

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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KATHERINE E. BARKER MARSHALL

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NEW YORK, NY  
TYSONS CORNER, VA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ  
BRUSSELS, BELGIUM

AFFILIATE OFFICES  
MUMBAI, INDIA

August 17, 2006

RECEIVED

AUG 18 2006

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

VIA UPS

Pamela A. Bonrud  
Executive Director  
Public Utilities Commission  
Capitol Building, 1st Floor  
500 East Capitol Avenue  
Pierre, SD 57501-5070

Re: Application of First Communications, LLC To Provide Resold Interexchange Telecommunications Services and Notification of a Transfer of Assets, Including Customers from Acceris Management and Acquisition LLC to First Communications, LLC

Dear Ms. Bonrud:

Enclosed please find, for filing, one original and ten (10) copies of the Application of First Communications, LLC ("First") to Provide Resold Interexchange Services. Please note that *Exhibit C* of the Application contains confidential, proprietary, trade secret material. A Motion for Confidential Treatment is included with this Application.

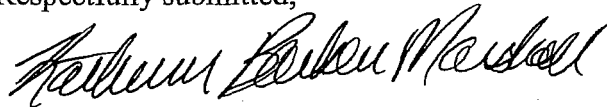
Additionally, enclosed please find one original and ten (10) copies of a Notification of a Transfer of Assets, including Customers from Acceris Management and Acquisition LLC to First. First's Application to Provide Resold Interexchange Services is being filed so that First may provide service to the customers it is obtaining from Acceris Management and Acquisition, LLC.

A check in the amount of \$250.00 is included with this filing to cover the requisite filing fee for First's Application to Provide Resold Interexchange Services.

Pamela A. Bonrud  
August 17, 2006  
Page Two

Please date stamp the duplicate of these filings and return in the self-addressed, postage prepaid envelope. Thank you for your assistance in this matter and please do not hesitate to contact me at (202) 342-8519 if you have any questions or concerns.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Katherine E. Barker Marshall".

Katherine E. Barker Marshall

Enclosures

**Before the  
STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**RECEIVED**

AUG 18 2006

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Application of )  
 )  
 ) Docket No. \_\_\_\_\_  
First Communications, LLC )  
 )  
for Authority to Provide Resold Interexchange )  
Telecommunications Services throughout )  
the State of South Dakota )

**APPLICATION**

First Communications, LLC (“First Communications”, “Company” or “Applicant”), by their counsel, respectfully requests that the South Dakota Public Utilities Commission (“Commission”) and pursuant to S.D.A.R. 20:10:24:02 and to all other relevant Rules and Regulations of the Commission that the Commission grant it a Certificate of Public Convenience and Necessity to provide resold interexchange telecommunications services throughout the State of South Dakota<sup>1</sup>.

In support of this Application, the Applicant provides the following information:

(1) First Communications, LLC is headquartered at 3340 West Market Street, Akron, Ohio, 44333, (216) 468-1614.

(2) Applicant will provide its services under the name of “First Communications, LLC”.

---

<sup>1</sup> Concurrently with this Application, First Communications, with Acceris Management and Acquisition LLC (“Acceris”) are filing a Notice of Transfer of Assets, including a customer base, from Acceris to First Communications. Accordingly, First Communications needs its certification to provide service to these customers within South Dakota.

(3) Applicant is a limited liability company formed under the laws of Ohio. First Communications was formed on July 1, 1998 under the laws of the State of Ohio, headquartered at 3340 West Market Street, Akron, OH 44333. A copy of First Communications' Certificate of Formation and the amendments thereto are appended hereto as *Exhibit A*. First Communications is qualified to conduct business within the State of South Dakota as a foreign limited liability company. A copy of the qualifying document is attached hereto as *Exhibit B*. 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' agent for service of process within the state of South Dakota is:

Corporation Service Company  
503 South Pierre Street  
Pierre, SD 57501.

(4) Applicant is not a partnership.

(5) By this Application, First Communications seeks authority to provide a full array of resold interLATA and intraLATA interexchange telecommunications services to business and residential customers in the State of South Dakota. Specifically, First Communications seeks authority to provide basic "1+" long distance services, otherwise known as Message Telecommunications Service ("MTS"), travel card services, and toll-free services. At a later date, First Communications may expand its long distance offerings, to include a broader range of interexchange products and services, and may, as economic conditions permit, seek authority to provide local exchange services. First Communications seeks authority to provide interexchange telecommunications services on a statewide basis. First Communications will not provide

operator assisted services and plans to provide its service on a resale basis. At this time, First Communications has no plans to construct outside plant or loop distribution facilities or any other facilities.

(6) First Communications plans to resell the services of Qwest, MCI and Global Crossing to provide interexchange service. However, the company may in the future resell the interexchange telecommunications services of other carriers appropriately authorized by the Commission. By offering service on a purely resale basis, First Communications reduces its need for significant capital expenditures.

