

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: FIRST COMMUNICATIONS, LLC; ACCERIS MANAGEMENT AND ACQUISITION, LLC; NEW ACCESS COMMUNICATIONS, LLC; AND CHOICETEL, LLC	DOCKET NOS. TCU-06-14 TF-06-331 WRU-06-34-3855 SPU-07-3
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**ORDER APPROVING APPLICATION, TARIFF, AND CONCURRENCE IN MAPS;
GRANTING WAIVER; ISSUING CERTIFICATE; AND
APPROVING NOTICE OF TRANSFER OF CUSTOMERS**

(Issued January 25, 2007)

On December 8, 2006, First Communications, LLC (First Communications), filed with the Utilities Board (Board) an application for issuance of a certificate of public convenience and necessity pursuant to Iowa Code § 476.29 (2005) stating its intention to provide local exchange service in Iowa. The application has been identified as Docket No. TCU-06-14. First Communications has provided financial statements and the qualifications of its company officers and has stated it will support a 2-PIC dialing methodology for dialing parity. No objections to the application were received.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest."

The Board has reviewed First Communications' application and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. First Communications has also filed a statement indicating that it commits to utilizing thousand-block number pooling (TBNP), even in areas where TBNP is voluntary, to the extent it is technically feasible to do so.

First Communications also states that its service area will mirror the exchanges and service area maps of Qwest Corporation (Qwest) as they are currently filed and as they may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which landline local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that First Communications has complied with the statutory and rule requirements by concurring in Qwest's exchange maps. The Board finds it is in the public interest to issue a certificate of public convenience and necessity to First Communications.

First Communications also requested waivers of Board rules 16.5(2), 18.2, and 22.3(1). The waiver request has been identified as Docket No. WRU-06-34-3855.

First Communications requests a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform systems of accounts. First Communications states it will maintain its books in accordance with generally

accepted accounting principles (GAAP). The Board finds this waiver should be granted, since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

First Communications also requested the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant the waiver based on First Communications' statement that it will make the records available to the Board upon request.

First Communications also requested a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant this waiver based upon First Communications' statement that it will arrange for its customers to be included in the directories published in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on a competitive local exchange carrier beginning to do business in Iowa. It would be an undue hardship for First Communications to publish a directory for just its customers and keep a

separate set of accounts or records in Iowa. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for health, safety, and welfare provided, since the actions waived will be completed under different circumstances.

On December 21, 2006, First Communications filed a proposed tariff, identified as TF-06-331. Revisions to the proposed tariff were filed on January 9, 2007. The Board has reviewed the tariff and its revisions and finds that they substantially comply with the Board's rules on filing and processing of tariff pages.

On December 8, 2006, First Communications filed a joint notice with the Board with Acceris Management and Acquisition, LLC (Acceris), New Access Communications, LLC (New Access), and Choicetel, LLC (Choicetel), regarding the transfer of assets, including local and long distance service customers, from Acceris, New Access, and Choicetel to First Communications. The joint notice was identified as Docket No. SPU-07-3. The parties state that after the transfer, First Communications will provide all of the services previously provided by Acceris, New Access, and Choicetel and that the transfer of service will be virtually transparent to customers.

In support of this notice, the parties state that Acceris is currently registered with the Board as an interexchange carrier and provides only long distance service in Iowa. The parties also state that New Access and Choicetel provide local and long distance service in Iowa. New Access and Choicetel provide local service pursuant

to certificates of public convenience and necessity; New Access was issued Certificate No. 0231 on January 30, 2001, and Choicetel was issued Certificate No. 0233 on May 14, 2001. The parties state that after the transfer of customers to First Communications, Acceris, New Access, and Choicetel will cease operations and New Access and Choicetel will surrender their certificates to provide service in Iowa.

Board rule 199 IAC 22.23(2) requires verified individual customer authorization for changes in each customer's telecommunications services. However, 199 IAC 22.23(2)"e"¹ eliminates the need for individual customer verification in situations of a sale or transfer of all or part of a telecommunications carrier's customer base by establishing procedures for notifying affected customers and the Board of the sale or transfer. The Board finds that the notices submitted by the parties on December 8, 2006, are in substantial compliance with the requirements of 199 IAC 22.23(2)"e" and are approved.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by First Communications, LLC, on December 8, 2006, is granted.
2. The concurrence in the maps and boundaries of Qwest Corporation is approved.
3. The tariff filed by First Communications, LLC, on December 21, 2006, as revised on January 9, 2007, is approved effective the date of this order.

¹ See In re: Revised Rules for Telecommunications Providers, "Order Adopting Rules," Docket No. RMU-05-6 (issued November 29, 2005).

4. The request for waiver of 199 IAC 16.5(2), 18.2, and 22.3(1), identified as Docket No. WRU-06-34-3855, is granted as described in this order.

5. A certificate, identified as Certificate No. 0311, is being issued to First Communications, LLC, concurrently with this order.

6. The notice of transfer of local and long distance customers from Acceris Management and Acquisition, LLC, New Access Communications, LLC, and Choicetel, LLC, filed on December 8, 2006, identified as Docket No. SPU-07-3, is approved as described in this order.

7. First Communications, LLC, shall notify the Board within 30 days after the conclusion of the transfer so that the authorizations and certificates of Acceris Management and Acquisition, LLC, New Access Communications, LLC, and Choicetel, LLC, can be cancelled.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 25th day of January, 2007.