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\*Also admitted in Illinois

August 20, 1999

**FILED<sup>2</sup>**

AUG 23 1999

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
301 West High Street, Suite 530  
Jefferson City, MO 65101

Re: Axces, Inc. - Gemini II, Inc.  
Application of Axces Aquisition, Inc. for a Certificate of Service to Provide  
Intrastate Telecommunications Services Within the State of Missouri

Our File No.: 343

TA-2000-179

Dear Sir/Madam:

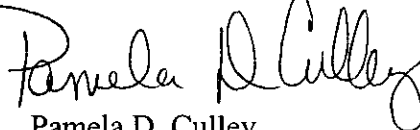
Enclosed please find an original and fourteen (14) copies of the Application regarding the above referenced corporation along with an original and six (6) copies of the proposed Tarriff and an original and fourteen (14) copies of the Motion for Expedited Treatment. Please file the documents accordingly.

I am also enclosing two (2) extra copies of the above referenced documents for return in the enclosed self-addressed stamped envelope.

Additionally, please be advised that a copy of the above referenced documents has been sent to the Office of Public Counsel.

Thank you for your cooperation and assistance in this regard.

Sincerely yours,



Pamela D. Culley  
Legal Assistant

cc: Office of Public Counsel  
(w/enclosures)

Monica Borne

0000147

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

AUG 23 1999

Missouri Public  
Service Commission

IN THE MATTER OF THE APPLICATION )  
OF AXCES ACQUISITION, INC. )  
FOR A CERTIFICATE OF SERVICE )  
TO PROVIDE INTRASTATE )  
TELECOMMUNICATIONS SERVICES )  
WITHIN THE STATE OF MISSOURI )

Application No. TA 2000-179

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APPLICATION

AXCES ACQUISITION, INC. ("Axces Acq." or "Applicant"), a Delaware corporation, files this verified application respectfully requesting that the Missouri Public Service Commission ("Commission") issue Applicant a Certificate of Service pursuant to Chapter 392 of the Missouri Revised Statutes and Commission Rules to resell intrastate telecommunications services within the State of Missouri and to be classified as a competitive telecommunications company. In support of its request, Applicant states:

1. Applicant is a Delaware corporation with its legal name, principal address and phone number as follows:

Axces Acquisition, Inc.  
2500 Wilcrest, Suite 300  
Houston, Texas 77042  
(713) 781-1187

A copy of Applicant's Certificate of Incorporation from Delaware is attached hereto as Exhibit A. Applicant's application for Certificate of Authority to transact business in Missouri has been submitted and the filed-stamped copy is attached hereto as Exhibit A. The final Certificate will be submitted as soon as it is received.

2. Applicant proposes to engage in the business of reselling 1+ intrastate interexchange interlata and intralata telecommunications services within and throughout the State of Missouri and hereby request a Certificate of Service pursuant to Section 392.440 RSMo. Applicant asserts that Case No. T0-84-222 (intralata services) and Case No. TX-85-10 at 10 Mo. Reg. 1048 (1985) (interlata services) are applicable as are Sections 392.190 to 392.530 RSMo and Applicant therefore does not include a showing of public necessity.
3. Applicant has the experience in the telecommunications industry and the technical and financial resources necessary to ensure Applicant's success. Brief descriptions of the qualification and experience of the Company Officers are attached hereto as Exhibit B. Applicant's financial statements are attached hereto as Exhibit C.<sup>1</sup> Applicant will comply pursuant to Section 386.320(3), RSMo with the reasonable requests for financial and operating data to allow the Commission to monitor the intralata toll market.
4. Applicant's Tariff which contains the rules and regulations applicable to its customers, a description of the services provided by Applicant and a list of rates associated with such services is attached as Exhibit D hereto, which Tariff is required to be filed pursuant to Section 392.220 RSMo and 4 CSR 240-30.010. Applicant will comply with Section 392.220 RSMo regarding notice requirements for filing new or amended Tariffs.

