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Arizona Corporation Commission

DOCKETED

JUN 11 2009

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

KRISTIN K. MAYES - CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 JUN 11 P 4:08

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

IN THE MATTER OF THE JOINT APPLICATION)	DOCKET NO. T-20376A-07-0076
OF ACCERIS MANAGEMENT AND)	DOCKET NO. T-04006A-07-0076
ACQUISITION LLC, NEW ACCESS)	DOCKET NO. T-20473A-07-0076
COMMUNICATIONS LLC AND FIRST)	
COMMUNICATIONS, LLC FOR APPROVAL OF)	
THE TRANSFER OF ASSETS, INCLUDING)	
CUSTOMERS, OF ACCERIS MANAGEMENT)	
AND ACQUISITION LLC AND NEW ACCESS)	
COMMUNICATIONS LLC TO FIRST)	
COMMUNICATIONS, LLC.)	
)	
)	

RECOMMENDATIONS OF APPLICANTS

First Communications, LLC ("First Communications"), Acceris Management and Acquisition LLC ("Acceris") and New Access Communications LLC ("New Access") (collectively, "Applicants") respond to the May 27, 2009 procedural order in this docket and submit their recommendation on how to proceed in this docket. In summary, Applicants recommend that the Commission continue with this docket and grant the application to transfer the Acceris' customer account assets and New Access' customer account assets to First Communications. In support of this recommendation, Applicants state:

First Communications holds a CC&N from the Arizona Corporation Commission to provide resold long distance service (Decision No. 69419 (April 16, 2007)) and resold local exchange service (Decision No. 70750 (February 12, 2009)).

In August of 2006, in a different docket, First Communications and Acceris submitted a joint application to transfer Acceris' enterprise long distance customer account assets to First Communications. The Commission granted the application in that docket in Decision No. 69420 (April 16, 2007). At that time, Acceris had a pending CC&N application (Docket No. 20376A-05-

1 0470) and was providing resold long distance service under provisional authority that Acceris
2 understood was the Commission policy at that time.

3 Subsequent to the August 2006 filing, First Communications, Acceris and New Access
4 filed the application in this docket. In the application, the companies sought to transfer the
5 remaining Acceris long distance customer accounts to First Communications as well as the New
6 Access customer accounts. All affected customers were notified of the upcoming transfer of
7 service pursuant to FCC requirements (see letters attached to the Application). However, those
8 customer accounts will not be transferred to First Communications until regulatory approval.

9 Contrary to the communication to Staff, reported in Docket No. T-20376A-05-0478,
10 Acceris still exists for purposes of winding up the company operations and still holds the customer
11 accounts that are the subject of this application. Attached is an affidavit of Drew Backstrand,
12 General Counsel of Acceris and New Access, concerning the legal status of Acceris. As set forth
13 in the affidavit, First Communications is servicing the remaining Acceris customers (and the New
14 Access customers) through a management contract. Although the asset sale has closed, Arizona
15 customer accounts will not be formally transferred to First Communications until regulatory
16 approval by the Commission. Approval of the application will allow that transfer to take place. It
17 will also obviate the CC&N issues regarding Acceris, including potential issues regarding the
18 Cognigen customers in Docket No. T-20376A-06-0795.¹

19 Finally, upon final transfer of the customers, both Acceris and New Access could then
20 request cancellation of their CC&N's under A.A.C. R14-2-1107. The cancellation should be
21 streamlined because the two companies will no longer be serving customers in Arizona.

22 WHEREFORE the Applications request that the Commission continue the processing of
23 the application in this docket.

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27 ¹ In that docket, Acceris and Cognigen requested that Cognigen customer accounts be transferred
to Acceris. That transfer may have already taken place.

1 RESPECTFULLY SUBMITTED this 17th day of June 2009.

2 FIRST COMMUNICATIONS, LLC

3
4
5 By 
6 Michael W. Patten
7 ROSHKA DEWULF & PATTEN, PLC
8 One Arizona Center
9 400 East Van Buren Street, Suite 800
10 Phoenix, Arizona 85004

11 ACCERIS MANAGEMENT AND ACQUISITION LLC

12 Drew S. Backstrand, General Counsel
13 Acceris Management and Acquisition LLC
14 60 South Sixth Street, Suite 2535
15 Minneapolis, Minnesota 55402

16 Original and 17 copies of the foregoing
17 filed this 17th day of June 2009 with:

18 Docket Control
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Copy of the foregoing hand-delivered/mailed
23 this 17th day of June 2009 to:

24 Teena Wolfe, Esq.
25 Chief Administrative Law Judge
26 Hearing Division
27 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Maureen A. Scott, Esq.
Senior Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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3 Arizona Corporation Commission
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6 By Mary Appolito

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ATTACHMENT

AFFIDAVIT OF DREW S. BACKSTRAND

DREW S. BACKSTRAND, (the "Affiant"), being first duly sworn, on oath deposes and says that he is the General Counsel of NAC Communications LLC ("NAC"), a Minnesota limited liability company, and Acceris Management and Acquisition LLC ("AMA"), a Minnesota limited liability company, and that the statements made herein are made upon personal knowledge. Affiant states the following:

1. Affiant is in charge of regulatory matters for AMA and NAC.
2. AMA applied for a Certificate of Convenience and Necessity to provide resold long distance telecommunications services in Arizona in Docket No. T-20376A-05-0478 on July 1, 2005 before the Arizona Corporations Commission ("Commission"). AMA operated under provisional authority in Arizona since July 1, 2005.
3. AMA negotiated a purchase and sale agreement for certain customers of Cognigen Networks, Inc. ("Cognigen") on October 16, 2006, which included 213 customers located within the state of Arizona, in which AMA would purchase the accounts from Cognigen. A joint request for approval of the customer transfer from Cognigen to AMA was filed with the Arizona Corporation Commission explaining the transfer, and asking for approval of this transfer on December 20, 2006. That filing is in Docket No. T-20376A-06-0795 and Docket No. T-04258A-06-0795.
4. As part of the purchase of Cognigen customers by AMA, a Management Services Agreement was then executed between Cognigen and AMA for management of affected customers from the date of execution of the Purchase and Sale Agreement for the transaction and the date of the applicable regulatory approvals for the transaction. A copy of the Management Services Agreement is attached as **Exhibit A**. The regulatory notice to customers of the proposed transfer of accounts from Cognigen to AMA was sent as required by the Commission.

