

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 24, 2007

IN RE:

APPLICATION OF ACCERIS MANAGEMENT AND
ACQUISITION LLC AND FIRST COMMUNICATIONS, LLC
FOR APPROVAL OF AN ASSET TRANSFER

)
) DOCKET NO.
) 06-00300
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ORDER APPROVING TRANSFER OF ASSETS

This matter came before Director Eddie Roberson, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 26, 2007 for consideration of the Joint Application ("*Joint Application*") of Acceris Management and Acquisition LLC ("Acceris") and First Communications, LLC d/b/a First Communications of Ohio, LLC ("First Communications") (together, "Applicants") requesting authorization to consummate a transaction involving the transfer of assets of Acceris, including customers, to First Communications.

The Joint Application

Acceris is a Minnesota company with headquarters in San Diego, California. Acceris holds authorizations to provide long distance and competitive local exchange telecommunications services in several states, and is authorized to provide interexchange and/or local exchange telecommunications services in Tennessee, pursuant to Authority Order issued on August 24, 2005 in Docket No. 05-00169. On November 6, 2006, Acceris was authorized to transfer its large business customer to First Communications by Authority Order issued in Docket No. 06-00214. Acceris did not surrender its authorization to provide telecommunications services in Tennessee at that time, because it intended to continue to serve its other customers.

First Communications, an Ohio corporation with headquarters in Akron, Ohio, is a common carrier which provides local, private line and long distance services to both business and residential customers in several states including Ohio, Michigan, Indiana, Illinois, Pennsylvania, and Florida. First Communications' services include 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. First Communications was authorized to provide telecommunications services in Tennessee pursuant to Authority Order issued on October 16, 2006 in Docket No. 06-00213.

On November 29, 2006, the Applicants filed their *Joint Application* stating that the Applicants have now agreed that First Communications will also acquire certain remaining assets of Acceris, including its remaining long distance resale customers, and seeking Authority approval for the transfer of assets. According to the *Joint Application*, First Communications is willing and able to acquire said assets and continue serving the remaining Acceris customers in a seamless manner. Upon consummation of the transaction, Acceris will voluntarily surrender its Certificate of Convenience and Necessity ("CCN") and cease providing telecommunications services in Tennessee.

After consummation of the transaction, First Communications will provide telecommunications services to Acceris' customers directly, pursuant to its own authorization, at the same rates, terms, and conditions, without any loss or impairment of service. The only material change will be the customer's service provider.

The *Joint Application* also stated that First Communications will provide advance written notice explaining the change in service provider to the affected customers at least thirty (30) days prior to the transfer, in accordance with applicable Federal Communications Commission ("FCC") and Authority requirements for changing a customer's presubscribed carrier.

On February 22, 2007, the Applicants informed the Authority that the customer notification letter, attached as Exhibit A to its Data Response #2, was sent to customers on January 17, 2007, prior to approval by the Authority, in order to ensure that affected customers would be provided a thirty (30) day

written notice prior to the transfer. Consequently, the Applicants also seek a waiver of the pre-approval provision of TRA Rule 1220-4-2-.56(2)(d) and approval of the notification letter already sent to transferring customers.

February 26, 2007 Authority Conference

The Applicants filed their *Joint Application* pursuant to Tenn. Code Ann. § 65-4-113 (2004). However, the Petition should be considered pursuant to Tenn. Code Ann. § 65-4-112 (2004) because Section 113 applies to transactions between a public utility and a non-utility whereas Section 112 applies to transactions between two public utilities, as in this docket.

Tenn. Code Ann. § 65-4-112(a) (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Regarding the transfer of a customer base, Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) provides:

- (d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:
 - 1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00-257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
 - 2. A notification letter, pre-approved by the Authority, shall be mailed by the current provider of telecommunications service to its customers describing the customer transfer and explaining that unless the customer selects another telecommunications service provider, the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter. The notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good

cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, but is not limited to, evidence that the current provider is no longer providing service in Tennessee.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

At the regularly scheduled Authority Conference held on February 26, 2007, the panel voted unanimously to approve the *Joint Application* and made the following findings:

1. The proposed transaction will serve the public interest because it will enable First Communications to expand and strengthen its competitive position in the Tennessee telecommunications market;
2. Existing Acceris customers will continue to receive their existing services at the same rates, terms and conditions with no disruption in service;
3. The customer notification letter complies with Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) except for the pre-approval requirement; and
4. There is good cause to waive the pre-approval requirement because the letter was sent to customers on January 17, 2007, to ensure that customers received no less than thirty (30) days notice prior to the transfer, as required by TRA rules.

IT IS THEREFORE ORDERED THAT:

1. The transfer of Assets of Acceris Management and Acquisition LLC, including customers, to First Communications, LLC d/b/a First Communications of Ohio, LLC, as described in the *Joint Application*, is approved.

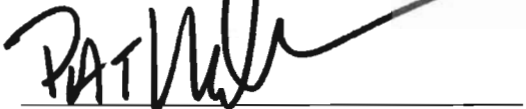
2. The pre-approval provision of Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) is waived for good cause.

3. The customer notification letter sent to Acceris Management and Acquisition LLC customers on January 17, 2007 is approved.

4. The Certificate of Convenience and Necessity and Tariff of Acceris Management and Acquisition LLC is cancelled effective upon notice to the Authority that the transfer of assets, including all of Acceris remaining customers, has been completed.

5. The Applicants shall file with the Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.


Eddie Roberson, Director


Pat Miller, Director


Ron Jones, Director