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<sup>1</sup>Due to the fact that Applicant is a corporation created for the sole purpose of facilitating the Agreement and Plan of Reorganization by and Among Axces, Inc. and Gemini II, Inc. which Application is before this Commission in Case No. TM-99-601, the financial statements for the Applicant, as the surviving corporation, will be the same as those of Axces, Inc. The financials for Axces, Inc. are attached hereto.

5. Applicant will not unjustly discriminate among its customers as is prohibited under Section 392.200 RSMo.
6. Applicant, pursuant to Section 386.570 RSMo, will comply with all applicable Commission rules except those which are specifically waived by the Commission pursuant to a request filed by the Applicant.
7. Applicant will not collect interexchange access surcharges for pay phone owners through its billing agreements with local exchange companies so long as the policy of the Commission and the law of the State of Missouri prohibit such billing agreements. In the event that said policy or law should be revised or changed, Applicant may, at that time, elect to collect said surcharges through billing agreements with local exchange companies.
8. Applicant is a competitive reseller of long distance telecommunications services and thus requests a competitive classification pursuant to Section 392.361 RSMo. and as set forth in the Commission Report and Order in its Case No. TO-88-142; Further, when granted the Certificate requested herein, Applicant will be competing with other telecommunications companies in Missouri offering the same or similar services as Applicant.
9. Pursuant to Section 392.361 RSMo. Supp. 1990, Applicant states that it is subject to sufficient competition to justify a lesser degree of regulation of it by this Commission and further states that it would be just and reasonable for the Commission to suspend or modify the Application of the following statutory provisions (all references are to the Missouri Revised Statutes) and Commission

rules as they pertain to Applicant: (1); property valuation, 392.270; Depreciation Accounts, 392.280; carriers issuance of stocks, bonds and other indebtedness as well as carriers reorganization of its capitalization, 392.290, 392.310, 392.320, 392.330 and 392.340; copies of rate schedules, 4 CSR 240-30.010(2)(C); access line and grade of service complaints, 4 CSR 240-32.030(1)(C); information at business office, 4 CSR 240-32.050(3); telephone directories, 4 CSR 240-32.050(4); call interception, 4 CSR 240-32.050(5); telephone and number changes, 4 CSR 240-32.050(6); coin telephones, 4 CSR 240-32.070(4); certain service and billing practices, 4 CSR 240-33.030; and whatever other statutes or rules the Commission deems appropriate.

10. Applicant, if required, will file Missouri specific annual reports pursuant to Section 392.210 RSMo. Applicant, if required, will submit Percentage of Interstate Use Reports including the percentage of interstate use and percentage of intrastate use, on a quarterly basis to the local exchange companies. In addition, if required, Applicant will submit to the Commission Staff on a quarterly basis reports showing the percentage of intralata use.

11. Any questions regarding this Application should be directed to the Company's counsel as follows:

EllenAnn G. Sands  
Benjamin W. Bronston  
Nowalsky, Bronston & Gothard, APLLC  
3500 N. Causeway Blvd.  
Suite 1442  
Metairie, Louisiana 70002  
Phone: (504) 832-1984  
Fax: (504) 831-0892

12. Applicant's local counsel for purposes of appearances before this Commission shall be:

William M. Wunderlich  
Wunderlich & Associates  
1504 Gravois  
High Ridge, MO 63049  
Phone: (314) 677-5669

WHEREFORE, Applicant, **Axcres Acquisition, Inc.** respectfully requests that the Public Service Commission of the State of Missouri (i) issue a Certificate of Public Service authorizing Applicant to provide intrastate interexchange intralata and interlata telecommunication services in Missouri, (ii) classify Applicant as a competitive telecommunications company and (iii) suspend or modify certain statutes and rules as they apply to Applicant.



