

ORIGINAL

OPEN MEETING ITEM



0000069212

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: MARCH 23, 2007

DOCKET NOS T-20376A-06-0536 and T-20473A-06-0536

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Order on:

**FIRST COMMUNICATIONS, LLC and ACCERIS MANAGEMENT
AND ACQUISITION, LLC
(TRANSER ASSETS)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

APRIL 2, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

APRIL 11, 2007 AND APRIL 12, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

MAR 23 2007

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DOCKETED BY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MIKE GLEASON, Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 KRISTIN K. MAYES
8 GARY PIERCE

9 IN THE MATTER OF THE APPLICATION OF
10 ACCERIS MANAGEMENT AND ACQUISITION
11 LLC AND FIRST COMMUNICATIONS, LLC FOR
12 APPROVAL OF THE TRANSFER OF ASSETS,
13 INCLUDING CUSTOMERS, OF ACCERIS
14 MANAGEMENT AND ACQUISITION LLC TO
15 FIRST COMMUNICATIONS, LLC.

DOCKET NO. T-20376A-06-0536
DOCKET NO. T-20473A-06-0536

DECISION NO. _____

16 **ORDER**

17 Open Meeting
18 April 11 and 12, 2007
19 Phoenix, Arizona

20 **BY THE COMMISSION:**

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. On August 24, 2006, First Communications, LLC ("First Communications") and
25 Acceris Management and Acquisition, LLC ("AMA"), (collectively "Applicants") filed with the
26 Arizona Corporation Commission ("Commission") an application granting them authority necessary
27 to consummate a transaction involving the transfer of certain assets of AMA. First Communications
28 is concurrently filing to become authorized to provide telecommunication services as a reseller in the
State of Arizona. See Docket No. T-20473A-06-0537.

29 2. On June 29, 2005, Acceris filed an application with the Commission for a
30 Certificate of Convenience and Necessity ("CC&N")(Docket No. T-20376A-05-0478). Acceris'
31 CC&N application is pending. Acceris, also doing business as Acceris Communications or
32 WorldxChange, is a direct wholly owned subsidiary of North Central Equity LLC ("North Central").
33 North Central is a privately held holding company established in 2004. Acceris' headquarters are

1 located in San Diego, California where it is authorized to provide telecommunications services.
2 Acceris is currently providing telecommunications services to residential and business customers
3 throughout the United States.

4 3. First Communications filed an application with the Commission for a CC&N on
5 August 25, 2006 (Docket No. T-20473A-06-0537). First Communications, formed on July 1, 1998,
6 is a privately held limited liability company headquartered in Akron, Ohio, serving approximately
7 100,000 customers. First Communications provides telecommunications service to residential and
8 business customers in several states.

9 4. Acceris and First Communications request approval to transfer certain assets,
10 including customers, from Acceris' large business customer enterprise operations to First
11 Communications.

12 5. On February 9, 2007, the Commission's Utilities Division ("Staff") filed a Staff
13 Report recommending approval of the transfer of assets and customers without a hearing.

14 6. The Applicants propose to transfer seven business customers with 69 distinct
15 locations, two routers located in Arizona (one in Tempe and one in Phoenix), and personal property
16 (including equipment and switches). First Communications, upon approval of its CC&N, will
17 provide telecommunications services that mirror the services, rates, terms and conditions of Acceris'
18 large business portion of its operations. There are no foreseen layoffs of Acceris' employees as a
19 result of this transaction.

20 7. Acceris will continue its application for approval of a CC&N to provide
21 telecommunications services to its customers not related to the large business enterprise aspect of its
22 operations in Arizona. Thus, Acceris does not wish to close its pending CC&N application.

23 8. Based on the financial information that First Communications submitted in its
24 application for CC&N, Staff believes that the company will have sufficient financial resources to
25 offer telecommunications services in Arizona. With its CC&N application, First Communications
26 provided unaudited financial statements for the year ending December 31, 2005, which indicates
27 assets of \$30,512,269, equity of \$7,514,971 and net income of \$1,296,468

28 9. First Communications states that no changes will be made to the services provided

1 to the customers involved in this transaction. Also, First Communications ensures that a written
2 notice will be provided to the affected customers within 30 days of a Commission Order.

3 10. Staff believes that this transaction will not have a negative impact on the
4 customers involved in this transaction nor will it negatively impact the competitive nature of the
5 market.

6 11. Staff recommends that the joint application be approved pursuant to A.R.S. § 40-
7 285 and R14-2-1107 with the condition that the current Acceris business customers have 90 days
8 following the date of the Commission's Order to transfer to another carrier without penalty if they so
9 choose.

10 12. Staff's recommendations are reasonable and should be adopted.

11 **CONCLUSIONS OF LAW**

12 1. Applicants are public service corporations within the meaning of Article XV of the
13 Arizona Constitution and A.R.S. §§ 40-281 and 40-285.

14 2. The Commission has jurisdiction over Applicants and the subject matter of the
15 application.

16 3. Applicants' request to transfer assets is a transaction that requires Commission
17 approval pursuant to A.R.S. § 40-285.

18 4. Notice of the application was given in accordance with the law.

19 5. Staff's recommendations are reasonable and should be adopted.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application by First Communications, LLC and
22 Acceris Management and Acquisition, LLC to transfer assets from Acceris Management and
23 Acquisition, LLC to First Communications, LLC, is approved as conditioned herein.

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IT IS FURTHER ORDERED that existing Acceris Management and Acquisition, LLC customers as of the effective date of this Order shall have at least 90 days from the effective date of this Order to transfer to another carrier without penalty if they so choose.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN		COMMISSIONER
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____
DISSENT _____

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SERVICE LIST FOR:

ACCERIS MANAGEMENT AND ACQUISITION,
LLC and FIRST COMMUNICATIONS, LLC

DOCKET NOS.:

T-20376A-06-0536 and T-20473A-06-0536

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