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July 7, 2005

Ms Sharla Dillon, Docket Room Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE Docket 05-00169 Data Request No 2
Petition for Authority for Acceris Management and Acquisition LLC to Acquire
Certain Assets of Acceris Communications Corp.

Dear Ms Dillon

In accordance with the request of Aster Adams, enclosed herewith for filing with the
Commission, please find an original and thirteen (13) copies of the response to Data Request
No 2

Also enclosed is a duplicate copy of this letter Please stamp the duplicate and return it to me in
the postage-paid envelope attached thereto

Please contact the undersigned should you have any questions or concerns

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P L C

Patrick D Crocker

PDC/pas

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DATA REQUEST NO 2

DOCKET NO 05-00169

Responses submitted by Patrick D Crocker

July 7, 2005

1. Clarify the following statement found on page 2 of the Joint Petition: "Evidence of the Buyer's qualifications to provide service is outlined in the Application for a certificate of Public Convenience and Necessity, which is being filed contemporaneously with this Application." Staff is not aware of any such Application for a Certificate of Convenience and Necessity."

Applicant's Application to Resell Telecommunications Services in Tennessee, which was inadvertently excluded as an attachment to the original filing, and is attached hereto as

Attachment 1. By way of the Joint Petition, Applicant requests the transfer of the Seller's operating authority

2. **Will ACCERIS retain all existing managers of Acceris Communications Corporation? Provide a list of managers who will run ACC and their respective management experience related to telecommunications services.**

Acceris Management and Acquisition LLC will retain the following management personnel from Acceris Communications Corp

Eric Lipscolm	Chief Accounting Officer
Keith T Harrison	General Manager Vice President, Product Development and Vendor Relations
Patty Mazon	Vice President, Financial Operations
Tom Simone	Vice President, Network Operations

3. **Provide the most recent audited Balance Sheet, Income Statement and Statement of Cash Flow if Acceris Management and Acquisition LLC, or its parent and of Acceris Communications Corp.**

Applicant is a wholly owned subsidiary of North Central Equity LLC ("NCE") As a newly formed company, Applicant does not yet have financial statements Applicant submits the audited financial statements for its parent as Exhibit G to the Application for Certificate to Resell Telecommunications Services in Tennessee Applicant is requesting that these financial statements be filed under seal and kept confidential and proprietary

Acceris Communication Corp is a wholly owned subsidiary of Acceris Communications Inc which is a publicly traded company. Acceris Communications Inc's 10-Q filing is attached hereto as **Attachment 2**.

4. **Provide any reference number to the petition filed with the FCC in this matter as well as any update of the case pending before the FCC if such is available.**

Applicant has filed a *Joint Application of Acceris Management and Acquisition LLC and Acceris Communications Corp for Authority pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer the Local and Interexchange Customer Base of an Authorized Domestic Carrier*

The FCC has not issued a reference number. A copy of the Petition along with the cover letter stamped by FCC/MELLON as evidence of filing is attached hereto as **Attachment**

ATTACHMENT 2

Financials for Acceris Communications Inc.
Parent of
Acceris Communications Corp.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2005

OR

☐ **TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number: 0-17973

ACCERIS COMMUNICATIONS INC.

(Exact name of registrant as specified in its charter)

FLORIDA

59-2291344

(State or other jurisdiction of
incorporation or organization)

(I R S Employer Identification No)

1001 Brinton Road, Pittsburgh, Pennsylvania 15221

(Address of principal executive offices)

(412) 244-2100

(Registrant's telephone number)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities and Exchange Act of 1934 during the preceding 12 months (or for such shorter time period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days Yes ☒ No ☐

Check whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act)

Yes ☐ No ☒

As of April 22, 2005, there were 19,237,135 shares of common stock, \$0.01 par value, outstanding

PART I - FINANCIAL INFORMATION

Item 1 - Financial Statements.

ACCERIS COMMUNICATIONS INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

<u>(In thousands of dollars, except share and per share amounts)</u>		<u>March 31,</u> <u>2005</u> <u>(unaudited)</u>	<u>December 31,</u> <u>2004</u>
ASSETS			
Current assets:			
Cash and cash equivalents	\$	491	\$ 458
Accounts receivable, less allowance for doubtful accounts of \$2,903 and \$2,163 at March 31, 2005 and December 31, 2004, respectively		11,725	13,079
Other current assets		1,503	1,473
Total current assets		13,719	15,010
Furniture, fixtures, equipment and software, net		3,120	4,152
Other assets			
Intangible assets, net		1,228	1,404
Goodwill		1,120	1,120
Investments		1,100	1,100
Other assets		1,076	1,223
Total assets	\$	21,363	\$ 24,009
LIABILITIES AND STOCKHOLDERS' DEFICIT			
Current liabilities			
Revolving credit facility	\$	3,422	\$ 4,725
Accounts payable and accrued liabilities		25,181	27,309
Unearned revenue		959	959
Current portion of notes payable		1,944	1,928
Obligations under capital leases		968	1,441
Total current liabilities		32,474	36,362
Notes payable, less current portion		3,119	3,597
Notes payable to a related party, net of unamortized discount		55,477	46,015
Total liabilities		91,070	85,974
Commitments and contingencies			
Stockholders' deficit			
Preferred stock, \$10.00 par value, authorized 10,000,000 shares, issued and outstanding 618 at March 31, 2005 and December 31, 2004, liquidation preference of \$618 at March 31, 2005 and December 31, 2004		6	6
Common stock, \$.01 par value, authorized 300,000,000 shares, issued and outstanding 19,237,135 at March 31, 2005 and December 31, 2004		192	192

Additional paid-in capital	187,016	186,650
Accumulated deficit	<u>(256,921)</u>	<u>(248,813)</u>
Total stockholders' deficit	<u>(69,707)</u>	<u>(61,965)</u>
Total liabilities and stockholders' deficit	<u>\$ 21,363</u>	<u>\$ 24,009</u>

The accompanying notes are an integral part of these condensed consolidated financial statements

ACCERIS COMMUNICATIONS INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

	Three Months Ended March 31,	
	2005	2004
(In thousands of dollars, except per share amounts)		
Revenues		
Telecommunications services	\$ 22,253	\$ 34,723
Technology licensing and development	—	450
Total revenues	<u>22,253</u>	<u>35,173</u>
Operating costs and expenses:		
Telecommunications network expense (exclusive of depreciation and amortization, shown below)	13,730	16,635
Selling, general and administrative	10,978	14,763
Provision for doubtful accounts	1,055	1,227
Research and development	150	—
Depreciation and amortization	<u>1,308</u>	<u>1,704</u>
Total operating costs and expenses	<u>27,221</u>	<u>34,329</u>
Operating income (loss)	<u>(4,968)</u>	<u>844</u>
Other income (expense):		
Interest expense - related party	(2,487)	(2,803)
Interest expense - third party	(680)	(730)
Other income	<u>27</u>	<u>1,377</u>
Total other expense	<u>(3,140)</u>	<u>(2,156)</u>
Loss from continuing operations	<u>(8,108)</u>	<u>(1,312)</u>
Gain from discontinued operations (net of \$0 tax)	<u>—</u>	<u>104</u>
Net loss	<u><u>\$ (8,108)</u></u>	<u><u>\$ (1,208)</u></u>
Basic and diluted weighted average shares outstanding	19,237	19,262
Net loss per common share - basic and diluted		
Loss from continuing operations	\$ (0.42)	\$ (0.07)
Gain from discontinued operations	<u>0.00</u>	<u>0.01</u>
Net loss per common share	<u><u>\$ (0.42)</u></u>	<u><u>\$ (0.06)</u></u>

The accompanying notes are an integral part of these condensed consolidated financial statements

ACCERIS COMMUNICATIONS INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)

	Three Months Ended March 31,	
	2005	2004
(In thousands of dollars)		
Cash flows from operating activities		
Net loss	\$ (8,108)	\$ (1,208)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	1,308	1,704
Accrued interest added to loan principal of related party debt	1,335	901
Provision for doubtful accounts	1,055	1,227
Amortization of discount on notes payable to related party	1,222	1,920
Decrease in allowance for impairment of net assets of discontinued operations	—	(148)
Gain on sale of investment in common stock	—	(565)
Mark to market adjustment to warrants	(35)	—
Expense associated with stock options issued to non-employee for services	1	29
Management benefit conferred by majority stockholder	—	33
Discharge of obligation	—	(767)
	(3,222)	3,126
Increase (decrease) from changes in operating assets and liabilities		
Accounts receivable	298	1,502
Other assets	95	503
Unearned revenue	—	(4,593)
Accounts payable, accrued liabilities and interest payable	(2,128)	(3,245)
Net cash used in operating activities	(4,957)	(2,707)
Cash flows from investing activities		
Purchases of furniture, fixtures, equipment and software	(94)	(167)
Cash received from sale of investments in common stock, net	—	1,627
Net cash (used in) provided by investing activities	(94)	1,460
Cash flows from financing activities		
Proceeds from issuance of notes payable to related party	7,339	4,967
(Repayment of) proceeds from revolving credit facility, net	(1,303)	(2,959)
Payment of capital lease obligations	(473)	(654)
Payment of notes payable	(479)	—
Costs paid by majority stockholder	—	15
Net cash provided by financing activities	5,084	1,369
Increase in cash and cash equivalents	33	122
Cash and cash equivalents at beginning of period	458	2,033
Cash and cash equivalents at end of period	\$ 491	\$ 2,155
Supplemental schedule of non-cash investing and financing activities:		
Effect of fair value recognition applied to investments in common stock	\$ —	\$ 1,346
Discount in connection with convertible notes payable to related parties	\$ 365	\$ 278
Supplemental cash flow information:		
Taxes paid	\$ 11	\$ —

Interest paid

\$ 624 \$ 328

The accompanying notes are an integral part of these condensed consolidated financial statements

ACCERIS COMMUNICATIONS INC. AND SUBSIDIARIES

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (in thousands, except share and per share data)

Note 1 - Description of Business and Principles of Consolidation

The unaudited condensed consolidated financial statements include the accounts of Acceris Communications Inc (formerly I-Link Incorporated) and its wholly-owned subsidiaries Acceris Communications Corp ("ACC," formerly WorldxChange Corp), I-Link Communications Inc , ("ILC"), which is substantially included in discontinued operations Transpoint Holdings Corporation, which includes the purchased assets of Transpoint Communications LLC and the purchased membership interest in Local Telecom Holdings, LLC (collectively, "Transpoint"), which the Company purchased in July 2003, and Acceris Communications Technologies, Inc. These entities, on a combined basis, are referred to as "Acceris" or the "Company" in these unaudited condensed consolidated financial statements.

Our Technologies segment offers a proven network convergence solution for voice and data in VoIP communications technology and includes a portfolio of communication patents. Included in this portfolio are two foundational patents in the VoIP space, U S Patent Nos. 6,243,373 and 6,438,124 (together the "VoIP Patent Portfolio"). This segment of our business is primarily focused on licensing our technology, supported by our patents, to carriers and equipment manufacturers and suppliers in the internet protocol ("IP") telephony market.

Our Telecommunications business, which generated substantially all of our revenue in 2004 and the first quarter of 2005, is a broad-based communications segment servicing residential, small- and medium-sized businesses, and corporate accounts in the United States. We provide a range of products, including local dial tone, domestic and international long distance voice services and fully managed, integrated data and enhanced services, to residential and commercial customers through a network of independent agents, telemarketing and our direct sales force. We are a U.S. facilities-based carrier with points of presence in 30 major U.S. cities. Our voice capabilities include nationwide Feature Group D ("FGD") access. Our data network consists of 17 Nortel Passports that have recently been upgraded to support multi-protocol label switching ("MPLS"). Additionally, we have relationships with multiple tier I and tier II providers in the U.S. and abroad which afford Acceris the opportunity for least cost routing on telecommunication services to our clients.

All significant intercompany accounts and transactions have been eliminated upon consolidation.

Management believes that the unaudited interim data includes all adjustments necessary for a fair presentation. The December 31, 2004 condensed consolidated balance sheet, as included herein, is derived from audited consolidated financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States of America. The March 31, 2005 unaudited condensed consolidated financial statements should be read in conjunction with the Company's annual report on Form 10-K for the year ended December 31, 2004, filed with the Securities and Exchange Commission.

These unaudited condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern and, accordingly, do not include any adjustments that might result from the outcome of this uncertainty. The independent registered public accounting firm's report on the consolidated financial statements included in the Company's annual report on Form 10-K for the year ended December 31, 2004 contained an explanatory paragraph regarding the Company's ability to continue as a going concern.

The results of operations for the three month period ended March 31, 2005 are not necessarily indicative of those to be expected for the entire year ending December 31, 2005.

Note 2 - Summary of Significant Accounting Policies

Net loss per share

Basic earnings per share is computed based on the weighted average number of Acceris common shares outstanding during the period. Options, warrants, convertible preferred stock and convertible debt are included in the calculation of diluted earnings per share, except when their effect would be anti-dilutive. As the Company has a net loss for the three month periods ended March 31, 2005 and 2004, basic and diluted loss per share are the same.

Potential common shares that were not included in the computation of diluted earnings per share because they would have been anti-dilutive are as follows:

	March 31, 2005	March 31, 2004
Assumed conversion of Series N preferred stock	24,720	24,760
Assumed conversion of related party convertible debt	3,404,382	2,542,276
Assumed conversion of third party convertible debt	5,180,481	—
Assumed exercise of options and warrants to purchase shares of common stock	3,388,846	1,956,630
	<u>11,998,429</u>	<u>4,523,666</u>

Investments

Dividends and realized gains and losses on equity securities are included in other income in the consolidated statements of operations.

Investments are accounted for under the cost method, as the equity securities or the underlying common stock are not readily marketable and the Company's ownership interests do not allow it to exercise significant influence over these entities. The Company monitors these investments for impairment by considering current factors including economic environment, market conditions and operational performance and other specific factors relating to the business underlying the investment, and will record impairments in carrying values when necessary. The fair values of the securities are estimated using the best available information as of the evaluation date, including the quoted market prices of comparable public companies, market price of the common stock underlying the preferred stock, recent financing rounds of the investee and other investee specific information. See Note 5 for further discussion of the Company's investment in convertible preferred stock.

Concentrations

Concentrations of risk with third party providers

Acceris utilizes the services of certain Competitive Local Exchange Carriers ("CLECs") to bill and collect from customers. A significant portion of revenues were derived from customers billed by CLECs. If the CLECs were unwilling or unable to provide such services in the future, the Company would be required to significantly enhance its billing and collection capabilities in a short amount of time and its collection experience could be adversely affected during this transition period.

The Company depends on certain large telecommunications carriers to provide network services for significant portions of the Company's telecommunications traffic. If these carriers were unwilling or unable to provide such services in the future, the Company's ability to provide services to its customers would be adversely affected and the Company might not be able to obtain similar services from alternative carriers on a timely basis.

Concentrations of credit risk

The Company's retail telecommunications subscribers are primarily residential and small business subscribers in the United States. The Company's customers are generally concentrated in the areas of highest population in the United States, more specifically California, Florida, Illinois, New York and Texas. No single customer accounted for over 10% of revenues in the first quarter of 2005 or 2004.

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Significant estimates include revenue recognition, accruals for telecommunications network cost, the allowance for doubtful accounts, purchase accounting (including the ultimate recoverability of intangibles and other long-lived assets), valuation of deferred tax assets and contingencies surrounding litigation. These policies have the potential to have a more significant impact on our financial statements, either because of the significance of the financial statement item to which they relate, or because they require judgment and estimation due to the uncertainty involved in measuring, at a specific point in time, events which are continuous in nature.

Costs associated with carrying telecommunications traffic over our network and over the Company's leased lines are expensed when incurred, based on invoices received from the service providers. If invoices are not available in a timely fashion, estimates are utilized to accrue for these telecommunications network costs. These estimates are based on the understanding of variable and fixed costs in the Company's service agreements with these vendors in conjunction with the traffic volumes that have passed over the network and circuits provisioned at the contracted rates. Traffic volumes for a period are calculated from information received through the Company's network switches. From time to time, the Company has disputes with its vendors relating to telecommunications network services. In the event of such disputes, the Company records an expense based on its understanding of the agreement with that particular vendor, traffic information received from its network switches and other factors.

An allowance for doubtful accounts is maintained for estimated losses resulting from the failure of customers to make required payments on their accounts. The Company evaluates its provision for doubtful accounts at least quarterly based on various factors, including the financial condition and payment history of major customers and an overall review of collections experience on other accounts and economic factors or events expected to affect its future collections experience. Due to the large number of customers that the Company serves, it is impractical to review the creditworthiness of each of its customers. The Company considers a number of factors in determining the proper level of the allowance, including historical collection experience, current economic trends, the aging of the accounts receivable portfolio and changes in the creditworthiness of its customers.

The Company accounts for intangible assets in accordance with Statement of Financial Accounting Standards ("SFAS") No. 141, *Business Combinations* ("SFAS 141") and SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142"). All business combinations are accounted for using the purchase method and goodwill and intangible assets with indefinite useful lives are not amortized, but are tested for impairment at least annually. Intangible assets are initially recorded based on estimates of fair value at the time of the acquisition.

The Company assesses the fair value of its segments for goodwill impairment based upon a discounted cash flow methodology. If the carrying amount of the segment assets exceeds the estimated fair value determined through the discounted cash flow analysis, goodwill impairment may be present. The Company would measure the goodwill impairment loss based upon the fair value of the underlying assets and liabilities of the segment, including any unrecognized intangible assets and estimate the implied fair value of goodwill. An impairment loss would be recognized to the extent that a reporting unit's recorded goodwill exceeded the implied fair value of goodwill.

The Company performed its annual goodwill impairment test in the fourth quarters of 2004 and 2003. No impairment was present upon the performance of these tests in 2004 and 2003. We cannot predict the occurrence of future events that might adversely affect the reported value of goodwill. Such events may include, but are not limited to, strategic decisions made in response to economic and competitive conditions, the impact of the telecommunications regulatory environment, the economic environment of its customer base, statutory judgments on the validity of the Company's VoIP Patent Portfolio or a material negative change in its relationships with significant customers.

Regularly, the Company evaluates whether events or circumstances have occurred that indicate the carrying value of its other amortizable intangible assets may not be recoverable. When factors indicate the asset may not be recoverable, the Company compares the related future net cash flows to the carrying value of the asset to determine if impairment exists. If the expected future net cash flows are less than carrying value, impairment is recognized to the extent that the carrying value exceeds the fair value of the asset.

The Company assesses the value of its deferred tax asset, which has been generated by an accumulation of net operating losses, at least annually, and determines the necessity for a valuation allowance. The Company evaluates which portion, if any, will more likely than not be realized by offsetting future taxable income. The determination of that allowance includes a projection of its future taxable income, as well as consideration of any limitations that may exist on its use of its net operating loss carryforwards.

The Company is involved from time to time in various legal matters arising out of its operations in the normal course of business. On a case by case basis, the Company evaluates the likelihood of possible outcomes for this litigation. Based on this evaluation, the Company determines whether a liability is appropriate. If the likelihood of a negative outcome is probable, and the amount is estimable, the Company accounts for the liability in the current period. A change in the circumstances surrounding any current litigation could have a material impact on the financial statements.

Stock-based compensation

At March 31, 2005, the Company has several stock-based compensation plans, which are described more fully in Note 18 to the audited consolidated financial statements contained in our most recently filed Form 10-K. The Company accounts for these plans under the recognition and measurement principles of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and related Interpretations (collectively, "APB 25"). Stock-based employee compensation cost is not reflected in net loss, as all options granted under these plans had an exercise price equal to the market value of the underlying common stock on the date of grant. In accordance with SFAS No. 123, *Accounting for Stock-Based Compensation* ("SFAS 123"), as amended by SFAS No. 148, *Accounting for Stock-Based Compensation - Transition and Disclosure*, see below for a tabular presentation of the pro forma stock-based compensation cost, net loss and loss per share as if the fair value-based method of expense recognition and measurement prescribed by SFAS 123 had been applied to all employee options. Options granted to non-employees (excluding options granted to non-employee members of the Company's Board of Directors for their services as Board members) are recognized and measured using the fair value-based method prescribed by SFAS 123.

	Three Months Ended March 31,,	
	2005	2004
Net loss as reported	\$ (8,108)	\$ (1,208)
Deduct		
Employee stock-based compensation cost determined under the fair value-based method for all awards, net of \$0 tax	(120)	(177)
Pro forma net loss	<u>\$ (8,228)</u>	<u>\$ (1,385)</u>
Net loss per share - basic and diluted		
As reported	\$ (0.42)	\$ (0.06)
Pro forma	\$ (0.43)	\$ (0.07)

Note 3 - Liquidity and Capital Resources

As a result of our substantial operating losses and negative cash flows from operations, at March 31, 2005 we had a stockholders deficit of \$69,707 (December 31, 2004 - \$61,965) and negative working capital of \$18,755 (December 31, 2004 - \$21,352). The Company continued to finance its operations during the first quarter of 2005 through related party debt with its major stockholder, Counsel Corporation (together with its subsidiaries, "Counsel"), and a revolving credit facility. At March 31, 2005, the related party debt had a gross outstanding balance of \$60,776 (December 31, 2004 - \$52,100), and the revolving credit facility had an outstanding balance of \$3,422 (December 31, 2004 - \$4,725). No additional borrowings are available under the revolving credit facility at March 31, 2005. The related party debt matures on April 30, 2006 and the revolving credit facility matures on June 30, 2005. During the first quarter of 2005, Counsel extended the maturity of its related party debt from January 31, 2006 to April 30, 2006. Interest on the

related party debt is added to the principal amounts outstanding

The related party debt is supplemented by a Keep Well agreement, which requires Counsel to fund, through long-term intercompany advances or equity contributions, all capital investment, working capital or other operational cash requirements. The Keep Well obligates Counsel to continue its financial support of Acceris until June 30, 2005. The Keep Well is not expected to be extended beyond its current maturity. The related party debt is subordinated to the Wells Fargo Foothill, Inc. ("Foothill") credit facility and to the Laurus Master Fund Ltd. of New York ("Laurus") convertible debenture. Additionally, both of these financial instruments are guaranteed by Counsel through their respective maturities of June 2005 and October 2007, respectively. The current debt arrangements with Laurus prohibit the repayment of Counsel debt prior to the repayment or conversion of the Laurus debt. The Laurus debt, to the extent that it is not converted, is due in October 2007. The current asset-based facility with Foothill is not expected to be extended beyond its June 2005 maturity. Payments cannot be made to Counsel while the Foothill facility remains outstanding.

There is significant doubt about the Company's ability to obtain additional financing beyond June 30, 2005 to support its operations once the Keep Well expires. Additionally, the Company does not at this time have an ability to obtain additional financing for its Telecommunications business to pursue expansion through acquisitions. Due to these financial constraints, management and its strategic advisors are looking to merge or dispose of the Telecommunications business. There is no certainty that a merger or disposal can occur on a timely basis on favorable terms. These matters raise substantial doubt about the Company's ability to continue as a going concern. For more information on the assets and operations of the Telecommunications segment, please refer to Note 13 of these unaudited condensed consolidated financial statements.

Note 4 - Composition of Certain Financial Statements Captions

Furniture, fixtures, equipment and software consisted of the following

March 31, 2005

	<u>Cost</u>	<u>Accumulated depreciation</u>	<u>Net</u>
Telecommunications equipment	\$ 14,435	\$ (13,112)	\$ 1,323
Furniture, fixtures and office equipment	564	(339)	225
Computer equipment	3,570	(3,082)	488
Building and leasehold improvements	277	(215)	62
Software and information systems	2,182	(1,160)	1,022
Total furniture, fixtures, equipment and software	<u>\$ 21,028</u>	<u>\$ (17,908)</u>	<u>\$ 3,120</u>

December 31, 2004

	<u>Cost</u>	<u>Accumulated depreciation</u>	<u>Net</u>
Telecommunications equipment	\$ 14,508	\$ (12,435)	\$ 2,073
Furniture, fixtures and office equipment	564	(317)	247
Computer equipment	3,580	(2,979)	601
Building and leasehold improvements	272	(199)	73
Software and information systems	2,155	(997)	1,158
Total furniture, fixtures, equipment and software	<u>\$ 21,079</u>	<u>\$ (16,927)</u>	<u>\$ 4,152</u>

Included in telecommunications network equipment is \$9,752 in assets acquired under capital leases at both March 31, 2005 and December 31, 2004. Accumulated amortization on these leased assets was \$9,351 and \$8,757 at March 31, 2005 and December 31, 2004, respectively. At the expiration of the lease terms, the Company has the option to purchase the equipment for a cash purchase price equal to the equipment's fair value, plus an amount equal to all taxes, costs and expenses incurred or paid by the lessor in connection with the sale.

Intangible assets consisted of the following:

March 31, 2005				
	Amortization period	Cost	Accumulated amortization	Net
Intangible assets subject to amortization				
Customer contracts and relationships	12 - 60 months	\$ 2,006	\$ (1,123)	\$ 883
Agent relationships	30 months	1,479	(1,209)	270
Agent contracts	12 months	242	(242)	—
Patent rights	60 months	100	(25)	75
Goodwill		1,120	—	1,120
Total intangible assets and goodwill		\$ 4,947	\$ (2,599)	\$ 2,348

December 31, 2004				
	Amortization period	Cost	Accumulated amortization	Net
Intangible assets subject to amortization				
Customer contracts and relationships	12 - 60 months	\$ 2,006	\$ (1,042)	\$ 964
Agent relationships	30 months	1,479	(1,119)	360
Agent contracts	12 months	242	(242)	—
Patent rights	60 months	100	(20)	80
Goodwill		1,120	—	1,120
Total intangible assets and goodwill		\$ 4,947	\$ (2,423)	\$ 2,524

Amortization expense for the three months ended March 31, 2005 and 2004 was \$176 and \$352, respectively.