William M. Wunderlich  
Wunderlich & Associates  
1504 Gravois  
High Ridge, MO 63049  
Phone: (314) 677-5669

VERIFICATION OF APPLICANT

STATE OF LOUISIANA            )  
  )    ss:  
PARISH OF JEFFERSON        )

I, MICHAEL AVIGNON, being first duly sworn, state that I am Chairman and CEO of Axces Acquisition, Inc., the Applicant herein; that I have reviewed the matters set forth in the Application and Exhibits and the statements contained therein are true to the best of my knowledge, except as to those matters which are stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of August, 1999.

AXCES ACQUISITION, INC.

By: Michael Avignon  
Michael Avignon, President

Sworn to and subscribed before me this 16th day of August, 1999.

Alfred M.  
Notary Public

**EXHIBIT A**



*State of Delaware*  
*Office of the Secretary of State* PAGE 1

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "AXCES ACQUISITION, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JUNE, A.D. 1999, AT 12 O'CLOCK P.M.



A handwritten signature in cursive script, reading "Edward J. Freel".

*Edward J. Freel, Secretary of State*

3060845 8100

991335760

AUTHENTICATION: 9918583

DATE: 08-12-99

**CERTIFICATE OF INCORPORATION  
OF  
AXCES ACQUISITION, INC.**

The undersigned, a natural person acting as incorporator of a corporation under the General Corporation Law of the State of Delaware as the same exists or may hereafter from time to time be amended (the "DGCL"), hereby makes this Certificate of Incorporation for such corporation.

**ARTICLE I**

**NAME**

The name of the corporation is AXCES Acquisition, Inc. (the "Corporation").

**ARTICLE II**

**REGISTERED OFFICE/AGENT**

The address of its registered office in the State of Delaware is located at the Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, New Castle County. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

**PURPOSES**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV**

**AUTHORIZED CAPITAL STOCK**

The aggregate number of shares of all classes of stock which the Corporation shall have authority to issue is 1,000 shares of common stock, par value \$1.00 per share.

**ARTICLE V**

**EXISTENCE**

The existence of the Corporation is to be perpetual.

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 12:00 PM 06/24/1999  
991257108 - 3060845

## ARTICLE VI

### NO PREEMPTIVE RIGHTS

No stockholder shall be entitled, as a matter of right, to subscribe for or acquire additional, unissued or treasury shares of any class of capital stock of the Corporation whether now or hereafter authorized, or any bonds, debentures or other securities convertible into, or carrying a right to subscribe to or acquire such shares, but any shares or other securities convertible into, or carrying a right to subscribe to or acquire such shares may be issued or disposed of by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

## ARTICLE VII

### NO CUMULATIVE VOTING

At each election of directors, every stockholder entitled to vote at such election shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote. No stockholder shall have the right to cumulate his votes in any election of directors.

## ARTICLE VIII

### BOARD OF DIRECTORS

The number of directors constituting the Corporation's initial Board of Directors is one (1), and the name and mailing address of the individual who will serve as director until the first annual meeting of stockholders or until his successor is elected and qualify is:

| <u>Name</u>         | <u>Address</u>                                |
|---------------------|---|
| Christopher H. Efir | 700 Gemini, Suite 100<br>Houston, Texas 77058 |

The number of directors constituting each subsequent Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the Corporation's Bylaws. None of the directors need be a stockholder or a resident of the State of Delaware. Elections of directors need not be by written ballot unless the Corporation's Bylaws provide otherwise. Except as otherwise provided by law, the business and affairs of the Corporation shall be managed by, or under the direction of, its Board of Directors. In furtherance and not in limitation of the rights, powers, privileges and discretionary authority granted or conferred by the DGCL or other statutes or laws of the State of Delaware, the Board of Directors is expressly authorized:

- A. To adopt, amend, alter or repeal the Bylaws of the Corporation;

- B. To authorize and cause to be executed any mortgage, lien or pledge upon or of the real and personal property and assets of the Corporation;
- C. To declare and pay lawful dividends upon shares of the Corporation's capital stock in accordance with the DGCL, as it may hereafter be amended from time to time;
- D. To set apart out of any funds of the Corporation available for dividends, a reserve or reserves for any proper purpose and to reduce or abolish any such reserve in the manner in which it was created; and
- E. To adopt from time to time bylaw provisions with respect to indemnification of directors, officers, employees, agents and other persons as it shall deem expedient and in the best interests of the Corporation, to the extent permitted by law and not inconsistent with other provisions of this Certificate of Incorporation, as it may be amended from time to time.

