



PUBLIC NOTICE

Federal Communications Commission
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DA 06-2509
Released: December 14, 2006

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

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-217

Comments Due: December 28, 2006
Reply Comments Due: January 4, 2007

On November 30, 2006, First Communications, LLC (“First Communications”), Acceris Management and Acquisition LLC (“Acceris”), New Access Communications LLC (“New Access”) and Choicetel LLC (“Choicetel”) (collectively, the “Applicants”) filed an application pursuant to section 63.04 of the Commission’s rules¹ seeking authority to transfer certain assets of Acceris, New Access and Choicetel to First Communications.²

Applicants submit that this transaction is entitled to presumptive streamlined treatment under 63.03(b)(2)(i) of the Commission’s rules because: (a) the proposed transaction would result in First Communications having a market share in the interstate, interexchange market of less than 10 percent, (b) First Communications will provide competitive services exclusively in areas served by a dominant local carrier not a party to the transaction, and (c) neither of the Applicants is dominant with respect to any domestic service.³

First Communications, an Ohio limited liability company, provides local, private line and long distance services to approximately 100,000 business and residential customers, located primarily in Ohio, Michigan, Indiana, Illinois, Pennsylvania, and Florida. First Communications is authorized to provide intrastate long distance telecommunications services in all contiguous states except for the following states, in which authority is pending: Arizona, Louisiana, North Dakota, Oklahoma, South Carolina, Vermont, Wyoming. First Communications is authorized to provide competitive local exchange

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

² Applicants are also filing an application for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

telecommunications services in Illinois, Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin.⁴ Applicants state that First Communications has no affiliates that offer domestic telecommunications services. The following U.S. entities hold a 10% or greater equity interest in First Communications: McKinley Communications, LLC, (“McKinley”) (51%); First Energy Corp. (“First Energy”) (31.85%); and Boich Investment Group, Ltd. (“Boich”) (17.15%). McKinley is 80% owned by Marbel Investments, LLC (“Marbel”), a U.S. limited liability company. Marbel is, in turn, owned in equal shares by the following U.S. citizens: Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden. No shareholder in First Energy holds a 10 percent or greater ownership interest in First Communications. Boich is owned entirely by Wayne Boich, Sr., a U.S. citizen.

Acceris, a Minnesota limited liability company, serves residential, small and medium-sized business, and large enterprise customers throughout the United States. Acceris is authorized to provide long distance telecommunications services in the contiguous 48 states, Hawaii, and the District of Columbia. In addition, Acceris is authorized to provide long distance and competitive local exchange telecommunications services in California, Pennsylvania, New York, New Jersey, Florida, and Massachusetts, and also holds authorization to provide interstate telecommunications. Acceris has one affiliate, New Access, that offers domestic local and long distance telecommunications services. New Access is authorized to provide local service primarily in the Qwest territories and long distance resale services virtually nationwide. Acceris is a direct, wholly-owned subsidiary of North Central Equity LLC (“North Central”), a privately held Minnesota holding company that is 53% owned by Elam Baer, a U.S. citizen. No other entity holds a 10% or greater equity interest in North Central.

New Access, a Minnesota limited liability company, provides competitive local and long distance telecommunications services to primarily residential customers throughout the United States. New Access is authorized to provide long distance resale telecommunications services in the contiguous 48 states, Hawaii, and the District of Columbia, with the exception of Connecticut, Delaware, Maryland, New Hampshire, South Carolina, Tennessee and West Virginia. New Access is authorized to provide local services on a resale or facilities-based basis in the following states: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Texas, Virginia, Washington, Wisconsin and Wyoming. New Access is a direct, wholly-owned subsidiary of North Central. Mr. Elam Baer holds a 53% equity interest in North Central, and thus, a 10% or greater equity interest in New Access under the Commission’s attribution rules. No other person or entity holds a 10% or greater equity interest in New Access.

Choicetel, a Minnesota limited liability company, provides competitive local and long distance telecommunications services to primarily residential customers in Minnesota and Iowa. Choicetel is a direct, wholly-owned subsidiary of New Access. Mr. Elam Baer holds a 53% equity interest in North Central, and thus, a 10% or greater equity interest in Choicetel under the Commission’s attribution rules. No other person or entity holds a 10% or greater equity interest in Choicetel.

The proposed transaction will result in the acquisition by First Communications of certain assets of Acceris (except for certain cash equivalent assets retained by Acceris), including the remaining long

⁴ In addition to traditional local and long distance services, First Communications’ telecommunications services include toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access, and dedicated and private line services, all of which are provided primarily on a resale basis.

distance resale customers and any remaining personal property; and the acquisition by First Communications of certain assets of New Access and Choicetel (except for certain cash equivalent assets retained by Acceris), including all local and long distance customers and any personal property such as equipment, switches, and a certain level of working capital (excluding accounts receivable), but not including any federal or state telecommunications authorizations.

The Applicants state that the transfer of assets to First Communications will serve the public interest because, following the transfer, the former Acceris, New Access and Choicetel customers will continue to receive services, which will be consistent with the quality of services currently provided by Acceris, New Access and Choicetel. Applicants also anticipate that customers will experience a seamless transition of service providers. Applicants state that grant of this Application will strengthen the competitive position of First Communications without negative impact to Acceris, New Access or Choicetel customers or to competition in the markets in which Acceris, New Access or Choicetel currently operates.

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before December 28, 2006** and **reply comments on or before January 4, 2006**.⁵ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁶ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

⁵ See 47 C.F.R. § 63.03(a).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

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

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

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

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

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

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bepiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C230, Washington, D.C. 20554; email: myrva.charles@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C3157, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and

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

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

For further information, please contact Myrva Charles at (202) 418-1506, or Alex Johns at (202) 418-1167.

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