

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of October, 2008.

Joint Application of First Communications, LLC)
and Renaissance Acquisition Corp. for Approval of)
a Transfer of Control)

Case No. TO-2009-0111

ORDER DISMISSING APPLICATION FOR LACK OF JURISDICTION

Issue Date October 23, 2008

Effective Date: November 2, 2008

Background

First Communications, LLC (FCL) and Renaissance Acquisition Corp. filed an application for approval to transfer control of First Communications to Renaissance. The Applicants state that they are proposing a stock transfer, which will involve no transfer of certificates, assets or customers.

FCL is a wholly owned subsidiary of First Communications, Inc. (FCI), a Delaware corporation. FCL is authorized to provide resold interexchange telecommunications services in Missouri by a Commission order issued on September 25, 2006, in Case No. TA-2007-0067. Renaissance is a Delaware corporation and has created, for the purpose of accomplishing this transaction, two wholly-owned subsidiaries; FCI Merger Sub I, Inc., and FCI Merger Sub II, LLC, which are both Delaware companies.

The Staff of the Commission recommends that the Commission dismiss this matter for lack of jurisdiction. The Office of the Public Counsel has filed no pleadings.

The Proposed Transaction

FCI, the parent of FCL, will merge with Renaissance's subsidiary Merger Sub I. FCI will survive the merger. Then, FCI will merge into Renaissance's subsidiary Merger Sub II, with Merger Sub II surviving. As a result, FCL, the regulated telecommunications company, will be a wholly owned subsidiary of Renaissance. The Applicants point out that after the transaction, FCL will continue to offer service with no change in the name of the company or its rates, terms or conditions.

The Applicants state that the proposed transaction will serve the public interest in that FCL will be able to obtain access to additional financial and operational resources, allowing the company to pursue growth strategies, increase its brand awareness and expand its geographical market and its service offerings.

Discussion

Section 392.300.1, RSMo 2000, states that:

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchise, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it to do so.

The statute prohibits a *telecommunications company* from doing what is described in the statute. In this transaction, FCL, the regulated telecommunications company, is not doing anything. It is the parent, FCI, that is merging with the subsidiaries of Renaissance. Essentially, FCL, which is now a subsidiary of FCI, an unregulated entity, will become a subsidiary of Renaissance, another unregulated entity.

Additionally, with regard to the transfer of stock, Section 392.300.2 states that:

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 consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications organized or existing under or by virtue of the laws of this state company

Because FCL is a Ohio corporation, this section is inapplicable and does not confer jurisdiction upon the Commission.

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. Because the Commission lacks jurisdiction, the Commission finds that good cause exists to dismiss this matter.

THE COMMISSION ORDERS THAT:

1. The application filed by First Communications, LLC and Renaissance Acquisition Corp. is dismissed for lack of jurisdiction.

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

2. This order shall become effective on November 2, 2008.
3. This case shall be closed on November 3, 2008.

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, Jarrett,
and Gunn, CC., concur.
Clayton, C., dissents.

Jones, Senior Regulatory Law Judge