Accounts payable and accrued liabilities consisted of the following:

	March 31, 2005	December 31, 2004
Regulatory and legal fees	\$ 10,334	\$ 9,983
Accounts payable	7,068	8,737
Telecommunications and related accruals	2,105	2,658
Payroll and benefits	1,197	1,436
Billing and collection fees	841	867
Agent commissions	526	585
Other	3,110	3,043
Total accounts payable and accrued liabilities	\$ 25,181	\$ 27,309

Note 5 - Investments

The Company's investments as of March 31, 2005 consist of a convertible preferred stock holding in AccessLine Communications Corporation, a privately-held corporation. This stock was received as consideration for a licensing agreement (reflected in technology licensing and related services revenues) in the second quarter of 2003, the estimated fair value of which was determined to be \$1.100. The fair value of the securities are estimated using the best available information as of the evaluation date, including the quoted market prices of comparable public companies, recent financing rounds of the investee and other investee specific information.

Prior to June 21, 2004, the Company held an investment in the common stock of Buyers United Inc. ("BUI"), which investment was acquired as consideration received related to the sale of the operations of I-Link Communications Inc. ("ILC"; see Note 8). At the time of the sale of the ILC business, the purchase price consideration paid by BUI was in the form of convertible preferred stock with additional shares of preferred stock received subsequently based on contingent earn out provisions in the purchase agreement. In addition, common stock dividends were earned on the preferred stock holding. On March 16, 2004, the Company converted its preferred stock into 1,500,000 shares of BUI common stock, and sold 750,000 shares at \$2.30 per share in a private placement transaction. This sale resulted in a gain of approximately \$565, which is included in interest and other income in the three months ended March 31, 2004 and was based on specific identification of the securities sold and their related cost basis. Through several open market transactions during the three months ended June 30, 2004, the Company sold the remaining 808,546 of these shares, resulting in a gain of approximately \$811.

Note 6 - Discontinued Product

During the three months ended March 31, 2005 and 2004, the Company recognized \$0 and \$6,363, respectively, as non-recurring revenue from prior-year sales of a network service offering, as prior period cash collections were finalized. The Company, through its Telecommunications segment (see Note 13 of these unaudited condensed consolidated statements for further discussion of the Company's segments), began to sell a network service offering in November 2002. The Company ceased selling this network service offering in July 2003. Revenues for the Company's network service offering were accounted for using the unencumbered cash receipt method. The Company determined that collectibility of the amounts billed to customers was not reasonably assured at the time of billing. Under its agreements with the LECs, cash collections remitted to the Company are subject to adjustment, generally over several months. Accordingly, the Company recognizes revenue when the actual cash collections to be retained by the Company are finalized and unencumbered. There was no further billing of customers for the network service offering subsequent to the program's termination.

At March 31, 2004, the Company had not paid the service provider approximately \$519 which was previously reserved pursuant to services provided in July 2003, which were expensed as a telecommunications cost in the third quarter of 2003. During the second quarter of 2004, a settlement was reached with the service provider whereby the Company paid approximately \$300 to the service provider, rendering all parties free and clear of all future obligations under the program. The discharge of the remaining \$219 obligation was included as an offset to telecommunications expense in the consolidated statements of operations for the nine months ended September 30, 2004.

Note 7 - Discharge of Obligation

In the first quarter of 2004, the Company was discharged of an obligation totaling \$767 owed to a consortium of owners of a certain telecommunications asset, to which the Company previously held an indefeasible right of usage. The discharge of the obligation is included in interest and other income in the accompanying condensed consolidated statements of operations for the three months ended March 31, 2004. There were no similar transactions during the first quarter of 2005.

Note 8 - Discontinued Operations

On December 6, 2002, the Company entered into an agreement to sell substantially all of the assets and customer base of ILC to BUI. The sale included the physical assets required to operate Acceris' nationwide network using its patented VoIP technology (constituting the core business of ILC) and a license in perpetuity to use Acceris' proprietary software platform. The sale closed on May 1, 2003 and provided for a post closing cash settlement between the parties. The sale price consisted of 300,000 shares of Series B convertible preferred stock (8% dividend) of BUI, subject to adjustment in certain circumstances, of which 75,000 shares were subject to an earn-out provision. The earn-out took place on a monthly basis over a fourteen-month period which began January 2003. The Company recognized the value of the earn-out shares as additional sales proceeds when earned. During the year ending December 31, 2003, 64,286 shares of the contingent consideration were earned and were included as a component of gain (loss) from discontinued operations. The fair value of the 225,000 shares (non-contingent consideration to be received) of BUI convertible preferred stock was determined to be \$1.350 as of December 31, 2002. As of December 31, 2003, the combined fair value of the original shares (225,000) and the shares earned from the contingent consideration (64,286 shares) was determined to be \$1.916. The value of the shares earned from the contingent consideration was included in the calculation of gain from discontinued operations for the year ended December 31, 2003. As additional contingent consideration was earned, it was recorded as a gain from discontinued operations. In the first quarter of 2004, the Company recorded a gain from discontinued operations of \$104. This gain was due to the receipt in January 2004 of the remaining 10,714 shares of common stock as contingent consideration, which is recorded as additional

gain from discontinued operations

Upon closing of the sale, BUI assumed all operational losses from December 6, 2002. Accordingly, the gain of \$529 for the year ended December 31, 2003, included the increase in the sales price for the losses incurred since December 6, 2002. In the year ended December 31, 2002, the Company recorded a loss from discontinued operations related to ILC of \$12,508. No income tax provision or benefit was recorded on discontinued operations.

There were no gains or losses from discontinued operations in the first quarter of 2005

Note 9 - Income Taxes

The Company recognized no income tax benefit from the losses generated in the three months ended March 31, 2005 and 2004 because of the uncertainty surrounding the realization of the related deferred tax asset. Pursuant to Section 382 of the Internal Revenue Code, annual usage of the Company's net operating loss carryforwards is limited to approximately \$6,700 per annum until 2008 and thereafter \$1,700 per annum as a result of previous cumulative changes of ownership resulting in a change of control of the Company. These rules in general provide that an ownership change occurs when the percentage shareholdings of 5% direct or indirect shareholders of a loss corporation have in aggregate increased by more than 50 percentage points during the immediately preceding three years. Restrictions in net operating loss carry forwards occurred in 2001 as a result of the acquisition of the Company by Counsel. Further restrictions likely have occurred as a result of subsequent changes in the share ownership and capital structure of the Company and Counsel. There is no certainty that the application of these rules may not reoccur resulting in further restrictions on the Company's income tax loss carry forwards existing at a particular time. In addition, further restrictions or reductions in net operating loss carryforwards may occur through future merger, acquisition and/or disposition transactions. Any such additional limitations could require the Company to pay income taxes in the future and record an income tax expense to the extent of such liability.

Note 10 - Related Party Transactions

During the three months ended March 31, 2005, Counsel advanced \$7,339 and converted \$1,335 of interest payable to principal. All loans from Counsel mature on April 30, 2006 and accrue interest at rates ranging from 9% to 10%, with interest compounding quarterly. Some of the loans are subject to an accelerated maturity in certain circumstances. At March 31, 2005, no events resulting in accelerated maturity had occurred. The Keep Well from Counsel expires on June 30, 2005 and provides a commitment to fund, through long-term intercompany advances or equity contributions, all capital investment, working capital or other operational cash requirements of the Company. The Company does not expect that the Keep Well will be extended beyond its current maturity.

Allan Silber, the Chief Executive Officer ("CEO") of Acceris is an employee of Counsel. As CEO of Acceris, he is entitled to an annual salary of \$275 and a discretionary bonus of up to 100% of the base salary. Such compensation is expensed and paid by Acceris.

On December 31, 2004, the Company entered into a management services agreement (the "Agreement") with Counsel. Under the terms of the Agreement, the Company agreed to make payment to Counsel for the past and future services to be provided by Counsel personnel (excluding Allan Silber, Counsel's Chairman, President and Chief Executive Officer and the Company's Chairman and Chief Executive Officer) to the Company for the calendar years of 2004 and 2005. The basis for such services charged is an allocation, on a cost basis, based on time incurred, of the base compensation paid by Counsel to those employees providing services to the Company. The cost of such services was \$280 for the year ended December 31, 2004. Services for 2005 are being determined on the same basis. For each fiscal quarter, Counsel will provide the details of the charge for services by individual, including respective compensation and their time allocated to the Company. For the first quarter of 2005, the cost was \$113. In accordance with the Foothill and Laurus agreements, amounts owing to Counsel cannot be repaid while amounts remain owing to Foothill and Laurus. The foregoing fees for 2004 and 2005 are due and payable within 30 days following the respective year ends, subject to applicable restrictions. Any unpaid fee amounts will bear interest at 10% per annum commencing on the day after such year end. In the event of a change of control, merger or similar event of the Company, all amounts owing, including fees incurred up to the date of the event, will become due and payable immediately upon the occurrence of such event. The Agreement does not guarantee the personal services of any specific individual at the Company throughout the term of the agreement and the Company will have to enter into a separate personal services arrangement with such individual should their specific services be required. During the first quarter of 2005, the Company did not enter into any such agreements.

Note 11 - Commitments and Contingencies

Legal Proceedings

On April 16, 2004, certain stockholders of the Company (the "Plaintiffs") filed a putative derivative complaint in the Superior Court of the State of California in and for the County of San Diego, (the "Complaint") against the Company, WorldxChange Corporation (sic), Counsel Communications LLC, and Counsel Corporation as well as certain present and former officers and directors of the Company, some of whom also are or were directors and or officers of the other corporate defendants (collectively the "Defendants") The Complaint alleges, among other things, that the Defendants, in their respective roles as controlling stockholder and directors and officers of the Company committed breaches of the fiduciary duties of care, loyalty and good faith and were unjustly enriched, and that the individual Defendants committed waste of corporate assets, abuse of control and gross mismanagement The Plaintiffs seek compensatory damages, restitution, disgorgement of allegedly unlawful profits, benefits and other compensation, attorneys' fees and expenses in connection with the Complaint The Company believes that these claims are without merit and intends to continue to vigorously defend this action There is no assurance that this matter will be resolved in the Company's favor and an unfavorable outcome of this matter could have a material adverse impact on its business, results of operations, financial position or liquidity

Acceris and several of Acceris' current and former executives and board members were named in a securities action filed in the Superior Court of the State of California in and for the County of San Diego on April 16, 2004, in which the plaintiffs made claims nearly identical to those set forth in the Complaint in the derivative suit described above The Company believes that these claims are without merit and intends to vigorously defend this action There is no assurance that this matter will be resolved in the Company's favor and an unfavorable outcome of this matter could have a material adverse impact on its business, results of operations, financial position or liquidity

In connection with the Company's efforts to enforce its patent rights, Acceris Communications Technologies Inc., our wholly owned subsidiary, filed a patent infringement lawsuit against ITXC Corp ("ITXC") in the United States District Court of the District of New Jersey on April 14, 2004 The complaint alleges that ITXC's VoIP services and systems infringe the Company's U.S. Patent No. 6,243,373, entitled "*Method and Apparatus for Implementing a Computer Network/Internet Telephone System*" On May 7, 2004, ITXC filed a lawsuit against Acceris Communications Technologies Inc., and the Company, in the United States District Court for the District of New Jersey for infringement of five ITXC patents relating to VoIP technology, directed generally to the transmission of telephone calls over the Internet and the completion of telephone calls by switching them off the Internet and onto a public switched telephone network The Company believes that the allegations contained in ITXC's complaint are without merit and the Company intends to continue to provide a vigorous defense to ITXC's claims There is no assurance that this matter will be resolved in the Company's favor and an unfavorable outcome of this matter could have a material adverse impact on its business, results of operations, financial position or liquidity

At our Adjourned Meeting of Stockholders held on December 30, 2003, our stockholders, among other things, approved an amendment to our Articles of Incorporation, deleting Article VI thereof (regarding liquidations, reorganizations, mergers and the like). Stockholders who were entitled to vote at the meeting and advised us in writing, prior to the vote on the amendment that they dissented and intended to demand payment for their shares if the amendment was effectuated were entitled to exercise their appraisal rights and obtain payment in cash for their shares under Sections 607.1301 - 607.1333 of the Florida Business Corporation Act (the "Florida Act"), provided their shares were not voted in favor of the amendment. In January 2004, we sent appraisal notices in compliance with Florida corporate statutes to all stockholders who had advised us of their intention to exercise their appraisal rights. The appraisal notices included our estimate of fair value of our shares, at \$4.00 per share on a post-split basis. These stockholders had until February 29, 2004 to return their completed appraisal notices along with certificates for the shares for which they were exercising their appraisal rights. Approximately 33 stockholders holding approximately 74,000 shares of our stock returned completed appraisal notices by February 29, 2004. A stockholder of 20 shares notified us of his acceptance of our offer of \$4.00 per share, while the stockholders of the remaining shares did not accept our offer. Subject to the qualification that, in accordance with the Florida Act, we may not make any payment to a stockholder seeking appraisal rights if, at the time of payment, our total assets are less than our total liabilities, stockholders who accepted our offer to purchase their shares at the estimated fair value will be paid for their shares within 90 days of our receipt of a duly executed appraisal notice. If we should be required to make any payments to dissenting stockholders, Counsel will fund any such amounts through the purchase of shares of our common stock. Stockholders who did not accept our offer were required to indicate their own estimate of fair value, and if we do not agree with such estimates, the parties are required to go to court for an appraisal proceeding on an individual basis in order to establish fair value. Because we did not agree with the estimates submitted by most of the dissenting stockholders, we have sought a judicial determination of the fair value of the common stock held by the dissenting stockholders. On June 24, 2004, we filed suit against the dissenting stockholders seeking a declaratory judgment, appraisal and other relief in the Circuit Court for the 17th Judicial District in Broward County, Florida. On February 4, 2005, the declaratory judgment action was stayed pending the resolution of the direct and derivative lawsuits filed in California. This decision was made by the judge in the Florida declaratory judgment action due to the similar nature of certain allegations brought by the defendants in the declaratory judgment matter and the California lawsuits described above. When the declaratory judgment matter resumes, there is no assurance that this matter will be resolved in our favor and an unfavorable outcome of this matter could have a material adverse impact on our business, results of operations, financial position or liquidity.

The Company is involved in various other legal matters arising out of its operations in the normal course of business, none of which are expected, individually or in the aggregate, to have a material adverse effect on the Company.

Note 12 - Agent Warrant Program

During the first quarter of 2004, the Company launched the Acceris Communications Inc. Platinum Agent Program (the "Agent Warrant Program"). The Agent Warrant Program provides for the issuance, to participating independent agents, of warrants to purchase up to 1,000,000 shares of the Company's common stock. The Agent Warrant Program was established to encourage and reward consistent, substantial and persistent production by selected commercial agents serving the Company's domestic markets and to strengthen the Company's relationships with these agents by granting long-term incentives in the form of the warrants to purchase the Company's common stock at current price levels. The Agent Warrant Program is administered by the Compensation Committee of the Board of Directors of the Company.

Participants in the Agent Warrant Program will be granted warrants upon commencement, the vesting of which is based on maintaining certain revenue levels for a period of 24 months. The grants are classified into tiers based on commissionable revenue levels, the vesting period of which begins upon the achievement of certain commissionable revenue levels during the eighteen month period beginning February 1, 2004. Vesting of the warrants within each tier occurs 50% after 12 months and 100% after 24 months, dependent on the agent maintaining the associated commissionable revenue levels for the entire period of vesting.

As of March 31, 2005, 650,000 warrants have been issued under the Agent Warrant Program, at an exercise price of \$3.50, none of which have met the requirements to begin vesting. The warrants issued under the plan are accounted for under the provisions of the FASB's Emerging Issue Task Force's ("EITF") Issue No. 96-18, *Accounting for Equity Instruments That are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services* ("EITF 96-18"). Accordingly, the Company will recognize an expense associated with these warrants over the vesting period based on the then current fair market value of the warrants calculated at each reporting period. At such time as the vesting for any warrants begins, the expense will be included in selling, general and administrative expense. As the vesting period has not commenced for any of the warrants issued prior to March 31, 2005, no expense has been recognized in the accompanying condensed consolidated statements of operations for the three months ended March 31, 2005.

Note 13 - Segment Reporting

The Company's reportable segments are as follows:

- **Telecommunications** - includes the operations of the assets and liabilities purchased from WorldxChange in June 2001 and the Agent and Enterprise businesses of RSL Com Inc. ("RSL"), which were acquired in December 2002. This segment offers a dial around telecommunications product, a 1+ product and a local dial tone bundled offering through MLM, commercial agents and telemarketing channels. This segment also offers voice and data solutions to business customers through an in-house sales force.
- **Technologies** - is the former technology licensing and development segment, which segment offers a fully developed network convergence solution for voice and data. The Company licenses certain developed technology to third party users.

There are no material inter-segment revenues. The Company's business is conducted principally in the U.S.; foreign operations are not significant. The table below presents information about net loss and segment assets used by the Company as of and for the three months ended March 31, 2005 and 2004.

	For the Three Months Ended March 31, 2005		
	Reportable Segments		
	Telecommunications	Technologies	Total
Revenues from external customers	\$ 253	\$ —	\$ 22,253
Other income	27	—	27
Interest expense	536	376	912
Depreciation and amortization expense	1,299	9	1,308
Segment loss from continuing operations	(4,335)	(695)	(5,030)
Other significant non-cash items:			
Provision for doubtful accounts	1,055	—	1,055
Expenditures for long-lived assets	74	20	94
Segment assets	19,672	1,242	20,914

For the Three Months Ended March 31, 2004

Reportable Segments

	Telecommunications	Technologies	Total
Revenues from external customers	\$ 34,723	\$ 450	\$ 35,173
Other income	767	—	767
Interest expense	701	344	1,045
Depreciation and amortization expense	1,699	5	1,704
Segment income (loss) from continuing operations	1,241	(265)	976
Other significant non-cash items			
Provision for doubtful accounts	1,227	—	1,227
Expenditures for long-lived assets	167	—	167
Segment assets	30,820	1,241	32,061

The following table reconciles reportable segment information to the consolidated financial statements of the Company

	Three months ended March 31, 2005	Three months ended March 31, 2004
Total interest and other income for reportable segments	\$ 27	\$ 767
Unallocated other income from corporate accounts	—	610
	<u>\$ 27</u>	<u>\$ 1,377</u>
Total interest expense for reportable segments	\$ 912	\$ 1,045
Unallocated interest expense from related party debt	2,111	2,475
Other unallocated interest expense from corporate debt	144	13
	<u>\$ 3,167</u>	<u>\$ 3,533</u>
Total depreciation and amortization for reportable segments	\$ 1,308	\$ 1,704
Other unallocated depreciation from corporate assets	—	—
	<u>\$ 1,308</u>	<u>\$ 1,704</u>
Total segment income (loss)	\$ (5,030)	\$ 976
Unallocated non-cash amounts in consolidated net loss		
Amortization of discount on notes payable	(1,186)	(1,885)
Other income (primarily gain on extinguishment of debt)	—	—
Other income (primarily gain on sale of investment)	—	610
Other corporate expenses (primarily corporate level interest, general and administrative expenses)	(1,892)	(1,013)
Net loss from continuing operations	<u>\$ (8,108)</u>	<u>\$ (1,312)</u>
Expenditures for segment long-lived assets	\$ 94	\$ 167
Other unallocated expenditures for corporate assets	—	—
	<u>\$ 94</u>	<u>\$ 167</u>
Segment assets	\$ 20,914	\$ 32,061
Intangible assets not allocated to segments	173	173

Other assets not allocated to segments [†]	276	2,606
	<u>\$ 21,363</u>	<u>\$ 34,840</u>

* Other assets not allocated to segments are corporate assets, and for 2004, assets associated with segments reported in previous periods which are no longer classified as reportable segments, primarily assets of and related to the discontinued operations of ILC (former telecommunications services segment)

Item 2 - Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion should be read in conjunction with the information contained in the unaudited condensed consolidated financial statements of the Company and the related notes thereto, appearing elsewhere herein, and in conjunction with the Management's Discussion and Analysis of Financial Condition and Results of Operations set forth in the Company's Form 10-K for the year ended December 31, 2004, filed with the Securities and Exchange Commission ("SEC"). All numbers are in thousands of dollars except for share, per share data and customer counts.

Forward Looking Information

This report contains certain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Exchange Act of 1934, as amended, which are based on management's exercise of business judgment as well as assumptions made by and information currently available to management. When used in this document, the words "may", "will", "anticipate", "believe", "estimate", "expect", "intend" and words of similar import, are intended to identify any forward-looking statements. You should not place undue reliance on these forward-looking statements. These statements reflect our current view of future events and are subject to certain risks and uncertainties as noted below. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, our actual results could differ materially from those anticipated in these forward-looking statements. We undertake no obligation, and do not intend, to update, revise or otherwise publicly release any revisions to these forward-looking statements to reflect events or circumstances after the date hereof, or to reflect the occurrence of any unanticipated events. Although we believe that our expectations are based on reasonable assumptions, we can give no assurance that our expectations will materialize.

Overview and Recent Developments

We currently operate two distinct but related businesses: a Voice over Internet Protocol ("VoIP") technologies business ("Technologies") and a telecommunications business ("Telecommunications").

Our **Technologies business** offers a proven network convergence solution for voice and data in VoIP communications technology and includes a portfolio of communications patents. Included in this portfolio are two foundational patents in VoIP - U.S. Patent Nos. 6,243,373 and 6,438,124 (together the "VoIP Patent Portfolio"). This segment of our business is primarily focused on licensing our technology, supported by our patents, to carriers and equipment manufacturers and suppliers in the internet protocol ("IP") telephony market.

Over the past five years, we have been licensing, on a fully paid-up basis, our technology and patents internationally and domestically. We have also identified and put on notice a number of domestic enterprises that we believe are infringing our patents, and licensing discussions are underway. Unfortunately, there are enterprises which, while infringing on our patents, have neither given recognition to our patents nor have been willing to pay a licensing fee for their use to this point. In those situations, after failing to reach agreement on a licensing arrangement, we have taken, and will continue to take, the steps necessary to ensure that those enterprises cease and desist infringing our patents and compensate the Company for past infringement.

To achieve our goals in our Technologies business, we plan to license our intellectual property. We have a number of issued patents and pending patent applications, which we utilize to provide our proprietary solutions. We believe that we hold the foundational patents for the manner in which a significant portion of VoIP traffic is routed in the marketplace today. We have licensed portions of our technology to third parties on a non-exclusive basis. We plan to further monetize our intellectual property by offering licenses to service providers, equipment companies and end-users who are deploying VoIP networks for phone-to-phone communications.

Our **Telecommunications business**, which generated substantially all of our revenue in 2004 and the first quarter of 2005, is a broad-based communications segment servicing residential, small- and medium-sized businesses, and corporate accounts in the United States. We provide a range of products, including local dial tone, domestic and international long distance voice services and fully managed, integrated data and enhanced services, to residential and commercial customers through a network of independent agents, telemarketing, and our direct sales force. We are a U.S. facilities-based carrier with points of presence in 30 major U.S. cities. Our voice capabilities include nationwide Feature Group D ("FGD") access. Our data network consists of 17 Nortel Passports that have

recently been upgraded to support multi-protocol label switching ("MPLS") Additionally, we have relationships with multiple tier I and tier II providers in the U S and abroad which afford Acceris the opportunity for least cost routing on telecommunications services to our clients

Our markets are characterized by the presence of numerous competitors which are of significant size relative to Acceris, while many others are similar or smaller in size. Acceris is a price taker in the markets in which it operates, and is affected by the global price compression brought on by technology advancements and deregulation in the telecommunications industry both domestically and internationally. To manage the effects of price compression, the Company endeavours to work with suppliers to reduce telecommunications costs and to regularly optimize its U.S.-based network to reduce its fixed costs of operations, while working to integrate the back office functions of the business.

We have built our Telecommunications business through the acquisition of distressed or bankrupt assets, integrating the back office, broadening product service offerings that consumers are demanding, and developing alternative channels to market. Our plan to become profitable on an operating income basis during 2004 was not achieved primarily due to our decision to halt the geographic expansion of our local dial tone offering as a direct result of regulatory uncertainty in our domestic markets, particularly in the areas of the Unbundled Network Element Platform ("UNE-P"), and growing Universal Service Fund ("USF") contribution levels for traditional carriers. In 2004, the Company commenced offering local services in Florida, Massachusetts, New Jersey, New York and Pennsylvania, and realized revenue of \$6,900, finishing the year with approximately 22,000 local subscribers. In March 2005, the Company decided to suspend efforts to attract new local customers, while continuing to support its existing local customers in the above states. The decision was a result of the Federal Communications Commission's ("FCC") revision of its wholesale rules, originally designed to introduce competition in local markets, which went into effect on March 11, 2005. The reversal of local competition policy by the FCC has permitted the Regional Bell Operating Companies ("RBOCs") to substantially raise wholesale rates for the services known as unbundled network elements ("UNEs"), and required the Company to re-assess its local strategy while it attempts to negotiate long-term agreements for UNEs on competitive terms. Should the Company not enter into wholesale contracts for UNE services in the near future, the natural attrition cycle will result in an ongoing reduction in the number of local customers and related revenues in 2005 and beyond. For the first quarter of 2005, the Company realized revenue of \$3.119 on its local services, and at March 31, 2005 had approximately 23,000 local subscribers.

Domestic regulatory uncertainty, coupled with continued international deregulation of telecommunication services and technology advancements, is changing the underlying business model for our Telecommunications business. We believe that to bring long-term sustainable success to our Telecommunications business, we need to acquire additional scale through acquisitions. However, the Company does not at this time have an ability to obtain additional financing for its Telecommunications business to pursue expansion through acquisitions. There is significant doubt about the Company's ability to obtain additional financing beyond June 30, 2005 to support its operations once the Keep Well from Counsel expires, and this raises substantial doubt about the Company's ability to continue as a going concern. Due to these financial constraints, management and its strategic advisors are looking to merge or dispose of the Telecommunications business. There is no certainty that a merger or disposal can occur on a timely basis on favorable terms. For more information on the assets and operations of the Telecommunications business, please refer to Note 13 of the unaudited condensed consolidated financial statements included in Item 1 of this report on Form 10-Q.