5. The transfer of customers from Cognigen to AMA has closed in stages, depending on regulatory approval, of which the Arizona transfer has not fully completed due to the pending approval in Arizona. Arizona is the last regulatory approval needed for this transaction to close completely.

6. The Staff has had several rounds of questions on this transaction, but the transaction has not yet been approved.

7. On February 28, 2007, a sale was negotiated of substantially all assets of AMA and NAC to First Communications LLC ("First Comm"), which includes the customer base, of which 752 interexchange customers are residents of Arizona. A joint application for approval of the transfer was filed with the Commission on February 1, 2007, asking for approval of the sale. A copy of the regulatory notice to customers of the proposed transfer of accounts from AMA and NAC to First Comm is attached as **Exhibit B**.

8. As part of the purchase of AMA and NAC customers by First Comm, a Management Services Agreement was then executed between the parties for continued management of affected customers by NAC and AMA from the date of the signing of the purchase and sale agreement until regulatory approval. A copy of that Management Agreement is attached as **Exhibit C**.

9. The transfer of customers from AMA and NAC to First Comm has closed in stages, depending on regulatory approval, of which the Arizona transfer has not fully completed due to pending Commission approval. Arizona is one of the last states necessary for approval to finish the final closing for the transaction.

10. Affiant is requesting Staff to approve the sale of customers from AMA and NAC to First Comm as soon as reasonably possible after AMA and NAC have completely answered all Commission questions. As was stated in the request of Staff for the Commission, there are approximately 433 AMA and 105 NAC customers affected by this transfer.

11. A request from Staff, dated May 14, 2009 was sent to Affiant and AMA and NAC's regulatory counsel in Michigan, on or about May 14, 2009. Affiant requested that Michigan outside counsel respond

and provide information to the Commission staff to as requested and to work with local Arizona counsel in that regard. Michigan counsel did not file a timely response or coordinate with Arizona local counsel. Affiant is now requesting that further time be allowed to respond to Staff requests to obtain approval of these two transfers and to reopen all the necessary Dockets that have just recently been closed administratively to approve these transfers of customers from Cognigen to AMA and from AMA and NAC to First Comm.

12. NAC was administratively dissolved on December 15, 2007, but Minnesota limited liability company laws and the Board of Governors actions authorizing the dissolution allowed the dissolved entity (through its managers) to complete its obligations and collect its assets and satisfy its liabilities after dissolution of the entity to wind up the entity.

13. AMA was administratively dissolved on January 15, 2009, but Minnesota limited liability company laws and the Board of Governors actions authorizing the dissolution allowed the dissolved entity (through its managers) to complete its obligations, collect its remaining assets, if any, and satisfy its liabilities after dissolution of the entity to wind up the entirety.

14. Affiant is requesting the transfer from Cognigen to AMA be approved by the Commission, as the completion of the sale of AMA and NAC can not be completed until the approval of the transfer of customers from Cognigen to AMA is completed, and is also requesting that the Commission approve the sale of customers from AMA and NAC to First Comm.

FURTHER AFFIANT SAYETH NOT.

Dated: June 11, 2009.


Drew S. Backstrand

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

On this 11th day of June, 2009 before me, a Notary Public for Minnesota, personally appeared Drew S. Backstrand, General Counsel of Acceris Management and Acquisition LLC, and New Access Communications LLC, to me known to be the person described in and who executed the foregoing Affidavit and acknowledged that he executed the same as his free act and deed on behalf of both limited liability companies.

Christine Leah Gronewald
Notary Public
January 31, 2011
My Commission Expires



EXHIBIT A
Management Services Agreement Cognigen

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT ("Agreement") is made effective as of October 16, 2006 at 12:01 a.m. Pacific Time ("Effective Date") by and among Acceris Management and Acquisition LLC, a Minnesota limited liability company ("Manager") and Cognigen Networks, Inc., a Colorado corporation ("Company"). All capitalized terms not defined herein have the meaning ascribed to them in the Asset Purchase Agreement ("Purchase Agreement") between the parties hereto entered into effective as of the same date and time as this Agreement. Any capitalized terms not specifically defined herein shall have the same meaning as set forth in the Purchase Agreement.

BACKGROUND

WHEREAS, Company has agreed to retain Manager to manage the customer accounts relating to the Business as identified on the attached Exhibit A hereto ("Customers") during the period set forth herein; and

WHEREAS, Company desires to utilize Manager's services and Manager desires to provide such services to Company to manage, to the fullest extent permissible under Law(s) (as defined below), the operations relating to the Customers pending receipt of Regulatory Approval of the transfer of the Customers by Company to Manager pursuant to the Purchase Agreement on the terms and subject to the conditions stated herein.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and other good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Compliance with Applicable Laws and Regulations.

1.1 Company and Manager desire that this Agreement and the obligations performed hereunder be in compliance with (i) all applicable rules, regulations and policies of the Federal Communications Commission ("FCC") and any state public utility commission(s) (the "State PUC(s)"); (ii) the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 151, et seq., (iii) state laws applicable to Company or Manager and (iv) any other applicable federal, state and local law, regulation or policy (collectively, "Law(s)"). Manager shall comply with Company customer proprietary network information policy ("CPNI Policy") of Company during the term of this Agreement.

1.2 It is expressly understood by the parties that nothing in this Agreement is intended to give Manager any right that would be deemed to constitute a transfer of control (as is defined in the Act and/or any applicable FCC or other relevant Law) of any of the applicable licenses from Company to Manager or to transfer the Customers to Manager to the extent prohibited by applicable Law. No Company licenses will be transferred from the Company to the Manager hereunder or under the Purchase Agreement and Manager shall obtain any

regulatory licenses necessary to accept transfer of the Customers from Company to Manager prior to the Initial or Final Closing Date on which any Customers may be transferred to Manager pursuant to the Purchase Agreement. Each Party shall perform its obligations under this Agreement in accordance with applicable Law(s). Manager shall have no right to re-provision Customers or transfer wholesale service from Company contracts to Manager contracts until FCC approval for the customer base transfer has been obtained, although all preparatory work for such transfer may commence upon signing of this Agreement.

