

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (McCoy)
Office of the General Counsel (Rojas)

RE: Docket No. 050428-TP – Joint petition of Acceris Management and Acquisition LLC and Acceris Communications Corp. of Florida for approval of name change and transfer of CLEC Certificate No. 8371 from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC; for acknowledgement of registration of Acceris Management and Acquisition LLC as IXC effective 6/22/05, and acknowledgment of cancellation of Acceris Communications Corp. of Florida's IXC Registration No. TJ413 effective 9/30/05; and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., in connection with sale of customer-based and other assets of Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC.

AGENDA: 10/18/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050428.RCM.DOC

Case Background

On June 22, 2005, the Commission received a joint petition from Acceris Management and Acquisition LLC and Acceris Communications Corp. of Florida requesting approval of a name change and transfer of competitive local exchange telecommunications company (CLEC) Certificate No. 8371 from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC; for acknowledgement of registration of Acceris Management and Acquisition LLC as an intrastate interexchange company (IXC), and for acknowledgment of removal from the registry of Acceris Communications Corp. of Florida's IXC Registration No. TJ413. In addition, the petition requested waivers of Rule 25-4.118, Florida Administrative Code, due to

the transfer of assets and customers (local and long distance) from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.02, 364.336, 364.337, 364.345 and 364.603, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the name change and transfer of CLEC Certificate No. 8371 from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC?

Recommendation: Yes. (McCoy, Rojas)

Staff Analysis: Pursuant to Section 364.345(2), Florida Statutes, Certificates; territory served; transfer, a telecommunications company may not sell, assign, or transfer its certificate or any portion thereof without (a) a determination by the commission that the proposed sale, assignment, or transfer is in the public interest; and (b) the approval of the Commission.

After a review of the petition, the proposed transaction would not adversely affect customers as Acceris Management and Acquisition LLC will continue to provide the same services that are currently provided by Acceris Communications Corp. of Florida. Acceris Management and Acquisition LLC will maintain the same rates, terms, and conditions of service as the services those customers currently receive.

Staff believes that in this instance it is in the public interest that the Commission approve the name change and transfer of CLEC Certificate No. 8371 from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC.

Issue 2: Should the Commission acknowledge registration of Acceris Management and Acquisition LLC as an intrastate interexchange company, effective June 22, 2005?

Recommendation: Yes. (McCoy, Rojas)

Staff Analysis: On June 22, 2005, Acceris Management and Acquisition LLC provided contact information and a tariff to be acknowledged as a registered intrastate interexchange company. Staff has determined that the documents received meet the requirements of Sections 364.02(13) and 364.04, Florida Statutes. Acceris Management and Acquisition LLC is assigned TK011 as its IXC registration for the state of Florida.

Based on the above, staff recommends that the Commission acknowledge registration of Acceris Management and Acquisition LLC as an intrastate interexchange company, effective June 22, 2005.

Issue 3: Should the Commission acknowledge Acceris Communications Corp. of Florida's request to remove registration TJ413 from the register, effective September 30, 2005?

Recommendation: Yes. (McCoy, Rojas)

Staff Analysis: On June 22, 2005, the Commission received a request from Acceris Communications Corp. of Florida for removal of registration TJ413 from the IXC register, effective September 30, 2005. Acceris Communications Corp. of Florida, holder of IXC Registration No. TJ413, does not have any delinquent IXC regulatory assessment fees, penalties or interest.

Accordingly, staff recommends that the Commission acknowledge Acceris Communications Corp. of Florida's request to remove registration TJ413 from the register, effective September 30, 2005.

Issue 4: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC?

Recommendation: Yes. (McCoy/Rojas)

Staff Analysis: Pursuant to Rule 25-4.118(1), Florida Administrative Code, a customer's carrier cannot be changed without the customer's authorization. Rule 25-4.118(2), Florida Administrative Code, provides that a carrier shall submit a change request only if one of the following has occurred:

- (a) The provider has a letter of agency (LOA) . . . from the customer requesting the change;
- (b) The provider has received a customer-initiated call for service . . . ;
- (c) A firm that is independent and unaffiliated with the provider . . . has verified the customer's requested change . . .

Pursuant to Rule 25-24.475(3), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to IXCs.

Rule 25-24.455(2), Florida Administrative Code, states:

An IXC may petition for a waiver of any provision of this Part. The waiver shall be granted in whole, granted in Part or denied based on the following:

- (a) The factors enumerated in Section 364.337(4), Florida Statutes;
- (b) The extent to which competitive forces may serve the same function as, or obviate the necessity for, the provision sought to be waived;
- (c) Alternative regulatory requirements for the company which may serve the purposes of this part; and
- (d) Whether the waiver is in the public interest.

Pursuant to Rule 25-24.845, Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, is incorporated into Chapter 25-24, and applies to CLECs.

Section 364.337(2), Florida Statutes, states in pertinent part:

A certificated competitive local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest.

The authority for Rule 25-4.118, Florida Administrative Code, is found in Section 364.603, Florida Statutes, which is a section the Commission is authorized to waive.

Acceris Management and Acquisition LLC has attested that it will provide for a seamless transition while ensuring that the affected customers understand available choices with the least amount of disruption to the customers. Staff has reviewed the notice that will be sent to Acceris Communications Corp. of Florida's customers and found it to be adequate. The customers should not experience any interruption of service, rate increase, or switching fees.

In addition, Acceris Management and Acquisition LLC provided the following statements in a letter dated August 16, 2005, regarding outstanding consumer complaints:

“...if a customer of Acceris Communications Corp. of Florida's (Old Acceris) files a complaint about the service provided or disputes an invoice that was received prior to the acquisition by Acceris Management and Acquisition LLC (New Acceris), then Acceris Management and Acquisition LLC (New Acceris) will work with the customer and/or Commission to resolve the complaint...”

Acceris Communications Corp. of Florida does not have any outstanding regulatory assessment fees, penalties or interest associated with either its CLEC certificate or IXC

registration. The company states that it will pay its 2005 regulatory assessment fees within 30 days of the issuance of the Consummating Order.

Staff believes that in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their local and long distance service. Furthermore, staff believes that granting this waiver will avoid unnecessary slamming complaints during this transition.

Therefore, staff recommends that the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC.

Issue 5: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. However, this docket should remain open pending receipt of payment of the 2005 regulatory assessment fees by Acceris Communications Corp. of Florida, for both its CLEC and IXC operations. If Acceris Communications Corp. of Florida fails to pay its 2005 regulatory assessment fees, staff will bring this matter back before the Commission for resolution. **(Rojas)**

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, the order will become final upon the issuance of a consummating order. However, this docket should remain open pending receipt of payment of the 2005 regulatory assessment fees by Acceris Communications Corp. of Florida, for both its CLEC and IXC operations. If Acceris Communications Corp. of Florida fails to pay its 2005 regulatory assessment fees, staff will bring this matter back before the Commission for resolution.