(7) Applicant plans to offer its services on a statewide basis.

(8) First Communications has attached hereto as *Exhibit C* its audited balance sheets as of December 31, 2005 and 2004, and statements of income and cash flows for the years ended December 31, 2005, 2004 and 2003, filed under seal. First Communications is a privately-held company. Accordingly, its financial statements are not public information. As a privately-held company, it does not issue annual reports or submit any financial filings with the Securities and Exchange Commission. First Communications respectfully requests that its financial statements disclosed in connection with this Application be filed under seal, solely for the purpose of the Commission's *in camera* review, as per S.D. Admin. R. 20:10:01:41, et al.

(9) The designated contact for this application is:

Katherine Barker Marshall  
KELLEY, DRYE AND WARREN, LLP  
3050 K Street, N.W., Suite 400  
Washington, D.C. 20007  
Telephone: (202) 342-8519  
Facsimile: (202) 955-8415

Copies of all correspondence, notices, inquiries and orders in relation to this Application also should be sent to the following:

Mary Cegelski  
FIRST COMMUNICATIONS, LLC  
15166 Neo Parkway  
Garfield Heights, OH 44128  
Telephone: (216) 468-1614  
Facsimile: (216) 468-1680  
E-Mail: [mcegelski@firstcomm.com](mailto:mcegelski@firstcomm.com)

Copies of all correspondence, notice, inquiries and orders relating to tariffs,  
pricing and customer complaint issues should be sent to:

Mary Cegelski  
FIRST COMMUNICATIONS, LLC  
15166 Neo Parkway  
Garfield Heights, OH 44128  
Telephone: (216) 468-1614  
Facsimile: (216) 468-1680  
E-Mail: [mcegelski@firstcomm.com](mailto:mcegelski@firstcomm.com)

Copies of all correspondence, notice inquiries and orders relating to consumer  
issues, billing issues, technical service quality issues should be sent to:

Andre Duckworth  
Manager, Customer Relations  
First Communications, LLC  
3340 W. Market Street  
Akron, OH 44333  
Telephone: (330) 835-2312  
Toll Free: (800) 274-1015  
Facsimile: (888) 274-1015  
E-mail: [aduckworth@firstcomm.com](mailto:aduckworth@firstcomm.com).

First Communications will bill all of its end-user customers directly. The Company does not intend to utilize a billing agent in issuing bills for services rendered to end users. First Communications will not use a “billing clearinghouse” or other outside entity to issue bills to its customers. All bills sent to end-user customers will bear the company's name and provide a toll-free number for customer inquiries and complaints. First Communications has a toll free number available for its customers to contact the company with billing and service related issues: 1-800-274-1015.

Customers may contact the company with billing related issues between the hours of 8AM - 10PM EST (Monday to Friday) and 8AM – 5PM EST (Saturday and Sunday) by using the toll free number noted above or by writing to First Communications, LLC, 3340 W. Market Street, Akron, OH 44333.

(10) 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 100,000 customers located primarily in Ohio, Michigan, Indiana, Illinois, Pennsylvania and Florida. First Communications' 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 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 California, Florida and Kentucky. First Communications 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. First Communications has not been denied a request for certification to provide telecommunications services by any jurisdictional authority. With years of experience in the states mentioned above, First Communications has the financial, managerial and technical qualifications needed to provide quality telecommunications services to the Business customers in South Dakota acquired from Acceris. First Communications is also authorized by the Federal Communications Commission to provide domestic interstate and international telecommunications services. By this Application, First Communications is requesting authority from the Commission to provide long distance resale services in order to be able to serve the Business customers being acquired from Acceris.

(11) First Communications at this time has no plans to conduct marketing campaigns or advertising directed towards South Dakota customers, but rather plans to focus on serving the business customers acquired from Acceris. Accordingly, there are no current marketing materials applicable to First Communications' proposed South Dakota operations available at this time. First Communications, as a policy, does not engage multilevel marketing.

First Communications plans to offer services to business customers only, but may, in the future, offer services to residential customers as well.

(12) All of Applicant's services are competitive and therefore no cost support for its rates are provided.

(13) First Communications' Federal Tax ID number is: 34-1870807.

(14) Applicant has not had any complaints lodged against it by any state or federal agency for the unauthorized switching of customer's telecommunications provider and/or the act of charging customer for services that have not been ordered.



(15) Applicant respectfully requests that it be allowed to keep its books and records in accordance with Generally Accepted Accounting Principles (“GAAP”) as opposed to the Uniform System of Accounts for Telecommunications Carriers (“USOA”). First Communications has only operated as a competitive carrier and has never operated in a rate of return environment and is not subject to jurisdictional separations and other accounting methods traditionally applicable to the incumbent LECs. Without a waiver, First Communications would be required to maintain two sets of books, an extremely onerous requirement, especially since GAAP accurately reflects Applicant’s operations.