1.3 If any State PUC or other governmental body of competent jurisdiction with regard to the Customers regulated by such State PUC determines that a provision of this Agreement violates any applicable Law, or if any State PUC regulating certain of the Customers has advised the parties, orally or in writing, that the review of any request by the parties for authority for the transactions contemplated hereby will be inordinately delayed or will likely be determined adversely to the parties, the parties will use their respective reasonable efforts to negotiate in good faith to modify this Agreement to the minimum extent necessary so as to comply with such order, decree, action or determination and/or remove any controversy identified by a State PUC without material economic detriment or effect to either party, and to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. This Agreement, as so modified, shall then continue in full force and effect. If the Initial Closing occurs under the Purchase Agreement but Regulatory Approval for the transfer of the remaining Customers to Manager under the Purchase Agreement cannot be obtained in any particular state, Manager shall continue to manage the remaining Customers until the Final Closing, and if there are other remaining Customers after the Final Closing, the Manager shall assist Company to obtain a buyer for such Customers for up to a one year period after the Closing Date. Any proceeds of the sale of such Customers shall be paid to the Manager as additional compensation under this Management Agreement. This clause does not apply as to the Excluded Assets or Excluded Liabilities under the Purchase Agreement.

2. Appointment of Manager. The Company hereby appoints Manager, to the fullest extent permissible under Law, as the provider of all services necessary or appropriate for the supervision and management of the Customers, as described more fully in Section 3 (the "Services"). Manager hereby accepts such appointment on the terms and subject to the conditions stated herein. Such appointment shall be effective as to all Customers as of the Effective Date and shall continue until the Final Closing or earlier termination of this Agreement; provided, however, such appointment shall cease on (a) the Initial Closing Date as to any and all Customers for which Regulatory Approval for the transfer of such Customers has been received as of such date and (b) the Final Closing Date as to any and all Customers for which Regulatory Approval is received after the Initial Closing Date.

3. Scope of the Services.

3.1 Management. During the Term (defined below), subject to the limitations in Sections 1.2 and 1.3 hereof and under the supervision, control and direction from time to time of the Company and the Company's Board of Directors and by its Designated Executive (as defined below), Manager shall establish and implement operational policies and provide general management and direction of the day-to-day operations with respect to the Customers and shall exercise general supervision and direction of all affairs related to the Customers' accounts to the

fullest extent permissible under Law(s) and shall make decisions with respect to the establishment, provisioning, contracting, billing, customer service and collection of the Customer accounts and the other duties listed in this Agreement.

(a) Manager agrees to report regularly (but no less frequently than weekly) at mutually agreeable times to Natasha Kocharov ("Designated Executive") concerning the status of the management of the Customers.

(b) Manager shall manage the Customers' accounts and report to the Designated Executive from time to time as provided for in this Agreement and shall manage the Customers' accounts in substantial good faith compliance with its obligations under this Agreement with respect to the Customers. Day to day operations shall include, without limitation, provisioning and procuring wholesale services, customer billing, customer care, management of accounts receivables and cash collections relating to the Customers. It is understood that CSTi and Convergia (hereinafter collectively referred to as CSTi) currently provides management services to Company with respect to the customers, and that Manager shall use its best efforts to replace CSTi by November 30, 2006 with respect to providing billing, customer care and collection services.

(c) Manager shall, upon execution of this agreement, assume control and management of the existing merchant account, lockbox deposit account and any and all accounts that receive payments from customers of the Company. Upon signing this agreement, the Company shall provide assurance satisfactory to the Manager that Manager has control of the lock box and all accounts that receive payments for service from the Customers. The Company shall, upon request of Manager, execute such additional documents and perform such further acts as may be necessary to insure Manager's control of collections upon the signing of this agreement and thereafter. The Company shall also provide to Manager evidence satisfactory to Manager that all security interests in said collections and receivables have been released upon the signing of this agreement.

(d) Manager, from funds collected pursuant to section 3.1(c) above, will periodically remit to Company the following sums:

(i) Amounts collected by Manager for services the Company provided to the Customers prior to the Effective Date.

(ii) The amounts of the wholesale bills of the underlying carriers providing service to the Company relating to the Customers that are paid by the Company during this agreement for service provided on and after the Effective Date. The Manager will make said remittances within one business day of proof of payment by the Company of such amounts due.

(iii) An amount, not to exceed 14% of commissionable revenue, applicable to services provided on or after the Effective Date.

4. Responsibilities of the Company. During the Term, the Company shall assist and fully cooperate on a timely basis with Manager in its performance of the Services. Time is of the essence under this Agreement and the Company will work diligently to make decisions and execute any agreements or action plans for the Company in as reasonably expeditious manner as reasonably possible to allow Manager to perform the Services. The Company shall have the Designated Executive available either on site or by telephone during all regular business hours and such Designated Executive shall have full and complete authority to bind the Company to decisions regarding the Customers. Without limiting the foregoing, the Company shall undertake the following responsibilities to assist the Manager and to allow the Manager to manage the day to day operations of the Company:

(a) shall provide Manager with all information and materials in their possession or subject to their control to enable Manager to provide the Services under this Agreement;

(b) shall perform any acts reasonably necessary to manage the Customer accounts, excluding those acts that are to be performed by Manager in connection with the Services, pursuant to and in accordance with the request of Manager;

(c) shall continue to communicate with third parties, including state regulatory commissions, in cooperation with Manager, including responding to their inquiries, requests and correspondence;

(d) shall promptly inform Manager, and provide Manager with copies of, all correspondence and communications relating to the Company from third parties; and

(e) shall pay on a timely basis 1) the wholesale bills of the underlying carriers providing service to the Customers, and 2) the fees it owes to CSTi for services provided by CSTi under its management services agreement with CSTi, including any fees that may be incurred to CSTi in connection with the transition of the customers to Manager, 3) the commissions due to agents related to the customers, and 4) any other expenses relating to the Customer base to be sold to Manager.

(f) Until such time as the FCC has approved the customer base transfer contemplated by the Purchase Agreement, the Company shall continue to provide the underlying telecommunications service to the Customers utilizing its wholesale contracts with the carriers who provide such service as of the date of this agreement. As soon as practicable after FCC approval of the customer base transfer, the Manager will re-provision the Customers or transfer wholesale service from Company contracts to Manager contracts, although all preparatory work for such transfer may commence upon signing of this Agreement.

