



PUBLIC NOTICE

Federal Communications Commission
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DA 06-1638

Released: August 14, 2006

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF
CERTAIN ASSETS OF ACCERIS MANAGEMENT AND ACQUISITION LLC
BY FIRST COMMUNICATIONS, LLC**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-145

Comments Due: August 28, 2006

Reply Comments Due: September 5, 2006

On July 18, 2006, Acceris Management and Acquisition LLC ("Acceris")¹ and First Communications, LLC ("First Communications") (together, the "Applicants") filed an application, pursuant to section 63.04 of the Commission's rules,² seeking authority to transfer certain assets of Acceris to First Communications.³

Applicants submit that this transaction is entitled to presumptive streamlined treatment under 63.03(b)(2)(i) of the Commission's rules because, following the consummation of the proposed transaction: (1) First Communications (including their affiliates) will have a market share in the interstate, interexchange market of less than ten percent (10%); (2) First Communications (including their affiliates) will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither First Communications nor Acceris nor any affiliate of either company is dominant with respect to any service it provides.⁴

¹ Acceris also conducts business as Acceris Communications or WorldxChange.

² 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

³ Applicants are also filing an application for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications. The Applicants filed two supplements to their original application. *See* Letter from Melissa Conway, Counsel, Kelley Drye & Warren, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-145 (filed Aug. 10, 2006 and Aug. 11, 2006).

⁴ 47 C.F.R. § 63.03(b)(2)(i).

Acceris, a Minnesota limited liability company, is a broad based communications company, serving residential, small and medium-sized business and large enterprise customers throughout the United States.⁵ Acceris is authorized to provide long distance telecommunications services in the contiguous 48 states, Hawaii, and the District of Columbia. In addition, Acceris is authorized to provide long distance and competitive local exchange telecommunications services in Pennsylvania, New York, New Jersey, Florida, and Massachusetts, and also holds authorization to provide interstate and international telecommunications. Acceris is a direct, wholly owned subsidiary of North Central Equity LLC ("North Central"), a privately held Minnesota holding company established in 2004. North Central is 52.6% owned by Elam Baer, a U.S. citizen, whose principal business is investment. No other entity holds a 10% or greater equity interest in North Central.

First Communications, an Ohio limited liability company, is a common carrier that provides local, private line and long distance services to both business and residential customers in several states in the U.S. First Communications provides telecommunications services to approximately 100,000 customers, located primarily in Ohio, Michigan, Indiana, Illinois, Pennsylvania, and Florida.⁶ The following U.S. entities hold a 10% or greater equity interest in First Communications: McKinley Communications, LLC, ("McKinley") (51%); First Energy Corp. ("First Energy") (31.85%); and Boich Investment Group, Ltd. ("Boich") (17.15%). McKinley is 80% owned by Marbel Investments, LLC ("Marbel"), a U.S. limited liability company. Marbel is, in turn, owned in equal shares by the following U.S. citizens: Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden. No shareholder in First Energy holds a 10 percent or greater ownership interest in First Communications. Boich is owned entirely by Wayne Boich, Sr., a U.S. citizen, whose principal business is coal.

Pursuant to the terms of an Asset Purchase Agreement dated July 11, 2006 between First Communications and Acceris, First Communications will acquire certain assets of Acceris relating to its enterprise business ("Business"). The Applicants request that the Commission approve the transfer of these assets, including personal property such as equipment and switches, customer contracts, and working capital (including accounts receivable), to First Communications. The Applicants note that First Communications already holds authority under Section 214 of the Act to provide domestic and international telecommunications services.

⁵ Acceris has one affiliate, New Access Communications LLC (New Access) that offers domestic local and long distance telecommunications services. New Access is authorized to provide local service primarily in the Qwest territories and long distance resale services virtually nationwide.

⁶ First Communications' telecommunications services include, in addition to traditional local and long distance services, toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access, and dedicated and private line services and these services are provided primarily on a resale basis using facilities and switches that are owned and operated by other telecommunications carriers. First Communications is authorized to provide intrastate long distance telecommunications services in California, Florida, and Kentucky, and is authorized to provide intrastate long distance and competitive local exchange telecommunications services in Illinois, Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. Applicants state that First Communications has no affiliates that offer domestic telecommunications services.

The Applicants state that the transfer of assets to First Communications will serve the public interest because (1) First Communications' purchase of the Acceris assets related to the Business will strengthen First Communications, enable it to expand, and better ensure that it remains a viable long-term competitor in the telecommunications marketplace, and (2) the transaction will be seamless to customers.

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before August 28, 2006 and reply comments on or before September 5, 2006.**⁷ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁸ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

⁷ See 47 C.F.R. § 63.03(a).

⁸ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: cecilia.seppings@fcc.gov;
- (3) Denise Coca, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B155, Washington, D.C. 20554; e-mail: denise.coca@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and

(5) Jim Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: jim.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Cecilia Seppings at (202) 418-1588, or Denise Coca at (202) 418-0574.

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