

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

In the Matter of the Joint Application of)
First Communications LLC and Gores FC)
Holding, LLC for Approval of Transfer of)
Control)

Case No. TM-2008-0023

STAFF RECOMMENDATION

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

1. On July 18, 2007, First Communications LLC and Gores FC Holding, LLC jointly filed an application (“Joint Application”) seeking approval of a transaction whereby Gores FC Holding, LLC would acquire control of First Communications LLC.

2. According to the Joint Application, the transaction will be achieved through the acquisition of First Communications LLC by Gores FC Holding, LLC, with the latter company obtaining the right to appoint a majority of the board of directors of the parent company of First Communications LLC (First Communications, Inc.). *Joint Application* at 1 and 6 and Exhibit C. The Joint Application also indicates that no transfer of certificates, assets or customers will result from the transaction. *Joint Application* at 6.

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. *Joint Application* at 6. 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*. *Id.*

7. In the past, the Commission has dismissed for lack of jurisdiction under Section 392.300.2 RSMo (2000) any 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.¹ “The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level.”² Indeed, the Commission has previously dismissed a similar application 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)).

¹ 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).

² 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) at 1.

8. Should the Commission dismiss this case, the request for waiver of Commission Rule 4 CSR 240-2.060(C) becomes moot.

WHEREFORE, the Staff recommends that the Commission issue an order that concludes that the Commission does not have jurisdiction over the transaction presented in the *Joint Application* and dismiss it.

Respectfully submitted,

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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 31st of July 2007.

/s/ David A. Meyer