## ARTICLE IX

### INDEMNIFICATION

A. *Mandatory Indemnification.* Each person who at any time is or was a director or officer of the Corporation, and is threatened to be or is made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative (a "Proceeding"), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, member, employee, trustee, agent or similar functionary of another domestic or foreign corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other for-profit or non-profit enterprise, whether the basis of a Proceeding is an alleged action in such person's official capacity or in another capacity while holding such office, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, or any other applicable law as may from time to time be in effect (but, in the case of any such amendment or enactment, only to the extent that such amendment or law permits the Corporation to provide broader indemnification rights than such law prior to such amendment or enactment permitted the Corporation to provide), against all expense, liability and loss (including, without limitation, court costs and attorneys' fees, judgments, fines, excise taxes or penalties, and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such person in connection with a Proceeding, and such indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation or a director, officer, partner, venturer, proprietor, member, employee, trustee, agent or similar functionary of another domestic or foreign corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other for-profit or non-profit enterprise, and shall inure to the benefit of such person's heirs, executors and administrators. The Corporation's obligations under this Section A include, but are not limited to, the convening of any meeting, and the consideration of any matter thereby, required by statute in order to determine the eligibility of any person for indemnification.

B. *Prepayment of Expenses.* Expenses incurred by a director or officer of the Corporation in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding to the fullest extent permitted by, and only in compliance with, the DGCL or any other applicable laws as may from time to time be in effect, including, without limitation, any provision of the DGCL which requires, as a condition precedent to such expense advancement, the delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under Section A of this Article IX or otherwise. Repayments of all amounts so advanced shall be upon such terms and conditions, if any, as the Corporation's Board of Directors deems appropriate.

C. *Vesting.* The Corporation's obligation to indemnify and to prepay expenses under Sections A and B of this Article IX shall arise, and all rights granted to the Corporation's directors and officers hereunder shall vest, at the time of the occurrence of the transaction or event to which a Proceeding relates, or at the time that the action or conduct to which such Proceeding relates was first taken or engaged in (or omitted to be taken or engaged in), regardless of when such Proceeding is first threatened, commenced or completed. Notwithstanding any other provision of this Certificate of Incorporation or the Bylaws of the Corporation, no action taken by the Corporation, either by amendment of this Certificate of Incorporation or the Bylaws of the Corporation or otherwise, shall diminish or adversely affect any rights to indemnification or prepayment of expenses granted under Sections A and B of this Article IX which shall have become vested as aforesaid prior to the date that such amendment or other corporate action is effective or taken, whichever is later.

D. *Enforcement.* If a claim under Section A or Section B or both Sections A and B of this Article IX is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit in a court of competent jurisdiction against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any such suit (other than a suit brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL or other applicable law to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. The failure of the Corporation (including its Board of Directors, independent legal counsel, or stockholders) to have made a determination prior to the commencement of such suit as to whether indemnification is proper in the circumstances based upon the applicable standard of conduct set forth in the DGCL or other applicable law shall neither be a defense to the action nor create a presumption that the claimant has not met the applicable standard of conduct. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal Proceeding, had reasonable cause to believe that his conduct was unlawful.

E. *Nonexclusive.* The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, bylaw, other provisions of this Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

F. *Permissive Indemnification.* The rights to indemnification and prepayment of expenses which are conferred to the Corporation's directors and officers by Sections A and B of this Article IX may be conferred upon any employee or agent of the Corporation if, and to the extent, authorized by the Board of Directors.