(16) First Communications’ management team includes individuals with substantive experience in successfully developing and operating telecommunications business. Consequentially, the company has the adequate internal technical resources to support its South Dakota operations. This expertise in the telecommunications industry makes First’s management team well-qualified to operate its interexchange operations in South Dakota. Specific details of the business and technical experience of First Communications’ management team are attached as *Exhibit D*, which contains biographies and a brief description of the business experiences of key management personnel who will be responsible for First Communications’ telecommunications services in South Dakota and throughout the United States.

Appended hereto as *Exhibit E*, please find the proposed initial tariff of First Communications. This tariff includes the same Business services, rates, terms and conditions as the existing Acceris tariff. Thus, the Business customers being transferred from Acceris to First Communications will not experience any change in their telecommunications services. The only change will be the new service provider: First Communications.

## **Conclusion**


First Communications hereby agrees to abide by all applicable statutes and all applicable Orders, Rules, and regulations entered and adopted by the Commission. Additionally, as a competitive provider of telecommunications services in South Dakota, First Communications respectfully requests that it be subject to the same streamlined regulatory treatment applicable to other competitive carriers.

A decision by the Commission to grant First Communications authority to provide resold interexchange telecommunications services is in the public interest. The Company is well qualified to operate as such a service provider in South Dakota. Consumers of telecommunications services in South Dakota will receive the benefits of downward pressure on prices, increased choice, improved quality of service and customer responsiveness, innovative service offerings, and access to increasingly advanced telecommunications technology. The market incentives for new and existing providers of telecommunications services will be improved through an increase in the diversity of suppliers and competition within the interexchange telecommunications market. Granting First Communications' Application would enhance the development of competition in the interexchange market and provide the consumers of South Dakota with all of the benefits described above.

WHEREFORE, the Applicant respectfully request that the Commission grant First Communications, LLC a Certificate of Public Convenience and Necessity to provide competitive resold interexchange telecommunications services in the State of South Dakota.

Respectfully submitted,

**First Communications, LLC**

By: 

Joan Griffin

Melissa Conway

Katherine Barker Marshall

Kelley, Drye & Warren LLP

3050 K Street, NY, Suite 400

Washington, D.C. 20007

Tel. (202) 342-8519

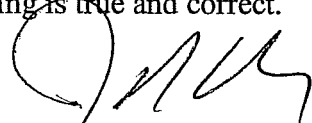
Fax: (202) 342-8415

Dated: August 17, 2006

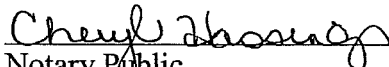
## VERIFICATION

I, Joseph R. Morris, am Chief Operating Officer of First Communications, LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to First Communications, LLC and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_

Subscribed and sworn to before me this 18<sup>th</sup> day of  
July 2006.

  
\_\_\_\_\_  
Notary Public

**Cheryl L. Hassinger**  
my commission expires  
**January 8, 2008**

My Commission expires: \_\_\_\_\_

# **EXHIBIT A**

## **CERTIFICATE OF FORMATION**

**UNITED STATES OF AMERICA  
STATE OF OHIO  
OFFICE OF THE SECRETARY OF STATE**

*I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show FIRST COMMUNICATIONS, LLC, an Ohio Limited Liability Company, Registration No. 1011207, was organized within the State of Ohio on July 01, 1998, is currently in FULL FORCE AND EFFECT upon the records of this office.*



*Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 7th day of July, A.D. 2006.*

*J. Kenneth Blackwell*  
Ohio Secretary of State

DATE	DOCUMENT NO	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
1. 7/8/1998	199818300442	LCA ARTICLES OF ORGANIZATION/DOM. LIMITED LIABILITY C	85.00	10.00	0.00	0.00	0.00
		<b>TOTAL</b>	<b>85.00</b>	<b>10.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Return To:  
 THE BUTLER REPORT COMPANY  
 ATTN D COMYSTOR  
 505 S HIGH ST STE 103  
 COLUMBUS, OH 43215-0000

cut along the dotted line



*The State of Ohio*  
 ♦ *Certificate* ♦

*Secretary of State - Bob Taft*

**1011207**

*It is hereby certified that the Secretary of State of Ohio has custody of the business records for FIRSTCOM, LLC and that said business records show the filing and recording of:*

Document(s)  
 ARTICLES OF ORGANIZATION/DOM. LIMITED LIABILITY CO

Document No(s):  
 199818300442

United States of America  
 State of Ohio  
 Office of the Secretary of State



Witness my hand and the seal of the Secretary  
 of State at Columbus, Ohio, This 1st day of  
 July, A.D. 1998