A **going concern qualification** has been included by the Company's independent registered public accounting firms in their audit opinions for each of 2002, 2003 and 2004. Readers are encouraged to take due care when reading the independent registered public accountants' reports included in Item 15 of the Company's most recent Form 10-K and this management's discussion and analysis. In the absence of a substantial infusion of capital, or a merger or disposal of our Telecommunications business, the Company may not be able to continue as a going concern.

Acceris was incorporated in Florida in 1983 under the name MedCross, Inc., which was changed to I-Link Incorporated in 1997 and to Acceris Communications Inc. in 2003. Our development and transition is articulated below.

Technologies

In 1994, we began operating as an Internet service provider and quickly identified that the emerging IP environment was a promising basis for enhanced service delivery. We soon turned to designing and building an IP telecommunications platform consisting of proprietary software, hardware and leased telecommunications lines. The goal was to create a platform with the quality and reliability necessary for voice transmission.

In 1997, we started offering enhanced services over a mixed IP-and-circuit-switched network platform. These services offered a blend of traditional and enhanced communication services and combined the inherent cost advantages of an IP-based network with the reliability of the existing Public Switched Telephone Network ("PSTN").

In August 1997, we acquired MiBridge, Inc. ("MiBridge"), a communications technology company engaged in the design, development, integration and marketing of a range of software telecommunications products that support multimedia communications over the PSTN, local area networks ("LANs") and IP networks. The acquisition of MiBridge permitted us to accelerate the development and deployment of IP technology across our network platform.

In 1998, we first deployed our real-time IP communications network platform. With this new platform, all core operating functions such as switching, routing and media control became software-driven. This new platform represented the first nationwide, commercially viable VoIP platform of its kind. Following the launch of our software-defined VoIP platform in 1998, we continued to refine and enhance the platform to make it even more efficient and capable for our partners and customers.

In 2002, the U.S. Patent and Trademark Office issued a patent (No. 6,438,124, the "Acceris Patent") for the Company's Voice Internet Transmission System. Filed in 1996, the Acceris Patent reflects foundational thinking, application, and practice in the VoIP Services market. In simple terms, the Acceris Patent encompasses the technology that allows two parties to converse phone-to-phone, regardless of the distance in between them, by transmitting voice/sound via the Internet. No special telephone or computer is required at either end of the call. The apparatus that makes this technically possible is a system of Internet access nodes, or Voice Engines (VoIP Gateways). These local Internet Voice Engines provide digitized, compressed, and encrypted duplex or simplex Internet voice/sound. The end result is a high-quality calling experience whereby the Internet serves only as the transport medium and as such, can lead to reduced toll charges. In conjunction with the issuance of our core foundational Acceris Patent, we disposed of our domestic U.S. VoIP network in a transaction with Buyers United, Inc. ("BUI"), which closed on May 1, 2003. The sale included the physical assets required to operate our nationwide network using our patented VoIP technology (constituting the core business of the I-Link Communications Inc. ("ILC") business) and included a fully paid non-exclusive perpetual license to our proprietary software-based network convergence solution for voice and data. The sale of the ILC business removed essentially all operations that did not pertain to our proprietary software-based convergence solution for voice and data. As part of the sale, we retained all of our intellectual and property rights and patents.

In 2003, we added to our VoIP Patent Portfolio when we acquired U.S. Patent No. 6,243,373 (the "VoIP Patent"), which included a corresponding foreign patent and related international patent applications. The VoIP Patent, together with the existing Acceris Patent and its related international patent applications, form our international VoIP Patent Portfolio that covers the basic process and technology that enables VoIP communication as it is used in the market today. Telecommunications companies that enable their customers to originate a phone call on a traditional handset, transmit any part of that call via IP, and then terminate the call over the traditional telephone network, are utilizing Acceris' patented technology. We intend to aggressively pursue recognition in the marketplace of our intellectual property via a focused licensing program. The comprehensive nature of the VoIP Patent, which is titled "*Method and Apparatus for Implementing a Computer Network/Internet Telephone System*" is summarized in the patent's abstract, which describes the technology as follows: "A method and apparatus are provided for communicating audio information over a computer network. A standard telephone connected to the PSTN may be used to communicate with any other PSTN-connected telephone, where a computer network, such as the Internet, is the transmission facility instead of conventional telephone transmission facilities. In conjunction with the acquisition, we also agreed to give up 35% of the net residual rights to our VoIP Patent Portfolio."

Intellectual property - The Company currently owns a number of issued patents and utilizes the technology supported by those patents in providing its products and services. The Company also has a number of non-U S patents and patent applications pending. Included in its U S portfolio of patents are

- U S Patent No 6,438,124 (issued in 2002)
- U S Patent No 6,243,373 (issued in 2001)
- U S Patent No 5,898,675 (issued in 1999)
- U S Patent No 5,754,534 (issued in 1998)

U S patents generally expire 17 years after issuance

Together, these patented technologies have been successfully deployed and commercially proven in a nationwide IP network and in Acceris' unified messaging service, Application Program Interface ("API") and software licensing businesses. The Company is using the technology supported by its VoIP patents in its business and is also engaged in licensing discussions with third parties domestically and internationally.

Telecommunications

Acceris' Telecommunications business has been built through the acquisition of predecessor businesses, which have been and are continuing to be integrated, consolidated and organized to provide the highest level of service to customers with the maximum level of operational efficiency.

In June 2001, the Company entered this business by acquiring, from bankruptcy, certain assets of WorldxChange Communications Inc. ("WorldxChange"). WorldxChange was a facilities-based telecommunications carrier providing international and domestic long distance service to retail customers. At acquisition, the business consisted primarily of a dial-around product that allowed a customer to make a call from any phone by dialling a 10-10-XXX prefix. Since the acquisition, we expanded the product offering to include 1+ products (1+ products are those which enable a customer to directly dial a long distance number from their telephone by dialling 1-area code-phone number). Historically, WorldxChange marketed its services through consumer mass marketing techniques, including direct mail and direct response television and radio. In 2002, we revamped our channel strategy by de-emphasizing the direct mail channel and devoting our efforts to pursuing more profitable methods of attracting and retaining customers. Today we use a network of independent commission agents in multi-level marketing ("MLM"), telemarketing and commercial agent channels to attract and retain customers.

In December 2002, we completed the purchase of certain assets of RSL COM USA Inc. ("RSL") from a bankruptcy proceeding. The purchase included the assets used by RSL to provide long distance voice and data services, including frame relay, to their commercial customers, and the assets used to provide long distance and other voice services to small businesses and the consumer/residential market.

In July 2003, the Company completed purchase of Local Telecom Holdings, LLC ("Transpoint"), a financially distressed company. The purchase of Transpoint provided us with further penetration into the commercial agent channel and access to a larger commercial customer base.

In 2004, we added offerings of local communications products to our residential and small business customers, achieving revenue of \$6.900 and completing the year with approximately 22,000 customers. The local dial tone service is provided under the terms of the UNE-P authorized by the Telecommunications Act of 1996, as amended, (the "1996 Act") and is available in Florida, Massachusetts, New Jersey, New York, and Pennsylvania, while our long distance services (1+ and 10-10-XXX) are available nationwide. In March 2005, the Company decided to suspend efforts to attract new local customers, while continuing to support its existing local customers in the above states. The decision was a result of the FCC's revision of its wholesale rules, originally designed to introduce competition in local markets, which went into effect on March 11, 2005. The reversal of local competition policy by the FCC has permitted the

RBOCs to substantially raise wholesale rates for the services known as UNEs, and required the Company to re-assess its local strategy while it attempts to negotiate long-term agreements for UNEs on competitive terms. Should the Company not enter into wholesale contracts for UNE services in the near future, the natural attrition cycle will result in an ongoing reduction in the number of local customers and related revenues. For the first quarter of 2005, the Company realized revenue of \$3,119 on its local services, and at March 31, 2005 had approximately 23 000 local subscribers.

Industry

Historically, the communications services industry has transmitted voice and data over separate networks using different technologies. Traditional carriers have typically built telephone networks based on circuit switching technology, which establishes and maintains a dedicated path for each telephone call until the call is terminated.

The communications services industry continues to evolve both domestically and internationally, providing significant opportunities and risks to the participants in these markets. Factors that have been driving this change include:

- entry of new competitors and investment of substantial capital in existing and new services, resulting in significant price competition
- technological advances resulting in a proliferation of new services and products and rapid increases in network capacity
- The 1996 Act, and
- growing deregulation of communications services markets in the United States and in selected countries around the world

VoIP is a technology that can replace the traditional telephone network. This type of data network is more efficient than a dedicated circuit network because the data network is not restricted by the one-call, one-line limitation of a traditional telephone network. This improved efficiency creates cost savings that can be either passed on to the consumer in the form of lower rates or retained by the VoIP provider. In addition, VoIP technology enables the provision of enhanced services such as unified messaging.

Competition

Competition in the telecommunications industry is based upon, among other things, pricing, customer service, billing services and perceived quality. We compete against numerous telecommunications companies that offer essentially the same services as we do. Many of our competitors, including the incumbent local exchange carriers ("ILECs"), are substantially larger and have greater financial, technical and marketing resources. Our success will depend upon our continued ability to provide high quality, high value services at prices competitive with, or lower than, those charged by our competitors.

We believe the recent proposed combination of national long distance carriers and local providers (SBC's proposed purchase of AT&T, Verizon and Qwest's bids for MCI and Sprint's proposed merger with wireless carrier Nextel) may provide the combined companies with a greater potential to offer targeted price plans to residential and small business customers — our primary target market — with significantly simplified rate structures and with bundles of local services with long-distance, which may continue to lower overall local and long-distance prices. Competition is also fierce for the commercial customers that we serve. This market was typically dominated by AT&T, Sprint and MCI (national long-distance carriers) but the recently proposed combination of some of these carriers with ILECs now offers the potential for additional growth opportunities for the incumbents, as they will be able to leverage the acquired long distance networks to service multi-location customers with offices located outside of their local calling area.

Pricing pressure has existed for several years in the telecommunications industry and is expected to continue. This is coupled with the introduction of new technologies such as VoIP, that seek to provide voice communications at a cost below that of traditional circuit-switched service. In addition, wireless carriers have seen further consolidation in their industry and are increasingly marketing their services as an alternative to traditional long distance and local services, further increasing competition and consumer choice. Reductions in prices charged by competitors may have a material adverse effect on us. Cable companies have entered the telecommunications business primarily for residential services, and this development may increase the competition faced by the Company in this market.

The ILECs are well-capitalized, well-known companies whose recent mergers will provide some of them with increased capabilities and assets to "bundle" services, such as local and wireless telephone services and high speed Internet access, with long-distance telephone services. The ILECs' name recognition in their existing markets, the established relationships that they have with their existing local service customers, their ability to leverage the long-distance networks from newly acquired carriers and traditional relationships to provide product and price competition, and evolving interpretations of the 1996 Act that appear favorable to the ILECs, also make it more difficult for us to compete with them.

Government Regulation

Telecommunications Industry

The telecommunications industry is subject to government regulation at federal, state and local levels. Any change in current government regulation regarding telecommunications pricing, system access, consumer protection or other relevant legislation could have a material impact on our results of operations. Most of our current operations are subject to regulation by the FCC under the Communications Act of 1934, as amended (the "Communications Act"). In addition, certain of our operations are subject to regulation by state public utility or public service commissions. Changes in, or changes in interpretation of, legislation affecting us could negatively impact our operations.

The 1996 Act, among other things, allows the RBOCs and others to enter the long-distance business. Entry of the RBOCs or other entities, such as electric utilities and cable television companies, into the long-distance business, either through recently proposed mergers or technological advances in the transmission of data communications over high-voltage electrical lines, may likely have a negative impact on our business and our ability to compete for customers. We anticipate that some of these entrants will prove to be strong competitors because they are better capitalized, already have substantial customer bases, and enjoy cost advantages relating to local telecom lines and access charges. In addition, the 1996 Act provides that state proceedings may in certain instances determine access charges that we are required to pay to the local exchange carriers. If these proceedings occur, rates could increase which could lead to a loss of customers and weaker operating results.

Overview of Federal Regulation

As a carrier offering telecommunications services to the public, we are subject to the provisions of the Communications Act, and FCC regulations issued thereunder. These regulations require us, among other things, to offer our regulated services to the public on a non-discriminatory basis at just and reasonable rates. We are subject to FCC requirements that we obtain prior FCC approval for transactions that would cause a transfer of control of one or more regulated subsidiaries. Such approval requirements may delay, prevent or deter transactions that could result in a transfer of control of our business.

International Service Regulation. We possess authority from the FCC, granted pursuant to Section 214 of the Communications Act, to provide international telecommunications service. The FCC has streamlined regulation of competitive international services and has removed certain restrictions against providing certain services. Presently, the FCC is considering a number of international service issues that may further alter the regulatory regime applicable to us. For instance, the FCC is considering revisions to the rules regarding the rates that international carriers like us pay for termination of calls to mobile phones located abroad. As of the date of this report, no resolutions of these issues have been announced.

Pursuant to FCC rules, we have cancelled our international and domestic FCC tariffs and replaced them with a general service agreement and price lists. As required by FCC rules, we have posted these materials on our Internet web site, <http://www.Acceris.com>. The "detrariffing" of our services has given us greater pricing flexibility for our services, but we are not entitled to the legal protection provided by the "filed rate doctrine," which generally provides protections to carriers from legal actions by customers that challenge

the terms and conditions of service

Interstate Service Regulation As an inter-exchange carrier ("IXC"), our interstate telecommunications services are regulated by the FCC. While we are not required to obtain FCC approval to begin or expand our interstate operations, we are required to obtain FCC approvals for certain transactions that would affect our ownership or the services we provide. Additionally, we must file various reports and pay certain fees and assessments. We are subject to the FCC's complaint jurisdiction and must contribute to the federal USF. We must also comply with the Communications Assistance for Law Enforcement Act ("CALEA"), and certain FCC regulations which require telecommunications common carriers to modify their networks to allow law enforcement authorities to perform electronic surveillance.

Overview of State Regulation

Through certain of our subsidiaries, we are authorized to provide intrastate interexchange telecommunications services and, in certain states, are authorized to provide competitive local exchange services by virtue of certificates granted by state public service commissions. Our regulated subsidiaries must comply with state laws applicable to all similarly certified carriers including the regulation of services, payment of regulatory fees and preparation and submission of reports. The adoption of new regulations or changes to existing regulations may adversely affect our ability to provide telecommunications services. Consumers may file complaints against us at the public service commissions. The certificates of authority we hold can be generally conditioned, modified, cancelled, terminated or revoked by state public service commissions. Further, many states require prior approval or notification for certain stock or asset transactions, or in some states, for the issuance of securities, debts, guarantees or other financial transactions. Such approvals can delay or prevent certain transactions.

Overview of Ongoing Policy Issues

Local Service Through the 1996 Act, Congress sought to establish a competitive and deregulated national policy framework for advanced telecommunications and information technologies. To date, local exchange competition has not progressed to a point where significant regulatory intervention is no longer required. Regulators believed that a "hands-off" policy would drive local exchange service into an adequately competitive market, but there continues to be a strong need for policy issue clarification and construction. Some policy changes have been addressed through the court system, not the regulatory system. For instance, the FCC has attempted several times to develop a list of UNEs which are portions of the ILEC networks and services that must be sold separately to competitors. On several occasions, the courts have rejected the FCC's approach to defining UNEs. The FCC's most recent attempt to develop rules, the Triennial Review Order, was vacated by the U.S. Circuit Court of Appeals in Washington D.C. on March 4, 2004. The Court's ruling went into effect on June 16, 2004. In response, several competitive carriers filed appeals with the U.S. Supreme Court, to seek a stay and review of the U.S. Circuit Court's ruling. Those requests for appeal were denied.

On August 20, 2004, the FCC issued interim UNE rules to replace those vacated by the D.C. Circuit Court as well as a Notice of Proposed Rulemaking ("NPRM") seeking comments on new UNE rules. On December 15, 2004, the FCC adopted new rules governing access to UNEs. The rules the FCC adopted replaced the interim rules. On February 4, 2005, the FCC released the text of the *TRO Remand Order* (the *Order*), adopted on December 15, 2004. The *Order* replaces rules that were vacated or remanded by the D.C. Circuit in *USTA II* on March 2, 2004. In short, the *Order* (1) reduces the availability of dedicated transport and high-capacity loops as UNEs, (2) eliminates UNE-P mass market switching, and (3) establishes transition periods and pricing for those UNEs no longer available after the *Order* becomes effective. Per its terms, the *Order* became effective on March 11, 2005.

Dedicated Transport - The FCC classifies the impairment status of dedicated transport services based on the revenue opportunities generated at either end of the underlying routes, based on "reasonable" inferences from previously successful competitive deployments. The Commission treats the various categories of routes as follows:

- DS1 Transport - carriers are impaired without access only if at least one end-point of the route is a wire center containing fewer than 38,000 business lines and fewer than four fiber-based collocators
- DS3 Transport - carriers are impaired without access only if at least one end-point of the route is a wire center containing fewer than 24,000 business lines and fewer than three fiber-based collocators
- Dark Fiber Transport - carriers are impaired without access only if at least one end-point of the route is a wire center containing fewer than 24,000 business lines and fewer than three fiber-based collocators
- Entrance Facilities - carriers are not impaired without access to entrance facilities

The FCC also places the following limits on the number of DS1 and DS3 lines that a competitor can access as UNEs

- If DS3 transport is not available as a UNE, competitors can lease up to 10 DS1s. The Commission reasons that if a competitor wishes to lease more than 10 DS1s, it would be economic for that competitor to provide or lease a DS3 instead
- If DS3 transport is available as a UNE, competitors can lease up to 12 DS3s
- High capacity loops - The FCC categorizes high-capacity loops as follows
- DS1 Loops - carriers are impaired without access to DS1 loops at any location within the service area of an ILEC wire center containing fewer than 60,000 business lines or fewer than four fiber-based collocators
- DS3 Loops - carriers are impaired without access to DS3 loops at any location within the service area of an ILEC wire center containing fewer than 38,000 business lines or fewer than four fiber-based collocators
- Dark Fiber Loops - carriers are not impaired without access to unbundled dark fiber loops

The FCC also places limits on the number of high-capacity loops that a competitor may access. Competitors can lease one DS3 and ten DS1s per building location

Mass Market Switching (UNE-P) - The FCC concludes that competitors are not impaired without access to ILEC circuit switching, relying on both the overall number of competitive circuit switches available, and the availability of alternatives to these switches. Specifically, the FCC notes that competitors can access packet switches and VoIP technology to serve mass-market customers. The FCC also notes that batch hot cuts are no longer an issue, given evidence of RBOC hot cut performance in the Section 271 context. Accordingly, mass market switching is eliminated as a UNE.

Conversions and New Orders - The FCC refuses to place any limitations on a competitor's right to convert special access arrangements into UNEs and UNE combinations, apart from the conditions and eligibility requirements placed on the UNEs themselves. Further, competitors may self-certify their eligibility for UNEs, which must then be provided by the relevant ILEC.

Transition - The FCC establishes the following transition procedures to phase-out existing UNEs that are eliminated by the *Order*

- DS1 and DS3 Loops and Transport - competitors will be permitted to continue their use of already-installed UNEs that have been eliminated for 12 months. As of March 11, 2005, the price for these UNEs will increase to 115% of the greater of (1) the rate paid on June 15, 2004, or (2) a new rate, if higher, set by a state commission after June 16, 2004
- Dark Fiber Loops and Transport - competitors will be permitted to continue their use of already-installed UNEs that have been eliminated for a period of 18 months. As of March 11, 2005, the price for these UNEs will increase to 115% of the greater of (1) the rate paid on June 15, 2004, or (2) a new rate, if higher, set by a state commission after June 16, 2004

- Mass Market Switching (as UNE-P) - competitors will be permitted to continue their use of already-installed UNEs that have been eliminated for 12 months, with the price for installed UNEs being the higher of (1) the June 15, 2004 rate, or (2) any rate set after June 16, 2004, plus one dollar

On February 24, 2005, the day the order was published in the Federal Register, United States Telecom Association, BellSouth Corporation, Qwest Communications International, Inc., SBC Communications, Inc. and the Verizon Telephone Companies filed a consolidated Petition for Review of the FCC Order with the Court of Appeals for the District of Columbia Circuit. The Petition states that the Order exceeds the FCC's jurisdiction or authority, violates the Communications Act of 1934 or the Administrative Procedure Act, fails to comply with prior judicial orders related to the triennial review process or are arbitrary, capricious, an abuse of discretion or otherwise contrary to law. The Petitioners ask the court to hold unlawful, vacate, enjoin, and set aside those portions of the order that are unlawful.

Competitors that utilize UNE-P will see an immediate increase in their wholesale costs for existing UNE-P customers. In addition, competitors will not be able to add new UNE-P lines unless they have entered into a commercial agreement with the ILECs in their service territory. Many of these commercial agreements allow for the continued provision of a UNE-P like service, but at a higher rate, generally structured to have annual rate increases during the term, and at times with minimum volume commitments. Without a commercial agreement, beginning March 11, 2005, it is likely that new orders submitted to the ILECs will be rejected or processed at the higher resale rate. There is some question whether ILECs can unilaterally implement the new FCC rules or whether they will have to go through the change of law procedures required by interconnection agreements.

A few facilities-based competitors have announced plans to provide non-facilities-based competitors with access to a UNE-P like platform using DSL or VoIP. However, there is no certainty that the pricing or availability for such services will be acceptable to the Company. The Company believes that the new FCC rules may adversely affect its ability to obtain access to local facilities on the same basis as under the Interim rules and/or prior to the USTA II decision.

Universal Service Fund ("USF") In 1997, the FCC issued an order implementing Section 254 of the 1996 Act regarding the preservation of universal telephone service. Section 254 and related regulations require all interstate and certain international telecommunications carriers to contribute toward the USF, a fund that provides subsidies for the provision of service to schools and libraries, rural health care providers, low income consumers and consumers in high cost areas.

Quarterly, the Universal Service Administrative Company ("USAC"), which oversees the USF, reviews the need for program funding and determines the applicable USF contribution percentage that interstate telecommunications carriers must contribute. While carriers are permitted to pass through the USF charges to consumers, the FCC has strictly limited amounts passed through to consumers in excess of a carrier's determined contribution percentage. In April 2005, the applicable USF contribution percentage was raised to 11.1%. Throughout 2004 the rate was in the 9% range and in early 2003 the rate was 7.3%.

As discussed below, the industry is relying less on traditional circuit-switched telephone service and more on digitized IP-based communications for long distance transport and local services. It is possible that this trend could threaten the amount of revenues USAC can collect through the USF system, and that the resulting revenue shortfall could prevent the system from meeting its funding demands. Separately from the FCC's inquiry into the regulation of IP-based voice service, the FCC could exercise its so called "permissive authority" under the 1996 Act and assess USF contributions on VoIP providers. To date, only some VoIP providers contribute to the USF, and do so at their discretion. If VoIP providers were exempted from USF contributions, telecommunications carriers would likely pay significantly higher USF contributions; conversely, if VoIP providers were required to contribute, traditional telecommunications carriers would contribute less. In addition to the FCC, Congress is reviewing a series of matters related to VoIP. Current Congressional debates are divided over whether IP-based telephony service providers should be required to contribute to the USF and other fees and surcharges applicable now only to traditional circuit-based networks and services. A decision to require VoIP providers to contribute to the USF, and pay other fees and surcharges from which they are now exempted, may adversely affect our provision of VoIP services.

VoIP Notice of Proposed Rule Making In March 2004 the FCC issued the VoIP Notice of Proposed Rulemaking (the "VoIP NPRM") to solicit comments on many aspects of the regulatory treatment of VoIP services. The FCC continues to consider the possibility of regulating access to IP-based services, but has not yet decided on the appropriate level of regulatory intervention for IP-based service applications. It has, through several decisions, sought to exercise its pre-emptive authority to designate VoIP as an interstate service, thus pre-empting state regulation of VoIP and placing the FCC as the sole regulator of the service - a position that has been challenged by several state public utility commissions. Should the FCC rule that our software-based solution for VoIP deployment and other similar service applications should be further regulated, or if the courts overturn the FCC's pre-emptive authority to prevent state regulation of VoIP, our ability to provide VoIP services may be adversely affected.

Further, the VoIP NPRM will likely address the applicability of access charges to VoIP services. Access charges provide compensation to local exchange carriers for traffic that originates or terminates on their networks. Certain LECs have argued that certain types of VoIP carriers provide the same basic functionality as traditional telephone service carriers in that they carry a customer's call from an origination point to a termination destination. Any ruling or decision from the FCC requiring VoIP carriers to pay access charges to ILECs for local loop use may adversely affect our VoIP services.

The VoIP NPRM is also expected to address the extent to which CALEA will be applicable to VoIP services. Recently, in a separate proceeding, the Federal Bureau of Investigation and other federal agencies have asked the FCC to clarify that VoIP is a telecommunications service, for the purpose of subjecting VoIP to CALEA's wiretapping requirements.

