BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Approval of the Transfer of Control of First Communications, LLC (U 8837 C), and Xtension Services, Inc. (U 6508 C) to First Communications, Inc.	Application 06-11-011 (Filed November 17, 2006)

OPINION GRANTING TRANSFER OF CONTROL

I. Summary

This decision authorizes the transfer of control of First Communications, LLC, and Xtension Services, Inc., to First Communications, Inc. The application is unopposed. This proceeding is closed.

II. The Application

First Communications, Inc. (FCI), a newly formed holding company, First Communications, LLC (First Communications), and Xtension Services, Inc. (Xtension), collectively referred to as Applicants, pursuant to § 854 of the Pub. Util. Code request authority to consummate a transaction whereby FCI will acquire control of First Communications and Xtension.[1]

III. The Proposed Transaction

Applicants state that FCI has been formed in order to facilitate a transaction whereby First Communications and Xtension will become an integrated telecommunications company that, while continuing to operate

[1] *See* January 26, 2007, Notice of Change to Application.

pursuant to their existing certificates and tariffs, will be able to benefit from the combined expertise of each of the companies' respective management and operational personnel and achieve additional economies of scope and scale that will enable them to compete more effectively.

According to Applicants, other than the insertion of a publicly traded holding company as the ultimate parent of First Communications and Xtension, the proposed transaction will not have any significant impact on the Commission's regulatory oversight of Applicants. Applicants expect that there will not be any new controlling individual or entity for the Commission to review and approve since the ownership of the FCI holding company will be widely held at the time of the transfer.

Further, Applicants state that the transaction will not result in any assignment or transfer of certificates, assets or customers of First Communications and Xtension. Both operating companies will continue to provide service to their existing customers in California pursuant to their existing authorizations and at the same rates, terms and conditions such that the transaction will be transparent to their customers, and the integrated company will continue to be run by a combination of highly experienced, well qualified management, operational and technical personnel that operate the companies today.

IV. The Parties

A. First Communications, Inc.

FCI is a newly formed corporation with offices located at 3340 West Market Street, Akron, Ohio 44333. Telephone: (330) 835-2323. It has entered into letters of intent to acquire 100% of the shares of First Communications, and Xtension.

B. First Communications, LLC

First Communications is a privately held Ohio limited liability company headquartered at 3340 West Market Street, Akron, Ohio, 44333. Telephone: (330) 835-2323. First Communications was formed on July 1, 1997 under the laws of the State of Ohio. McKinley Communications, LLC holds a 51% ownership interest in First Communications, First Energy Corp. holds a 32% interest in First Communications and Boich Investment Group, Ltd. holds a 17% interest in First Communications. No other entity holds a 10% or greater ownership interest in First Communications.

First Communications is a common carrier that provides local, private line and long distance services to both business and residential customers in several states. Currently, First Communications provides telecommunications services to approximately 200,000 customers located primarily in Ohio, Michigan, Indiana, Illinois, North Carolina, Texas, Pennsylvania, and Florida. First Communications' service 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 Communications' telecommunications services are provided primarily on a resale basis using the facilities and switches that are owned and operated by other telecommunications carriers.

First Communications is authorized to provide intrastate long distance telecommunications services in 42 states and is authorized to provide intrastate long distance and competitive local exchange telecommunications services in Illinois, Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. In California, First Communications is authorized to provide resold

interexchange telecommunications services pursuant to authority granted in D.03-10-066 issued on October 22, 2003.

C. Xtension Services, Inc.

Xtension is a corporation founded in 2000 under the laws of the State of Delaware. Its offices are located at 30 South Treasure Drive, Tampa, Florida 33609. Jamie J. O'Steen and David H. Amis each own 50% of Xtension. Xtension holds domestic and international Section 214 authorizations from the FCC and is authorized to provide long distance telecommunications services in 13 states and local exchange telecommunications services in New Jersey. In California, Xtension is authorized to provide resold interexchange telecommunications services pursuant to authority granted in D.01-03-006 issued on March 5, 2001.

VI. Financial Showing

Applicants furnished under seal, as Exhibit C to the application, the most recent financial statements for FCI. These documents show FCI meets the Commission's financial standards applicable to parties seeking control of facilities-based carriers.

VII. Motion for Protective Order

Pursuant to Pub. Util. Code § 583 and General Order 66-C, Applicants request that the financial information and terms of the proposed transaction submitted in the application be kept under seal. Applicants represent that the information is proprietary and sensitive, and the information, if revealed, would place FCI at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

VIII. Public Interest Considerations

The sole issue in this proceeding is whether, upon the acquisition of control by FCI, First Communications and Xtension will continue to have

requisite managerial, financial, and technical support to provide service, and whether granting this application is otherwise consistent with the public interest.

Applicants state that following the change of control, First Communications and Xtension will continue to be managed by the existing executive management teams and management staffs of these utilities. Applicants provided biographies of the management teams as Exhibit B to the application.

IX. Discussion

Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854(a), which, in relevant part, states:

> No person or corporation . . . shall merge, acquire, or control . . . any public utility organized and doing business in this state without first securing authorization to do so from the commission . . . Any merger, acquisition, or control, without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).[2] The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.[3]

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, First Communications and Xtension will continue to operate as they have done in the past, using the same names and operating authorities. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of these entities to raise capital,

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[2] D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19.

[3] D.00-06-079, p. 13.

maintain and expand their services and operations in California. Third, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

VIII. Categorization and Need for Hearing

In Resolution ALJ 176-3183, dated November 30, 2006, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3183.

IX. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

X. Assignment of Proceeding

Rachelle Chong is the assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. First Communications is authorized by D.03-10-066 to provide resold interexchange services in California.

2. Xtension is authorized by D.01-03-006 to provide resold interexchange services in California.

3. FCI seeks authority to acquire control of First Communications and Xtension through purchase of stock of these utilities.

4. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

5. First Communications and Xtension will continue offering current services and use the same name and authority after the transfer of control.

6. First Communications and Xtension are current on reporting and transmitting the user fees applicable to their California operations.

7. Upon completion of the transaction, First Communications and Xtension will continue to be operated by the same existing management teams.

8. There is no opposition to this application.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.

2. This application should be approved and become effective immediately because it is not adverse to the public interest.

3. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. First Communications, Inc. (FCI) is authorized, pursuant to Pub. Util. Code §§ 851-854, to purchase stock in First Communications, LLC, and Xtension Services, Inc., and to thereby acquire control over these entities as more fully described in the application and exhibits attached to the application.

2. The request of FCI, to have the financial information filed with this application kept under seal is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned

Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

3. If FCI believes that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. FCI shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 30 days of completion of this transaction. A true copy of the instrument(s) of transfer shall be attached to the notification.

5. Application 06-11-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.