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DATE: January 6, 2005
TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director
FROM: Toni J. McCoy, Regulatory Analyst II, Division of Competitive Markets & Enforcement
RE: Correspondence related to First Communications LLC/TJ398

050000-07

Jeh

Please maintain the attached information as an undocketed matter.

Please call if you have any questions. I can be reached at 413-6532.

Thank you.

- CMP _____
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December 23, 2004

Via UPS

Mr. Tom Williams
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Application of McKinley Communications, LLC for Determination of Exempt Telecommunications Company Status

Dear Mr. Williams:

In accordance with Section 1.5002 of the rules of the Federal Communications Commission ("FCC"), McKinley Communications, LLC, by its attorneys, hereby provides a copy of its application for determination of exempt telecommunications company status. This application was filed with the FCC on December 23, 2004. Upon consummation of an acquisition, McKinley will provide telecommunications services indirectly, through an affiliate, First Communications LLC.

Should you have any questions concerning this filing, please contact the undersigned.

Respectfully submitted,



Steven A. Augustino

Attorney for McKinley Communications, LLC

Enclosure

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
MCKINLEY COMMUNICATIONS, LLC) File No. _____
)
Application for Determination of)
Exempt Telecommunications Company)
Status Pursuant to the)
Telecommunications Act of 1996)

**APPLICATION FOR DETERMINATION OF
EXEMPT TELECOMMUNICATIONS COMPANY STATUS**

McKinley Communications, LLC (“McKinley”) hereby applies to the Commission for a determination of “exempt telecommunications company” (“ETC”) status pursuant to Section 34(a)(1) of the Public Utility Holding Company Act of 1935 (“PUHCA”),¹ and Section 1.5000, *et seq.* of the rules of the Federal Communications Commission (“Commission”).² In support of its Application, McKinley provides in Attachment 1 the certifications required by the Commission’s Rules,³ and states as follows:

McKinley is an Ohio limited liability company based in Canton, Ohio. McKinley is an investment company created for the purpose of investing exclusively in telecommunications assets. McKinley is controlled by Marbel Investments, LLC (“Marbel”), an investment company that is owned in equal shares by four (4) individual investors – Marshall Belden, Timothy

¹ 15 U.S.C. § 79, *et seq.*, as added by Section 103 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

² 47 C.F.R. § 1.5000, *et seq.*

³ See 47 C.F.R. §§ 1.2002(a), 1.5002(a).

Susan Belden, and Katherine Belden (the “Beldens”). Neither McKinley nor any of its affiliates currently provide any telecommunications services on a common carrier basis.

McKinley and FirstEnergy Corp. (“FirstEnergy”) have reached an agreement in principle whereby FirstEnergy will sell to McKinley a 51 percent membership interest in First Communications LLC (“First”).⁴ The transaction is contingent on receipt of the necessary regulatory approvals, among other things. After closing, McKinley will hold a 51 percent ownership interest in First.

First is an Ohio limited liability company based in Akron, Ohio. Founded in 1984, First is a common carrier that provides local, private line and long distance services to both business and residential customers in several states in the U.S. Currently, First provides telecommunications services to approximately 70,000 customers, located primarily in Florida, Ohio, Indiana and Michigan. First's services include, in addition to traditional local and long distance services, toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access, and dedicated and private line services. First's telecommunications services are provided primarily on a resale basis using facilities and switches that are owned and operated by other telecommunications carriers.

After closing, McKinley will be indirectly engaged through First in the business of providing telecommunications services, information services, other services or products subject to the jurisdiction of the Commission and/or products or services that are related or incidental to such products or services.⁵ In addition, McKinley may in the future engage in other activities that fall within the categories set forth in Section 34(a) of PUHCA. Accordingly,

⁴ See Applications for Consent to Transfer of Control of FirstEnergy Corp. and McKinley Communications, LLC, IB File No. ITC-T/C-20041123-00467 and WC Docket No. 04-422, filed Nov. 23, 2004.

⁵ See PUHCA § 34(a)(1).


McKinley meets the criteria for Commission determination that it is an exempt telecommunications company under Section 34(a)(1) of PUHCA.

In accordance with the Commission's Rules,⁶ a copy of this Application has been served on the Securities and Exchange Commission, and the Public Utilities Commission of California, Florida, Illinois, Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania and Wisconsin.

WHEREFORE, McKinley respectfully requests that the Commission determine that it is exempt telecommunications companies under Section 34(a) of PUHCA.

Respectfully submitted,

MCKINLEY COMMUNICATIONS, LLC

By: 

Marshall B. Belden, Jr.
Authorized Representative
McKinley Communications, LLC
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Canton, Ohio 44702
Tel: (330) 455-4000

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*Attorneys for the McKinley
Communications, LLC*

Date: December 23, 2004

⁶ 47 C.F.R. § 1.5002(a).

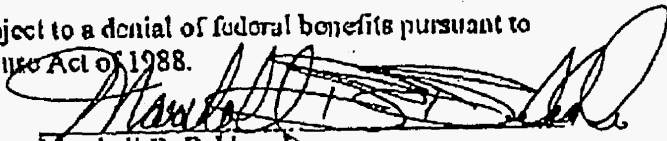
Attachment 1

DECLARATION

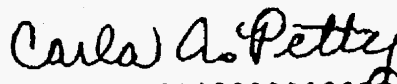
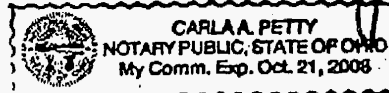
Pursuant to Sections 1.5002(a)(2), 1.5002(a)(3) and 1.16 of the Commission's rules, the undersigned hereby submits this declaration as an authorized representative of McKinley Communications, L.L.C. ("McKinley") in connection with its "Application for Determination of Exempt Telecommunications Company Status." I declare, under penalty of perjury, that the following is true and correct:

1. The facts and representations concerning McKinley set forth in the Application are true and correct to the best of my knowledge, information and belief.
2. McKinley exclusively will be engaged, through First Communications LLC, in the business of providing (A) telecommunications services, (B) information services, (C) other services for products subject to the jurisdiction of the Federal Communications Commission (the "Commission"), or (D) products or services related or incidental to the provision of a product or service described in clause (A), (B), or (C).
3. No party to this Application is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

By:


 Marshall B. Belden, Jr.
 Authorized Representative
 MCKINLEY COMMUNICATIONS, L.L.C.

Subscribed and sworn this 23rd day of December, 2004.

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of December 2004, a copy of the foregoing
“Application for Determination of Exempt Telecommunications Company Status” was served,
by hand or via United States first class mail, postage prepaid, upon the following persons:

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Illinois Commerce Commission
Leland Building
527 E. Capitol Avenue, 8th Floor
Springfield, IL 62701

Jeremy Miller*
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Indiana Utility Regulatory Commission
302 West Washington Street, Suite E306
Indianapolis, IN 46204

Carmell Weathers*
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Michigan Public Service Commission
6545 Mercantile Way, Suite 7
Lansing, MI 48911

Rodney McDonald*
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

New Jersey Board of Public Utilities
Two Gateway Center, 8th Floor
Newark, NJ 07102

Office of the General Counsel
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549

New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

* Via Hand and Electronic Mail Delivery

Robert P. Watson
Chief Financial Analyst
Office of the Public Utility Regulation
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549


California Public Utility Commission
505 Van Ness Avenue
San Francisco, CA 94102

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, Room N201
Harrisburg, PA 17120

Wisconsin Public Service Commission
610 North Whitney Way, P.O. Box 7854
Madison, WI 53707



Steven A. Augustino