(g) The Company shall cause its existing management service provider, CSTi, to cooperate and provide all information required by Manager to effectuate an orderly transition of the customer base to Manager under the Purchase Agreement and to enable Manager to otherwise perform under this agreement and the Purchase Agreement. It is understood and agreed that the Company, and not the Manager, will be responsible to CSTi for all fees charged by CSTi, including those related to services provided by CSTi in transitioning the customer base to Manager. These costs include, without limitation, programming resources

devoted to transitioning data from the CSTi to the Manager. The Company will need to provide, without limitation, information relating to the structure of the applicable databases, rate tables, tax tables, billing, collection, provisioning, and customer care systems, so that data can be properly migrated from the Company's/CSTi's system to the Manager's system. This may include parallel bill runs by both CSTi and Manager to insure that proper data migration has occurred. Should CSTi charge any fees for such transition services, that the Company, and not the Manager, will be responsible for such fees. Provided, however, Manager shall pay the ordinary course monthly contractual fees accrued as owed to CSTi during the period from the Effective Date until termination of the CSTi contract term for its billing, collection and servicing of the accounts it services for Company out of collections in Section 3.1(c). If for any reason the billing term of the CSTi contract ends and CSTi requires a higher fee to continue and the customers have not been transitioned completely, Company shall pay the excess fee over the ordinary course monthly fee amount under the expired contract until the customers have been completely transitioned from CSTi.

(h) The Company, during the term of this agreement and thereafter, shall pay the commissions to the agents applicable to the Customers.

(i) At the request of Manager, the Company shall timely exercise rights it has under any of the contracts or agreements of the Company with the Customers, including, but not limited to, rights, whether in law or equity, with respect to breach, termination, set-off, indemnity, waiver, sub-contracting and assignment and shall execute commitments, agreements, contracts, instruments or agreements as are reasonable for the management of the Customers as requested by the Manager, subject to the limitations of Section 1.2 above.

(j) Expenses incurred by the Company in transitioning the Customers to Manager's service shall be the responsibility of the Company, including expenses that may be billed by CSTi to facilitate an orderly transition to Manager.

5. Independent Contractor Status of Manager. Manager is an independent contractor in the performance of the Services under this Agreement and shall determine the method, details and means of performing the Services. Without limiting the generality of the foregoing, Manager shall be permitted, in its sole discretion, but in no way shall be required to (i) enter into and perform contracts and agreements in its own name for the furnishing of services, equipment, parts and supplies in connection with the Services (subject to the limitations of Section 1.2 above), and (ii) recruit and hire and terminate its own employees and independent contractors to provide the Services. Manager shall solely establish the terms and conditions of employment for its employees and shall pay all salaries and other compensation due to such employees.

6. Compensation. As its compensation for the Services, the Manager shall be entitled to a fee equal to the cumulative amounts collected in the lockbox accounts or from other collection accounts relating to the Customer's applicable to services provided to the Customers on and after the Effective Date, less 1) amounts Manager remits to the Company for the wholesales bills paid by the Company to its underlying carriers for services provided to Customers on behalf of Company after the Effective Date (October 16, 2006), 2) less commissions, not to exceed 14% of commissionable revenue, collected in the lockbox accounts

or from other collection accounts relating to the Customers, and 3) amounts collected by Manager for services provided to Customers prior to the Effective Date. All final allocation decisions with regard to such cash collected and compensation to Manager shall be based upon generally accepted accounting principles as consistently applied by the Company. Any dispute regarding the calculation and determination of Manager's fees shall be resolved by the dispute resolution mechanism set for in Section 11 of this Agreement.

7. True-Up Payment. At the Final Closing, Manager shall pay to Company in immediately available funds an amount (the "True-Up Payment") computed in accordance with the attached Exhibit B. In computing the True-Up Payment the items in Exhibit B shall be considered.

8. Expenses. Except as otherwise provided in the Purchase Agreement, the parties hereto shall pay their own legal fees, accounting and other expenses incurred in connection with the negotiation and consummation of the transactions contemplated by this Agreement or the Purchase Agreement.

9. Termination of Agreement. The term of this Agreement (the "Term") shall commence on the Effective Date hereof and shall expire upon the later of: (i) January 31, 2007; (ii) the Final Closing; or (iii) early termination of the agreement for a material breach of this Agreement or the Purchase Agreement by the other party. Upon the termination of this Agreement, neither party shall be further obligated under this Agreement except for the parties' obligations under the last two sentences of Section 1.3 and their respective indemnification obligations set forth in Section 10. Upon termination of this Agreement or the Purchase Agreement by Manager, Manager may set off and recoup any down payment it has previously made to Company under the Purchase Agreement from funds of Company it is holding under this Agreement or otherwise.

10. Limitation of Liability.

(a) Both parties expressly agree that neither the Company nor the Manager will have any liability to the other party or any third party based on the failure of the Customers to achieve profitability at any specified level or based upon Manager's decision-making with respect to management of the Customers under this agreement except for willful or criminal acts of the Manager or the Company, or any rescission liability payment due to Company by Manager if Manager terminates the Purchase Agreement under the terms thereof. Any claim of either party arising under or relating to this Agreement shall be made only against the other party as a corporation or limited liability company, as the case may be, and any liability relating thereto shall be enforceable only against the corporate or limited liability company assets of the party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against the parent company, Affiliated company, subsidiary, shareholder, employee or director or governor of another party.

(b) Notwithstanding anything to the contrary contained in this Section 10 the parties shall cooperate with each other in connection with any action, including keeping each other reasonably informed with respect to the status of any action and to obtain the benefits of any insurance coverage for third party claims that may be in effect at the time a third party claim is asserted.

10. Dispute Resolution Mechanism for Determination of True-Up Payment. If the Company and Manager shall have a dispute over the determination of the True-Up Payment and cannot otherwise resolve it under this Agreement, the parties shall resolve it using the following process: One executive from each party shall meet and confer within two weeks of any dispute of determining the True-Up Payment to resolve the matter. If the two executives can nor resolve the number, each of the Company and the Manager shall appoint a neutral arbitrator and the two arbitrators shall choose a third arbitrator. The three arbitrators shall determine the True-Up payment utilizing the commercial arbitration rules of the American Arbitration Association and the arbitration shall be held in Minneapolis, Minnesota.

11. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is to be given; (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and confirmation of receipt is obtained promptly after completion of transmission; (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iv) on the fifth calendar day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to the Manager:

Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Attn: Elam Baer
Facsimile: 612-455-1022

Copy to:

Drew S. Backstrand
General Counsel
Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Facsimile: 612-455-1022

If to Company:

Coghigen Networks, Inc.
Attention: Gary Cook
Acting CEO
6405 218th St. SW, Suite 305
Mountlake Terrace, WAS 98043-2180

Any party may change its address for the purpose of this Section by giving the other party written notice of its new address in the manner set forth above.

12. Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) relating to the subject matter hereof are merged herein and superseded hereby, it being the intention of the parties hereto that this Agreement and the instruments and agreements contemplated hereby shall serve as the complete and exclusive statement of the terms of their agreement. This clause, however, shall not impair the validity or enforceability of the Purchase Agreement and related documents which are intended to be and remain effective.

13. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party (by contract, operation of law, change of control or otherwise) without the prior written consent of the other parties. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

15. Severability. Each provision of this Agreement is intended to be severable. Should any provision of this Agreement or the application thereof be judicially, or by arbitral award, declared to be or become illegal, invalid, unenforceable or void, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties.

16. Governing Law; Venue and Jurisdiction. This Agreement shall be governed by and construed according to the laws of the State of Minnesota, without regard to the conflict of law rules of Minnesota or any other state. The parties hereto consent to the exclusive venue and jurisdiction of an appropriate federal or state court in Minneapolis, Minnesota for any suit or action arising out of or related to this Agreement. The parties hereto waive any arguments of forum non conveniens in any matter relating to this Agreement.

17. Parties in Interest—No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third persons to the Company or Manager. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Company or Manager.

18. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

19. Counterparts. This Agreement may be executed in one or more original or facsimile counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more such counterparts have been executed by each of the parties and delivered to the other parties. This Agreement may be executed in facsimile copy with the same binding effect as an original.

20. Interpretation. Except as otherwise provided or if the context otherwise requires, whenever used in this Agreement, (a) any noun or pronoun shall be deemed to include the plural and the singular, (b) the terms "include" and "including" shall be deemed to be followed by the phrase "without limitation," (c) unless the context otherwise requires, all references to Sections refer to Sections of this Agreement, (d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision, (e) any definition of or reference to any Law, agreement, instrument or other document herein will be construed as referring to such Law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (f) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

21. WAIVER OF JURY TRIAL. COMPANY AND MANAGER EACH ACKNOWLEDGE THAT, AS TO ANY AND ALL DISPUTES THAT MAY ARISE BETWEEN THE PARTIES, THE COMMERCIAL NATURE OF THE TRANSACTION OUT OF WHICH THIS AGREEMENT ARISES WOULD MAKE ANY SUCH DISPUTE UNSUITABLE FOR TRIAL BY JURY. ACCORDINGLY, THE PARTIES BY THEIR ACCEPTANCE OF THIS AGREEMENT WAIVE ANY RIGHT TO TRIAL BY JURY AS TO ANY AND ALL DISPUTES THAT MAY ARISE RELATING TO THIS AGREEMENT OR TO ANY OF THE OTHER INSTRUMENTS OR DOCUMENTS EXECUTED IN CONNECTION HEREWITH.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COMPANY:

Cognigen Networks, Inc.

Name:

Title:

MANAGER:

Acceris Management and Acquisition, LLC



Name: Jessica Newman

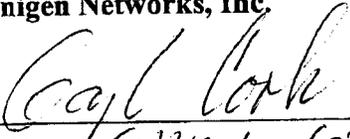
Title: Chief Executive Officer

[SIGNATURE PAGE TO MANAGEMENT SERVICES AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COMPANY:

Cognigen Networks, Inc.


Name: Gary L. Cook
Title: ACTING CEO

MANAGER:

Acceris Management and Acquisition, LLC

Name: Jessica Newman
Title: Chief Executive Officer

[SIGNATURE PAGE TO MANAGEMENT SERVICES AGREEMENT]

EXHIBIT B
Regulatory Notice to Customers AMA/NAC



IMPORTANT INFORMATION REGARDING YOUR TELECOMMUNICATIONS SERVICE.

December 5, 2006

Dear _____ :

We are happy to share some exciting news about your telecommunications services. We are proud to announce that, beginning on or about March 1, 2007, your telecommunications services, formerly provided by Acceris Communications will be provided by First Communications.

Who is First Communications?

First Communications is a full service, facilities-based telecommunications provider located in Northeast Ohio. First Communications serves more than 130,000 business and residential customers across the U.S. with the majority located in Ohio, Michigan and Indiana. First Communications is a solid financial company with 23 straight quarters of profitable growth with a strong equity base, including a Fortune 100 company. For more information about First Communications, please visit the First Communications website www.firstcomm.com.

What does this mean?

First Communications is purchasing the proprietary rights to many of Acceris Communications products, including long distance and circuits. The initial period of transition will involve your account migration to First Communications billing system. Therefore, once the migration is complete, First Communications will support your telecommunications needs.

What happens to my services?

Your services will not be affected during this transition. In fact, from the first day of the transitional period you will experience a superior quality of service led by First Communications veteran staff of Client Care management. During this transition, there will be **NO** change to your rates, service options, or the way that you dial and **NO** interruption in service. Please, also be assured that the operations of Acceris Communications Network Operations Center (NOC) will remain fully functional during this period. Therefore, you will continue to be able to request changes to your service, submit trouble tickets and receive timely troubleshooting resolutions.

Any future changes in rates, terms and conditions of service will be done as prescribed by the Federal Communications Commission (FCC) and your applicable state regulatory commission.

Will I be charged for this change?

Absolutely **NOT!** There will be no charge or fee as a result of this change to First Communications. Please contact First Communications if a charge does appear on your bill. The only difference that you will notice will be the name of your carrier and the look of your new monthly bill.

When will this Change Occur?

No further action is required on your part. First Communications anticipates that the transfer will occur on or about March 1, 2007, provided that the necessary regulatory approvals have been obtained. Beginning on or after that date, First Communications will be providing your service and Acceris Communications will no longer be your service provider. First Communications is

confident that you will find that remaining with us is the smart choice to meet your telecommunications needs; however, First Communications realizes that you have a choice of service providers, and you may choose another carrier at any point, subject to any applicable termination provisions in your contract. Please check the Missouri Public Service Commission website, <http://www.psc.mo.gov/consumer-telecoinfo.asp> for Alternative Carriers selections.

All subscribers receiving this notice, even those who had arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to First Communications, unless they select a different carrier before the transfer date. Existing preferred carrier freezes on the service(s) involved in the transfer will be lifted. You must contact your new local service provider (First Communications or other local service provider that you choose) to arrange a new freeze to protect you from unauthorized carrier changes after the transfer.

