

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of August, 2005.

In the Matter of the Joint Application of Acceris)
Management and Acquisition LLC and Acceris)
Communications Corp. for Approval of the)
Acquisition of Certain Assets of Acceris)
Communications Corp. by Acceris Management)
and Acquisition LLC.)

Case No. TO-2005-0508

ORDER APPROVING SALE OF ASSETS

Issue Date: August 16, 2005

Effective Date: August 26, 2005

Procedural History:

On June 30, 2005, Acceris Management and Acquisition LLC (ACCERIS) and Acceris Communications Corp. (ACC) filed an application for approval of a transaction whereby ACCERIS will obtain certain Missouri assets of ACC, including, but not limited to, the subscriber base of ACC. The applicants also request cancellation of ACC's Missouri certificate of service authority and tariffs after the consummation of the transfer of assets.

The company filed supplements to the application on July 7 and 8, 2005. On August 1, 2005, the Staff of the Commission filed its Recommendation and Memorandum.

The Parties:

According to the application, Acceris Management and Acquisition LLC (ACCERIS) is a limited liability company organized under the laws of the state of Minnesota and is a wholly owned subsidiary of NCE. NCE is a privately-owned holding company with

experience in the telecommunications industry. The application indicates that ACCERIS is in the process of obtaining authority to provide interexchange or local exchange telecommunications services throughout the United States. The parties also indicate that ACCERIS has filed, in Case No. TO-2005-0507, an application to provide intrastate, interexchange, and nonswitched local exchange telecommunications service in the state of Missouri.

Acceris Communications Corp. (ACC) is a corporation organized under the laws of the State of Delaware. ACC has authority to provide, and is currently providing, domestic interstate and international telecommunications service throughout the United States. ACC was granted a certificate of service authority to provide interexchange telecommunications services in the state of Missouri by an order issued on July 31, 2000, in Case No. TA-2000-847.¹

The Transaction:

Pursuant to an Asset Purchase Agreement executed on May 19, 2005, ACC has agreed to sell to ACCERIS all telecommunications assets and operations of ACC, including the customer base as of the closing date of the transaction. The parties note that because ACCERIS will acquire substantially all of the assets of ACC and ACC will thereafter cease operations in Missouri, ACC will no longer require authority to provide service in this state. The applicants therefore request that the Commission permit ACC to relinquish its certificate of service authority in Missouri once the transfer has been consummated.

¹ At the time of its initial certification, the company name was PT-1 Counsel, Inc. Staff indicates that the company has changed its name three times since the Commission granted that initial certificate.

Staff's Memorandum and Recommendation:

Staff filed its Memorandum and Recommendation on August 1, 2005, recommending that the Commission issue an order approving the proposed merger of ACCERIS and ACC, conditioned upon (1) the grant of a certificate of service authority to provide telecommunications services to ACCERIS in Case No. TA-2005-0507; and (2) that the order further directs the joint applicants to notify the Commission when the transfer of customers has been completed so that the Commission may cancel the certificate and tariff of ACC. Staff notes that at that time, it will also seek cancellation of the tariffs of Worldxchange Corp. and Worldxchange Corp., d/b/a Acceris Communications, neither of which were canceled during the course of the company's previous name changes.

Staff states that along with its recommendation in this case, Staff is also filing a recommendation in Case No. TA-2005-0507. Staff's favorable recommendation in the transfer case is contingent upon the grant of authority in Case No. TA-2005-0507.

Staff notes that a transfer of assets for a telecommunications company is governed by Section 392.300² 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 *State ex rel. City of St. Louis v. Public Serv. Comm'n of Mo.*, 73 S.W.2d 393, 400 (Mo. banc 1934). Staff opines that the transaction will not be detrimental to the public interest. Staff notes that the transaction involves only competitively classified companies and is not detrimental

² All statutory references are to the Revised Statutes of Missouri (RSMo), revision of 2000, unless otherwise specified.

to the public interest since a customer will receive advance notice and can freely switch to another provider.

Discussion:

The Commission has reviewed the joint application, the supplemental filings, and Staff's Memorandum and Recommendation. The Commission also notes that on August 2, 2005, it issued an Order Approving Interexchange and Nonswitched Local Exchange Certificate of Service Authority and Order Approving Tariff in Case No. TO-2005-0507. Thus, one of Staff's conditions for approval has been fulfilled. Based upon its review, the Commission concludes that the proposed transaction does not pose a detriment to the public interest. Therefore, the Commission will approve the transactions with the remaining condition recommended by Staff, that the company notify the Commission when the transaction has been consummated so that the Commission may cancel the certificate and tariff of ACC.

IT IS THEREFORE ORDERED:

1. That the Joint Application, filed on June 30, 2005, by Acceris Management and Acquisition LLC and Acceris Communications Corp. is approved.
2. That Acceris Management and Acquisition LLC and Acceris Communications Corp. are authorized to enter into and perform in accordance with the Asset Purchase Agreement referred to above.
3. That the applicants are directed to inform the Commission when the authorized transactions are complete so that the Commission may cancel the current certificate and tariff of Acceris Communications Corp., along with any remaining tariffs of

Worldxchange Corp. or Worldxchange Corp., d/b/a Acceris Communications. The applicants shall file this notification within ten days of the transactions' consummation.

4. That this order shall become effective on August 26, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Ruth, Senior Regulatory Law Judge,