Broadband Deployment Broadband refers to any platform capable of providing high bandwidth-intensive content and advanced telecommunications capability. The FCC's stated goal for broadband services is to establish regulatory policies that promote competition, innovation and investment in broadband services and facilities. Broadband technologies encompass evolving high-speed digital technologies that offer integrated access to voice, high-speed data, video-on-demand or interactive delivery services. The FCC is seeking to 1) encourage the ubiquitous availability of broadband access to the Internet, 2) promote competition across different platforms for broadband services, 3) ensure that broadband services exist in a minimal regulatory environment that promotes investment and innovation and 4) develop an analytical framework that is consistent, to the extent possible, across multiple platforms. The FCC has opened several inquiries to determine how to promote the availability of advanced telecommunications capability with the goal of removing barriers to deployment, encouraging competition and promoting broadband infrastructure investment. For instance, the FCC is considering the appropriate regulatory requirements for ILEC provision of domestic broadband telecommunications services. The FCC's concern is whether the application of traditional common carrier regulations to ILEC-provided broadband telecommunications services is appropriate. On October 14, 2004, the FCC adopted an Order concluding that fiber-to-the-curb ("FTTC") loops shall be treated in the same manner as fiber-to-the-home ("FTTH") loops. Accordingly, ILECs will not be required to offer FTTC to competitors as UNEs. The FCC defined FTTC as "a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential multiple dwelling units ("MDUs"), not more than 500 feet from the MDUs." The FCC also clarified that ILECs are not required to build TDM capabilities into new packetized transmission facilities or add them to facilities where they never existed. Under other existing regulations, ILECs are treated as dominant carriers absent a specific finding to the contrary for a particular market and, as dominant carriers, shall still be subject to numerous regulations, such as tariff filing and pricing requirements.

On February 7, 2002, the FCC released its third biennial report on the availability of broadband, in which it concluded that broadband is being deployed in a reasonable and timely manner. The report showed that the advanced telecommunications services market continues to grow and that the availability of and subscribership to high-speed services increased significantly since the last report. Additionally, the report noted that investment in infrastructure for advanced telecommunications remains strong. The data in the report is gathered largely from standardized information from providers of advanced telecommunications capability including wireline telephone companies, cable providers, wireless providers, satellite providers, and any other facilities-based providers of 250 or more high-speed service lines (or wireless channels) in a given state.

Internet Service Regulation The demand for high-speed internet access has increased significantly over the past several years as consumers increase their Internet use. The FCC is active in reviewing the need for regulatory oversight of Internet services and to date has advocated less regulation and more market-based competition for broadband providers. The FCC's stated policy is to promote the continued development of the Internet and other interactive computer-based communications services. We cannot be certain that the FCC will continue to take a deregulatory approach to the Internet. Should the FCC increase regulatory oversight of Internet services, our costs could increase for providing those services.

Other Legislation

Recent legislation in the United States including the Sarbanes-Oxley Act of 2002 ("Sarbanes Oxley") is increasing the scope and cost of work provided to us by our independent registered public accountants and legal advisors. Many guidelines have not yet been finalized and there is a risk that we will incur significant costs in the future to comply with legislative requirements or rules, pronouncements and guidelines by regulatory bodies, including the cost of restating previously reported financial results thereby reducing profitability.

Risk Factors

Many factors could cause actual results to differ materially from our forward-looking statements. Several of these factors, which are more fully discussed in our Annual Report on Form 10-K for the year ended December 31, 2004, filed with the SEC, include, without limitation:

1) Our ability to

- finance and manage growth,
- execute on the strategy and the business plans of management,
- maintain our relationship with telecommunications carriers,
- provide ongoing competitive services and pricing
- retain and attract key personnel,
- operate effective network facilities,
- maintain favorable relationships with local exchange carriers ("LECs"), long-distance providers and other vendors, including our ability to meet our usage commitments,
- attract new subscribers while minimizing subscriber attrition,
- continue to grow the distribution for our Telecommunications segment through multi level marketing ("MLM"), residential and commercial agents, and with our direct sales force,
- continue to offer competitive local dial tone, long distance and data products and to expand the geographic reach of our local dial tone offering,
- efficiently integrate completed acquisitions,
- address legal proceedings in an effective manner,
- maintain, operate and upgrade our information systems network,

- maintain and operate our networks in a cost effective manner.
- extend our related party debt beyond its April 30 2006 maturity date or replace such debt on acceptable terms.
- obtain Counsel's continued commitment and ability to fund through June 30, 2005, the cash requirements of the business,

- complete third party debt or equity financing,
- extend our asset based lending facility beyond its June 30, 2005 maturity or replace the facility on acceptable terms,
- maintain compliance with existing and evolving federal and state governmental regulation of telecommunications providers.
- respond to regulatory changes on a timely and cost effective basis.

2) Adoption of new, or changes in, accounting principles, and

3) Other risks referenced from time to time in our filings with the SEC and the FCC

Critical Accounting Estimates

Management's Discussion and Analysis of Financial Condition and Results of Operations discusses our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP"). The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments, including those related to intangible assets, contingencies, collectibility of receivables and litigation. Management bases its estimates and judgments on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The critical accounting estimates used in the preparation of our consolidated financial statements are discussed in our Annual Report on Form 10-K for the year ended December 31, 2004. To aid in the understanding of our financial reporting, a summary of significant accounting policies are described in Note 2 of the unaudited condensed consolidated financial statements and notes thereto included in Item 1 of this report on Form 10-Q. These policies have the potential to have a more significant impact on our financial statements, either because of the significance of the financial statement item to which they relate, or because they require judgment and estimation due to the uncertainty involved in measuring, at a specific point in time, events which are continuous in nature.

Liquidity and Capital Resources

As a result of our substantial operating losses and negative cash flows from operations, at March 31, 2005 we had a stockholders' deficit of \$69,707 (December 31, 2004 - \$61,965) and negative working capital of \$18,755 (December 31, 2004 - \$21,352). The Company continued to finance its operations during the first quarter of 2005 through related party debt with its major stockholder, Counsel Corporation (together with its subsidiaries, "Counsel"), and a revolving credit facility. At March 31, 2005, the related party debt had a gross outstanding balance of \$60,776 (December 31, 2004 - \$52,100), and the revolving credit facility had an outstanding balance of \$3,422 (December 31, 2004 - \$4,725). No additional borrowings are available under the revolving credit facility at March 31, 2005. The related party debt matures on April 30, 2006 and the revolving credit facility matures on June 30, 2005. During the first quarter of 2005, Counsel extended the maturity of its related party debt from January 31, 2006 to April 30, 2006. Interest on the related party debt is rolled into the principal amounts outstanding.

The related party debt is supplemented by a Keep Well agreement, which requires Counsel to fund, through long-term intercompany advances or equity contributions, all capital investment, working capital or other operational cash requirements. The Keep Well obligates Counsel to continue its financial support of Acceris until June 30, 2005. The Keep Well is not expected to be extended beyond its current maturity. The related party debt is subordinated to the Wells Fargo Foothill, Inc. ("Foothill") credit facility and to the Laurus Master Fund Ltd. of New York ("Laurus") convertible debenture. Additionally, both of these financial instruments are guaranteed by Counsel through their respective maturities of June 2005 and October 2007, respectively. The current debt arrangements with Laurus prohibit the repayment of Counsel debt prior to the repayment or conversion of the Laurus debt. The Laurus debt, to the extent that it is not converted, is due in October 2007. The current asset-based facility with Foothill is not expected to be extended beyond its June 2005 maturity. Payments cannot be made to Counsel while the Foothill facility remains outstanding.

There is significant doubt about the Company's ability to obtain additional financing beyond June 30, 2005 to support its operations once the Keep Well expires. Additionally, the Company does not at this time have an ability to obtain additional financing for its Telecommunications business to pursue expansion through acquisitions. Due to these financial constraints, management and its strategic advisors are looking to merge or dispose of the Telecommunications business. There is no certainty that a merger or disposal can occur on a timely basis on favorable terms. These matters raise substantial doubt about the Company's ability to continue as a going concern. For more information on the assets and operations of the Telecommunications segment, please refer to Note 13 of the unaudited condensed consolidated financial statements included in Item 1 of this report on Form 10-Q.

The independent registered public accounting firms' reports on the consolidated financial statements included in the Company's annual report on Form 10-K for each of the years ended December 31, 2002, 2003 and 2004 contained an explanatory paragraph wherein they expressed the opinion that there is substantial doubt about the Company's ability to continue as a going concern. Readers are encouraged to take due care when reading the independent registered public accountants' reports included in Item 15 of the Company's most recent Form 10-K. Stockholders are urged to obtain the necessary advice before becoming or continuing as a stockholder in the Company.

Cash Position

Cash and cash equivalents as of March 31, 2005 were \$491 compared to \$458 at December 31, 2004.

Cash flows from operating activities

Our working capital deficit decreased \$2,597 to \$18,755 as of March 31, 2005, from \$21,352 as of December 31, 2004. The decrease is primarily related to the decrease in our accounts payable and accrued liabilities of \$2,128 during the first three months of 2005, and a decrease in our revolving credit facility of \$1,303 due to payments made to our asset based lender during the same period. These decreases were partially offset by a decrease in our accounts receivable of \$1,354 during the first three months of 2005.

Cash used in operating activities (excluding non-cash working capital and the asset-based lending facility) during the three months ended March 31, 2005 was \$3,222, as compared to cash provided of \$3,126 during the same period in 2004. Net cash used in operating activities during the three months ended March 31, 2005 was \$4,957, as compared to \$2,707 during the same period in 2004. The net increase in cash used in 2005 was primarily due to a \$6,900 increase in net loss to \$8,108 for the first three months of 2005 from a net loss of \$1,208 for the same period in 2004. Included in revenue for the three months ended March 31, 2004 was \$6,363 in revenue from a discontinued network service offering. There were no similar revenues during the first three months of 2005. Unearned revenue relating to this offering was \$4,593 at March 31, 2004 and \$0 at March 31, 2005. See Note 6 of the unaudited condensed consolidated financial statements included in Item 1 of this report on Form 10-Q for further discussion of the network service offering.

Cash flows from investing activities

Net cash used by investing activities during the three months ended March 31, 2005 was \$94, as compared to net cash provided of \$1,460 for the same period in 2004. The net cash used in 2005 related to equipment purchases. In the first three months of 2004, net cash provided by investing activities related to \$1,627 in proceeds received from the sale of common stock in Buyers United Inc ("BUI"), offset by the purchase of equipment in the amount of \$167. There were no similar sales of investments in the first three months of 2005.

Cash flows from financing activities

Financing activities provided net cash of \$5.084 during the three months ended March 31, 2005, as compared to \$1.369 for the same period in 2004. The increase from 2004 to 2005 is due primarily to the increased amount of funding from Counsel. During the first three months of 2005, Counsel funded the Company \$7,339, as compared to funding \$4,967 during the same period in 2004. Additionally, the net repayment of our revolving credit facility was reduced, being \$1.303 during the first three months of 2005, as compared to \$2.959 during the same period in 2004. This reduction was partially offset by increases in scheduled lease and note payable payments of \$298.

Supplemental Statistical and Financial Data

The following unaudited data is provided for additional information about our operations. It should be read in conjunction with the quarterly segment analysis provided herein.

(In millions of dollars, except where indicated)

	2003			2004				2005
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
Gross revenues — product mix								
Local and long-distance bundle	\$ —	\$ —	\$ —	\$ 0.1	\$ 1.0	\$ 2.7	\$ 3.1	\$ 3.1
Domestic								
long-distance ⁽⁵⁾	7.8	7.4	7.5	6.4	5.6	5.4	4.8	4.3
International long-distance	14.4	15.3	15.1	13.0	11.4	10.5	9.2	7.7
MRC/USF ⁽¹⁾	2.4	2.8	3.0	3.0	2.7	2.3	2.3	2.4
Dedicated voice	0.3	0.4	0.4	0.3	0.3	0.4	0.5	0.5
Direct sales revenues	6.8	5.9	5.9	5.4	5.0	5.8	4.0	4.0
Other	0.1	0.2	—	0.1	0.2	0.2	0.2	0.2
Total telecommunications revenue	\$ 31.8	\$ 32.0	\$ 31.9	\$ 28.3	\$ 26.2	\$ 27.3	\$ 24.1	\$ 22.2
Network service offering	4.1	3.1	0.4	6.4	0.2	0.1	—	—
Technology licensing and development	1.1	1.0	0.1	0.5	0.1	—	—	—
Total revenues	\$ 37.0	\$ 36.1	\$ 32.4	\$ 35.2	\$ 26.5	\$ 27.4	\$ 24.1	\$ 22.2

Telecommunications revenue by customer type

Local and long-distance bundle	\$ —	\$ —	\$ —	\$ 0.1	\$ 1.0	\$ 2.7	\$ 3.1	\$ 3.1
Dial-around ⁽²⁾	13.3	13.7	13.3	10.3	9.0	7.2	6.5	5.7
1+ ⁽³⁾	11.6	12.2	12.7	12.4	11.0	11.4	10.3	9.2
Direct sales ⁽⁶⁾	6.8	5.9	5.9	5.4	5.0	5.8	4.0	4.0
Other	0.1	0.2	—	0.1	0.2	0.2	0.2	0.2
Total telecommunications revenues	\$ 31.8	\$ 32.0	\$ 31.9	\$ 28.3	\$ 26.2	\$ 27.3	\$ 24.1	\$ 22.2

Gross revenue — product mix (%)

Local and long-distance bundle	—	—	—	0.4%	3.8%	9.8%	12.9%	14.0%
Domestic long-distance	24.6%	23.1%	23.5%	22.6%	21.4%	19.9%	19.9%	19.4%
International long-distance	45.3%	47.8%	47.3%	45.9%	43.1%	38.4%	38.2%	34.7%
MRC/USF	7.5%	8.8%	9.4%	10.6%	10.3%	8.5%	9.5%	10.8%
Dedicated voice	0.9%	1.3%	1.3%	1.0%	1.1%	1.3%	2.1%	2.3%
Direct sales revenues	21.4%	18.4%	18.5%	19.1%	19.5%	21.4%	16.6%	18.0%
Other	0.3%	0.6%	0.0%	0.4%	0.8%	0.7%	0.8%	0.8%
Total telecommunications revenues	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Gross revenues — product mix (minutes)

Domestic long-distance	140,798,912	134,198,098	121,880,023	129,293,178	134,649,835	176,065,320	183,884,289	183,116,647
International long-distance	93,896,850	98,873,877	98,978,290	91,288,985	83,923,345	79,458,519	74,180,770	67,333,988
Dedicated voice	7,772,277	9,364,583	8,653,038	9,653,915	9,374,236	14,751,696	17,479,619	23,229,466

Active retail subscribers (in number of people)

Local and long-distance bundle								
Beginning of period	—	—	—	—	1,971	11,471	21,332	22,110
Adds	—	—	—	3,076	12,288	16,444	9,244	10,143
Churn	—	—	—	(1,105)	(2,788)	(6,583)	(8,466)	(9,320)
End of period	—	—	—	1,971	11,471	21,332	22,110	22,933

Dial-around

Beginning of period	228,330	215,187	206,937	192,678	164,331	138,557	125,202	120,801
Adds	85,246	100,624	63,349	46,518	40,094	37,582	37,745	32,079
Churn	(98,389)	(108,874)	(77,608)	(74,865)	(65,568)	(51,237)	(42,146)	(41,226)
End of period	215,187	206,937	192,678	164,331	138,557	125,202	120,801	111,654

1+

Beginning of period	136,896	174,486	168,242	161,570	165,847	172,162	163,941	153,020
Adds	81,040	43,964	25,356	25,344	27,093	23,574	17,741	15,898
Churn	(43,450)	(50,208)	(32,028)	(21,067)	(20,778)	(31,795)	(28,662)	(25,753)
End of period	174,486	168,242	161,570	165,847	172,162	163,941	153,020	143,165
Total subscribers (end of period)	389,673	375,179	354,248	332,149	322,490	310,475	295,931	277,752

Direct sales

Active customer base		254		236		227		256		252		238		234		228
Total top 10 billing	\$	1 163	\$	1 094	\$	1 050	\$	926	\$	1 034	\$	1,230	\$	915	\$	856

Average monthly revenue per user (active subscriptions) in absolute dollars: ⁽⁴⁾

Local and long-distance bundle	\$	—	\$	—	\$	—	\$	16 49	\$	30 05	\$	41 65	\$	46 53	\$	45 34
Dial-around	\$	20 60	\$	22 07	\$	23 01	\$	20 89	\$	21 61	\$	19 15	\$	17 98	\$	17 02
1+	\$	22 16	\$	24 17	\$	26 20	\$	24 92	\$	21 30	\$	23 15	\$	22 31	\$	21 42

- (1) MRC USF represents "Monthly Recurring Charges" and "Universal Service Fund" fees charged to the customers
- (2) "Dial-around" refers to a product which allows a customer to make a call from any phone by dialing a 10-10-XXX prefix
- (3) "1+" refers to a product which allows a retail customer to directly make a long distance call from their own phone by dialing "1" plus the destination number

- (4) Average monthly revenues per user ("ARPU"), a generally accepted industry measurement, is calculated as the revenues of the quarter divided by the number of users at the end of the quarter divided by 3 to get the monthly amount. We use the term ARPU for the use of the reader in understanding of our operating results. This term is not prepared in accordance with, nor does it serve as an alternative to, GAAP measures and may be materially different from similar measures used by other companies. While not a substitute for information prepared in accordance with GAAP, ARPU provides useful information concerning the appeal of our rate plans and service offerings and our performance in attracting and retaining customers. However, ARPU should not be considered in isolation or as an alternative measure of performance under GAAP. This measure has limitations as an analytical tool, and investors should not consider it in isolation or as a substitute for analysis of our results prepared in accordance with GAAP.
- (5) Includes local product line bulk/package rate domestic minutes
- (6) Represents number of parent customers with revenues greater than \$0 in each calendar month

Management Discussion of Operations

The following table displays the Company's unaudited consolidated quarterly results of operations for the eight quarters ended March 31, 2005

	2003 (unaudited)			2004 (unaudited)			2005 (unaudited)	
	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
Revenues								
Telecommunications	\$ 31,853	\$ 31,923	\$ 31,993	\$ 28,360	\$ 26,229	\$ 27,229	\$ 24,063	\$ 22,253
Network service offering	4,142	3,079	408	6,363	190	161	—	—
Technologies	1,050	1,049	65	450	90	—	—	—
Total revenues	37,045	36,051	32,466	35,173	26,509	27,390	24,063	22,253
Operating costs and expenses								
Telecommunications network expense (exclusive of depreciation and amortization shown below)	19,154	19,266	18,936	16,635	15,680	15,349	12,606	13,730
Network service offering	2,165	807	(70)	—	(203)	—	—	—
Selling, general, administrative and other	14,617	13,981	14,441	14,763	14,074	13,992	11,601	10,978
Provision for doubtful accounts	1,131	1,466	1,666	1,227	1,740	941	1,321	1,055
Research and development	—	—	—	—	106	119	217	150
Depreciation and amortization	1,758	1,993	1,548	1,704	1,653	1,520	2,099	1,308
Total operating costs and expenses	38,825	37,513	36,521	34,329	33,050	31,921	27,844	27,221
Operating income (loss)	(1,780)	(1,462)	(4,055)	844	(6,541)	(4,531)	(3,781)	(4,968)
Other income (expense)								
Interest expense	(3,394)	(3,398)	(3,562)	(3,533)	(2,486)	(2,562)	(2,768)	(3,167)
Other income	1	53	1,160	1,377	811	226	57	27
Total other income (expense)	(3,393)	(3,345)	(2,402)	(2,156)	(1,675)	(2,336)	(2,711)	(3,140)
Loss from continuing operations	(5,173)	(4,807)	(6,457)	(1,312)	(8,216)	(6,867)	(6,492)	(8,108)
Gain from discontinued operations, net of \$0 tax	371	213	222	104	—	—	—	—
Net loss	\$ (4,802)	\$ (4,594)	\$ (6,235)	\$ (1,208)	\$ (8,216)	\$ (6,867)	\$ (6,492)	\$ (8,108)

Three-Month Period Ended March 31, 2005 Compared to Three-Month Period Ended March 31, 2004

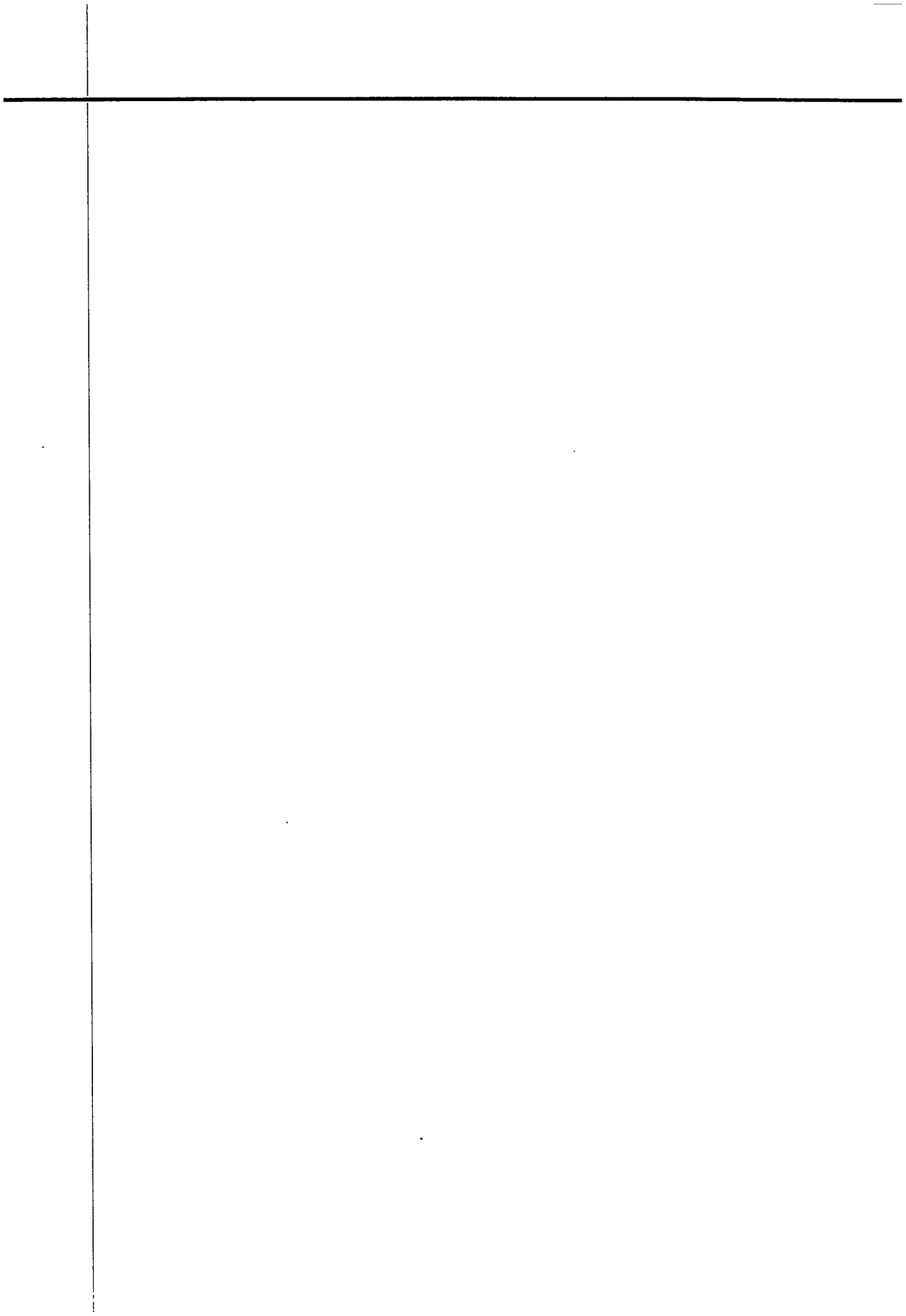
In order to more fully understand the comparison of the results of continuing operations for the three months ended March 31, 2005 as compared to the same period in 2004, it is important to note the following significant changes that occurred in our operations:

- In November 2002, we began to sell a network service offering obtained from a new supplier. The sale of that product ceased in July 2003. During 2004, we continued to recognize revenue from this offering, using the unencumbered cash method. In the first quarter of 2005, \$0 revenue was recognized, compared to \$6,363 in the same quarter of 2004. Expenses associated with this offering were recorded when incurred, no expenses were recorded in the first quarter of 2005 and 2004. The cessation of this product offering did not qualify as discontinued operations under generally accepted accounting principles.
- In January 2004, the Company commenced offering local dial tone services via the UNE-P, bundled with long distance. In the first quarter of 2005, \$3,119 was recognized in revenue compared to \$97 in the same period in 2004. The Company offers these services in five states and had approximately 23,000 local customers at March 31, 2005.

Telecommunications services revenue declined to \$22,253 in the first quarter of 2005 from \$28,360 during the same period in 2004 primarily due to the following

- In 2004 we introduced a local and long distance bundled offering in Florida, Massachusetts, New Jersey, New York and Pennsylvania. This offering contributed \$3,119 in revenue during the first quarter of 2005 compared to \$97 in revenue during the first quarter of 2004. At March 31, 2005, we had approximately 23,000 customers with average monthly revenue per customer ("ARPU") of \$45.00, compared to approximately 2,000 customers with ARPU of \$16.00 at March 31, 2004. We had originally planned to roll out this product nationwide in 2004. However, we held off implementing this growth plan pending resolution of regulatory uncertainty surrounding UNE-P. In March 2005, we decided to suspend efforts to attract new local customers while continuing to support existing local customers in the above states. The decision was a result of the FCC's revision of its wholesale rules originally designed to introduce competition in local markets, which went into effect on March 11, 2005. The reversal of local competition policy by the FCC has permitted the RBOCs to substantially raise wholesale rates for the services known as UNEs and required the Company to re-assess its local strategy while it attempts to negotiate long-term agreements for UNEs on competitive terms. Should the Company not enter into wholesale contracts for UNE services in the near future, the natural attrition cycle will result in a reduction in the number of local customers and related revenues throughout 2005 and beyond.
- We have experienced attrition in our 1+ customer base which has declined to approximately 143,000 customers at March 31, 2005 from approximately 166,000 customers at March 31, 2004. We also experienced a reduction in ARPU to approximately \$21.00 in the first quarter of 2005 from approximately \$25.00 in the first quarter of 2004. The reduction in the number of customers is due to the Company focusing its customer acquisition programs on the local and long distance bundled offering in five states, described above, for much of 2004, versus focusing on long distance nationwide as in prior years. The reduction in the ARPU relates to the continued reduction of long distance rates for services, primarily in various international destinations to which customers are making outbound long distance calls.
- Since 2001, we have not actively marketed our 10-10-XXX or dial around products. Accordingly, the Company continued to experience an erosion of this customer base. The Company had approximately 112,000 customers in this category at March 31, 2005, as compared to approximately 164,000 customers at March 31, 2004. Consistent with our 1+ product offering, we saw the ARPU declining to approximately \$17.00 in the first quarter of 2005 from approximately \$21.00 in the first quarter of 2004.
- In the first quarter of 2005, direct sales were \$4,039, down from \$5,447 in the first quarter of 2004. The reduced revenue is due to the non-renewal of some customer contracts, price concessions provided on contract renewals, and an overall lower average volume of traffic. The customer base declined to 228 customers at March 31, 2005 from 256 customers at March 31, 2004.
- Overall, the Company continued to experience price erosion in 2004 and 2005 in a very competitive long distance market. Our number of dial-around and 1+ subscribers decreased to 254,819 at March 31, 2005 from 330,178 at March 31, 2004. In the first quarter of 2005, we recognized approximately \$14,400 of domestic and international long distance revenues (including monthly recurring charges and USF fees) on approximately 250,000,000 minutes, resulting in a blended rate of approximately \$0.06 per minute. In the first quarter of 2004, we recognized approximately \$22,400 of domestic and international long distance revenues on approximately 221,000,000 minutes, resulting in a blended rate of approximately \$0.10 per minute.