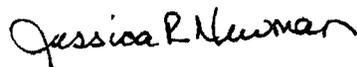
If you have any questions or concerns in regards to service needs, complaints or billing issues, you can also call First Communications at 1.800.274.1015 or prior to the transfer on or around March 1, 2007, call Acceris Communications at 1.800.852.7023, and a representative will assist you.

Welcome to First Communications and thank you for your time.

Sincerely,



Ray Hexamer
Chief Executive Officer
First Communications



Jessica R. Newman
Chief Executive Officer
Acceris Management and Acquisition LLC
d/b/a Acceris Communications



IMPORTANT INFORMATION REGARDING YOUR TELECOMMUNICATIONS SERVICE.

December 5, 2006

Dear _____ :

We are happy to share some exciting news about your telecommunications services. We are proud to announce that, beginning on or about March 1, 2007, your telecommunications services, formerly provided by New Access Communications will be provided by First Communications.

Who is First Communications?

First Communications is a full service, facilities-based telecommunications provider located in Northeast Ohio. First Communications serves more than 130,000 business and residential customers across the U.S. with the majority located in Ohio, Michigan and Indiana. First Communications is a solid financial company with 23 straight quarters of profitable growth with a strong equity base, including a Fortune 100 company. For more information about First Communications, please visit the First Communications website www.firstcomm.com.

What does this mean?

First Communications is purchasing the proprietary rights to many of New Access Communications products, including long distance and circuits. The initial period of transition will involve your account migration to First Communications billing system. Therefore, once the migration is complete, First Communications will support your telecommunications needs.

What happens to my services?

Your services will not be affected during this transition. In fact, from the first day of the transitional period you will experience a superior quality of service led by First Communications veteran staff of Client Care management. During this transition, there will be **NO** change to your rates, service options, or the way that you dial and **NO** interruption in service. Please, also be assured that the operations of New Access Communications Network Operations Center (NOC) will remain fully functional during this period. Therefore, you will continue to be able to request changes to your service, submit trouble tickets and receive timely troubleshooting resolutions.

Any future changes in rates, terms and conditions of service will be done as prescribed by the Federal Communications Commission (FCC) and your applicable state regulatory commission.

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confident that you will find that remaining with us is the smart choice to meet your telecommunications needs; however, First Communications realizes that you have a choice of service providers, and you may choose another carrier at any point, subject to any applicable termination provisions in your contract. Please check the Missouri Public Service Commission website, <http://www.psc.mo.gov/consumer-telecoinfo.asp> for Alternative Carriers selections.

All subscribers receiving this notice, even those who had arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to First Communications, unless they select a different carrier before the transfer date. Existing preferred carrier freezes on the service(s) involved in the transfer will be lifted. You must contact your new local service provider (First Communications or other local service provider that you choose) to arrange a new freeze to protect you from unauthorized carrier changes after the transfer.

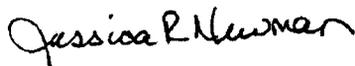
If you have any questions or concerns in regards to service needs, complaints or billing issues, you can also call First Communications at 1.800.274.1015 or prior to the transfer on or around March 1, 2007, call New Access Communications at 1.877.613.7487, and a representative will assist you.

Welcome to First Communications and thank you for your time.

Sincerely,



Ray Hexamer
Chief Executive Officer
First Communications



Jessica R. Newman
Chief Executive Officer
New Access Communications

EXHIBIT C
Management Services Agreement AMA/NAC

FINAL

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT ("Agreement") is made effective as of January 12, 2007 ("Effective Date") by and among Acceris Management and Acquisition LLC, a Minnesota limited liability company ("Acceris"), Choicetel LLC, a Minnesota limited liability company ("Choicetel") and New Access Communications LLC, a Minnesota limited liability company ("New Access") (Acceris, Choicetel and New Access are collectively the "Company") and First Communications, LLC, an Ohio limited liability company ("Manager"). All capitalized terms not defined herein have the meaning ascribed to them in the Asset Purchase Agreement ("Purchase Agreement") between the parties hereto entered into effective as of January 12, 2007. Any capitalized terms not specifically defined herein shall have the same meaning as set forth in the Purchase Agreement.

BACKGROUND

WHEREAS, as of the date hereof, Manager has purchased certain customer accounts from the Company pursuant to the Purchase Agreement; and

WHEREAS, Company has agreed to engage Manager to manage the customer accounts retained by the company until Regulatory Approval is obtained as identified on the attached Exhibit A hereto ("Customers") during the period set forth herein; and

WHEREAS, Company desires to utilize Manager's services and Manager desires to provide such services to Company to manage, to the fullest extent permissible under Law(s) (as defined below), the operations relating to the Business Customers pending receipt of Regulatory Approval of the transfer of the Business Customers by Company to Manager pursuant to the Purchase Agreement on the terms and subject to the conditions stated herein.

NOW, THEREFORE, in consideration of the above recitals and mutual promises and other good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Compliance with Applicable Laws and Regulations.

1.1 Company and Manager desire that this Agreement and the obligations performed hereunder be in compliance with (i) all applicable rules, regulations and policies of the Federal Communications Commission ("FCC") and any state public utility commission(s) (the "State PUC(s)"); (ii) the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. 151, et seq., (iii) state laws applicable to Company or Manager and (iv) any other applicable federal, state and local law, regulation or policy (collectively, "Law(s)"). Manager shall comply with Company customer proprietary network information policy ("CPNI Policy") of Company during the term of this Agreement.

1.2 It is expressly understood by the parties that nothing in this Agreement is intended to give Manager any right that would be deemed to constitute a transfer of control (as is defined in the Act and/or any applicable FCC or other relevant Law) of any of the applicable licenses from Company to Manager or to transfer the Customers to Manager to the extent prohibited by applicable Law. No Company licenses will be transferred from the Company to the Manager hereunder or under the Purchase Agreement and Manager shall obtain any regulatory licenses necessary to accept transfer of the Customers from Company to Manager prior to the Closing Date (the "Closing Date"). Each Party shall perform its obligations under this Agreement in accordance with applicable Law(s). Manager shall have no right to re-provision Customers or to transfer billing, customer service or collection or contractual relationships for billing and collection from Customers or to transfer wholesale or other vendor relationships from Company contracts to Manager contracts until the Closing Date.

