommends that the Commission issue an order that approves the proposed merger of Acceris Management and Acquisition LLC and Acceris Communications Corp., conditioned upon the grant of a certificate of service authority to provide interexchange telecommunications services to Acceris Management and Acquisition LLC in Case No. TA-2005-0507; and that further directs the Joint Applicants to notify the Commission when the transfer of customers has been completed so the Commission may cancel Acceris Communications Corp.'s certificate and tariff.

Respectfully submitted,

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/s/ David A. Meyer

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 1st day of August 2005.

/s/ David A. Meyer

## Memorandum

To: Missouri Public Service Commission Official Case File  
Case No. TO-2005-0508, TA-2005-0507 File No. YX-2005-1166

From: Lisa Mahaney, Telecommunications Department

William Voight 7/29/05  
Utility Operations Division/Date

/s/ David A. Meyer 8/1/05  
General Counsel's Office/Date

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

Date: 7/29/05

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

- ☐ Approve Merger      ☐ Approve Consolidation      ☒ Approve Sale of Assets
- ☐ Approve Name Change
- ☐ Cancel Certificate(s) & Tariff(s)      ☒ Approve Certificate(s) & Tariff(s)

According to Commission rules, competitively classified companies are required to provide minimal 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. This transaction solely involves competitively classified companies and is not detrimental to the public interest since a customer has/will receive advance notice and can freely switch to another provider. 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 Communications Corp. (ACC)	X		X						
Acceris Management and Acquisition LLC (Acceris)		X		X	A	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 and a copy of the notification is attached to this Staff Recommendation.**Company Name Change Notification**☐ Company has notified its customers of the name change. A copy of the customer notice is attached.☐ 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:

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.
4. ☐ (Check, if applicable) Grant the request for waiver of 4 CSR 3.510(1)(C), which requires the filing of a tariff with an effective date not fewer than 45 days from the issue date. The applicant cannot lawfully provide service until tariffs are effective.

☒ 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)  
8/14/05 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):**

- ☒ Properly formatted: (Company name, PSC MO No., Page #, Page revision #, proposed effective date)
- ☒ Identifies competitive classification.
- ☒ Identifies waivers granted.
- ☐ ICB pricing, if proposed, limited for private line, special access or Centrex-like services. (392.200(8)).
- ☒ Proposed rates do not establish geographic deaveraged rates (if not checked, explain in attachment). (392.200(4)).
- ☐ If an alternative operator service provider (receives more than 40% of revenues from traffic aggregators) operator service rates do not exceed: Person-to-Person (\$10.00), Station-to-Station/card (\$5.50). (392.515(1))
- ☐ If increasing rates, potentially affected customers have been provided with written notification at least 10 days in advance.

**Tariff review items (applicable only for CLECs):**

- ☐ Interconnection agreement approved (if not checked, explain in attachment)
- ☐ Tariff clearly indicates areas offering local service area  
(\_\_\_\_SWB, \_\_\_\_Verizon, \_\_\_\_Sprint, \_\_\_\_Spectra, \_\_\_\_Other.)
- ☐ Tariff offers local service as a separate and distinct service.
- ☐ Switched access service rates capped at ILEC's rates.

Company should be ordered to notify the Commission when the transfer of assets takes place so that the existing company's certificates and tariff can be cancelled at that time. Customers will be notified at least 30 days prior to being switched to a different company. The proposed tariff filed by Acceris Management and Acquisition LLC in Case No. TA-2005-0507 does not contain identical terms to the existing tariff for customers of ACC. However, the terms are substantially similar and no customer should receive an increase in rates.

Acceris Management and Acquisition LLC is a limited liability company organized under the laws of the State of Minnesota and is a wholly owned subsidiary of North Central Equity (NCE). NCE is a privately owned holding company established in 2004 with experience in the telecommunications industry.