Technologies revenue is derived from licensing and related services revenue. Utilizing our patented technology, VoIP enables telecommunications customers to originate a phone call on a traditional handset, transmit any part of that call via the Internet, and then terminate the call over the traditional telephone network. Our VoIP Patent Portfolio is an international patent portfolio covering the basic process and technology that enables VoIP communications, and allows Accuris to participate in the provision of VoIP solutions. We have commenced the aggressive pursuit of recognition of our intellectual property in the marketplace through a focused licensing program. Revenue and contributions from this business to date have been based on the sales and deployments of our VoIP solutions, which will continue. The timing and sizing of various projects will result in a continued pattern of fluctuating financial results. We expect growth in revenue in this business as we gain recognition of the underlying value in our VoIP Patent Portfolio.



Technologies earned revenues of \$0 in the first quarter of 2005 compared to \$450 in the first quarter of 2004. The revenue in 2004 relates to a contract that was entered into with a Japanese company in 2003.

Telecommunications network expense was \$13,730 in the first quarter of 2005, as compared to \$16,635 in the first quarter of 2004, a decrease of \$2,905. On a comparative percentage basis, telecommunications costs totalled 62% of telecommunications services revenue in the first quarter of 2005, as compared to 59% of revenue in the first quarter of 2004, excluding 2004 revenue from the network service offering discussed above. Telecommunications services margins (telecommunications services revenues less telecommunications network expenses) fluctuate significantly from period to period, and are expected to continue to fluctuate significantly for the foreseeable future. Predicting whether margins will increase or decline is difficult to estimate with certainty. Factors that have affected and continue to affect margins include:

- Differences in attributes associated with the various long-distance programs in place at the Company. The effectiveness of each offering can change margins significantly from period to period. Some factors that affect the effectiveness of any program include the ongoing deregulation of phone services in various countries where customer traffic terminates, actions and reactions by competitors to market pricing, the trend toward bundled service offerings and the increasing level of wireline to cellular connections. In addition, changes in customer traffic patterns also increase and decrease our margins.
- Our voice and frame relay networks. Each network has a significant fixed cost element and a minor variable per minute cost of traffic carried element; significant fluctuations in the number of minutes carried on-net from month to month can significantly affect the margin percentage from period to period. The fixed network monthly cost is \$759 as of March 31, 2005, as compared to \$1,068 as of March 31, 2004. Fixed network costs represent the fixed cost of operating the voice and data networks that carry customer traffic, regardless of the volume of traffic.
- Changes in contribution rates to the USF and other regulatory changes associated with the fund. Such changes include increases and decreases in contribution rates, changes in the method of determining assessments, changes in the definition of assessable revenue, and the limitation that USF contributions collected from customers can no longer exceed contributions. USF rates have been increasing. The USF rate in effect for the first quarter of 2005 was 10.7%, compared to 8.7% for the same period of 2004, and it was raised to 11.1% in April 2005. However, the USF expense in the first quarter of 2005 declined to \$1,302 compared to \$1,349 in the same period of 2004, due to lower assessable revenues.

In connection with the 2003 acquisition of U.S. Patent No. 6,243,373, the Company agreed to remit to the former owner of the patent 35% of the net proceeds from future revenue derived from the licensing of the VoIP Patent Portfolio, composed of U.S. Patent Nos. 6,243,373 and 6,438,124. Net proceeds are defined as revenue from licensing the patent portfolio less costs necessary to obtain the licensing arrangement. As patent licensing revenues grow, these costs will affect margins.

Selling, general, administrative and other expense was \$10,978 during the first quarter of 2005, as compared to \$14,763 for the first quarter of 2004. The significant changes included:

- Compensation expense was \$4,485 in the first quarter of 2005, as compared to \$6,537 in the first quarter of 2004. The reduction is primarily attributable to lower staff levels in 2005 compared to 2004.

- External commissions totaled \$1,538 in the first quarter of 2005, as compared to \$2,032 in the first quarter of 2004. Lower commission costs were experienced in 2005 due to lower revenues during the respective period.
- Telemarketing costs decreased to \$92 in the first quarter of 2005 from \$255 in the first quarter of 2004. The Company incurred higher telemarketing costs in 2004 relating to our focused efforts throughout the year to encourage customers to acquire local dial tone and long distance bundled services.
- Legal expenses in the first quarter of 2005 were \$776, as compared to \$564 in the first quarter of 2004. The increase in legal costs primarily related to the Company taking legal action against ITC for patent infringement and legal fees associated with the direct and derivative actions against the Company.
- Billings and collections expenses decreased to approximately \$1,458 in the first quarter of 2005 from approximately \$1,901 in the first quarter of 2004, relating to the reduction in revenue in the respective period.
- Marketing and advertising expenses decreased to approximately \$172 in the first quarter of 2005 from approximately \$263 in the first quarter of 2004.
- Accounting and tax consulting expenses decreased to approximately \$236 in the first quarter of 2005 from approximately \$554 in the first quarter of 2004.
- Facilities expenses decreased to \$940 in the first quarter of 2005 from approximately \$961 in the first quarter of 2004.

Provision for doubtful accounts - The \$172 decrease to \$1,055 in the first quarter of 2005 compared to \$1,227 in the first quarter of 2004 is primarily due to lower revenue levels in 2005 compared to 2004. The provision for doubtful accounts as a percentage of revenue was 4.7% for the first quarter of 2005 as compared to 3.5% for the first quarter of 2004. The increase in the percentage from 2004 to 2005 is due to the inclusion, in 2004, of \$6,363 in revenues from a discontinued network service offering, for which revenue was recognized only on an unencumbered cash receipts basis. See Note 6 of the unaudited condensed consolidated financial statements included in Item 1 of this report on Form 10-Q for discussion of the network service offering. When the network service offering revenues are excluded from the 2004 calculation, the provision for doubtful accounts as a percentage of revenue increases to 4.3%.

Research and development ("R&D") costs - In the second quarter of 2004, we resumed R&D activities related to our VoIP platform, continuing into the first quarter of 2005. These activities are expected to allow us to provide enhanced telecommunication services to our customer base in the near term. R&D expense was \$150 in the first quarter of 2005, as compared to \$0 in the first quarter of 2004.

Depreciation and amortization - This expense was \$1,308 in the first quarter of 2005, as compared to \$1,704 during the first quarter of 2004. In 2005, depreciation and amortization were lower than in 2004 because more fixed and intangible assets have reached the end of their accounting life.

The changes in **other income (expense)** are primarily related to the following:

- **Related party interest expense** - This totaled \$2,487 in the first quarter of 2005, as compared to \$2,803 in the first quarter of 2004. The reduction of \$316 is largely attributed to reduction of the quarterly amortization of the beneficial conversion feature related to Counsel's ability to convert its debt to equity. Included in related party interest expense in the first quarter of 2005 is \$1,152 of amortization of the beneficial conversion feature ("BCF") on \$17,090 of debt convertible at \$5.02 per share. In the first quarter of 2004, amortization of the BCF was \$1,904 on \$15,635 debt to Counsel convertible at \$6.15 per share. The reduction in the BCF amortization was partially offset by a higher average loan balance with Counsel.

- Third party interest expense - This totaled \$680 in the first quarter of 2005, as compared to \$730 in the first quarter of 2004. The decrease is largely attributed to lower interest expense on capital leases and on regulatory amounts owing in 2005 compared to 2004. This decrease was partially offset by an increase of \$40 in interest expense on the total debt held by Wells Fargo Foothill, Inc. and Laurus Masterfund Ltd.
- Other income - This totaled \$27 for the first quarter of 2005, as compared to \$1,377 during the first quarter of 2004. During the first quarter of 2004, approximately \$767 of other income related to a gain on the discharge of certain obligations associated with our former participation with a consortium of owners in an indefeasible right of usage, and approximately \$565 related to our sale of 750,000 shares of BUI common stock.

Discontinued operations - In the first quarter of 2005, there was no gain or loss from discontinued operations recorded, as compared to the \$104 gain reported in the first quarter of 2004 related to the sale of the ILC business.

Item 3 - Quantitative and Qualitative Disclosures about Market Risk.

Our exposure to market risk is limited to interest rate sensitivity, which is affected by changes in the general level of United States interest rates. Our cash equivalents are invested with high quality issuers and we limit the amount of credit exposure to any one issuer. Due to the short-term nature of the cash equivalents, we believe that we are not subject to any material interest rate risk as it relates to interest income. As to interest expense, we have two debt instruments that have variable interest rates. Our asset-based lending facility is based on the prime rate of interest + 1.75%, with an interest floor of 6%. Our variable interest rate convertible note provides that the principal amount outstanding bears interest at the prime rate as published in the Wall St. Journal ("WSJ interest rate", 5.75% at March 31, 2005) plus 3% (but not less than 7.0%), decreasing by 2% (but not less than 0%) for every 25% increase in the Market Price (as defined therein) above the fixed conversion price of \$0.88 following the effective date (January 18, 2005) of the registration statement covering the Common Stock issuable upon conversion. Assuming the debt amount on the asset-based facility at March 31, 2005 was constant during the next twelve-month period, the impact of a one percent increase in the respective interest rates would be an increase in interest expense of approximately \$34 for that twelve-month period, and an increase in interest expense of approximately \$48 for that twelve-month period on our convertible note. Because the asset-based facility is subject to an interest rate floor of 6.0%, a one percent decrease in the prime interest rate would have no impact on interest expense during the next twelve-month period. In respect of the variable interest rate convertible note, should the price of the common stock of Acceris increase and maintain a price equal to 125% of \$0.88 for a twelve month period, the Company would benefit from a reduced interest rate of 2%, resulting in lower interest costs of up to approximately \$96 for that twelve-month period. We do not believe that we are subject to material market risk on our fixed rate debt with Counsel in the near term.

We did not have any foreign currency hedges or other derivative financial instruments as of March 31, 2005. We do not enter into financial instruments for trading or speculative purposes and do not currently utilize derivative financial instruments. Our operations are conducted primarily in the United States and as such are not subject to material foreign currency exchange rate risk.

Item 4 - Controls and Procedures.

As of the end of the period covered by this quarterly report, the Chief Executive Officer and Chief Financial Officer of the Company (the "Certifying Officers") conducted evaluations of the Company's disclosure controls and procedures. As defined under Sections 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the term "disclosure controls and procedures" means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including the Certifying Officers, to allow timely decisions regarding required disclosure. Based on this evaluation, the Certifying Officers have concluded that the Company's disclosure controls and procedures were effective to ensure that material information is recorded, processed, summarized and reported by management of the Company on a timely basis in order to comply with the Company's disclosure obligations under the Exchange Act, and the rules and regulations promulgated thereunder.

Further, there were no changes in the Company's internal control over financial reporting during the first fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting

PART II - OTHER INFORMATION

Item 1 - Legal Proceedings

On April 16, 2004, certain stockholders of the Company (the "Plaintiff") filed a putative derivative complaint in the Superior Court of the State of California in and for the County of San Diego (the "Complaint") against the Company, WorldxChange Corporation (sic), Counsel Communications LLC, and Counsel Corporation as well as certain present and former officers and directors of the Company, some of whom also are or were directors and/or officers of the other corporate defendants (collectively, the "Defendants"). The Complaint alleges, among other things, that the Defendants, in their respective roles as controlling stockholder and directors and officers of the Company committed breaches of the fiduciary duties of care, loyalty and good faith and were unjustly enriched and that the individual Defendants committed waste of corporate assets, abuse of control and gross mismanagement. The Plaintiffs seek compensatory damages, restitution, disgorgement of allegedly unlawful profits, benefits and other compensation, attorneys' fees and expenses in connection with the Complaint. The Company believes that these claims are without merit and intends to continue to vigorously defend this action. There is no assurance that this matter will be resolved in the Company's favor and an unfavorable outcome of this matter could have a material adverse impact on its business, results of operations, financial position or liquidity.

Acceris and several of Acceris' current and former executives and board members were named in a securities action filed in the Superior Court of the State of California in and for the County of San Diego on April 16, 2004, in which the plaintiffs made claims nearly identical to those set forth in the Complaint in the derivative suit described above. The Company believes that these claims are without merit and intends to vigorously defend this action. There is no assurance that this matter will be resolved in the Company's favor and an unfavorable outcome of this matter could have a material adverse impact on its business, results of operations, financial position or liquidity.

In connection with the Company's efforts to enforce its patent rights, Acceris Communications Technologies Inc., our wholly owned subsidiary, filed a patent infringement lawsuit against ITXC Corp. ("ITXC") in the United States District Court of the District of New Jersey on April 14, 2004. The complaint alleges that ITXC's VoIP services and systems infringe the Company's U.S. Patent No. 6,243,373, entitled "*Method and Apparatus for Implementing a Computer Network/Internet Telephone System*". On May 7, 2004, ITXC filed a lawsuit against Acceris Communications Technologies Inc. and the Company, in the United States District Court for the District of New Jersey for infringement of five ITXC patents relating to VoIP technology, directed generally to the transmission of telephone calls over the Internet and the completion of telephone calls by switching them off the Internet and onto a public switched telephone network. The Company believes that the allegations contained in ITXC's complaint are without merit and the Company intends to continue to provide a vigorous defense to ITXC's claims. There is no assurance that this matter will be resolved in the Company's favor and an unfavorable outcome of this matter could have a material adverse impact on its business, results of operations, financial position or liquidity.

At our Adjourned Meeting of Stockholders held on December 30, 2003, our stockholders, among other things, approved an amendment to our Articles of Incorporation, deleting Article VI thereof (regarding liquidations, reorganizations, mergers and the like). Stockholders who were entitled to vote at the meeting and advised us in writing, prior to the vote on the amendment, that they dissented and intended to demand payment for their shares if the amendment was effectuated, were entitled to exercise their appraisal rights and obtain payment in cash for their shares under Sections 607.1301 - 607.1333 of the Florida Business Corporation Act (the "Florida Act"), provided their shares were not voted in favor of the amendment. In January 2004, we sent appraisal notices in compliance with Florida corporate statutes to all stockholders who had advised us of their intention to exercise their appraisal rights. The appraisal notices included our estimate of fair value of our shares, at \$4.00 per share on a post-split basis. These stockholders had, until February 29, 2004, to return their completed appraisal notices along with certificates for the shares for which they were exercising their appraisal rights. Approximately 33 stockholders holding approximately 74,000 shares of our stock returned completed appraisal notices by February 29, 2004. A stockholder of 20 shares notified us of his acceptance of our offer of \$4.00 per share, while the stockholders of the remaining shares did not accept our offer. Subject to the qualification that, in accordance with the Florida Act, we may not make any payment to a stockholder seeking appraisal rights if, at the time of payment, our total assets are less than our total liabilities, stockholders who accepted our offer to purchase their shares at the estimated fair value will be paid for their shares within 90 days of our receipt of a duly executed appraisal notice. If we should be required to make any payments to dissenting stockholders, Counsel will fund any such amounts through the purchase of shares of our common stock. Stockholders who did not accept our offer were required to indicate their own estimate of fair value, and if we do not agree with such estimates, the parties are required to go to court for an appraisal proceeding on an individual basis, in order to establish fair value. Because we did not agree with the estimates submitted by most of the dissenting stockholders, we have sought a judicial determination of the fair value of the common stock held

by the dissenting stockholders. On June 24, 2004, we filed suit against the dissenting stockholders seeking a declaratory judgment, appraisal and other relief in the Circuit Court for the 17th Judicial District in Broward County, Florida. On February 4, 2005, the declaratory judgment action was stayed pending the resolution of the direct and derivative lawsuits filed in California. This decision was made by the judge in the Florida declaratory judgment action due to the similar nature of certain allegations brought by the defendants in the declaratory judgment matter and the California lawsuits described above. When the declaratory judgment matter resumes, there is no assurance that this matter will be resolved in our favor and an unfavorable outcome of this matter could have a material adverse impact on our business, results of operations, financial position or liquidity.

The Company is involved in various other legal matters arising out of its operations in the normal course of business, none of which are expected, individually or in the aggregate, to have a material adverse effect on the Company

Item 2 - Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities.

During the three months ending March 31, 2005, approximately 2,100 options were issued to employees under the 2003 Employee Stock Option and Appreciation Rights Plan. These options are issued with exercise prices that equal or exceed fair value on the date of the grant and vest over a 4-year period subject to the grantee's continued employment with the Company. The Company relied on an exemption from registration under Section 4(2) of the Securities Act of 1933.

Additionally, during the three months ended March 31, 2005, no warrants have been issued to participants under the Accuris Communications Inc. Platinum Agent Program. See Note 12 to the unaudited condensed consolidated financial statements included in Item 1 of this report on Form 10-Q for a description of the vesting provisions of these warrants. The Company relied on an exemption from registration under Regulation D under the Securities Act of 1933.

Item 3 - Defaults Upon Senior Securities.

None

Item 4 - Submission of Matters to a Vote of Security Holders.

None

Item 5 - Other Information.

None

/s/ Gary M. Clifford

Gary M. Clifford
Chief Financial Officer and Vice
President of Finance

ATTACHMENT 3

Application Filed with FCC

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

ATTORNEYS AT LAW
900 COMERICA BUILDING
KALAMAZOO, MICHIGAN 49007-4752
TELEPHONE (269) 381-8844
FACSIMILE (269) 381-8822

RECEIVED

JUL 01 2005

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DAVID G. CROCKER
MICHAEL D. O'CONNOR
HAROLD E. FISCHER, JR.
LAWRENCE M. BRENTON
GORDON C. MILLER
GARY P. BARTOSIEWICZ
BLAKE D. CROCKER

ROBERT M. TAYLOR
RON W. KIMBREL
PATRICK D. CROCKER
RUSSELL B. BAUGH
ANDREW J. VORBRICH
TYREN R. CUDNEY
STEVEN M. BROWN
KRISTEN L. GETTING

OF COUNSEL

JOHN T. PETERS, JR.

VINCENT T. EARLY
(1922-2001)

JOSEPH J. BURGIE
(1926-1992)

THOMPSON BENNETT
(1912-2004)

June 30, 2005

FEDERAL COMMUNICATIONS COMMISSION
Wireline Competition Bureau – CPD – 214 Apps
PO Box 358145
Pittsburgh, PA 15251-5115

RE: Joint Application of Acceris Management and Acquisition LLC and Acceris Communications Corp. for Authority pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer the Local and Interexchange Customer Base of an Authorized Domestic Carrier

Dear Sir or Madam:

Pursuant to Section 214 of the Communications Act of 1934, as amended, enclosed for filing with the Commission, please find an original and six (6) copies of an application for Commission approval to complete a transfer of assets of an authorized international and domestic interstate carrier, a completed Fee Processing Form, and a check in the amount of \$895.00 to cover filing fees related to same.

In addition, enclosed is a copy of this letter. Please date-stamp the duplicate and return it to me in the enclosed postage-paid envelope.

Should you have any questions, please feel free to contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

Patrick D. Crocker

PDC/bmr

enc

In the Matter of the Joint Application of)
 Acceris Management and Acquisition LLC)
 and Acceris Communications Corp. for)
 Authority pursuant to Section 214 of the) File No _____
 Communications Act of 1934, as)
 Amended, to Transfer the Local and)
 Interexchange Customer Base of an)
 Authorized Domestic Carrier)

I. INTRODUCTION

II. SUMMARY OF THE PROPOSED TRANSACTION

ACCERIS is a limited liability company organized under the laws of the State of Minnesota, and is a wholly owned subsidiary of North Central Equity, LLC (the Buyer's Guarantor, hereinafter "NCE"). NCE is a privately owned holding company with experience in the telecommunications industry. ACCERIS is not currently authorized to provide telecommunications services in any jurisdiction, but is in the process of obtaining authority to provide interexchange and/or local exchange telecommunications services throughout the United States.

ACC is a corporation organized under the laws of the State of Delaware, and is a wholly owned subsidiary of Acceris Communications, Inc. ACC is authorized under Section 214 of the Communications Act of 1934, as amended, to provide domestic interstate and international telecommunications service. ACC has authority to provide, and is currently providing, intrastate, interexchange telecommunications services in the contiguous 48 states, Hawaii and the District of Columbia. ACC is also authorized to provide competitive local exchange services in 32 states and is currently providing such service in Florida, Massachusetts, New Jersey, New York, and Pennsylvania.

Applicants have entered into an Asset Purchase Agreement whereby ACCERIS will acquire ACC's entire local and long distance customer base. As a result of the transaction, ACCERIS will become the local exchange and long distance provider of the transferred customer base and ACC will cease providing local exchange and long distance services. The proposed transfer is subject to certain state required notifications and/or approvals.

In states where ACCERIS has not yet secured the necessary licensure to provide service, it will service transferred customers pursuant to a pre-existing transitional Management Agreement with ACC upon consummation of the Asset Purchase Agreement.

Applicants emphasize that the transition of ACC's local exchange and long distance customers will be seamless and virtually transparent to the affected customers. Following the customer base transfer, ACCERIS will provide local exchange and long distance service, under the same rates, terms and conditions as the customers currently receive from ACC. ACC's customers will not incur any charges as a result of the change in local and long distance service provider from ACC to ACCERIS.

In accordance with state and Commission rules, Applicants have provided written notice to affected ACC customers informing them of the proposed transaction. Service to these customers will not be transferred until the requisite regulatory approvals have been obtained. In addition, ACCERIS has filed with the Commission the notice and certification required by

Section 64 1120(e) of the Commission's rules. Applicants seek to consummate the proposed transaction on an expedited basis so that ACCERIS may integrate the acquired customers into its existing business and thereby expand its presence in the local exchange and long distance market.

III. INFORMATION REQUIRED BY SECTION 63.04

In support of this Application, Applicants provide the following summary information pursuant to §63 04 of the Commission's rules.

(a) Contact Information

Transferor: Acceris Communications Corp.
1001 Brinton Road
Pittsburgh, PA 15221
Telephone: (412) 244-2100
FRN 0004337622

Transferee Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Telephone: (612) 465-0260
Facsimile: (612) 455-1022
FRN. 0013650817

(b) State of Organization

Transferor ACC is organized under the laws of the state of Delaware

Transferee: ACCERIS is organized under the laws of the state of Minnesota.

(c) Contact persons for this Application

Questions concerning this application may be directed to:

Please direct any questions concerning ACC to

Lance J M. Steinhart, Esq.
Lance J.M. Steinhart, P C.
1720 Windward Concourse
Suite 250
Alpharetta, GA 30005
Telephone: (770) 232-9200
Facsimile: (678) 775-1194
E-mail: lsteinhart@telecomcounsel.com

Please direct any questions concerning ACCERIS to.

Patrick D. Crocker
Early, Lennon, Crocker & Bartosiewicz, P L C.
900 Comerica Building
Kalamazoo, MI 49007
Telephone: (269) 381-8844
Facsimile: (269) 381-8822
E-mail: pcrocker@earlylennon.com

(d) Equity Ownership

The following entity directly owns ten percent or more of the equity of ACCERIS.

Name: North Central Equity LLC
Address: 60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Citizenship: U S
Principal Business: Holding Company
% Equity: 100%

No other person or entity, either directly or indirectly, owns ten percent (10%) or more of the equity of ACCERIS.

The following individual owns equity in North Central Equity LLC:

Name: Elam Baer
Address: 60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Citizenship: U.S.
Principal Business: CEO of holding company
% Equity: 56.4%

No other person or entity, either directly or indirectly owns ten percent (10) or more of the equity of North Central Equity LLC

(e) Certification

ACCERIS and ACC each certify pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that no party to this Application is subject to a denial of Federal benefits, as provided in the Anti-Drug Abuse Act of 1988, 21 U.S.C. §3301.

(f) Description of the Transaction

Please see Section II of this Application.

(g) Geographic Areas Served

ACCERIS is not currently authorized to provide telecommunications services in any jurisdiction, but is in the process of obtaining authority to provide interexchange and/or local exchange telecommunications services throughout the United States. In states where ACCERIS has not yet secured the necessary licenses to provide service, it will service transferred customers pursuant to a pre-existing transitional Management Agreement with ACC.

(h) Streamlined Treatment

Applicants submit that the proposed transaction would result in ACCERIS' market share in the local exchange and long distance market of substantially less than ten percent. Neither applicant is dominant with respect to any service. Therefore, this Application presumptively qualifies for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's rules.

(i) Related FCC applications

None

(j) Special Consideration

None.

(k) Waiver Requests

Applicants have not filed any waiver requests in conjunction with the proposed transaction.