1.3 If any State PUC or other governmental body of competent jurisdiction with regard to the Customers regulated by such State PUC determines that a provision of this Agreement violates any applicable Law, or if any State PUC regulating certain of the Customers has advised the parties, orally or in writing, that the review of any request by the parties for authority for the transactions contemplated hereby will be inordinately delayed or will likely be determined adversely to the parties, the parties will use their respective reasonable efforts to negotiate in good faith to modify this Agreement to the minimum extent necessary so as to comply with such order, decree, action or determination and/or remove any controversy identified by a State PUC without material economic detriment or effect to either party, and to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. This Agreement, as so modified, shall then continue in full force and effect. If the Closing Date occurs then the parties will continue to seek Regulatory Approval for the transfer of the remaining Customers to Manager under the Purchase Agreement but if such Regulatory Approval for such remaining customers cannot be obtained in any particular state, Manager shall assist Company to obtain a buyer for such Customers for up to a one year period after the Closing Date. Any proceeds of the sale of such Customers shall be paid to the Manager as additional compensation under this Management Agreement.

2. Appointment of Manager. The Company hereby appoints Manager, to the fullest extent permissible under Law, as the provider of all services necessary or appropriate for the supervision and management of the Customers, as described more fully in Section 3 (the "Services"). Manager hereby accepts such appointment on the terms and subject to the conditions stated herein. Such appointment shall be effective as of the Closing Date as to all Customers for which Regulatory Approval has not been received as of the Closing Date and shall continue until such Regulatory Approval is obtained, such Customer is sold pursuant to Section 1.3 above or the earlier termination of this Agreement.

3. Scope of the Services.

3.1 Management. During the Term (defined below), subject to the limitations in Sections 1.2 and 1.3 hereof and under the supervision, control and direction from time to time of the Company and the Company's Board of Governors and by its Designated Executive (as defined below), Manager shall establish and implement operational policies and provide general management and direction of the day-to-day operations with respect to the Customers and shall

exercise general supervision and direction of all affairs related to the Customers' accounts to the fullest extent permissible under Law(s) and shall make decisions with respect to the establishment, provisioning, contracting, billing, customer service and collection of the Customer accounts and the other duties listed in this Agreement, with respect only to the Customer accounts for which federal or state regulatory approval has not occurred. Day-to-day operations shall include, without limitation, provisioning and procuring wholesale services, customer billing, customer care, management of accounts receivables and cash collections relating to the Customers.

(a) Manager agrees to report regularly (but no less frequently than weekly) at mutually agreeable times to Drew Backstrand ("Designated Executive") concerning the status of the management of the Customers. The Designated Executive may not be changed without Manager's consent.

(b) Manager shall manage the Customers' accounts and report to the Designated Executive from time to time as provided for in this Agreement and shall manage the Customers' accounts in substantial good faith compliance with its obligations under this Agreement with respect to the Customers.

3.2 Payment of Accounts Receivable with respect to Customer Accounts and Payment of Assumed Liabilities.

(a) On the Closing Date, Company will provide to Manager a complete listing of all of its accounts receivable and the Company shall take any action necessary to transfer any and all rights it has in any lockboxes utilized in connection with the collection of its accounts receivable. If Company should receive payment for any accounts receivable after the Closing Date other than through the lockboxes, it shall immediately turn over any amount to the Manager.

(b) Any payments received after the Closing Date through the lockboxes or otherwise on any accounts receivable that are included in the Purchased Assets (the "Purchased Accounts Receivable") shall be the property of Manager. If any payments are made to Company with respect to the other than through the lockboxes, Company shall forward any such payments as soon as commercially practicable to Manager.

(c) Any payments received after the Closing Date through the lockboxes or otherwise on any Retained Accounts Receivable shall be the property of Company. Manager shall forward any such payments it receives to Company as soon as commercially practicable. Any such payments received by Company shall be retained by Company.

(d) If any payment received after the Closing Date includes a payment for both a Purchased Account Receivable and a Retained Account Receivable, the party receiving the payment shall deposit such payment and shall retain such portion of the payment to which they are entitled hereunder and shall as soon as commercially practicable pay over to the other party the other party's share of such payment.

(e) Manager shall be obligated to use any payments it receives on the Purchased Accounts Receivable to pay Assumed Liabilities but only until the date on which the

Closing Date Working Capital has been finally determined pursuant to the Purchase Agreement. Thereafter, there shall be no restriction on Managers' use of such payments.

4. Responsibilities of the Company. During the Term, the Company shall assist and fully cooperate on a timely basis with Manager in its performance of the Services and the collection of the accounts receivable. Time is of the essence under this Agreement and the Company will work diligently to make decisions and execute any agreements or action plans for the Company in as reasonably expeditious manner as reasonably possible to allow Manager to perform the Services. The Company shall have the Designated Executive available either on site or by telephone during all regular business hours and such Designated Executive shall have full and complete authority to bind the Company to decisions regarding the Customers. Without limiting the foregoing, the Company shall undertake the following responsibilities to assist the Manager and to allow the Manager to manage the day to day operations of the Company:

(a) shall provide Manager with all information and materials in their possession or subject to their control to enable Manager to provide the Services under this Agreement;

(b) shall perform any acts reasonably necessary to manage the Customer accounts, excluding those acts that are to be performed by Manager in connection with the Services, pursuant to and in accordance with the request of Manager;

(c) shall continue to communicate with third parties, including state regulatory commissions, in cooperation with Manager, including responding to their inquiries, requests and correspondence;

(d) shall promptly inform Manager, and provide Manager with copies of, all correspondence and communications relating to the Company from third parties; and

(e) At the request of Manager, the Company shall timely exercise rights it has under any of the contracts or agreements of the Company with the Customers, including, but not limited to, rights, whether in law or equity, with respect to breach, termination, set-off, indemnity, waiver, sub-contracting and assignment and shall execute commitments, agreements, contracts, instruments or agreements as are reasonable for the management of the Customers as requested by the Manager, subject to the limitations of Section 1.2 above.

5. Independent Contractor Status of Manager. Manager is an independent contractor in the performance of the Services under this Agreement and shall determine the method, details and means of performing the Services. Without limiting the generality of the foregoing, Manager shall be permitted, in its sole discretion, but in no way shall be required to (i) enter into and perform contracts and agreements in its own name for the furnishing of services, equipment, parts and supplies in connection with the Services (subject to the limitations of Section 1.2 above), and (ii) recruit and hire and terminate its own employees and independent contractors to provide the Services. Manager shall solely establish the terms and conditions of employment for its employees and shall pay all salaries and other compensation due to such employees.

6. Compensation. As its compensation for the Services, the Company shall pay Manager a fee equal to all cash collections and rights to payments accrued after the Closing Date upon the Customer Accounts for which regulatory approval has not yet been obtained.