G. *Insurance.* The Corporation shall have power to purchase and maintain insurance, at its expense, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, member, employee, trustee, agent or similar functionary of another domestic or foreign corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other for-profit or non-profit enterprise against any expense, liability or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the provisions of this Article IX, the Corporation's Bylaws, the DGCL or other applicable law.

H. *Implementing Arrangements.* Without limiting the power of the Corporation to procure or maintain insurance or other arrangement on behalf of any of the persons as described in paragraph G of this Article IX, the Corporation may, for the benefit of persons eligible for indemnification by the Corporation, (1) create a trust fund, (2) establish any form of self-insurance, (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Corporation, or (4) establish a letter of credit, guaranty or surety arrangement.

## ARTICLE X

### LIMITED DIRECTOR LIABILITY

No director of the Corporation shall be personally liable to the Corporation or to its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article X shall not eliminate or limit the liability of a director:

- A. for any breach of the director's duty of loyalty to the Corporation or its stockholders,
- B. for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,

- C. under Section 174 of the DGCL, as it may hereafter be amended from time to time, for any unlawful payment of a dividend or unlawful stock purchase or redemption, or
- D. for any transaction from which the director derived an improper personal benefit.

If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. No amendment to or repeal of this Article X will apply to, or have any effect on, the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of the director occurring prior to such amendment or repeal.

#### **ARTICLE XI**

#### **AMENDMENT**

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders are granted subject to this reservation.

#### **ARTICLE XII**

#### **SECTION 203 ELECTION**

The Corporation expressly elects not to be governed by Section 203 of the DGCL.

#### **ARTICLE XIII**

#### **INCORPORATOR**

The name and mailing address of the incorporator is:

E. James Cowen  
Porter & Hedges, L.L.P.  
700 Louisiana, 35th Floor  
Houston, Texas 77002-2764

I, the undersigned, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the DGCL, do make this certificate, hereby declaring under the penalties of perjury that this is my act and deed and that the facts stated herein are true, and accordingly have hereunto set my hand this 24<sup>th</sup> day of June, 1999.

  
\_\_\_\_\_  
E. James Cowen, Incorporator





**State of Missouri**  
**Rebecca McDowell Cook, Secretary of State**  
**P.O. Box 778, Jefferson City, Mo. 65102**  
**Corporation Division**

**Application for Foreign Corporation**  
**For a Certificate of Authority**

(Submit in duplicate with filing fee of \$155.00)

- (1) The corporation's name is Axces Acquisition, Inc.  
 and it is organized and existing under the laws of Delaware.
- (2) The name it will use in Missouri is Axces Acquisition, Inc.
- (3) The date of its incorporation was 6/24/99, and the period of its duration is perpetual.  
month/day/year
- (4) The address of its principal place of business 2500 Wilcrest, Suite 300, Houston, TX 77042  
Address City/State/Zip
- (5) The name and address of its registered agent and office in the State of Missouri is  
National Registered Agents, Inc. 300-B East High Street, Jefferson City, MO 65101  
Name Address City/State/Zip
- (6) The specific purpose(s) of its business in Missouri are:  
The sale of long distance telecommunications services. **AUG 13 1999**
- (7) The name of its officers and directors and their business addresses are as follows:
- | (Officers)     | Name                   | Address  |
|----------------|------------------------|--|
| President      | <u>Timothy J. Till</u> | <u>2500 Wilcrest, #300, Houston, Texas 77042</u> |
| Vice President | <u></u>                | <u></u>  |
| Secretary      | <u>Timothy J. Till</u> | <u>2500 Wilcrest, #300, Houston, Texas 77042</u> |
| Treasurer      | <u>Michael Avignon</u> | <u>2500 Wilcrest, #300, Houston, Texas 77042</u> |
- (Board of Directors)
- |          |                         |  |
|----------|-------------------------|--|
| Director | <u>Timothy J. Till,</u> | <u>2500 Wilcrest, #300, Houston, Texas 77042</u> |
| Director | <u>Michael Avignon,</u> | <u>2500 Wilcrest, #300, Houston, Texas 77042</u> |
| Director | <u></u>                 | <u></u>  |
| Director | <u></u>                 | <u></u>  |
- (8) The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows: \_\_\_\_\_