*Bob Taft*

Bob Taft  
 Secretary of State



Prescribed by  
Bob Taft, Secretary of State  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43266-0418  
Form LCA (July 1994)

Approved \_\_\_\_\_  
Date \_\_\_\_\_  
Fee \$85.00

ARTICLES OF ORGANIZATION

(Under Section 1705.04 of the Ohio Revised Code)  
Limited Liability Company

The undersigned, desiring to form a limited liability company, under Chapter 1705 of the Ohio Revised Code, do hereby state the following:

FIRST: The name of said limited liability company shall be FirstCom, LLC

*(the name must include the words "limited liability company", "limited", "Ltd" or "Ltd.")*

SECOND: This limited liability company shall exist for a period of perpetual  
existence

THIRD: The address to which interested persons may direct requests for copies of any operating agreement and any bylaws of this limited liability company is:

600 Superior Avenue, East, Suite 2100  
(street or post office box)  
Cleveland, Ohio 44114-2653  
(city, village or township) (state) (zip code)

Please check this box if additional provisions are attached hereto

Provisions attached hereto are incorporated herein and made a part of these articles of organization.



**FOURTH: Purpose (optional)**

IN WITNESS WHEREOF, we have hereunto subscribed our names, this 30<sup>th</sup> day of June, 19 98.

Signed: Shawn M. Riley Signed: \_\_\_\_\_  
 Shawn M. Riley, Authorized Representative  
 Signed: \_\_\_\_\_ Signed: \_\_\_\_\_  
 Signed: \_\_\_\_\_ Signed: \_\_\_\_\_

*(If insufficient space for all signatures, please attach a separate sheet containing additional signatures)*

**INSTRUCTIONS**

1. The fee for filing Articles of Organization for a limited liability company is \$85.00.
2. Articles will be returned unless accompanied by a written appointment of agent signed by all or a majority of the members of the limited liability company which must include a written acceptance of the appointment by the named agent.
3. A limited liability company must be formed by a minimum of two persons.
4. Any other provisions that are from the operating agreement or that are not inconsistent with applicable Ohio law and that the members elect to set out in the articles for the regulation of the affairs of the limited liability company may be attached.

[Ohio Revised Code Section 1705.04]



Prescribed by  
Bob Taft, Secretary of State  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43266-0418  
Form LCO (July 1994)

**ORIGINAL APPOINTMENT OF AGENT**  
(for limited liability company)

the authorized representative for

The undersigned, being at least a majority of the members of FirstCom, LLC, hereby appoint

Shawn M. Riley (name of limited liability company) to be the agent

(name of agent)  
upon whom any process, notice or demand required or permitted by statute to be served upon the limited liability company may be served. The complete address of the agent is:  
c/o McDonald, Hopkins, Burke & Haber Co., L.P.A.  
600 Superior Avenue, East, Suite 2100

(street address)  
Cleveland, Ohio 44114-2653  
(city, village or township) Note: P.O. Box addresses are not acceptable (zip code)

(member) Shawn M. Riley  
~~XXXXXXXX~~ Authorized Representative

(member) \_\_\_\_\_ (member) \_\_\_\_\_

(If insufficient space for all signatures, please attach a separate sheet containing additional signatures)

**ACCEPTANCE OF APPOINTMENT**

The undersigned, named herein as the statutory agent for FirstCom, LLC, hereby acknowledges and accepts the appointment of agent for said limited liability company.

Shawn M. Riley  
Agent's Signature  
Shawn M. Riley

**INSTRUCTIONS**



1. Articles of organization must be accompanied by an original appointment of agent R.C. 1705.06(B).
2. The agent for a limited liability company must be an individual who is a resident of Ohio, an Ohio corporation, or a foreign corporation holding an Ohio license as a foreign corporation. R. C. 1705.06(A)
3. An original appointment of agent form must be signed by at least a majority of the members of the limited liability company. R.C. 1705.06(B)

DATE	DOCUMENT NO	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
1. 1/19/1999	199901500191	LAM AMEND/ARTICLES-ORGANIZATION/DOM LIMITED LIAB. C	10.00	10.00	0.00	0.00	0.00
		TOTAL	10.00	10.00	0.00	0.00	0.00

Return To:  
CORPORATE SERVICES OF OHIO INC  
50 W BROAD ST STE 1120  
COLUMBUS, OH 43215-0000

cut along the dotted line



*The State of Ohio*  
 *Certificate* 

*Secretary of State - J. Kenneth Blackwell*

**1011207**

*It is hereby certified that the Secretary of State of Ohio has custody of the business records for FIRST COMMUNICATIONS, LLC and that said business records show the filing and recording of:*

