

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 050428-TP  
ORDER NO. PSC-05-1124-PAA-TP  
ISSUED: November 8, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ACKNOWLEDGING IXC REGISTRATION, TRANSFER AND NAME CHANGE  
ON CLEC CERTIFICATE AND WAIVER OF CARRIER SELECTION REQUIREMENTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NUMBER-DATE  
10784 NOV-8 05  
FPSC-COMMISSION CLERK

### **Case Background**

On June 22, 2005, this 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.

We are 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**

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.

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

On June 22, 2005, Acceris Management and Acquisition LLC provided contact information and a tariff to be acknowledged as a registered intrastate interexchange company. We have 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, we acknowledge registration of Acceris Management and Acquisition LLC as an intrastate interexchange company, effective June 22, 2005.

Also 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, we acknowledge Acceris Communications Corp. of Florida's request to remove registration TJ413 from the register, effective September 30, 2005.

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 IXC's.

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.

We find 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, we 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that in this instance it is in the public interest that we approve the name change and transfer of CLEC Certificate No. 8371 from Acceris Communications Corp. of Florida to Acceris Management and Acquisition LLC. It is further

ORDERED that Acceris Management and Acquisition LLC is assigned TK011 as its IXC registration for the state of Florida. It is further

ORDERED that we acknowledge Acceris Communications Corp. of Florida's request to remove registration TJ413 from the register, effective September 30, 2005. It is further

ORDERED that we 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. It is further

ORDERED that 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, Commission staff will bring this matter back before the Commission for resolution.

By ORDER of the Florida Public Service Commission this 8th day of November, 2005.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk and  
Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

JPR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

ORDER NO. PSC-05-1124-PAA-TP

DOCKET NO. 050428-TP

PAGE 6

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 29, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.