(Date may not be more than 90 days after the filing date in this office)

In affirmation thereof the facts stated above are true.

|   |                        |                                    |
|---|------------------------|------------------------------------|
| <u>Michael Avignon</u>  | <u>Chairman / CEO</u>  | <u>8/12/99</u>                     |
| <small>(Authorized signature of officer or chairman of the board)</small> | <small>(Title)</small> | <small>(Date of Signature)</small> |

Note: You must have a current certificate of good standing or certificate of existence with this application. This may be obtained from the Secretary of State or other authority that issues corporate charters.

**EXHIBIT B**

### **Resumes of Officers of Axces Acquisition, Inc.**

Timothy J. Till – President and Secretary. Mr. Timothy J. Till, co-founder of Axces, Inc., is President and a member of the Board of Directors. From 1986 through 1992, Mr. Till served as a corporate manager for ISOETEC, a privately held company. Prior to that, he served as a project manager for Southwestern Bell Telecom and Centel Business System, both publicly traded companies.

Michael Avignon – Treasurer. Mr. Michael Avignon is a co-founder of Axces, Inc., and serves at its Chairman and Chief Executive Officer. Prior to his tenure with Axces, Inc., Mr. Avignon was involved in various business ventures. From 1982 through 1987, he served as President of Coin Distributing, Inc. ("Coin Distributing"). In one year, he managed the acquisitions of twenty-one competitors. Prior to 1982, Mr. Avignon served as President of Satin Sweats, a privately held company.

The address for each of the principals and/or key personnel is as follows:

Axces, Inc.  
2500 Wilcrest, Suite 540  
Houston, Texas 77042  
(713) 781-1187 (phone)  
(713) 781-9396 (fax)

**EXHIBIT C**

# AXCES, INC.

## Income Statement

|  | Year Ended December 31. |                  |                    |                       |
|--|-------------------------|------------------|--------------------|-----------------------|
|  | 1995                    | 1996             | 1997               | 1998 (1)              |
|  | (Audited)               | (Audited)        | (Audited)          | (Unaudited)           |
| Sales  | \$2,690,951             | \$8,467,506      | \$19,473,981       | \$30,295,100          |
| Cost of sales                                | <u>1,605,922</u>        | <u>3,959,087</u> | <u>8,002,688</u>   | <u>9,876,013</u>      |
| Gross profit                                 | 1,085,029               | 4,508,419        | 11,471,293         | 20,419,087            |
| Selling, general and administrative expenses | <u>830,412</u>          | <u>3,734,925</u> | <u>9,045,468</u>   | <u>15,002,886</u> (2) |
| Operating income                             | 254,617                 | 773,494          | 2,425,825          | 5,416,201             |
| Interest income                              | 0                       | 56,694           | 9,575              | 43,337                |
| Interest expense                             | <u>(10,893)</u>         | <u>(20,424)</u>  | <u>(28,529)</u>    | <u>(271,504)</u>      |
| Income before taxes                          | 243,724                 | 809,764          | 2,406,871          | 5,188,034             |
| Income taxes                                 | <u>73,741</u>           | <u>278,284</u>   | <u>837,093</u>     | <u>129,261</u> (3)    |
| Net income                                   | <u>\$169,983</u>        | <u>\$531,480</u> | <u>\$1,569,778</u> | <u>\$5,058,773</u>    |

As a percentage of sales:

|  |        |        |        |        |
|--|--------|--------|--------|--------|
| Sales  | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of sales                                | 59.7%  | 46.8%  | 41.1%  | 32.6%  |
| Gross profit                                 | 40.3%  | 53.2%  | 58.9%  | 67.4%  |
| Selling, general and administrative expenses | 30.9%  | 44.1%  | 46.4%  | 49.5%  |
| Operating income                             | 9.5%   | 9.1%   | 12.5%  | 17.9%  |
| Income before taxes                          | 9.1%   | 9.6%   | 12.4%  | 16.9%  |
| Net income                                   | 6.3%   | 6.3%   | 8.1%   | 16.7%  |

(1) The Company made an election to become an "S" Corporation effective 01/01/98. Consequently, there are no Federal taxes assessed to the Company during 1998.