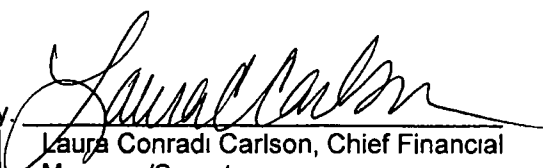
(l) Public Interest Considerations

The proposed transaction will serve the public interest by ensuring no interruption of service or inconvenience to the affected customers, and the affected customers will receive the same local service and long distance rates backed by the support services of ACCERIS, a growing and highly competitive carrier. Because ACCERIS will provide local exchange and long distance service to ACC's customers at the same rates, terms and conditions of service as they currently receive from ACC, the transaction will be virtually transparent to ACC local and long distance customers in terms of the service they receive. Moreover, as set forth above, Applicants have provided written notice of the proposed transaction to ensure that ACC customers will understand how the proposed change in service providers will affect them.

CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. This Application is contingent on the closing of the transaction as reported herein. If the closing does not occur, Applicants will promptly notify the Commission

Respectfully Submitted,

By: 
Laura Conradi Carlson, Chief Financial
Manager/Secretary
Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
(612) 465-0260

By: _____
Kelly Murumets, President
Acceris Communications Corp
1001 Brinton Road
Pittsburgh, PA 15221
(412) 224-2100

Dated. 6/22, 2005


Dated _____, 2005

CONCLUSION

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. This Application is contingent on the closing of the transaction as reported herein. If the closing does not occur, Applicants will promptly notify the Commission.

Respectfully Submitted,

By: _____
Drew S. Backstrand, General Counsel
Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
(612) 465-0260

By:  _____
Stephen Weintraub, Secretary
Acceris Communications Corp.
1001 Brinton Road
Pittsburgh, PA 15221
(412) 224-2100

Dated: _____, 2005

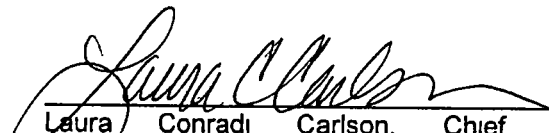
Dated: June 27, 2005

VERIFICATION

I, Laura Conradi Carlson, am the Chief Financial Manager/Secretary of Acceris Management and Acquisition LLC and am authorized to make this verification on its behalf. I do hereby verify that I have read the foregoing Application and the statements made therein are true, correct, and complete to the best of my knowledge, information, and belief

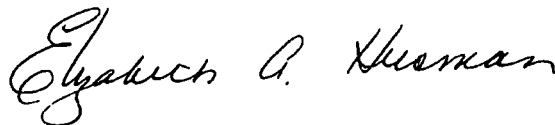
Executed on the 22nd day of June 2005

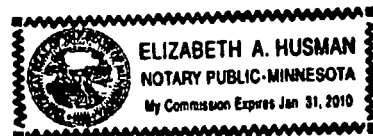
Acceris Management and Acquisition, LLC



Laura Conradi Carlson, Chief Financial
Manager/Secretary

Subscribed and sworn before me this 22nd day of June 2005






VERIFICATION

I, Stephen Weintraub, Secretary of Acceris Communications Corp., and am authorized to make this verification on its behalf. I do hereby verify that I have read the foregoing Application and the statements made therein are true, correct, and complete to the best of my knowledge, information, and belief.

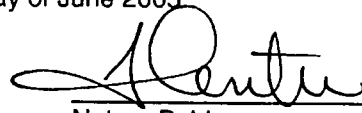
Executed on the 27th day of June 2005.

Acceris Communications Corp.



Secretary, Stephen Weintraub

Subscribed and sworn before me this 27th day of June 2005.



Notary Public T. Center

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

ATTORNEYS AT LAW

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STEVEN M BROWN
KRISTEN L GETTING

OF COUNSEL

JOHN T PETERS, JR

VINCENT T EARLY
(1922-2001)

JOSEPH J BURGIE
(1926-1992)

THOMPSON BENNETT
(1912-2004)

July 7, 2005

Ms Sharla Dillon, Docket Room Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE Docket 05-00169 Data Request No 2
Petition for Authority for Acceris Management and Acquisition LLC to Acquire
Certain Assets of Acceris Communications Corp

Dear Ms Dillon

In accordance with the request of Aster Adams, enclosed herewith for filing with the Commission, please find an original and thirteen (13) copies of the response to Data Request No 2

Also enclosed is a duplicate copy of this letter. Please stamp the duplicate and return it to me in the postage-paid envelope attached thereto

Please contact the undersigned should you have any questions or concerns

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P L.C

Patrick D Crocker

PDC/pas

enc

DATA REQUEST NO 2

DOCKET NO 05-00169

Responses submitted by Patrick D Crocker

July 7, 2005

1. Clarify the following statement found on page 2 of the Joint Petition: "Evidence of the Buyer's qualifications to provide service is outlined in the Application for a certificate of Public Convenience and Necessity, which is being filed contemporaneously with this Application." Staff is not aware of any such Application for a Certificate of Convenience and Necessity."

Applicant's Application to Resell Telecommunications Services in Tennessee, which was inadvertently not included with the original filing is attached hereto as **Attachment 1**.

2. **Will ACCERIS retain all existing managers of Acceris Communications Corporation? Provide a list of managers who will run ACC and their respective management experience related to telecommunications services.**

Acceris Management and Acquisition LLC will retain the following management personnel from Acceris Communications Corp

Eric Lipscolm	Chief Accounting Officer
Keith T Harrison	General Manager Vice President, Product Development and Vendor Relations
Patty Mazon	Vice President, Financial Operations
Tom Simone	Vice President, Network Operations

ATTACHMENT 1

Application for Certificate to Resell Telecommunications Services in Tennessee

**APPLICATION FOR CERTIFICATE
TO PROVIDE OPERATOR SERVICES AND/OR RESELL
TELECOMMUNICATION SERVICES IN TENNESSEE
SECTION A**

Application is hereby made for a certificate of authority pursuant to TRA Rule 1220-4-2-.57 to provide telecommunications services in the State of Tennessee.

Part I General Information

A Name of Applicant Acceris Management and Acquisition LLC
Full exact name of person, corporation, partnership, sole proprietorship, or other entity, for which application is made

Legal name of applicant, if different from above

60 South Sixth Street, Suite 2535, Minneapolis, MN 55402
Address, City, State, Zip

Tenn Secretary of State Certificate of Authority ID 0496732
Federal Taxpayer ID Number 20-2855923
Social Security Number for Applicants Applying as Individuals _____
Any trade name(s), assumed name(s) or fictitious name(s) used by applicant _____

If applicant has affiliate(s) engaged in providing telecommunications services, provide the above requested information for each affiliate(s), as well as for the applicant

Applicant has no affiliates providing telecommunications services in Tennessee

Address _____
City/State/Zip _____ Phone () _____

*****IMPORTANT INFORMATION*****

If applicant has affiliate(s) or parent company, or constituency corporations, engaged in providing telecommunications services, or operating under any trade name, assumed name or fictitious name used by the above, provide the above requested information on all parts of this application as well as for the applicant. Provide this information on a separate attachment, if necessary.

THIS SECTION FOR TRA USE ONLY

Docket Number _____	Company ID Number _____
	Date Approved _____
	Evaluator _____

B. Describe other businesses or business transactions, if any, at the same location as the principal business address

Applicant's parent North Central Equity, LLC is at the same principal address

C Provide the name, business and home address of and a chronological summary of the employment history and business experience over the preceding eight years of

- (a) The proprietor, if the applicant is an individual,
- (b) Every member, if the applicant is a partnership,
- (c) Each Executive Officer, Director and each Key Stockholder if the applicant is a joint stock association or a corporation (Note If the applicant is a publicly traded corporation or a subsidiary of such a corporation it does not need to provide this information)
- (d) Any person in a position to exercise control over or direction of, the business of the applicant, regardless of the form of organization of the applicant.

Information to be included

NAME	TITLE	SOCIAL SECURITY NUMBER
------	-------	------------------------

BUSINESS ADDRESS	PHONE No
------------------	----------

HOME ADDRESS	PHONE No
--------------	----------

EMPLOYMENT HISTORY

Attached as Exhibit A

D Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, LLC members, directors, officers, five percent (5%) more shareholders or beneficiaries (of a trust) been associated with a business whose authority to transact business was denied, revoked or suspended by a state or federal regulatory or law enforcement entity?

☐ Yes ☒ No If yes, please explain fully

E Has the Tennessee Regulatory Authority, or any other agency of the State of Tennessee, any federal agency or any agency of any other state ever initiated a regulatory action or order against the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, LLC members, directors, officers, five percent (5%) more shareholders or beneficiaries (of a trust)?

☐ Yes ☒ No If yes, please explain fully

(1) Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, LLC members, directors, officers, five percent (5%) more shareholders or beneficiaries (of a trust), been enjoined or restrained by order by any court or state or federal regulatory or law enforcement entity from engaging in any conduct or practice related to the telecommunications business?

☐ Yes ☒ No If yes, please explain fully

F Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, LLC members, directors, officers, five percent (5%) more shareholders or beneficiaries (of a trust) been associated with a business who has ceased providing telecommunications services in any state, describe the circumstances **(Use additional pages if necessary)**

☐ Yes ☒ No If yes, please explain fully

G Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, L L C members, directors, officers, five percent (5%) or more shareholders or beneficiaries (of a trust) been convicted of any crime or crimes, or charged in court with any fraudulent or dishonest acts in any transaction of any kind, or confined in any penal institution? If so, list such persons, give details, state results and final outcome **(Use additional pages if necessary)**

☐ Yes ☒ No If yes, please explain fully

(1) Has the applicant or any of its parent companies, subsidiaries, affiliates, owners, partners, L.L C members, directors, officers, five percent (5%) or more shareholders or beneficiaries (of a trust) been indicted, convicted, pled guilty or pled nolo contendere to a felony in Tennessee or elsewhere?

☐ Yes ☒ No If yes, please explain fully.

H Name and telephone number of contact person authorized to respond to Authority inquiries regarding company operations Monday through Friday

Drew Backstrand

Name

(612) 465-0265

Phone No

(612) 455-1022

Facsimile No

(800) 852-7023

Toll Free Number

backstrand@ncequity.net

E-mail Address

(1) Name and telephone number of contact person authorized to respond to Authority inquiries regarding this filing Monday through Friday

Patrick Crocker

Name

(269) 381-8844

Phone No

(269) 381-8822

Facsimile No

pcrocker@earlylennon.com

E-mail Address

I List a toll-free telephone number and mailing address that consumers can call or write to report service problems and/or request refunds or adjustments

(800) 852-7023

PHONE NUMBER

(612) 465-0260

ALTERNATE PHONE NUMBER

60 South Sixth Street, Suite 2535

ADDRESS

Minneapolis

CITY

MN

STATE

55402

ZIPCODE

J Provide the name and address of the registered agent for service of process

Joseph Martin, Jr.

315 Deaderick Street

Nashville, TN 37238

K Identify all authorized agents in the state, if any by name, address, business and home phone numbers and any other businesses conducted by the agent at the same location (use additional sheets if necessary)

Not Applicable

Part II

- A Check the type of telecommunication services you plan to provide in Tennessee
☒ Resell Interexchange long distance services
☐ Operator Services
☐ Resell local services
☐ Other (describe) _____
- B If providing operator services, list company name, address and contact person for all reseller carriers you serve in Tennessee **Provide the above information on Appendix I.** Applicant is not providing operator service at this time _____
- C List the state(s) where the applicant, its parent company, and all affiliates are authorized to operate in at this time For each such state, describe applicant's current activities along with a history of operations there (Use additional pages if necessary)
Attached as Exhibit B

For the above states, list the number and types of complaint(s) filed against applicant, and the complaint(s)' current status Provide this information on a separate attachment, if necessary
No complaints have been filed against Applicant _____
If applicant has affiliate(s) or parent company, or constituency corporations, engaged in providing telecommunications services, or operating under any trade name, assumed name or fictitious name used by the above, provide the above requested information for all as well as for the applicant. Provide this information on a separate attachment, if necessary.

- D List any states that the applicant or any affiliate, parent company, or constituency corporation operating under any trade name, assumed name, or fictitious name, has been denied authority to provide service (Use additional pages if necessary)
Applicant has not been denied authority to provide service _____
- E Areas in Tennessee to be served
Statewide _____
- F What type of customers will the applicant serve?
a ☒ Business
b ☒ Residential
c ☐ Aggregators
(e g Hotels, Payphones)
d ☐ Other (specify) _____
- G. Does the applicant allow a property imposed fee (PIF) to be added to the price of intrastate telephone calls over its network?
☐ Yes ☒ No If yes, specify amount _____
- H Are your prices for intrastate services plus any PIF equal to or less than the dominant carriers' price for similar services?
☒ Yes ☐ No _____

I. Describe the type of services and price that the applicant will be offering in Tennessee on the Informational Tariff Form found in Appendix II¹
Attached as Exhibit C

J. What is the applicant's 10XXX or 800 access code, if applicable?
Not applicable

K. Does the applicant now have or plan to have any telecommunication's facilities (e.g. switches, fiber lines) in Tennessee?
Applicant has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority by means of this application

L. Whose facility-based network(s) will the applicant be reselling?
Applicant will be reselling the networks of MCI, SPRINT, AT&T, and Global Crossing

M. Will the applicant be utilizing the local telephone company's billing system or billing customers directly²?
Applicant will be utilizing Billing Concepts, Inc

N. Describe briefly how the applicant plans to market their services in Tennessee?
Applicant plans to market their services via advertising, direct marketing, website, and independent distributors

O. If independent telemarketers are to be used, list the name, contact person, address, phone number and federal taxpayer ID for each company

COMPANY NAME	CONTACT	ADDRESS	CITY ST ZIP	PHONE
COMPANY NAME	CONTACT	ADDRESS	CITY ST ZIP	PHONE

P. Describe the methods and procedures by which the applicant will use to switch a consumer's preferred interexchange service, and to prevent unauthorized switching of a consumer's interexchange service. Use additional pages if necessary. If you have written procedures or company guidelines, attach copies
Applicant will switch customers after obtaining an executed Letter of Agency ("LOA") in case of a commercial customer or a voice recording authorizing change in the case of a residential customer

Q. Applicant has the ability and agrees to honor the form of call blocking that the consumer has subscribed to with their local telephone company
☒ Yes ☐ No

R. Applicant gives permission to the local telephone company to provide the Authority a periodic sample of the reseller's intrastate toll calls. The purpose of this analysis is to audit the reseller's rates to assure they are at or below the dominant carrier's tariffed rates
☒ Yes ☐ No

¹ Applicant is required to fill out an Informational Tariff form. Failure to fill out this form will cause the applicant's request to be rejected.

² A copy of a bill is required if applicant is going to bill the customer directly.

Part III Organization Structure

A Applicant's organizational structure

☒ Corporation

☐ Publicly Traded Corporation

☐ Subsidiary of a Publicly Traded Corporation

☒ Limited Liability Corporation Attach a copy of the articles of organization and operating agreement along with amendments.

☐ Other Form of Corporation

List type _____ (Example S Corporation)

Attach a copy of the charter, bylaws and/or certificate of incorporation.

Applicant's Articles of Organization and Operating Agreement are attached as Exhibit D.

☐ Association

Attach a copy of the charter, bylaws and/or certificate of incorporation and Letter of Authorization from Tennessee Secretary of State.

☐ Joint Stock Association

Attach a copy of the charter, bylaws and/or certificate of incorporation and Letter of Authorization from Tennessee Secretary of State.

☐ Trust

Attach a copy of the trust agreement and Letter of Authorization from Tennessee Secretary of State.

☐ Individual

Attach a copy of the Letter of Authorization from Tennessee Secretary of State.

SECTION (a)-(e) is to be completed if applicant is a Corporation, Association or Trust

(a) The date and state of formation/incorporation: 05/10 /05 in Minnesota

(1) Parent Company, if applicable North Central Equity, LLC

(b) Attach a certificate of good standing from the state in which the applicant was incorporated/formed
Attached as Exhibit E.

(1) Attach a copy of Certification of Authority issued by Tennessee Secretary of State showing corporation's authority to engage in business in Tennessee
Attached as Exhibit F.

(c) Describe the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant. Disclose whether any parent or subsidiary is publicly traded on any stock exchange
Applicant is a limited liability company duly organized in the State of Minnesota. Applicant's parent, North Central Equity, LLC is not publicly traded.

(d) Provide the history of material litigation and criminal convictions of every current director, executive officer, or key shareholder of the applicant for the ten-year period prior to the date of this application
The directors, executive officers, or key shareholders of Applicant have no history of material litigation or criminal convictions for the ten-year period prior to the date of this application.

(e) If applicable, attach a copy of the instrument creating the trust and all amendments thereto

- B
- ☐ Proprietorship
 - ☐ Partnership
 - ☐ General Attach a copy of the partnership agreement along with any amendments.
 - ☐ Limited Attach a copy of the certificate of limited partnership and the partnership agreement along with any amendments.
 - ☐ Other (Explain on separate sheet)

All of the above will be required to submit a valid business license

- (a) Identify the place and date of the applicant's qualifications to provide telecommunications services in this state
- (b) List the full name, social security number and address of the owners, if a sole proprietorship, or all partners identifying the percentage of ownership **ATTACH ADDITIONAL PAGES AS NECESSARY**

C Number of employees Applicant has no direct employees The parent company and all affiliate subsidiaries have approximately 120 employees

Employer Identification Number (E I N) 20-2855923

Part IV. Financial Information

A Address where business records are kept
60 South Sixth Street, Suite 2535 Minneapolis, MN 55402 (612) 465-0260
STREET CITY STATE ZIP CODE PHONE NUMBER

B Attach a copy of the applicant's most recent unconsolidated and consolidated audited financial statements for the immediately preceding three-year period Provide in detail the applicant's financial condition, including balance sheet and income statement, or a copy of IRS form 1120 or 1065 filed by your business for the previous year Attach, if available, a copy of your company's 10K and/or stockholder reports
A copy of Applicant's parent's most recent financial statements is attached as Exhibit G.

(1) Fiscal year end Month December Day 31

(2) Date of most recent audited, unconsolidated financial statement of Applicant
Not Applicable

(3) If applicable, name and address of independent certified public accountant:
Not Applicable

(4) Period covered by financial statement attached. 05/19/2004 through 12/31/2004

C Does the applicant currently have an internal auditor and/or internal audit program?
If so, Name of internal auditor Not Applicable

D If applicable, provide a history of applicant's material litigation and criminal convictions for the ten-year period prior to the date this application is made Material litigation is defined as any litigation that, according to generally accepted accounting principles, is deemed significant to a person's financial health and would be required to be referenced in annual audited financial statements, reports to shareholders or similar documents
Not Applicable

Part V Rule Compliance Agreement

A. Have you read and understand the Tennessee Regulatory Authority's (TRA) Rules and Regulations for Resellers, 1220-4-2 located at the TRA's website http://www.state.tn.us/tra/electronic_fileroom in its entirety?

☒ Yes ☐ No

B. Do you understand the penalties for non-compliance, and all associated fees to provide such service?

☒ Yes ☐ No

Mail the completed application and a check for \$50.00 to Tennessee Regulatory Authority, **P.O. Box 198907, Nashville, TN 37219-8907**. Should you have any questions, call (615) 741-7489, ext. 163.

The Reseller or Operator Service Provider applicant, hereby, affirms the following:

Will comply with the TRA Reseller Rules and all other applicable Authority Rules and state laws, including T.C.A. Section 65-5-206 located at the TRA's website http://www.state.tn.us/tra/electronic_fileroom under the External Site of Lexis Law Publishing.

Attached hereto as **Exhibit H** Surety Bond

Attached hereto as **Exhibit I** InterLATA Toll Dialing Parity Plan

Attached hereto as **Exhibit J** Small and Minority-Owned Telecommunications Business Plan

Attached hereto as **Exhibit K** Statement affirming Compliance with Toll-free Countywide Calling Requirements

Having been duly sworn, and under the penalties of perjury, I hereby certify that the representations in this RESELLER APPLICATION and all attachments and appendices are true and correct to the best of my knowledge and belief. I further understand that omissions or inaccuracies may result in denial of the APPLICATION and grounds for revocation of Certificate of Authority.

For Individual and Partners

Signature

PRINTED NAME

Signature

PRINTED NAME

Signature

PRINTED NAME

Signature

PRINTED NAME

For Corporations
and Other Organizations

Acceris Management and Acquisition LLC
(NAME OF CORPORATION)

BY

SIGNATURE

Patrick D Crocker
PRINTED NAME

Attorney
TITLE

ATTEST

TITLE

On this the 7th day of July 2005, before me, a Notary Public, Patrick D Crocker, known to me to be the person(s) named in, and who executed the foregoing application, being duly sworn according to law, deposes and says that the statements and representations set forth in the above application are true and correct to the best of his knowledge and belief.

Paula A Schneider
NOTARY PUBLIC Paula A Schneider

My Commission Expires June 24, 2011

County of Kalamazoo State of Michigan

EXHIBIT A

Background and Experience of Managers

EXHIBIT A

Background and Experience of Managers

Persons in a position to exercise control over or direction of, the business of the applicant are as follows:

Elam Baer

CEO, Chief Manager

SSN# 473-62-9969

(Business Address)

60 South Sixth Street, Suite 2535
Minneapolis, MN 55402

Telephone (612) 465-0260

(Residential Address)

2104 Girard Avenue, South
Minneapolis, MN 55405

Laura Conradi Carlson

Chief Financial Manager
Secretary

SSN# 473-70-7806

(Business Address)

60 South Sixth Street, Suite 2535
Minneapolis, MN 55402

Telephone (612) 465-0260

(Residential Address)

4134 Ottawa Avenue, South
Minneapolis, MN 55402

Principal Managers and Officers of Acceris Management and Acquisition LLC

● Elam Baer, Chief Executive Officer/Chief Manager

- Responsibilities: Management of Acceris Management and Acquisition LLC. Additional duties include deal sourcing, new investment screening, assisting portfolio companies, and negotiating transactions.
- Age 45, Mr. Baer has founded and grown a number of successful companies since starting his business career in 1992. These companies include QAI, Inc. (U.S. based telecommunications reseller), QAI Australia, Inc. (telecommunications reseller), QuikPage, Inc. (web page directory), NewTel Germany (telecommunications reseller), and NewTel Holdings LLC (telecommunications reseller in Ireland, United Kingdom, Switzerland, Spain and Australia). Prior to his business career, Mr. Baer was a lawyer. He received his bachelor's and juris doctorate degrees from the University of Minnesota.

● Laura Conradi Carlson, Chief Financial Officer/ Secretary/Manager

- Responsibilities: All financial reporting, financial statement preparation, cash management, investment valuation, tracking and analysis of portfolio performance, preparing and executing due diligence plans
- Age 34, Ms. Carlson served as controller or CFO of various companies founded by Elam Baer prior to joining North Central. Ms. Carlson also spent five years with Ernst & Young LLP as a senior auditor and two years with a telecom firm as Director of Accounting. Ms. Carlson is an honor's graduate from the University of St. Thomas, where she received a B.A. in Accounting in 1992, and received her CPA in 1993.

EXHIBIT B

Jurisdictions Where Applicant is Authorized to Operate

Applicant is applying for authority to provide interexchange and/or local exchange authority throughout the United States

Applicant is currently authorized to provide interexchange services in District of Columbia, Idaho, Indiana, Iowa, Michigan, Montana, New Jersey, Utah, and Virginia

EXHIBIT C

Tariff

EXHIBIT D

Articles or Organization

and

Operating Agreement

CCC OR



**ARTICLES OF ORGANIZATION
OF
ACCERIS MANAGEMENT AND ACQUISITION LLC**

The undersigned, being of full age and for the purpose of forming a limited liability company for general business purposes under Chapter 322B of the Minnesota Statutes, does hereby adopt the following Articles of Organization: ✓

**Article 1
Name**

The name of this limited liability company is Acceris Management and Acquisition LLC. m ✓

**Article 2
Registered Office**

The address of the registered office of this limited liability company is

60 South Sixth Street
Suite 2535
Minneapolis, MN 55402 ✓

**Article 3
Period of Existence**

Unless dissolved earlier in accordance with law, the period of existence of this limited liability company shall be perpetual. ✓

**Article 4
Organizer**

The name and address of the sole organizer of this limited liability company are

Christopher A. Carlisle
Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402

**Article 5
Preemptive Rights Prohibition**

The members of this limited liability company shall have no preemptive rights as described in Minnesota Statutes Section 322B 33 or any successor thereto.

Article 6
Cumulative Voting

The members of this limited liability company shall have no rights of cumulative voting as described in Minnesota Statutes Section 322B.63 or any successor thereto.

Article 7
Limitation of Liability of Governors

A governor of this limited liability company shall not be personally liable to this limited liability company or its members for monetary damages for breach of fiduciary duty as a governor, except for liability (i) based on a breach of the governor's duty of loyalty to this limited liability company or its members; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) under Section 322B.56 or Section 80A.23 of the Minnesota Statutes; or (iv) for any transaction from which such governor derived an improper personal benefit. If Chapter 322B of the Minnesota Statutes is hereafter amended to authorize the further elimination or limitation of the liability of governors, then the liability of a governor of this limited liability company, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by Chapter 322B of the Minnesota Statutes, as amended. Any repeal or modification of this Article by the members of this limited liability company shall be prospective only and shall not adversely affect any limitation on the personal liability of a governor of this limited liability company existing at the time of such repeal or modification.

Article 8
Actions by Written Consent

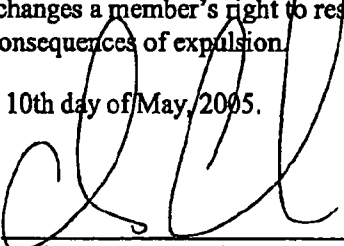
Any action which is required or permitted to be taken by the governors of this limited liability company at a meeting and which does not require the approval of the members may be taken by written action signed by the number of governors that would be required to take the same action at a meeting at which all governors were present. However, if the action is one which must be approved by the members, such action may be taken only by written action signed by all of the governors then in office. Any action required or permitted to be taken at a meeting of the members may be taken by written action signed by members who possess the voting power that would be required to take the same action at a meeting of the members at which all members were present.