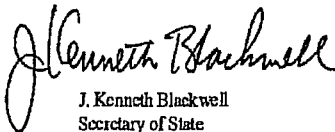
Document(s)  
AMEND/ARTICLES-ORGANIZATION/DOM LIMITED LIAB. CO

Document No(s):  
199901500191

United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the Secretary  
of State at Columbus, Ohio, This 14th day of  
January, A.D. 1999



  
J. Kenneth Blackwell  
Secretary of State

**CERTIFICATE OF AMENDMENT TO  
ARTICLES OF ORGANIZATION OF  
FIRSTCOM, LLC**

The undersigned, being a member and authorized representative of FirstCom, LLC, an Ohio limited liability company, organized on the 1st day of July, 1998, does hereby certify that the undersigned is duly authorized to execute this certificate, and hereby certifies that the Articles of Organization of the above-named limited liability company have been amended as follows:

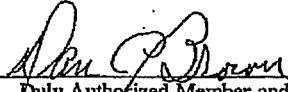
**AMENDMENT**

Article FIRST is hereby amended as follows:

**FIRST:** The name of said limited liability company shall be  
First Communications, LLC

IN WITNESS WHEREOF, the undersigned has executed this certificate this 30<sup>th</sup> day of  
December, 1998.

FIRSTCOM, LLC

By:   
Its: Duly Authorized Member and  
Representative

**RECEIVED**

JAN 14 1999

J. KENNETH BLACKWELL  
SECRETARY OF STATE

# **EXHIBIT B**

## **QUALIFICATION TO DO BUSINESS**

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### Certificate of Authority Limited Liability Company

ORGANIZATIONAL ID #: FL003040

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for a Certificate of Authority of **FIRST COMMUNICATIONS, LLC (OH)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application for certificate of authority.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this July 31, 2006.



*Chris Nelson*

Chris Nelson  
Secretary of State

SECRETARY OF STATE  
STATE CAPITOL  
500 E. CAPITOL AVE.  
PIERRE, S.D. 57501  
605-773-4845

CERTIFICATE OF AUTHORITY APPLICATION  
OF A  
FOREIGN LIMITED LIABILITY COMPANY

RECEIVED

JUL 31 '06

S.D. SEC. OF STATE

Filed this 31<sup>st</sup> day of July, 2006

- The name of the foreign limited liability company is: First Communications, LLC
- The name of the state or country under whose laws it is organized is: Ohio
- The street address and principal office is: 3340 West Market Street  
Akron, OH 44333
- The address of its initial designated office in South Dakota is: 503 South Pierre Street, Pierre, SD 57501
- The name and street address of its initial agent for service of process in South Dakota is: Corporation Service Company  
503 south Pierre Street, Pierre, SD 57501
- The date of organization is 7-1-1998, and the period of duration is: perpetual
- If the company is manager-managed, rather than member-managed, the name and address of each initial manager:  

Raymond Hexamer	3340 W. Market St.	AKRON, OH	44333
Marvin Sharpless	3340 W. Market St.	AKRON, OH	44333
Joseph R. Morris	3340 W. Market St.	AKRON, OH	44333
- Whether one or more of the members of the company are to be liable for its debts and obligations under a provision similar to SDCL 47-34A-303 (c).

This application must be signed by a member if the company is member-managed or by a manager if it's a manager-managed company.

Date 7-26-2006

MESHVP VP + CFO  
(Signature and Title)

The Consent of Appointment below must be signed by the registered agent.

**CONSENT OF APPOINTMENT BY THE REGISTERED AGENT**

I, Corporation Service Company, hereby give my consent to serve as the  
(name of registered agent)

registered agent for First Communications, LLC  
(limited liability company name)

Dated 7/28/06 Amy Schwal  
(signature)

FILING INSTRUCTIONS:

- FILING FEE \$550
- One original and one exact or conformed copy must be submitted
- The application must be accompanied by an original, currently dated *Certificate of Good Standing or Existence* from the Secretary of State in the state where it is organized.

**EXHIBIT C**

**FINANCIAL STATEMENTS**

**TRADE SECRET – SUBJECT TO MOTION FOR  
CONFIDENTIAL TREATMENT, PURSUANT TO**

**S.D. ADMIN. R. 20:10:01:40-42**



# EXHIBIT D

## MANAGEMENT BIOGRAPHIES

### **Ray Hexamer, Chief Executive Officer**

Ray Hexamer, joined First Communications in January of 2005 as the Chief Executive Officer. Ray has helped grow and manage businesses over his twenty-four year career. He was President and General Manager of WHBC Radio and was involved over the years in all aspects of that business from on-air, sales, financial, and management. Ray was a part of the investment group and CEO of SkyLan, a wireless internet provider, whose assets were recently acquired by First Communications. He is also a part of McKinley Communications Group, the majority investors for First Communications. Ray was named as one of the top five-presidents/general managers nationally by Radio Ink Magazine in 2002 and 2003. The magazine also chose him twice as one of their top sales managers of the year. He is involved in numerous community boards and was the 2001 General Chairman of The Pro Football Hall of Fame Festival. This position involved managing 3500 volunteers and 86 committees for the 19 day NFL Pro Football Hall of Fame Festival.