(2) S,G &A excludes \$3.1 million in salaries to executives and administrative which is the total amount allocated in fiscal 1998 minus \$300,000 for salaries which we deem as reasonable estimates of management compensation going forward.

(3) Allocations for income taxes include State and Local taxes and penalties incurred during the year.

# AXCES, INC.

## Balance Sheet

|  | December 31,<br>1997<br><i>(Audited)</i> | December 31,<br>1998<br><i>(Unaudited)</i> |
|--|--|--|
| Current assets:                            |  |  |
| Cash                                       | \$220,109                                | \$335,430                                  |
| Accounts receivable                        | 3,246,686                                | 5,669,771                                  |
| Prepaid expenses                           | 451,299                                  | 850,368                                    |
| Total current assets                       | 3,918,094                                | 6,855,569                                  |
| Property and equipment                     | 734,344                                  | 828,728                                    |
| Less accumulated depreciation              | (147,682)                                | 290,126                                    |
| Net property and equipment                 | 586,629                                  | 538,603                                    |
| Other assets                               | 88,783                                   | 687,121                                    |
| Notes receivable from shareholders         | 210,658                                  | -  |
| Total assets                               | \$4,804,164                              | \$ 8,081,293                               |
| Current liabilities:                       |  |  |
| Accounts payable                           | \$556,931                                | \$605,813                                  |
| Current portion of long-term debt          | 19,080                                   | 1,694,969 (1)                              |
| Current income taxes payable               | 2,249                                    | 502,241                                    |
| Deferred income taxes                      | 904,840                                  | 258,395                                    |
| Current portion of prizes and awards       | 65,000                                   | 76,111                                     |
| Other accrued expenses                     | 880,430                                  | 600,044                                    |
| Total current liabilities                  | 2,428,530                                | 3,737,573                                  |
| Long-term debt less current portion        | 43,706                                   | 38,694                                     |
| Deferred income taxes                      | 12,502                                   | -  |
| Prized and awards less current portion     | 13,750                                   | -  |
| Total liabilities                          | 2,498,488                                | 3,776,267                                  |
| Shareholders' equity:                      |  |  |
| Common stock                               | 1,000                                    | 1,000                                      |
| Additional paid-in capital                 | 12,492                                   | 12,492                                     |
| Retained earnings                          | 2,292,184                                | 4,291,535                                  |
| Total shareholder's equity                 | 2,305,676                                | 4,305,027                                  |
| Total liabilities and shareholders' equity | \$4,804,164                              | \$8,081,293                                |

(1) Debt was extinguished as of January 15, 1999.

## AXCES, INC.

### Discussion of Historical Financial Results

- Year Ended December 31, 1998 versus Year Ended September 30, 1997

Sales increased by \$10,821,119 or 55.6% to \$30,295,100 in the year ended December 31, 1998 from \$19,473,981 in the year ended December 31, 1997. This increase was primarily attributable to the expansion of the Company's sales force and an increase in sales per customer.

Cost of sales increased by \$1,873,325 to \$9,876,013 from \$8,002,688. This increase was primarily due to an increase in state and federal assessments and the Company's new verification process. As a percentage of sales, costs of sales decreased to 32.6% from 41.1%. As a result, gross margins increased to 67.4% from 58.9%.

