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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE JOINT APPLICATION OF ACCERIS MANAGEMENT AND ACQUISITION LLC AND COGNIGEN NETWORKS, INC. FOR APPROVAL OF A TRANSFER OF ASSETS FROM COGNIGEN TO ACCERIS.

DOCKET NO. T-20376A-06-0795
DOCKET NO. T-04258A-06-0795

IN THE MATTER OF THE JOINT APPLICATION OF ACCERIS MANAGEMENT AND ACQUISITION, LLC, NEW ACCESS 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.

DOCKET NO. T-20376A-07-0076
DOCKET NO. T-04006A-07-0076
DOCKET NO. T-20473A-07-0076

IN THE MATTER OF THE APPLICATION OF COGNIGEN NETWORKS, INC. FOR APPROVAL TO CANCEL ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN ARIZONA.

DOCKET NO. T-04258A-09-0260

DECISION NO. 71422

ORDER

Open Meeting
November 19 and 20, 2009
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

Consolidation of Dockets

Because the above-captioned dockets are intermingled with respect to previously executed

1 transactions that occurred between the above-named entities, and the authority sought by the various
2 applications, these dockets have been consolidated into a single Order.

3 **Prior CC&N Application Filed By Acceris (Docket No. T-04302A-05-0478)**

4 1. On July 1, 2005, Acceris Management and Acquisition LLC ("Acceris") filed with the
5 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience
6 and Necessity ("CC&N") to provide resold long distance telecommunications services in Arizona
7 (Docket No. T-04302A-05-0478) ("Acceris CC&N Docket"). Although Acceris' CC&N application
8 was not approved by the Commission, the company apparently began providing resold long distance
9 service at some point after filing its application.

10 2. From July 2005 through October 2007, the Commission's Utilities Division Staff
11 ("Staff") issued three Letters of Insufficiency and Data Requests; Acceris provided three sets of
12 responses and filed proof of publication; two Procedural Orders were issued requiring Staff updates
13 in this matter; and two Staff Updates were filed.

14 3. Nothing further was filed in this matter until January 14, 2009, when Staff filed its
15 Staff Report, recommending approval of Acceris' CC&N application.

16 4. In the Staff Report, Staff checked a box indicating that Acceris was currently
17 providing services in Arizona, although Staff indicated elsewhere that Acceris was not currently
18 providing services in Arizona. Staff also provided information related to Acceris' involvement with
19 Federal Communications Commission ("FCC") complaints, the bulk of which appeared to have
20 occurred after the application was filed in this matter. Staff explained that Acceris obtained control
21 of Acceris Communications Corporation ("ACC") in August 2005, while two FCC complaints were
22 apparently pending against ACC. Staff also stated that either eight or nine complaints were filed
23 against Acceris after it took control of ACC, five of which were apparently granted. It appeared that
24 all of the complaints involved allegations of slamming. Staff did not include copies of any FCC
25 Orders with the Staff Report.

26 5. On April 16, 2009, a Procedural Order was issued requiring Staff to file a document
27 clarifying whether Acceris is providing services in Arizona and, if so, under what authority and to file
28 copies of FCC orders, and any explanation provided to Staff by Acceris regarding the FCC

1 complaints. The Procedural Order also required Acceris to file an updated response to Application
2 Item A-11, Staff to file an Amended Staff Report, and Acceris to file a response to the Amended
3 Staff Report.

4 6. On May 14, 2009, Staff filed a Staff Update stating, among other things, that Staff had
5 been contacted by an Acceris representative and informed that Acceris had been dissolved as of
6 January 2009 and was no longer doing business in any jurisdiction. Staff also stated that Acceris
7 requested withdrawal of its application. Staff therefore recommended that Acceris' CC&N docket be
8 administratively closed.

9 7. Because Acceris did not file an updated response to Application Item A-11 as required
10 by the Procedural Order of April 16, 2009, and did not make any filing in response to the Staff
11 Update to indicate that Staff's statement regarding Acceris' desire to withdraw its application was
12 inaccurate, a Procedural Order was issued on June 8, 2009 directing that Docket No. T-04302A-05-
13 0478 be administratively closed.

14
15 **Acceris/Cognigen Asset Transfer Application (Docket Nos. T-20376A-06-0795 and T-04258A-
06-0795)**

16 8. On December 20, 2006, Acceris dba Acceris Communications and WorldxChange
17 filed a joint application with Cognigen Networks, Inc. ("Cognigen")¹ for Commission approval to
18 transfer Cognigen's telecommunications customer base to Acceris ("Acceris/Cognigen Transfer
19 Docket").

20 9. According to the Staff Report issued June 12, 2009, Acceris conducted
21 telecommunications services under the names Acceris, Acceris Communications, and
22 WorldxChange, and was a wholly owned subsidiary of North Central Equity LLC ("North Central").
23 Staff indicated that Acceris provided both residential and business related telecommunications
24 services throughout the United States².

25

26 ¹ Cognigen was granted authority to provide resold long distance telecommunication services in Arizona by Decision No.
27 67462 (January 4, 2005).