Article 9
Dissenters' Rights Prohibition

Pursuant to Minnesota Statutes Section 322B.383, subdivision 1(1) (or similar provisions of future law), a member shall have no right to dissent from, and obtain payment for the fair value of the member's membership interest in the event of an amendment of the articles of organization which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it: (i) alters or abolishes a preferential right of the membership interests; (ii) creates, alters, or abolishes a right in respect of the redemption of the

membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests; (iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution; (iv) excludes or limits the right of a member to vote on a matter or to cumulate votes; (v) changes a member's right to resign or retire; or (vi) establishes or changes the conditions for or consequences of expulsion.

The undersigned has set his hand this 10th day of May, 2005.



Christopher A. Carlisle
Organizer

GP.1710865 v1

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 10 2005


Secretary of State 

State of Minnesota

SECRETARY OF STATE

Certificate of Organization

I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: Articles of Organization, duly signed, have been filed on this date in the Office of the Secretary of State, for the organization of the following limited liability company, under and in accordance with the provisions of the chapter of Minnesota Statutes listed below.

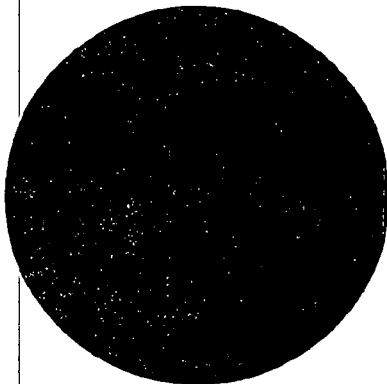
This limited liability company is now legally organized under the laws of Minnesota.

Name: Acceris Management and Acquisition LLC

Charter Number: 1353712-2

Chapter Formed Under: 322B

This certificate has been issued on 05/10/2005.



Mary Kiffmeyer
Secretary of State.

MEMBER CONTROL AGREEMENT
OF
ACCERIS MANAGEMENT AND ACQUISITION LLC

**MEMBER CONTROL AGREEMENT
OF
ACCERIS MANAGEMENT AND ACQUISITION LLC**

This this Member Control Agreement (this “**Agreement**”), made by North Central Equity LLC (the “**Member**” and collectively with any other person who becomes a party to this Agreement, the “**Members**”) takes effect on May 10, 2005.

Recitals

- A. The undersigned is the sole current Member of the Company.
- B. The undersigned desires to enter into this Agreement, which is intended to constitute a member control agreement within the meaning of Minnesota Statutes Section 322B.37.

Agreement

In consideration of the foregoing and the mutual promises and agreements set forth below, the Member agrees as follows:

**Article 1
Definitions**

For purposes of this Agreement the terms defined in this Article 1, except as otherwise expressly provided in this Agreement or unless the context clearly requires otherwise, have the following respective meanings. Any other terms that are defined in the Articles of Organization or Bylaws and are not defined here have the meanings ascribed to them in such other document.

- 1.1 “**Act**” means the Minnesota Limited Liability Company Act (presently Minnesota Statutes Chapter 322B), as amended from time to time.
- 1.2 “**Additional Member**” means a Person who is admitted as a Member and issued a new Membership Interest in exchange for a new Capital Contribution to the Company.
- 1.3 “**Agreement**” means this Member Control Agreement, and all amendments, schedules, exhibits, and modifications hereto.
- 1.4 “**Articles of Organization**” means the Articles of Organization of the Company, as the same may be amended from time to time.
- 1.5 “**Assignee**” means a transferee of a Membership Interest who has not been admitted as a Substitute Member.
- 1.6 “**Board**” or “**Board of Governors**” means the Board of Governors of the Company.

- 1.7 **“Bylaws”** means the Bylaws of the Company.
- 1.8 **“Capital Account”** means the account of a Member established and maintained in accordance with the provisions of Section 4.1 hereof.
- 1.9 **“Capital Contribution”** means the total amount of cash and/or the agreed upon fair market value of property (net of liabilities to which the property is subject or which are assumed by the Company) that is contributed to the Company by any Member or all of the Members in the aggregate (including contributions by predecessor Members in the event of any assignment).
- 1.10 **“Code”** means the Internal Revenue Code of 1986, as amended, and any successor thereto. Any reference to specific sections of the Code shall be to the section as it now exists and to any successor provision.
- 1.11 **“Company”** means Acceris Management and Acquisition LLC.
- 1.12 **“Distribution”** means the total amount of cash and/or the fair market value of property distributed by the Company to a Member (net of liabilities to which the property is subject or which are assumed by the Member) at any time or from time to time with respect to his or her interest as a Member of the Company.
- 1.13 **“Governor”** means a member of the Board of Governors of the Company.
- 1.14 **“Member”** means a member of the Company as named herein and any additional Member or Substitute Member admitted pursuant to this Agreement. For purposes of the provisions of this Agreement related to the Transfer of Membership Interests, Member includes any Person holding a Unit, whether or not such Person has been admitted as a Member.
- 1.15 **“Membership Interest”** means the interest of a Member in the Company, which interests are represented by Units.
- 1.16 **“Person”** means any natural person and any corporation, partnership, trust, association, or other legal entity.
- 1.17 **“Substitute Member”** means an Assignee who has been admitted to the Company with all of the rights of membership in the Company pursuant to the Agreement.
- 1.18 **“Transfer,”** with respect to any Membership Interest, when used as a noun, means any sale, assignment, trade, transfer, bequest, encumbrance, pledge, hypothecation, gift or any other disposition of all or any portion of a Membership Interest or any interest therein, and when used as a verb, means to sell, to assign, to trade, to transfer, to bequeath, to encumber, to pledge, to hypothecate, to give or in any other way to dispose of all or any portion of a Membership Interest or any interest therein.

- 1.19 **“Unit”** means a Membership Interest representing a proportionate interest in Distributions from the Company and in the gains, profits, and losses of the Company

Article 2 Formation

- 2.1 **Formation of Limited Liability Company.** The Company has been organized as a limited liability company under the Act. The rights and liabilities of the Members shall be as provided in the Act, except as otherwise expressly provided herein, in the Articles of Organization, or in the Bylaws.
- 2.2 **Name.** The name of the Company is “Acceris Management and Acquisition LLC,” unless an amendment to the Company’s Articles of Organization has been authorized by the Company’s Members after the date of this Agreement and duly filed with the Minnesota Secretary of State.
- 2.3 **Offices.** The Company’s registered office will be located at 60 South 6th Street, Suite 2535, Minneapolis, Minnesota 55402, or such other place as the Members may from time to time determine. The Company’s principal executive office will be located at 60 South 6th Street, Suite 2535, Minneapolis, Minnesota 55402, or such other place as the Members or Board of Governors may from time to time determine. The Company may maintain such other offices at such other places as the Members or Board of Governors deem advisable.
- 2.4 **Purposes** The Company is formed for general business purposes consistent with the Act. The purpose and character of business of the Company is to make investments in operating companies, and to do any other act and engage in any other business that the Members may determine to be necessary, related, or convenient to the accomplishment of such purposes.
- 2.5 **Term.** Unless otherwise stated in the Articles of Organization or unless the Company is dissolved earlier in accordance with law, the period of existence of the Company is perpetual.
- 2.6 **Member’s Name and Address.** The name and address of the Member as of the date hereof is as follows:
- North Central Equity LLC
60 South 6th Street, Suite 2535
Minneapolis, Minnesota 55402
- 2.7 **Title to Company Property** All property owned by the Company, whether real or personal, tangible or intangible, is owned by the Company as an entity, and no Member, individually, shall have any separate ownership interest in any such property.

- 2.8 **Waiver of Partition.** Each Member hereby waives any and all rights such Member may have to a partition of any Company property or properties.

Article 3

Capital Contributions

- 3.1 **Initial Capital Contributions.** The Member agrees to make the initial Capital Contribution set forth on **Schedule A**, which is attached hereto and made a part of this Agreement, for which such Member will receive the number of Units set forth on **Schedule A**.
- 3.2 **Additional Capital Contributions; Nonassessability.** No Member will be required to make any Capital Contribution in excess of the amount stated in Section 3.1 unless agreed by all Members.
- 3.3 **No Right to Return of Capital Contribution.** No Member has any the right to withdraw or to demand the return of all or any part of such Member's Capital Contribution, except as otherwise expressly provided herein. The Company will not be liable to Members for repayment of their Capital Contributions.
- 3.4 **Loans from Members to Company.** Subject to any other restrictions contained herein, the Company may borrow money from one or more Members at such interest rate or rates and upon such other terms as are agreed upon by the Company and the lending Member; provided that the interest rate on any such loans may not exceed the rate that would apply to Company borrowing on similar terms from recognized banks or financial institutions.
- 3.5 **No Interest on Contributions.** No interest shall be paid to any Member on Capital Contributions.

Article 4

Allocations of Profits and Losses; Distributions

4.1 Capital Accounts

- (a) The Company will maintain a separate Capital Account for each Member. The Capital Account for each Member shall be increased by such Member's Capital Contributions and decreased by Distributions made to such Member. Each Member's Capital Account also shall be increased or decreased, as the case may be, to account for profits and losses (and items thereof required to be taken into account by applicable Treasury Regulations) that are allocated to such Member.
- (b) The Members' Capital Accounts shall also be maintained and adjusted as permitted by the provisions of Treasury Regulation § 1.704-1(b)(2)(iv)(f) and as required by the other provisions of

Treasury Regulation §§ 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treasury Regulation § 1.704-1(b)(2)(iv)(g). As a consequence, the Members' Capital Accounts shall be increased or decreased to reflect a revaluation of the Company's property on its books, based on the fair market value of the Company's property on the date of adjustment, immediately prior to (A) the contribution of money or other property to the Company by a new or existing Member as consideration for an additional Membership Interest, (B) the Distribution of money or other property by the Company to a Member as consideration for a Membership Interest, (C) the liquidation of the Company. The Members' Capital Accounts shall be further adjusted as appropriate to reflect the Members' Membership Interests upon the exercise of any option or conversion right by which a Member acquires, or changes the nature and rights of, a Membership Interest.

- 4.2 **Allocations of Profit and Losses.** Profits and losses of the Company shall be allocated pro rata among the Members in proportion to their Units.
- 4.3 **Allocations to Reflect Book/Tax Differences.** For income tax purposes, income, gain, loss, and deduction with respect to property contributed to the Company by a Member or revalued pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(f) shall be allocated among the Members in a manner that takes into account the variation between the adjusted tax basis of such property and its book value, as required by Section 704(c) of the Code and Treasury Regulation § 1.704-1(b)(4)(i), using such allocation method permitted by Treasury Regulations as is determined by the Board of Governors. Any allocations made solely to comply with this Section 4.3 and the Code shall not be reflected in Capital Account adjustments.
- 4.4 **Distributions Prior to Liquidation.** Current Distributions may be made from time to time as determined by the Governors. Distributions pursuant to this Section 4.4 shall be made among the Members in proportion to the number of Units held by each of them. Except as provided in Section 4.7, all Distributions to Members prior to the liquidation, winding up, and dissolution of the Company shall be in cash.
- 4.5 **Distributions Upon Dissolution and Winding Up.** At the time of the dissolution and winding up of the Company, following the allocation of all net income and net losses and the payment of all Company obligations, the remaining assets shall be distributed to the Members in accordance with Section 10.3.

- 4.6 **No Distribution by Reason of Withdrawal.** Neither withdrawal from the Company, Transfer of any interest in the Company, nor demand for the return of capital shall entitle any owner of a Membership Interest to receive any Distribution from the Company.
- 4.7 **Distributions in Kind.** No Member has any right to demand or receive a Distribution from the Company in any form other than cash, nor may any Member be compelled to accept any distribution of property in kind except under circumstances where all Members receive undivided interests in property or substantially equivalent interests in property on the basis of their Capital Accounts. If there is a Distribution of property in kind, such property shall be assumed to have been sold at its fair market value at the time of the Distribution, and the resulting gain or loss shall be allocated among the Members according to their Capital Accounts, and their Capital Accounts shall be adjusted accordingly.

Article 5

Reimbursement; Indemnification

- 5.1 **Reimbursement of Expenses.** Except to the extent otherwise provided for herein, and except for items generally constituting a Member's overhead, the Company will pay all costs and expenses associated with the Company business, and will reimburse the Members for the actual costs incurred for goods, materials, and services used by or for the Company.
- 5.2 **Indemnification and Liability of Members, Governors, and Managers.** The Company shall indemnify the Members, Governors, and managers or any Member, Governor, or manager against any claim or liability incurred by the Members, Governors, and managers, or any of them in connection with the conduct of the business of the Company, and neither the Company nor any Member will have any claim against the Members, Governors, and managers, or any of them by reason of any such act or omission of the Members, Governors, and managers, or any of them; provided that, in each instance, a Member, Governor, or manager shall not be indemnified or exculpated if such act or failure to act was not in good faith or constituted fraud, gross negligence, or willful misconduct. The provisions of this Section regarding liability and indemnification will apply with equal force and effect to any manager, Governor, Member, agent or employee of a Member, and their successors and assigns.

Article 6

Books and Records; Tax Matters

- 6.1 **Tax Characterization.** The Members intend that the Company be treated as a "partnership" for tax purposes at all times when there are sufficient Members to do so and as a disregarded entity at times when there are not sufficient Members to be treated as a "partnership."

- 6.2 **Accounting Method and Fiscal Year** The Company will keep its accounting records and report its income for income tax purposes using such method of accounting as the Board of Governors shall designate. The fiscal year of the Company will end on December 31 or on such other date as the Members or Board of Governors shall designate.
- 6.3 **Annual Financial Statements.** Annual financial statements for the Company, including statements of assets and liabilities, income statements, and such other statements as are commonly included in financial statements, or as may be requested by a majority in interest of the Members, shall be prepared and delivered to each of the Members within ninety (90) days after the close of each fiscal year.
- 6.4 **Tax Returns.** As soon as possible following the close of each year of the Company during which there are sufficient Members to treat the Company as a partnership for federal income tax purposes, the Board of Governors shall cause the partnership income tax return for the Company to be prepared. In addition, within ninety (90) days after the end of each such fiscal year, or as soon thereafter as possible, or such later time as all Members agree, the Company will cause to be delivered to each Person who was a Member and was taxed as a “partner” for federal income tax purposes at any time during such fiscal year a Schedule K-1 and such other information, if any, with respect to the Company as may be necessary for the preparation of such Member’s federal or state income tax (or information) returns, including a statement showing each Member’s share of income, gain, loss, and credits for such fiscal year for federal or state income tax purposes.
- 6.5 **Tax Elections.** In the sole discretion of the Members, the Company may make or not make any and all tax elections deemed appropriate, including, in the event of a Transfer of all or part of any Member’s interest in the Company, the election under Section 754 of the Code to adjust the bases of the assets of the Company.
- 6.6 **Tax Matters Partner.** If necessary, North Central Equity LLC will act on behalf of the Company as the “tax matters partner” within the meaning of Section 6231(a)(7) of the Code.

Article 7

Transfers of Membership Interests

- 7.1 **Limitation on Sale or Exchange.** Except as otherwise provided in this Article 7, no Member may Transfer all or any portion of its interest in the Company except with the written consent of Members holding two-thirds (2/3) of the Units held by all other Members. Notwithstanding the foregoing, unless the consent of Members holding seventy-five percent (75%) of the Units held by all other Members is obtained, which consent may be granted or withheld in each such Member’s absolute discretion, no interest in the Company may be sold

or exchanged if such transaction, in light of the total of all other interests in the Company sold or exchanged within the period of twelve (12) consecutive months prior thereto, might, in the opinion of counsel for the Company, result in the Company's termination as a partnership for federal income tax purposes under Section 708 of the Code.

- 7.2 **Requirements for Assignment.** Subject to restrictions on Transfer contained elsewhere in this Agreement or imposed by federal or state law, a Member may assign a Membership Interest only (a) by a written assignment that (i) is not in contravention of any of the provisions of this Agreement; (ii) has been duly executed and acknowledged by the assignor and Assignee, with the approval of the Board of Governors, which approval shall be in its sole and absolute discretion; and (iii) is to an Assignee who represents that he satisfies specific suitability standards applicable to the assigning Member as may from time to time be established by the Board of Governors; and (b), if required by the Board of Governors, legal counsel for the Company has rendered its opinion, in form and substance satisfactory to the Board of Governors and at the expense of the prospective Assignee or assignor, that such assignment would not cause the termination of the Company for federal income tax purposes (unless termination is with consent pursuant to Section 7.1) or the taxation of the Company as a corporation.
- 7.3 **Continuation of Assignor's Status.** Anything herein to the contrary notwithstanding, the Company, its managers, and the Members are entitled to treat an assignor of a Membership Interest as the absolute owner thereof in all respects, and they will incur no liability for distributions of cash made in good faith to such assignor until such time as a written assignment that conforms to all requirements of this Article 7 has been received by and recorded on the books and records of the Company. Until such time, any payment by the Company to an assigning Member or his executors, administrators, or representatives shall, to the extent of such payment, acquit the Company of liability to any other Person who may have an interest in such payment by reason of an assignment by the Member, such Member's death, or otherwise.
- 7.4 **Assignee's Rights.** An Assignee of any Member's interest will be entitled to receive Distributions of cash or other property from the Company and to receive allocations of the gains, profits, and losses of the Company attributable to such interest after the effective date of the assignment. The "effective date" of an assignment shall be the later of (a) the date set forth on the written instrument of assignment and (b) the date upon which the requirements of this Article 7 have been satisfied. An Assignee who has not been admitted as a Substitute Member pursuant to Section 7.5 will have no additional rights except as required by law.
- 7.5 **Requirements for Admission as a Substitute or Additional Member.** An Assignee of a Membership Interest, if not already a Member, may become a Substitute Member only with the consent of Members holding a majority of all

Units held by nontransferring Members, which consent may be granted or withheld all in each such Member's sole discretion. No Assignee of any Member's interest who is not already a Member may become a Substitute Member with respect to such interest without such consent.

- 7.6 **Documents and Expenses.** As a condition to admission as a Substitute Member, an Assignee of all or a part of any interest in the Company shall execute and acknowledge such instruments, in form and substance satisfactory to the Company, as the Company deems necessary or advisable to effect such admission and to confirm the agreement of the Person being admitted as such Substitute Member to be bound by all of the terms and provisions of this Agreement. Such Assignee shall pay all reasonable expenses in connection with such admission as a Substitute Member, including, but not limited to, legal fees and costs of preparing and filing any amendment to the Articles of Organization of the Company if necessary or desirable in connection therewith.
- 7.7 **Expulsion.** A Member shall be expelled without further action for "cause," which means a final judicial determination that he (a) was grossly negligent in failing to perform his obligations under this Agreement, (b) has committed a fraud upon the Members or upon the Company, (c) has committed a felony in connection with the management of the Company or its business, or (d) was in material breach of his obligations under this Agreement.

Article 8

Additional Members; Options and Warrants

Additional Members may be admitted to the Company and additional Units issued to additional or existing Members upon such terms and conditions, and for such Capital Contributions, as are approved by the Board of Governors. In addition, the Board of Governors may grant and issue options or warrants upon such terms and conditions, and with exercise prices of such Capital Contributions, as are approved by the Board of Governors in the Governors sole discretion to employees, consultants, Managers and Governors as additional consideration for such persons' service to the Company, or to other persons for other business reasons, for the future purchase of Units, may reserve Units for issuance upon exercise of such options or warrants, and must issue Units (including admission of the option holder as a Member with all economic and governance rights, if not already a Member) to an exercising optionholder or warrant holder upon such optionholder's or warrant holder's full performance under the option agreement or warrant agreement including payment of such Capital Contributions as the option or warrant requires, without further consent of any Members. Upon the termination of the last or sole Member of the Company, the legal representative of that last or sole Member may cause the Company to admit one or more additional Members.

Article 9

Investment Representations

Each Member, by becoming a member of the Company and becoming obligated hereunder, hereby represents and warrants to the managers, Governors, and other Members of the Company and the Company as follows:

- (a) Such Member's acquisition of a Membership Interest is made as a principal for his, her, or its sole account for investment purposes only and not with a view toward the distribution of all or any portion thereof and under no circumstances will such Member sell, Transfer or assign all or any portion of his, her, or its interest in the Company except in compliance with the provisions of this Agreement.
- (b) Such Member is relying on his, her, or its own business and financial knowledge and experience, or that of such Member's duly qualified investment advisor, in making a decision to enter into and execute this Agreement. Such Member, alone or together with such investment advisor, has such knowledge and experience in business and financial matters as will enable such Member to utilize the information made available to him, her, or it in connection with his, her, or its investment in the Company, to evaluate the merits and risks of the prospective investment and to make an informed investment decision.
- (c) Such Member is aware of the restrictions on the Transfer of his, her, or its interest in the Company and that the same will at no time be freely transferable or be assignable otherwise than to a Person accepting similar restrictions on transferability.
- (d) Such Member has no reason to anticipate any change in circumstances, financial or otherwise, which would cause such Member to sell or distribute or necessitate or require any sale or distribution of his, her, or its interest in the Company.
- (e) Such Member is familiar with the nature of and risks attending investments in securities.
- (f) Such Member is fully aware of the restrictions on resale of his, her, or its interest in the Company under this Agreement and the Securities Act of 1933, as amended (the "**Securities Act**"), and applicable state securities laws, and the effect of such a sale under federal and state tax laws; in particular, is aware that the interest in the Company will not be registered under the Securities Act at any

time, will not at any time be freely salable, and that any Transfer thereof may have significant adverse tax consequences.

Article 10

Dissolution; Continuation

- 10.1 **Dissolution Events.** The Company will continue until the occurrence of any of the following events (each a “**Dissolution Event**”):
- (a) The expiration of the Company’s period of existence, if any, set forth in the Articles of Organization;
 - (b) The sale or other disposition of all or substantially all of the Company’s assets,
 - (c) The death, retirement, resignation, expulsion, bankruptcy, or dissolution of a Member, or the occurrence of any other event which terminates the continued membership of a Member, but only if there is no other Member of the Company remaining after such termination of membership and no new Member is admitted within 90 days after the termination of the last or sole Member of the Company;
 - (d) The agreement of Members holding not less than seventy-five percent (75%) of all Units to dissolve and terminate the Company; or
 - (e) The decree of a court of competent jurisdiction that dissolution and liquidation is required.
- 10.2 **Continuation After Dissolution.** Notwithstanding the occurrence of the Dissolution Event defined in Section 10.1(c), the Company will not be dissolved and the business of the Company shall be continued if a Member is admitted to the Company at the time of, or within 90 days after, the termination of membership constituting the Dissolution Event.
- 10.3 **Dissolution and Liquidation Procedure.** Except as otherwise provided by the Act and unless the Company is continued pursuant to Section 10.2, upon the occurrence of a Dissolution Event, no further business shall be done in the name of or on behalf of the Company except insofar as may be necessary to wind up the business of the Company and distribute its assets to the Members or their successors in interest, and the Company shall execute and file a notice of dissolution as required by the Act. Upon dissolution and termination of the Company, except as otherwise provided in any valid business continuation agreement and by applicable law, the Company’s assets shall be applied in the following order:

- (a) To the payment of the debts and obligations of the Company, including, to the extent permitted by law, obligations to Members who are creditors, in the order prescribed by law;
- (b) Next, to the setting up of any reserves deemed reasonably necessary by the Members for any contingent or unforeseen liabilities or obligations of the Company;
- (c) Next, to the Members who are creditors for any debts and liabilities not permitted to be paid under (a), above; and
- (d) Next, to the Members in accordance with their respective Capital Account balances.

For purpose of determining the rights of Members to Distributions in dissolution, in the event of a distribution of property in kind, such property shall be assumed to have been sold at its fair market value, with any gain or loss allocated to the Members in accordance with Article 4. If a Member is indebted to the Company, the Company, if possible, shall offset such indebtedness to satisfy its obligations to said indebted Member rather than distribute a portion of said indebtedness to the other Member(s).

Article 11 Member Voting

Unless otherwise required by law, the Articles of Organization, or another specific provision of this Agreement, in all matters on which a vote of Members is required or otherwise provided for, each Member will have one (1) vote for each Unit held by the Member.

Article 12 Amendments

This Agreement may be amended at a meeting of the Members called for such purpose upon the approval of Members holding not less than seventy-five percent (75%) of all outstanding Units or by written agreement or written action of Members whose approval at a meeting would be sufficient to accomplish such amendment; provided, however, that any amendment that would have any of the following effects must be consented to in writing by each Member whose rights or obligations, as expressly provided in this Agreement, would be directly and adversely affected by such amendment:

- (a) An increase to a Member's obligation to make Capital Contributions to the Company or a decrease to the Capital Account of a Member;
- (b) A change in the allocations of profits and losses of the Company;
- (c) A change in the manner of determining how Distributions are shared among Members of the Company;

- (d) A change in the right of a Member to assign a Membership Interest or in any rights provided in this Agreement to substitute another Person as a Member;
- (e) A change in the voting rights or status of Members; or
- (f) A change in the provisions for amending this Agreement.

In addition, any change that may materially and adversely affect the ability of the Company to be taxed as a partnership for federal income tax purposes will require unanimous approval.

Article 13 Provisions Applicable When There is a Single Member

For all periods during which there is a single Member of the Company, notwithstanding any contrary provision of this Agreement, such Member's actions, for all purposes, shall be duly authorized actions by and on behalf of the Company

Article 14 Waiver of Dissenters' Rights

The Members waive any and all dissenters' rights under the Act to the extent that the Act permits such waiver.

