

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 9th day of
August, 2007.

Joint Application of First Communications, LLC,)
and Gores FC Holdings, LLC for Approval of)
Transfer of Control.)

Case No. TM-2008-0023

ORDER DISMISSING APPLICATION FOR LACK OF JURISDICTION

Issue Date: August 9, 2007

Effective Date: August 19, 2007

Background

On July 18, 2007, First Communications, LLC (FCL) and Gores Holdings LLC filed with the Missouri Public Service Commission an application seeking approval to transfer certain control of First Communications, Inc. (FCI) to Gores. FCL is authorized to provide telecommunications service in the state of Missouri and is a subsidiary of FCI. Attached to this order are diagrams showing the corporate structure before and after the proposed transaction.

Although Joint Applicants filed this application with the Commission, they question the Commission's jurisdiction over this transaction. Further, the Staff of the Commission opines that the Commission does not have jurisdiction. The Office of the Public Counsel has filed no pleadings in this matter.

The Proposed Transaction

Gores will obtain the right to appoint a majority of the FCI board of directors. Additionally, Gores will obtain a 13.1 percent interest in FCI by converting non-voting

shares of common stock to voting shares. Finally, Gores will exercise warrants to increase its interest in FCI up to 35.6 percent. The result of these transactions will be to give Gores control over FCI, which is the parent of the regulated telecommunications company, FCL.

Discussion

Section 392.300.1 RSMo (2000) requires telecommunications companies to obtain Commission approval prior to selling, assigning, leasing or transferring or otherwise disposing of its, “franchise, facilities or system, necessary or useful in the performance of its duties to the public” The applicants in this matter do not propose to do what is described in Section 392.300.1. That subsection is therefore inapplicable.

Section 392.300.2 states as follows:

Except where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company”

The telecommunications company involved in this transfer is FCL. However, it is FCI not FCL over which Gores will obtain more than 10 percent of the total capital stock. Because Gores does not seek to obtain more than 10 percent of the total capital stock of FCL, the Commission-regulated entity, Section 392.300.2 does not apply to the proposed transfer.

The Commission has only that authority expressly conferred upon it by legislative enactment.¹ There is no law granting authority to the Commission over the transaction proposed by the applicants. The Commission therefore lacks jurisdiction over this matter.

Commission rule 4 CSR 240-2.116(4) states that a case may be dismissed for good cause found by the Commission after a minimum of ten days notice to all parties involved.

¹ *State ex rel. Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 34 S. W. 2d. 37 (1931).

Because the Commission lacks jurisdiction, the Commission finds that good cause exist to dismiss this matter. Ten days after the Commission issues this order it will become effective. Under the above Commission rule, parties are hereby given 10 days notice of this matter being dismissed. Any party wishing to object to the Commission dismissing this matter may file an application for rehearing.

IT IS ORDERED THAT:

1. The application filed by First Communications, LLC and Gores FC Holdings, LLC is dismissed for lack of jurisdiction.
2. This order shall become effective on August 19, 2007.
3. This case may be closed on August 20, 2007.

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.

Jones, Senior Regulatory Law Judge