28 ² In the Staff Report, Staff stated that a representative from Cognigen informed Staff that Cognigen ceased providing
telecommunications services in Arizona in April 2007. On May 22, 2009, Cognigen filed an application in Docket No. T-
04258A-09-0260 to cancel its CC&N to provide all telecommunications services in Arizona.

1 10. Under the proposed transfer, which was completed in February 2007, Cognigen
2 transferred to Acceris the following assets: (1) 138 business customers within Arizona ("Affected
3 Customers"); (2) all relevant Affected Customer information from the customer lists, Affected
4 Customer agreements, Affected Customer billing and collection data, and the complete billing history
5 from each Affected Customer account; and (3) all cash and cash equivalents attributable to the
6 transferred Affected Customers. Staff reported that there were no service contracts between Acceris,
7 Cognigen, and the Affected Customers.

8 11. The Staff Report states that on May 22, 2009, Cognigen filed an application with the
9 Commission to cancel its CC&N to provide all telecommunications services in Arizona.³ Staff
10 further states a representative from Cognigen informed Staff that Cognigen ceased providing
11 telecommunications services in Arizona in April 2007.

12 12. Staff concluded that the transfer would not have a negative impact on the Affected
13 Customers, and would not negatively impact the competitive nature of the market. Staff therefore
14 recommends that the application to transfer Cognigen's customers and assets to Acceris be granted.
15 Regarding the discontinuance of service notice requirements set forth in A.A.C. R14-2-1107, Staff
16 recommends that, given the unique circumstances of this proceeding, a waiver of the rule should be
17 granted to Cognigen; that Cognigen's CC&N should be cancelled and its tariffs withdrawn; and that
18 Docket No. T-04258A-09-0260 should be administratively closed.

19 **Acceris, New Access, and First Communications Transfer Application (Docket Nos. T-20376A-**
20 **07-0076; T-04006A-07-0076; and T-20473A-07-0076**

21 13. On February 1, 2007, First Communications, LLC ("First Communications")⁴, Acceris
22 and New Access Communications, LLC ("New Access")⁵ filed a joint application seeking
23 Commission approval to transfer the assets, including customers, of Acceris and New Access to First
24 Communications ("First Communications Transfer Docket").

25 _____
26 ³ See Staff Report in Docket No. T-04258-09-0260.

27 ⁴ First Communications was granted Commission approval to provide resold long distance telecommunication services in
28 Decision No. 69419 (April 16, 2007). Additionally, the Commission granted First Communications a CC&N to provide
resold local exchange telecommunications services in Decision No. 70750 (February 6, 2009).

⁵ New Access, an affiliate of Acceris, was granted Commission approval to provide resold local exchange and resold long
distance telecommunications services in Decision No. 65632 (February 18, 2003).

1 14. On June 12, 2009, Staff filed a Staff Report recommending approval of the transfer of
2 assets, including customers of Acceris and New Access to First Communications; and stating that a
3 hearing is not necessary regarding the transfer application.

4 15. According to the Staff Report, the transfer of assets and customers from Acceris and
5 New Access to First Communications was completed in March 2007. The transaction occurred prior
6 to Commission approval and involves the same customers previously transferred from Cognigen to
7 Acceris.

8 16. The Staff Report indicates that, in March 2007, First Communications acquired from
9 Acceris and New Access: (1) 187 commercial customers and 2,833 residential customers ("Affected
10 Customers"); (2) the personal property of Acceris; and (3) the assets (i.e., equipment, switches, and
11 working capital), except certain cash equivalents, of New Access.⁶ The transfer application also
12 requests waiver of Commission R14-2-1901 (Unauthorized Carrier Changes).

13 17. According to Staff, Acceris, New Access, and First Communications notified the
14 Affected Customers prior to the transfer, but no legal notice of the transaction was published. Staff
15 reviewed the written notice sent to the Affected Customers and concluded that it meets the
16 Commission's notice requirements. Staff indicates that First Communications will amend its tariffs
17 to incorporate the services, rates, terms, and conditions previously provided by Acceris and New
18 Access. Staff further states that no complaints have been filed regarding the transfer and found that
19 the acquisition and transfer did not negatively impact the Affected Customers or negatively impact
20 the competitive nature of the market.

21 18. As indicated above, Staff was informed that Acceris is no longer providing service to
22 customers in any jurisdiction and that the company has been dissolved. However, on June 12, 2009,
23 First Communications, Acceris, and New Access filed a response to the information contained in the
24 Procedural Order that administratively closed Acceris' CC&N docket (Docket No. T-20376A-05-
25 0478). The filing states that Acceris still exists for purposes of winding up the company operations,
26 and that it still holds the customer accounts that are the subject of this application. The filing
27

28 ⁶ Docket No. T-20376A-07-0076, et. al., Staff Report dated June 12, 2009.

1 included an affidavit from Drew Backstrand, General Counsel for Acceris and New Access, attesting
 2 to the legal status of Acceris. The affidavit states that First Communications is servicing the
 3 remaining Acceris and New Access customers through a management contract and, although the
 4 asset sale has closed, Arizona customer accounts will not be formally transferred to First
 5 Communications until Commission approval is granted.