7. Expenses. Except as otherwise provided in the Purchase Agreement, the parties hereto shall pay their own legal fees, accounting and other expenses incurred in connection with the negotiation and consummation of the transactions contemplated by this Agreement or the Purchase Agreement.

8. Termination of Agreement. The term of this Agreement (the "Term") shall commence on the Effective Date hereof and shall expire upon the earlier of: (i) mutual written agreement of the Parties, (ii) Regulatory Approval or sale pursuant to Section 1.3 of all of the Customer Accounts. Upon the termination of this Agreement, neither party shall be further obligated under this Agreement except for the parties' obligations under the last two sentences of Section 1.3, the obligation of Manager pursuant to Section 3.2(b) and their respective obligations set forth in Section 10.

9. Limitation of Liability.

(a) Both parties expressly agree that neither Company nor the Manager will have any liability to the other party or any third party based on the failure of the Customers to achieve profitability at any specified level or based upon Manager's decision-making with respect to management of the Customers under this agreement except for willful or criminal acts of the Manager or the Company. Each party will indemnify the other party for any liability in performing its duties under the provisions of this Agreement in a commercially reasonable and good faith manner under this Agreement. The parties shall follow the indemnity procedures set forth in Article X of the Purchase Agreement with respect to any indemnity claims. Any claim of either party arising under or relating to this Agreement shall be made only against the other party as a corporation or limited liability company, as the case may be, and any liability relating thereto shall be enforceable only against the corporate or limited liability company assets of the party. No party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against the parent company, Affiliated company, subsidiary, shareholder, employee or director or governor of another party.

(b) Notwithstanding anything to the contrary contained in this Section 10, the parties shall cooperate with each other in connection with any action, including keeping each other reasonably informed with respect to the status of any action and to obtain the benefits of any insurance coverage for third party claims that may be in effect at the time a third party claim is asserted.

10. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is to be given; (ii) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and confirmation of receipt is obtained promptly after completion of transmission; (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iv) on the fifth calendar day after mailing, if

mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to the Company: Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Attn: Elam Baer
Facsimile: 612-455-1022

Copy to:

Drew S. Backstrand
General Counsel
Acceris Management and Acquisition LLC
60 South Sixth Street, Suite 2535
Minneapolis, MN 55402
Facsimile: 612-455-1022

If to Manager: First Communications, LLC.
340 West Market Street
Akron, Ohio 44333
Attention: Joe Morris
Facsimile: 330-835-2655

Copy to:

Roetzel & Andress Co. LPA
222 South Main Street
Akron, Ohio 44308
Attn: Jeffrey W. Leonard
Facsimile: 330-376-4577

Any party may change its address for the purpose of this Section by giving the other party written notice of its new address in the manner set forth above.

13. Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) relating to the subject matter hereof are merged herein and superseded hereby, it being the intention of the parties hereto that this Agreement and the instruments and agreements contemplated hereby shall serve as the complete and exclusive statement of the terms of their agreement. This clause, however, shall not impair the validity or enforceability of the Purchase Agreement and related documents which are intended to be and remain effective.

14. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party (by contract, operation of law, change of control or otherwise) without the prior written consent of the other parties. Subject to the foregoing, this

Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

15. Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

16. Severability. Each provision of this Agreement is intended to be severable. Should any provision of this Agreement or the application thereof be judicially, or by arbitral award, declared to be or become illegal, invalid, unenforceable or void, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties.

17. Governing Law; Venue and Jurisdiction. This Agreement shall be governed by and construed according to the laws of the State of Ohio, without regard to the conflict of law rules of Ohio or any other state. The parties hereto consent to the exclusive venue and jurisdiction of an appropriate federal or state court in Akron, Ohio for any suit or action arising out of or related to this Agreement. The parties hereto waive any arguments of forum non conveniens in any matter relating to this Agreement.

18. Parties in Interest—No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third persons to the Company or Manager. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Company or Manager.

19. Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

20. Counterparts. This Agreement may be executed in one or more original or facsimile counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more such counterparts have been executed by each of the parties and delivered to the other parties. This Agreement may be executed in facsimile copy with the same binding effect as an original.

21. Interpretation. Except as otherwise provided or if the context otherwise requires, whenever used in this Agreement, (a) any noun or pronoun shall be deemed to include the plural and the singular, (b) the terms "include" and "including" shall be deemed to be followed by the phrase "without limitation," (c) unless the context otherwise requires, all references to Sections refer to Sections of this Agreement, (d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or

other subdivision, (e) any definition of or reference to any Law, agreement, instrument or other document herein will be construed as referring to such Law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (f) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

22. WAIVER OF JURY TRIAL. COMPANY AND MANAGER EACH ACKNOWLEDGE THAT, AS TO ANY AND ALL DISPUTES THAT MAY ARISE BETWEEN THE PARTIES, THE COMMERCIAL NATURE OF THE TRANSACTION OUT OF WHICH THIS AGREEMENT ARISES WOULD MAKE ANY SUCH DISPUTE UNSUITABLE FOR TRIAL BY JURY. ACCORDINGLY, THE PARTIES BY THEIR ACCEPTANCE OF THIS AGREEMENT WAIVE ANY RIGHT TO TRIAL BY JURY AS TO ANY AND ALL DISPUTES THAT MAY ARISE RELATING TO THIS AGREEMENT OR TO ANY OF THE OTHER INSTRUMENTS OR DOCUMENTS EXECUTED IN CONNECTION HEREWITH.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COMPANY:

**ACCERIS MANAGEMENT AND
ACQUISITION LLC**

Name: Elam Baer
Title: Chairman

MANAGER:

FIRST COMMUNICATIONS, LLC

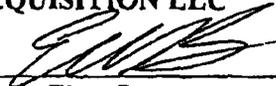
Name: *Jason Morris*
Title: *C.O.O.*

[SIGNATURE PAGE TO MANAGEMENT SERVICES AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COMPANY:

**ACCERIS MANAGEMENT AND
ACQUISITION LLC**



Name: Elam Baer
Title: Chairman

MANAGER:

FIRST COMMUNICATIONS, LLC

Name: _____
Title: _____

[SIGNATURE PAGE TO MANAGEMENT SERVICES AGREEMENT]

EXHIBIT A

CUSTOMERS

Customers in the states of AZ, CA, FL, MN, NJ, OR, HI and SC and all Cognigen customers in all states.