### **Joseph R. Morris, J.D., Chief Operating Officer**

Joe Morris played a vital role in the emergence of First Communications as one of the largest, most profitable and respected telecommunications companies in the Midwest. Mr. Morris joined First Communications in 1998 as Director of Corporate Operations, General Counsel. He later was promoted to V.P. of Corporate Operations and then Chief Operating Officer. Mr. Morris is responsible for First Communications overall operations, including service delivery, provisioning, network management, field technicians and information technology. He is also responsible for all acquisitions, legal affairs and setting regulatory strategy and direction for First Communications. Mr. Morris is active in several professional and community boards. Prior to joining First Communications, Mr. Morris was an attorney with Roetzel & Andress with a practice focused on public, corporate and international law. Mr. Morris studied economics at Queens University of Belfast and Franciscan University. He received his J.D. from University of Akron School of Law (magna cum laude). He also holds a Utility, Finance and Accounting Certificate from the Financial Accounting Institute.

## **Marvin Sharpless, Vice President and Chief Financial Officer**

Marvin Sharpless joined First Communications in 1997 and has responsibility for all the financial aspects of the company. Marv also worked at SBC for 13 years. His last recent position there was as Director of Corporate Accounting and Assistant Controller with responsibility for the financial integrity of SBC Ohio. Prior to joining SBC, Marvin served in the Accounting Department of the B.F. Goodrich Company and as an external auditor with Coopers & Lybrand in Cleveland, Ohio. Marvin, a Certified Public Accountant, graduated Magna Cum Laude from the University of Akron with a B.S. in Accounting. Marvin is also on the Board of Directors and Treasurer of the Summit County Red Cross, and was recently accepted into the 2005/2006 Class of Leadership Akron.

## **David W. Johnson, II, Vice President of Sales and Marketing**

David Johnson joined First Communications in 1989 and is responsible for all Sales and Marketing matters. David's 23 years of business experience serve as a platform to lead initiatives touching commercial and consumer markets as well as leading sales teams in: direct outside sales, direct inside sales, enterprise sales, indirect agent sales, and affinity focused sales. David holds a B.A. in Finance and a B.A. in Management, Magna Cum Laude from Walsh University. Prior to First Comm. he worked at The Timken Bearing and Steel Company for five years. David has been an active board member of Boy Scouts of America (Buckeye Council), Canton Urban League, and The Chapel in North Canton, North Canton Little League and Youth football.

# **EXHIBIT E**

## **PROPOSED INITIAL TARIFF**

**TARIFF APPLICABLE TO  
INTEREXCHANGE SERVICES  
WITHIN THE STATE OF SOUTH DAKOTA  
PROVIDED BY  
FIRST COMMUNICATIONS, LLC**

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Issued:  
Issued by:

Joseph R. Morris  
Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:

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**TELECOMMUNICATIONS SERVICES TARIFF**

**TITLE SHEET**

**SOUTH DAKOTA TELECOMMUNICATIONS TARIFF**

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service or facilities for Telecommunications Services furnished by First Communications, LLC ("First"), with principal offices at 3340 W. Market St., Akron, OH 44333. This tariff applies for services furnished within the State of South Dakota. This tariff is on file with the South Dakota Public Utilities Commission, and copies may be inspected, during normal business hours, at the company's principal place of business.

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**CONCURRING, CONNECTING OR**  
**OTHER PARTICIPATING CARRIERS**

- 1. **Concurring Carriers – None**
- 2. **Connecting Carriers – None**
- 3. **Other Participating Carriers – None**

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**CHECK SHEET**

The Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet (s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>REVISION</u>	<u>SHEET</u>	<u>REVISION</u>
1	Original	31	Original
2	Original	32	Original
3	Original	33	Original
4	Original	34	Original
5	Original	35	Original
6	Original	36	Original
7	Original	37	Original
8	Original	38	Original
9	Original	39	Original
10	Original	40	Original
11	Original	41	Original
12	Original		
13	Original		
14	Original		
15	Original		
16	Original		
17	Original		
18	Original		
19	Original		
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21	Original		
22	Original		
23	Original		
24	Original		
25	Original		
26	Original		
27	Original		
28	Original		
29	Original		
30	Original		

\* New or Revised Sheet

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**TARIFF FORMAT**

A. Sheet Numbering: Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between pages 11 and 12 would be page 11.1.

B. Sheet Revision Numbers: Revision numbers also appear in the upper right corner of each sheet where applicable. These numbers are used to indicate the most current page version on file with the Commission. For example, 4th Revised Sheet 13 cancels 3rd Revised Sheet 13. Consult the Check Sheet for the sheets currently in effect.