6 19. Further, New Access requests authorization to cancel its CC&N and tariffs on file with
 7 the Commission, upon approval of the transfer of assets to First Communications.

8 20. Staff recommends approval of the transfer of assets from Acceris and New Access to
 9 First Communications pursuant to A.R.S. §40-285 and A.A.C. R14-2-1107; granting administrative
 10 closure of Acceris' CC&N docket⁷; and granting New Access' request to cancel its CC&N and
 11 related tariffs.

12 Discussion and Resolution

13 21. As a means of unraveling the issues represented by these various interrelated and
 14 commingled dockets, we believe it is in the public interest to approve the applications in accordance
 15 with Staff's recommendations.

16 22. Accordingly, we will approve the transfer of assets from Cognigen to Acceris; the
 17 cancellation of Cognigen's CC&N and related tariffs; waiver of the requirements of A.A.C. R14-2-
 18 1107 and R14-2-1901 related to the Acceris/Cognigen Transfer Docket; approval of the transfer of
 19 assets from Acceris and New Access to First Communications; waiver of the requirements of A.A.C.
 20 R14-2-1107 and R14-2-1901 related to the First Communications Transfer Docket; and grant New
 21 Access' request to cancel its CC&N and related tariffs.

22 CONCLUSIONS OF LAW

23 1. Cognigen, Acceris, New Access, and First Communications are public service
 24 corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-
 25 282, and 40-285.

26 2. The Commission has jurisdiction over Acceris, Cognigen, New Access, First
 27

28 ⁷ As discussed above, Acceris's CC&N docket (Docket No. T-04302A-05-0478) was administratively closed by
 Procedural Order issued June 8, 2009.

1 Communications and the subject matter of the applications.

2 3. The transactions described herein are in the public interest and should be approved.

3 4. The cancellation of Cognigen's and New Access' CC&Ns and related tariffs are in the
4 public interest.

5 5. Based on the facts and circumstances presented in the above-captioned dockets, it is
6 appropriate to waive the notice requirements pursuant to A.A.C. R14-2-1107 and R14-2-1901 et seq.

7 6. Approval of the transfers described herein does not negatively impact the Affected
8 Customers or the competitive market.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the joint application of Acceris Management and
11 Acquisition, LLC dba Acceris Communications dba WorldxChange, and Cognigen Networks, Inc.
12 for the transfer of Cognigen Network, Inc.'s telecommunications customer base, as described herein,
13 to Acceris Management and Acquisition, LLC dba Acceris Communications dba WorldxChange, is
14 hereby approved.

15 IT IS FURTHER ORDERED that the joint application of First Communications, LLC,
16 Acceris Management and Acquisition, LLC, and New Access Communications, LLC, for approval to
17 transfer the assets of Acceris Management and Acquisition, LLC and New Access Communications,
18 LLC, to First Communications, LLC, as described herein, is hereby approved.

19 IT IS FURTHER ORDERED that the notice requirements of A.A.C. R14-2-1107 and R14-2-
20 1901 et seq. are hereby waived for Cognigen Networks, Inc., Acceris Management and Acquisition,
21 LLC, and New Access Communications, LLC.

22 IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to
23 Cognigen Networks, Inc., in Decision No. 67462 (January 4, 2005), is hereby cancelled.

24 IT IS FURTHER ORDERED that the tariffs of Cognigen Networks, Inc. on file with the
25 Commission are hereby cancelled.

26 IT IS FURTHER ORDERED that upon the effective date of this Decision cancelling the
27 Certificate of Convenience and Necessity of Cognigen Network, Inc., Docket Control shall
28 administratively close Docket No. T-04258A-09-0260.

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IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity granted to New Access Communications, Inc. in Decision No. 65632 (February 18, 2003), is hereby cancelled.

IT IS FURTHER ORDERED that the tariffs of New Access Communications, Inc., on file with the Commission are hereby cancelled.

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

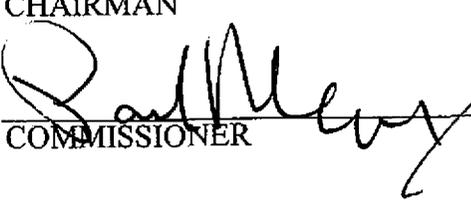
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.



CHAIRMAN



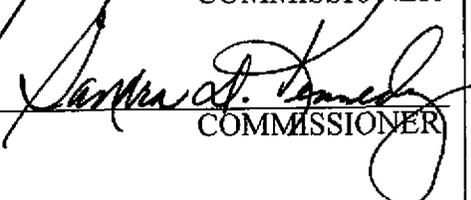
COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, 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 8th day of December, 2009.



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

ACCERIS MANAGEMENT, ACQUISITION, LLC,
COGNIGEN NETWORKS, INC., NEW ACCESS
COMMUNICATIONS, LLC, and FIRST
COMMUNICATIONS, LLC.

4 DOCKET NOS.:

T-20376A-06-0795, T-04258A-06-0795, T-04258A-
09-0260, T-20376A-07-0076, T-04006A-07-0076 and
T-20473A-07-0076

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