Article 15 Miscellaneous

- 15.1 **Other Business Ventures.** Any Member may engage in or possess an interest in other business ventures of every nature and description, whether or not competitive with the business of the Company, independently or with others; and neither the Company nor the Members shall have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived therefrom. No Member shall have any obligation to bring any business opportunity to the Company or to any other Member.
- 15.2 **Governing Law.** Notwithstanding the fact that the Company may conduct business in states other than Minnesota, and notwithstanding the fact that some or all of the Members may be residents of states other than Minnesota, this Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the State of Minnesota.
- 15.3 **Articles of Organization and Bylaws.** The Articles of Organization and Bylaws are incorporated by reference and hereby made a part of this Agreement. If there is any conflict between the Articles of Organization or the Bylaws and this Agreement, the provisions of this Agreement shall govern to the extent not contrary to law

- 15.4 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Members, and their respective heirs, executors, administrators, personal representatives, successors and assigns.
- 15.5 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision will be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
- 15.6 **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged.
- 15.7 **Additional Documents and Acts.** Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effect, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.
- 15.8 **No Third Party Beneficiary.** This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other Person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third party beneficiary or otherwise.
- 15.9 **Notices.** Any notice to be given or to be served by a Member upon the Company in connection with this Agreement must be in writing and will be deemed to have been given when delivered personally or mailed to the Company at its registered office or its principal executive office or to the Company's President. Notice to a Member will be deemed to have been given when (i) delivered personally to the Member or (ii) deposited in the United States mail, postage prepaid and addressed to a Member at the address specified in Section 2.6 hereof. At any time, by giving five (5) days' prior written notice to the Company, a Member may designate another address in substitution of the foregoing address as the address to which notice is to be given.

- 15.10 **Headings and Titles.** Article and section headings and titles are for descriptive purposes and convenience of reference only and shall not control or alter the meaning of this Agreement as set forth in the text.
- 15.11 **Entire Agreement.** This Agreement is the final integration of the agreement of the parties with respect to the matters covered by it and supersedes any prior understanding or agreement, oral or written, with respect thereto.
- 15.12 **Gender, Etc.** Except where the context requires otherwise, the use of terminology of any of the masculine, feminine, or neuter genders shall include all such genders, and the use of the singular number shall include the plural and vice versa.

The undersigned has executed this Agreement on the date first above written.

MEMBER:

North Central Equity LLC

By: _____

Elam Baer

Its: Chief Executive Officer

Schedule A

Acceris Management and Acquisition LLC

<u>Member</u>	<u>Date</u>	<u>Capital Contributions</u>	<u>Number of Units</u>
North Central Equity LLC	May 10, 2005	\$1,000	300,000
TOTAL			300,000

GP 1711424 v1

**BYLAWS
OF
ACCERIS MANAGEMENT AND ACQUISITION LLC**

**Article 1
Offices**

1.1 **Registered Office.** The registered office of the Company shall be located within the State of Minnesota as set forth in the Articles of Organization. The registered office need not be identical with the principal executive office of the Company and may be changed from time to time by the Board of Governors.

1.2 **Other Offices.** The Company may have other offices, including its principal executive office, at such places inside and outside the State of Minnesota as the Board of Governors may determine from time to time.

**Article 2
Members**

2.1 **Place of Meetings.** All meetings of the Members of the Company shall be held at its principal executive office unless some other place for any such meeting within or without the State of Minnesota is designated by the Board of Governors in the notice of meeting. Any regular or special meeting of the Members of the Company called by or held pursuant to a written demand of Members shall be held in the county where the principal executive office of the Company is located.

2.2 **Regular Meetings** Regular meetings of the Members of the Company may be held at the discretion of the Board of Governors on an annual or less frequent periodic basis on such dates and at such times and places as may be designated by the Board of Governors in the notices of meeting. At regular meetings, the Members shall elect a Board of Governors and transact such other business as may be appropriate for action by Members. If a regular meeting of Members has not been held for a period of fifteen (15) months, one or more Members owning not less than three percent (3%) of the voting power of the Members may call a regular meeting of Members by delivering to the chief manager or treasurer a written demand for a regular meeting. Within thirty (30) days after the receipt of such a written demand by the chief manager or treasurer, the Board of Governors shall cause a regular meeting of Members to be called and held on notice no later than ninety (90) days after the receipt of such written demand, all at the expense of the Company.

2.3 **Special Meetings.** Special meetings of the Members, for any purpose or purposes appropriate for action by Members, may be called by the chief manager, by the acting chief manager in the absence of the chief manager, by the treasurer, or by the Board of Governors or any two or more Governors. Such meeting shall be held on such date and at such time and place as shall be fixed by the person or persons calling the meeting and designated in the notice of meeting. A special meeting may also be called by one or more Members owning ten percent (10%) or more of the voting power of the Members. The Members calling such meetings shall

deliver to the chief manager or treasurer a written demand for a special meeting, which demand shall contain the purposes of the meeting. Within thirty (30) days after the receipt of such a written demand for a special meeting of Members by the chief manager or treasurer, the Board of Governors shall cause a special meeting of Members to be called and held on notice no later than ninety (90) days after the receipt of such written demand, all at the expense of the Company. Business transacted at any special meeting of Members shall be limited to the purpose or purposes stated in the notice of meeting. Any business transacted at any special meeting of Members that is not included among the stated purposes of such meeting shall be voidable by or on behalf of the Company unless all of the Members entitled to vote have waived notice of the meeting

2.4 Notice of Meetings. Except where a meeting of Members is an adjourned meeting and the date, time, and place of such meeting were announced at the time of adjournment, notice of all meetings of Members stating the date, time, and place thereof, and any other information required by law or desired by the Board of Governors or by such other person or persons calling the meeting, and in the case of special meetings, the purpose thereof, shall be given to each Member of record entitled to vote at such meeting not less than three (3) nor more than sixty (60) days prior to the date of such meeting. If a plan of merger or exchange or the sale or other disposition of all or substantially all of the assets of the Company is to be considered at a meeting of Members, notice of such meeting shall be given to every Member, whether or not entitled to vote, and shall be in writing. The notice of meeting at which there is to be considered a proposal to adopt a plan of merger or exchange shall be given not less than fourteen (14) days prior to the date of such meeting, shall state the purpose of such meeting, and, where a plan of merger or exchange is to be considered, shall include a copy or a short description of the plan.

Notices of meeting shall be given to each Member entitled thereto. Such notice shall be delivered personally, sent by facsimile communication, sent by electronic mail, posted on an electronic network together with a separate notice to the Member of the specific posting, mailed, first class, postage prepaid, or by any other method authorized by law. Notice by mail shall be deemed given when deposited in the United States mail with sufficient postage affixed. Notice shall be deemed received when it is given.

Any Member may waive notice of any meeting of Members. A waiver of notice is effective whether given before, at, or after the meeting, and whether given orally, in writing, by attendance, or by any other means authorized by law. Attendance by a Member at a meeting is a waiver of notice of that meeting, except where the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of that item at the meeting.

2.5 Record Date. For the purpose of determining Members entitled to notice of and to vote at any meeting of Members or any adjournment thereof, or persons entitled to receive payment of any distribution with respect to an interest in the Company or in order to make a determination of Members for any other proper purpose, the Board of Governors may, but need not, fix a date as the record date for any such determination of Members, which record date,

however, shall in no event be more than sixty (60) days prior to any such intended action or meeting.

2.6 Quorum. The owners of a majority of the voting power of the Members constitute a quorum at a meeting of Members for the purpose of taking any action other than adjourning such meeting. If a majority of the voting power of the Members is not represented at a meeting, the Members with voting power present in person or by proxy shall constitute a quorum for the sole purpose of adjourning such meeting, and the owners of a majority of the voting power of the Members so represented may adjourn the meeting to such date, time, and place as they shall announce at the time of adjournment. Any business that might have been transacted at the adjourned meeting had a quorum been present, may be transacted at the meeting held pursuant to such an adjournment and at which a quorum shall be represented. If a quorum is present when a duly called or held meeting is convened, the Members present may continue to transact business until adjournment, even though the withdrawal of Members originally represented leaves less voting power present than would otherwise be required for a quorum.

2.7 Voting and Proxies. The voting power of the Members shall be as set forth in a member control agreement, if there be one, or otherwise as prescribed by law. A Member may exercise voting power in person or by proxy, but no appointment of a proxy shall be valid for any purpose more than eleven (11) months after the date of its execution, unless a longer period is expressly provided in the appointment. Every appointment of a proxy shall be in writing (which shall include telegraphing, cabling or telephotographic transmission, provided that any appointment by telegraph, cable or other method where the signature of the member is not available shall be accompanied by the Member's social security number, home telephone number and address to confirm the identity of the Member), and shall be filed with a manager of the Company before or at the meeting at which the appointment is to be effective. An appointment of a proxy for an interest held jointly by two or more Members shall be valid if signed by any one of them, unless a manager of the Company receives from any one of such Members written notice either denying the authority of another of such Members to appoint a proxy or appointing a different proxy. All questions regarding the qualification of voters, the validity of appointments of proxies, and the acceptance or rejection of votes shall be decided by the presiding manager or governor of the meeting. The Members shall take action by the affirmative vote of the owners of a majority of the voting power of the Members present, in person or represented by proxy, except where a different vote is required by law, the Articles of Organization, these Bylaws, or any applicable member control agreement.

2.8 Actions in Writing. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting by written action signed by the Members possessing the voting power that would be required to take the same action at a meeting of Members at which all Members entitled to vote were present. For purposes of this Section, an electronic signature satisfies the requirement of a signature so long as the electronic communication containing the electronic signature sets forth sufficient information from which the Company can reasonably conclude that the communication was actually sent by the purported sender. If any written action is taken by less than all Members entitled to vote, all Members entitled to vote shall be notified immediately of its text and effective date. The failure to provide such notice, however, shall not invalidate such written action.

2.9 Meeting by Means of Electronic Communication. Any meeting of the Members may be conducted solely, or with the participation of one or more Members, by one or more means of remote communication, including electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis, through which all of the Members may participate in the meeting, if the same notice is given of the meeting as would be required for a meeting, and if the number of Members participating in the meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting in this manner constitutes presence at a meeting.

Article 3 Governors

3.1 General Powers. Except as otherwise provided by the Members pursuant to a member control agreement, the business and affairs of the Company shall be managed by or under the direction of its Board of Governors. The Governors may exercise all such powers and do all such things as may be exercised or done by the Company, subject to the provisions of applicable law, the Articles of Organization, these Bylaws and any member control agreement.

3.2 Number, Tenure, and Qualification. The number of Governors which shall constitute the whole Board of Governors shall be fixed from time to time by action of the Members. If the Members fail to fix the number of Governors, the number of Governors shall be one (1). The number of Governors shall be subject to increase or decrease by resolution of the Board of Governors; provided, however, that no decrease in the number of Governors pursuant to this section shall effect the removal of any Governor then in office except upon compliance with the provisions of Section 3.7. Except as provided in Sections 3.6 and 3.7, each Governor shall be elected at a regular meeting of Members and shall hold office until the next regular meeting of Members and thereafter until a successor is duly elected and qualified, unless a prior vacancy shall occur by reason of death, resignation, or removal from office. Governors shall be natural persons, but need not be Members.

3.3 Meetings. Meetings of the Board of Governors may be held at such times and places as shall from time to time be determined by the Board of Governors. Meetings of the Board of Governors also may be called by the chief manager, by the acting chief manager in the absence of the chief manager, or by any Governor, in which case the person or persons calling such meeting may fix the date, time, and place thereof, either within or without the State of Minnesota, and shall cause notice of meeting to be given.

3.4 Notice of Meetings If the date, time, and place of a meeting of the Board of Governors has been announced at a previous meeting, no notice is required. In all other cases three (3) days' notice of meetings of the Board of Governors, stating the date and time thereof and any other information required by law or desired by the person or persons calling such meeting, shall be given to each Governor. Such notice shall be delivered personally, sent by facsimile communication, sent by electronic mail, posted on an electronic network together with a separate notice to the Governor of the specific posting, mailed, first class, postage prepaid, or by any other method authorized by law. If notice of meeting is required, and such notice does not

state the place of the meeting, such meeting shall be held at the principal executive office of the Company. Notice of meetings of the Board of Governors shall be given to Governors in the manner provided in these Bylaws for giving notice to Members of meetings of Members

Any Governor may waive notice of any meeting. A waiver of notice by a Governor is effective whether given before, at, or after the meeting, and whether given orally, in writing, by attendance, or by any other means authorized by law. The attendance of a Governor at any meeting shall constitute a waiver of notice of such meeting, unless such Governor objects at the beginning of the meeting to the transaction of business on grounds that the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

3.5 Quorum and Voting. A majority of the Governors currently holding office shall constitute a quorum for the transaction of business at any meeting of the Board of Governors. In the absence of a quorum, a majority of the Governors present may adjourn the meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the Governors present may continue to transact business until adjournment, even though the withdrawal of a number of Governors originally present leaves less than the number otherwise required for a quorum.

The Board of Governors shall take action by the affirmative vote of a majority of the Governors present at any duly held meeting, except as to any question upon which any different vote is required by law, the Articles of Organization, or any member control agreement. A Governor may give advance written consent or objection to a proposal to be acted upon at a meeting of the Board of Governors. If the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the Governor has consented or objected, such consent or objection shall be counted as a vote for or against the proposal and shall be recorded in the minutes of the meeting. Such consent or objection shall not be considered in determining the existence of a quorum.

3.6 Vacancies and Newly Created Governorships. Any vacancy occurring on the Board of Governors resulting from the death, resignation, removal, or disqualification of a governor, may be filled by the affirmative vote of a majority of the governors remaining in office, even though said remaining governors may be less than a quorum. In addition, any newly created governorship resulting from an increase in the authorized number of governors by action of the Board of Governors may be filled by a majority vote of the governors serving at the time of such increase. Notwithstanding the foregoing, any vacancy or newly created governorship may be filled by resolution of the members. Each governor elected by the Board of Governors to either fill a vacancy or a newly created governorship shall hold office until a qualified successor is elected by the members at the next regular or special meeting of the members.

3.7 Removal of Governors. The entire Board of Governors or any Governor or Governors may be removed from office, with or without cause, at any special meeting of the Members duly called for that purpose as provided in these Bylaws, by a vote of the Members possessing a majority of the voting power of the Members. At such meeting, without further notice, the Members may fill any vacancy or vacancies created by such removal as provided in Section 3.6. Any such vacancy not so filled may be filled by the Governors as provided in

Section 3.6. Any Governor named by the Board of Governors to fill a vacancy may be removed at any time, with or without cause, by an affirmative vote of a majority of all remaining Governors (including remaining Governors that were elected by the Members and remaining Governors elected by the Governors without Member action pursuant to Section 3 6), even though said remaining Governors be less than a quorum, if the Members have not elected Governors during the interval between the appointment to fill the vacancy and the time of removal.

3.8 Committees. The Board of Governors, by a resolution approved by the affirmative vote of a majority of the Governors then holding office, may establish one or more committees of one or more natural persons having the authority of the Board of Governors in the management of the business of the Company to the extent provided in such resolution. Such committees, however, shall at all times be subject to the direction and control of the Board of Governors. Committee members need not be Governors and shall be appointed by the affirmative vote of a majority of the Governors present. A majority of the members of any committee shall constitute a quorum for the transaction of business at a meeting of any such committee. In other matters of procedure the provisions of these Bylaws shall apply to committees and the members thereof to the same extent they apply to the Board of Governors and Governors, including, without limitation, the provisions with respect to meetings and notice thereof, absent members, written actions, and valid acts. Each committee shall keep regular minutes of its proceedings and report the same to the Board of Governors.

3.9 Actions in Writing. Any action required or permitted to be taken at a meeting of the Board of Governors or of a lawfully constituted committee thereof may be taken by written action signed by all of the Governors then in office or by all of the members of such committee, as the case may be. If the action does not require Member approval, such action shall be effective if signed by the number of Governors or members of such committee that would be required to take the same action at a meeting at which all Governors or committee members were present. For purposes of this Section, an electronic signature satisfies the requirement of a signature so long as the electronic communication containing the electronic signature sets forth sufficient information from which the Company can reasonably conclude that the communication was actually sent by the purported sender. If any written action is taken by less than all Governors, all Governors shall be notified immediately of its text and effective date. The failure to provide such notice, however, shall not invalidate such written action.

3.10 Meeting by Means of Electronic Communication. Any meeting of the Board of Governors, or any committee designated by the Board, may be conducted solely, or with the participation of one or more Governors, by one or more means of remote communication, including electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis, through which all of the Governors may participate in the meeting, if the same notice is given of the meeting as would be required for a meeting, and if the number of Governors participating in the meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting in this manner constitutes presence at a meeting.

Article 4 Managers

4.1 Number and Qualification. The Company shall have the Managers set forth in this Article 4, which shall include one or more natural persons elected by the Board of Governors exercising the functions of the offices of chief manager and treasurer, as set forth herein. The Board of Governors may also appoint such other Managers and assistant Managers as it may deem necessary or advisable. Except as provided in these Bylaws or any applicable member control agreement, the Board of Governors shall fix the powers, duties, and compensation of all Managers. Managers may be, but need not be, Governors of the Company. Any number of Manager positions may be held by the same person.

4.2 Term of Office. A Manager shall hold office until a successor has been duly elected, or until such Manager's prior death, resignation, or removal from office.

4.3 Removal and Vacancies. Any Manager or agent elected or appointed by the Board of Governors shall hold office at the pleasure of the Board of Governors and may be removed, with or without cause, at any time by the vote of a majority of the Board of Governors present, subject to the terms of any member control agreement. Any vacancy in an office of the Company shall be filled by action of the Board of Governors.

4.4 Chief Manager. Unless provided otherwise by a resolution adopted by the Board of Governors, the chief manager shall have general active management of the business of the Company, and in the absence of the Chairperson of the Board or if the office of Chairperson of the Board is vacant, shall preside at meetings of the members and Board of Governors, shall see that all orders and resolutions of the Board of Governors are carried into effect, shall have authority to sign and deliver in the name of the Company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the Company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the Articles of Organization, these Bylaws, or the Board of Governors to some other Manager or agent of the Company, may maintain records of and certify proceedings of the Board of Governors and Members, and shall perform such other duties as may from time to time be prescribed by the Board of Governors.

4.5 Chairperson of the Board. The Board of Governors may elect a Chairperson of the Board who, if elected, shall preside at all meetings of the Members and of the Board of Governors and shall perform such other duties as may be prescribed by the Board of Governors from time to time.

4.6 President. Unless otherwise determined by the Board of Governors, the President shall be the chief manager of the Company. If a Manager other than the President is designated chief manager, the President, if any, shall have such powers and perform such duties as the Board of Governors or the chief manager may prescribe from time to time.

4.7 Vice Presidents. The Vice President, if any, or Vice Presidents in case there be more than one, shall have such powers and perform such duties as the chief manager or the Board

of Governors may prescribe from time to time. In the absence of the President or in the event of the President's death, inability, or refusal to act, the Vice President, or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board of Governors, or, in the absence of any designation, in the order of their seniority, shall perform the duties of the President, and, when so acting, shall have all the powers of and be subject to all of the restrictions upon the President.

4.8 Secretary. The Secretary shall attend all meetings of the Board of Governors and of the Members and shall maintain records of, and whenever necessary, certify all proceedings of the Board of Governors and of the Members. The Secretary shall keep the required records of the Company, when so directed by the Board of Governors or other person or persons authorized to call such meetings, shall give or cause to be given notice of meetings of the Members and of meetings of the Board of Governors, and shall also perform such other duties and have such other powers as the chief manager or the Board of Governors may prescribe from time to time

4.9 Treasurer. Unless provided otherwise by a resolution adopted by the Board of Governors, the Treasurer shall serve as the "treasurer" of the Company as such term is defined in the Minnesota Limited Liability Company Act, and shall keep accurate financial records for the Company, shall deposit all monies, drafts, and checks in the name of and to the credit of the Company in such banks and depositories as the Board of Governors shall designate from time to time, shall endorse for deposit all notes, checks, and drafts received by the Company as ordered by the Board of Governors, making proper vouchers therefor, shall disburse Company funds and issue checks and drafts in the name of the Company as ordered by the Board of Governors, shall render to the chief manager and the Board of Governors, whenever requested, an account of all such Manager's transactions as Treasurer and of the financial condition of the Company, and shall perform such other duties as may be prescribed by the Board of Governors or the chief manager from time to time.

4.10 Delegation. Unless prohibited by a resolution approved by the affirmative vote of a majority of the Governors present, a Manager elected or appointed by the Board of Governors may delegate in writing some or all of the duties and powers of such person's management position to other persons.

Article 5

Books and Records

The Company's books and accounting records and all other papers, records, and documents relating to the Company's affairs shall be kept at the Company's principal executive office or such other place as the Board of Governors shall prescribe. In addition to any other books and records of the Company, the Company shall maintain the following "required records," as prescribed by Minnesota Statutes Section 322B.373.

- (a) a current list of the full name and last-known address of each Member, any Governor, and the chief manager of the Company;

- (b) a current list of the full name and last-known address of each assignee of financial rights of a Member (other than a secured party), and a description of the rights assigned;
- (c) a copy of the Articles of Organization of the Company and all amendments thereto;
- (d) a copy of any currently effective bylaws;
- (e) copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (f) copies of the Company's financial statements required by Minnesota Statutes Section 322B.376 (including at least a balance sheet as at the end of each fiscal year and an income statement for each fiscal year);
- (g) records of all actions and proceedings of Members for the last three years;
- (h) records of all actions and proceedings of the Board of Governors, if any, of the Company for the last three years;
- (i) reports made to Members generally within the last three years;
- (j) a copy of any effective member control agreements;
- (k) a statement of all Capital Contributions or contributions of services accepted by the Company, including, for each, the information required by Minnesota Statutes Section 322B.373, subdivision 1(11);
- (l) a statement of all contribution and contribution allowance agreements made by the Company, including, for each, the information required by Minnesota Statutes Section 322B.373, subdivisions 1(12) and (13);
- (m) an explanation of any restatement of value of previous contributions made pursuant to Minnesota Statutes Chapter 322B;
- (n) any written consents obtained from Members pursuant to Minnesota Statutes Chapter 322B; and
- (o) a copy of any agreements, contracts, or other arrangements or portions of them incorporated by reference under Minnesota Statutes Chapter 322B to fix the terms and conditions of membership interests in the Company.

Each Member, or its designated representative, shall at all times have access to and may inspect and copy any of such items during normal business hours.

Article 6

Contracts, Loans, Checks, and Deposits

6.1 Contracts. The Board of Governors may authorize such Managers or agents as they shall designate to enter into contracts or execute and deliver instruments in the name of and on behalf of the Company, and such authority may be general or confined to specific instances.

6.2 Loans. The Company shall not lend money to, guarantee the obligation of, become a surety for, or otherwise financially assist any person unless the transaction, or class of transactions to which the transaction belongs, has been approved by the affirmative vote of a majority of Governors present, and (a) is in the usual and regular course of business of the Company, (b) is with, or for the benefit of, a related company, an organization in which the Company has a financial interest, an organization with which the Company has a business relationship, or an organization to which the Company has the power to make donations, (c) is with, or for the benefit of, a manager or other employee of the Company or a subsidiary, including a Manager or employee who is a Governor of the Company or a subsidiary, and may reasonably be expected, in the judgment of the Board of Governors, to benefit the Company, or (d) has been approved by the affirmative vote of the owners of two-thirds (2/3) of the outstanding voting power of the Members other than the interested person(s) or the unanimous affirmative vote all members, whether or not ordinarily entitled to vote.

6.3 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Company shall be signed by the chief manager or such Managers or agents of the Company as shall be designated and in such manner as shall be determined from time to time by resolution of the Board of Governors.

6.4 Deposits. All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks or other financial institutions as the Board of Governors may select.

Article 7

Miscellaneous

7.1 Reserves. There may be set aside out of any funds of the Company available for distributions such sum or sums as the Board of Governors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, for equalizing distributions, for repairing or maintaining any property of the Company, for the purchase of additional property, or for such other purpose as the Governors shall deem to be consistent with the interests of the Company. The Board of Governors may modify or abolish any such reserve.

7.2 Fiscal Year. The fiscal year of the Company shall be such twelve-month period as is set by a resolution of the Board of Governors, provided; however, that the first fiscal year of the Company may be a shorter period if permitted by law and set by a resolution of the Board of Governors.

7.3 Amendments. Except as limited by the Articles of Organization or any member control agreement, these Bylaws may be altered or amended by the Board of Governors at any meeting of Governors to the full extent permitted by law, subject, however, to the power of the Members of the Company to alter or repeal these Bylaws.

7.4 Member Control Agreements. In the event of any conflict or inconsistency between these Bylaws, or any amendment thereto, and the terms of any member control agreement, whenever adopted, the terms of such member control agreement shall control.

7.5 Seal. The Company shall have no seal.

* * * * *

The undersigned, Secretary of Acceris Management and Acquisition LLC, a Minnesota limited liability company, does hereby certify that the foregoing Bylaws are the Bylaws adopted for the Company by unanimous written consent of its Governors on the 10th day of May, 2005.

Laura Conradi Carlson
Secretary

GP 1711417 v1

EXHIBIT E

Certificate of Good Standing

From State of Minnesota

State of Minnesota

SECRETARY OF STATE

Certificate of Good Standing

I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: The limited liability company listed below is a limited liability company formed or registered to do business under the laws of Minnesota; the limited liability company was formed by the filing of articles of organization or registered to do business by filing an application for a certificate of authority with the Office of the Secretary of State on the date listed below; the limited liability company is governed by Chapter 322B of Minnesota Statutes; and this limited liability company is authorized to do business as a limited liability company at the time this certificate is issued.

Name: Acceris Management and Acquisition LLC

Date Formed or Registered: May 10, 2005

State of Organization: Minnesota

This certificate has been issued on June 14, 2005.



Mary Kiffmeyer
Secretary of State