C. Paragraph Numbering Sequence: There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2.  
2.1  
2.1.1  
2.1.1.A  
2.1.1.A.1  
2.1.1.A.1.(a)  
2.1.1.A.1.(a).I  
2.1.1.A.1.(a).I.(i)  
2.1.1.A.1.(a).I.(i).(1)

D. Check Sheets: When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross reference to the current Revision Number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some sheets). The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on Commission file.

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**SYMBOLS**

The following are the only symbols used for the purposes indicated below:

- (C) to signify change in regulation
- (D) to signify a deletion
- (I) to signify a rate increase
- (L) to signify material relocated in the tariff
- (N) to signify a new rate or regulation
- (R) to signify a rate reduction
- (T) to signify a change in text, but no change in rate or regulation

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**SECTION 1 – TECHNICAL TERMS AND ABBREVIATIONS**

10XXX or 101XXXX Access Code – The Access Code is the 10XXX or 101XXXX Access number.

Access Line – An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to the Company's location or switching center.

Authorization Code – A numerical code, one or more of which may be assigned to a Customer, to enable the Company to identify the origin of the Customer so it may rate and bill the call. Automatic number identification (ANI) is used as the authorization code wherever possible.

Casual Calling – A dialing method that enables a Customer to reach the interexchange carrier of the Customer's choice even if the Customer is not a regular Customer of that carrier. The Customer utilizes a 10XXX or 101XXXX Access Code to make calls, and the Customer does not change its Primary Interexchange Carrier.

Commission – Used throughout this tariff to mean the South Dakota Public Utilities Commission.

Customer – The person, firm, corporation or other legal entity which orders the services of the Company and is responsible for the payment of charges and for compliance with the Company's tariff regulations.

Company or First – Used throughout this tariff to mean First Communications, LLC.

Dedicated Access – The Customer gains entry to the Company's services by a direct path from the Customer's location to the Company's point of presence.

DUC – DUC stands for Designated Underlying Carrier.

LEC – LEC stands for Local Exchange Carrier.

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**SECTION 1 – TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

Presubscribed Service – A service whereby the Customer can make long distance calls and the Customer must change its Primary Interexchange Carrier to the Company.

Resp. Org. – Responsible Organization or entity identified by Toll-Free service Customer that manages and administers records in the toll-free number database and management system.

Switched Access – The Customer gains entry to the Company's services by a transmission line that is switched through the local exchange carrier to reach the Company's point of presence.

Telecom Unit – A measurement of telecommunications service equivalent to one minute of usage between any two points within the State of South Dakota.

Telecommunications – The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Underlying Carrier – The telecommunications carrier whose network facilities provide the technical capability and capacity necessary for the transmission and reception of Customer telecommunications traffic.

U.S.F. – U.S.F. stands for Universal Service Fund.

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**SECTION 2 – RULES AND REGULATIONS****2.1 Undertaking of the Company**

This tariff contains the regulations and rates applicable to intrastate interexchange telecommunications services provided by the Company for telecommunications between points within the State of South Dakota. Services are furnished subject to the availability of necessary facilities, equipment and/or billing arrangements with the DUC and/or LEC, and subject to the terms and conditions of this tariff in compliance with limitations set forth in the Commission's rules. Necessary facilities and equipment may include, but are not limited to, facilities or equipment to be provided by the Company, connecting carriers, underlying carriers, owners and operators of transmission capacity leased to the Company or the LEC. The Company's services are provided on a statewide basis and are not intended to be limited geographically, however, all Switched Access services are only available in equal access areas. The selection of the DUC is made solely in the discretion of the Company. The Company offers service to all those who desire to purchase service from the Company consistent with all of the provisions of this tariff. Except for 101XXXX Access Service, Customers interested in the Company's services shall file a service application with the Company which fully identifies the Customer, the services requested and other information requested by the Company. The Company reserves the right to examine the credit record and check the references of all applicants and Customers. The Company may examine the credit profile/record of any applicant prior to accepting the service order or a Customer's deposit, if required. The service application and the deposit shall not in themselves obligate the Company to provide services or to continue to provide service if a later check of applicant's credit record is, in the opinion of the Company, contrary to the best interest of the Company. If service is denied, Customer deposits, if required, will be returned immediately. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer, to allow connection of a Customer's location to a service provided by the Company. The Customer shall be responsible for all charges due for such service arrangement.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.1.1 The services provided by the Company are not part of a joint undertaking with any other entity providing telecommunications channels, facilities, or services, but may involve the resale of the Message Toll Services (MTS) and Wide Area Telecommunications Services (WATS) of underlying common carriers subject to the jurisdiction of this Commission.
- 2.1.2 The rates and regulations contained in this tariff apply only to the services furnished by the Company and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carriers for use in accessing the services of the Company.
- 2.1.3 The Company reserves the right to limit the length of communications, to discontinue furnishing services, or limit the use of service necessitated by conditions beyond its control, including, without limitation: lack of satellite or other transmission medium capacity; the revision, alteration or repricing of the Underlying Carrier's tariffed offerings; or when the use of service becomes or is in violation of the law or the provisions of this tariff.