Selling, general and administrative expenses increased by \$9,021,184 to \$18,066,652 from \$9,045,468. This increase was primarily attributable to the increase in sales force and the associated overhead costs. In addition, the Company became an "S" Corporation in 1998. Accordingly, management distributions were treated as operating expenses. When management distributions are included, selling, general and administrative expenses increased to 59.6% from 46.4% and operating margins decreased to 7.8% from 12.5%. When management distributions are added back to operating expenses, selling, general and administrative expense decreased from \$18,066,652 to \$15,002,886 for the year ended December 31, 1998. Normalized operating margins show a increase to 59.6% for the year ended December 31, 1998 from 46.4% for the year ended December 31, 1997.

Interest income increased to \$43,337 from \$9,575 while interest expense increased to \$271,504 from \$28,529. As a result, income before taxes decreased by \$282,603 or 11.7% to \$2,124,268 as compared to \$2,406,871.

For the period ending December 31, 1997, the Company accrued \$837,093 in taxes. As mentioned above, the Company became an "S" Corporation in 1998, therefore all Federal tax liability is now passed on to the shareholders.

## AXCES, INC.

### Discussion of Historical Financial Results

- Year Ended December 31, 1997 versus Year Ended December 31, 1996

Sales increased by \$11,006,475 or 130% to \$19,473,981 in the year ended December 31, 1997 from \$8,467,506 in the year ended December 31, 1996. This increase was primarily attributable to the expansion of the Company's sales force in existing territories, obtaining an Ameritech billing and collection contract and entry into the Ameritech region with the opening of a sales office in Chicago.

Cost of sales increased by \$4,043,601 to \$8,002,688 from \$3,959,087. This increase was primarily due to the expansion into the Ameritech region. As a percentage of sales, costs of sales decreased to 41.1% from 46.8%. As a result, gross margins increased to 58.9% from 53.2%.

Selling, general and administrative expenses increased by \$5,310,543 to \$9,045,468 from \$3,734,925. This increase was primarily attributable to the increase in the sales force and the associated overhead expenses related to the Company's expansion. As a percentage of revenues, selling, general and administrative expenses increased to 46.4% from 44.1%. Accordingly, operating margins increased to 12.5% from 9.1%.

Interest income decreased to \$9,575 from \$56,694 while interest expense increased to \$28,529 from \$20,424. As a result, income before taxes increased by \$1,597,107 or 197% to \$2,406,871 as compared to \$809,764.

Income taxes increased to \$837,093 from \$278,284. As a result, net income increased by \$1,038,298 or 195% to \$1,569,778 as compared to \$531,480.



## AXCES, INC.

### Discussion of Historical Financial Results

- Year Ended December 31, 1996 versus Year Ended December 31, 1995

Sales increased by \$5,776,555 or 215% to \$8,467,506 in the year ended December 31, 1996 from \$2,690,951 in the year ended December 31, 1995. This increase was primarily attributable to the increase in the Company's sales force, opening an office in Dallas, obtaining a Southwestern Bell billing and collection contract and becoming a reseller.

Cost of sales increased by \$2,353,165 to \$3,959,087 from \$1,605,922. This increase was primarily due to the entry into the Southwestern Bell region. As a percentage of sales, costs of sales decreased to 46.8% from 59.7%. As a result, gross margins increased to 53.2% from 40.3%.

Selling, general and administrative expenses increased by \$2,904,513 to \$3,734,925 from \$830,412. This increase was primarily attributable to the increase in the sales force, opening a new sales office in Dallas and the associated overhead expenses. As a percentage of sales, selling, general and administrative expenses increased to 44.1% from 30.9%. Accordingly, operating margins decreased to 9.1% from 9.6%.

Interest income increased to \$56,694 from \$0 while interest expense increased to \$20,424 from \$10,893. As a result, income before taxes increased by \$566,040 or 232% to \$809,764 as compared to \$243,724.

Income taxes increased to \$278,284 from \$73,741. As a result, net income increased by \$361,497 or 213% to \$531,480 as compared to \$169,983.