**2.2 Use of Services**

- 2.2.1 The Company's services may be used for any lawful purpose consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of services, subject to any limitations set forth in this Section 2.2.
- 2.2.2 The use of the Company's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another or in such a way as to unreasonably interfere with use by others is prohibited.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.2.3 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.4 The Company's services are available for use twenty-four hours per day, seven days per week.
- 2.2.5 The Company does not transmit messages, but the services may be used for that purpose.
- 2.2.6 The Company's services may be denied for nonpayment of charges or for other tariff violations.
- 2.2.7 Customers shall not use the service provided under this tariff for any unlawful purpose.
- 2.2.8 The Customer is responsible for notifying the Company immediately of any unauthorized use of services.

**2.3 Liability of the Company**

- 2.3.1 The Company shall not be liable for any claim, loss, expense or damage for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff, if caused by the Underlying Carrier, an act of God, fire, war, civil disturbance, act of government, or due to any other causes beyond the Company's control.
- 2.3.2 The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against any claim, loss, expense, or damage for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, trade name or service mark, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data or information transmitted.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.3.3 No agent or employee of any other carrier or entity shall be deemed to be an agent or employee of the Company.
  
- 2.3.4 It is understood and agreed that this tariff embodies the full understanding and agreement between the Company and the Customer regarding the services provided hereunder. No representation or understanding contrary to the provisions and rates of this tariff shall apply. The company, its officers, directors, employees, shareholders, and their respective heirs and assigns, are specifically excused and indemnified, saved and held harmless, by each Customer taking services under this tariff for any claim of misrepresentation, or errors or omissions made by sales representatives or sales agents.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

**2.4 Responsibilities of the Customer**

- 2.4.1 The Customer is responsible for placing any necessary orders and complying with tariff regulations. The Customer is also responsible for the payment of charges for services provided under this tariff.
- 2.4.2 The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by the Company on the Customer's behalf.
- 2.4.3 If required for the provision of the Company's services, the Customer must provide any equipment space, supporting structure, conduit and electrical power without charge to the Company.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.4.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to the Company and the Customer when required for the Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.
  
- 2.4.5 The Customer shall cause the temperature and relative humidity in the equipment space provided by Customer for the installation of the Company's equipment to be maintained within the range normally provided for the operation of microcomputers.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.4.6 The Customer shall ensure that the equipment and/or system is properly interfaced with the Company's facilities or services, that the signals emitted into the Company's network are of the proper mode, bandwidth, power and signal level for the intended use of the subscriber and in compliance with criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel, or degrade service to other Customers. If the Federal Communications Commission or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, the Company will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer fails to maintain the equipment and/or the system properly, with resulting imminent harm to the Company equipment, personnel or the quality of service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service.
- 2.4.7 The Customer must pay the Company for replacement or repair of damage to the equipment or facilities of the Company caused by negligence or willful act of the Customer or others, by improper use of the services, or by use of equipment provided by Customer or others.
- 2.4.8 The Customer must pay for the loss through theft of any the Company equipment installed at Customer's premises.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.4.9 If the Company installs equipment at Customer's premises, the Customer shall be responsible for payment of any applicable installation charge.
- 2.4.10 The Customer must use the services offered in this tariff in a manner consistent with the terms of this tariff and the policies and regulations of all state, federal and local authorities having jurisdiction over the service.

**2.5 Cancellation or Interruption of Services**

- 2.5.1 Without incurring liability, upon five (5) working days' (defined as any day on which the company's business office is open and the U.S. Mail is delivered) written notice to the Customer, the Company may immediately discontinue services to a Customer or may withhold the provision of ordered or contracted services:
- 2.5.1.A For nonpayment of any sum due the Company for more than thirty (30) days after issuance of the bill for the amount due, unless the charge is in dispute
- 2.5.1.B For violation of any of the provisions of this tariff,
- 2.5.1.C For violation of any law, rule, regulation, policy of any governing authority having jurisdiction over the Company's services, or
- 2.5.1.D By reason of any order or decision of a court, public service commission or federal regulatory body or other governing authority prohibiting the Company from furnishing its services.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

- 2.5.2 Without incurring liability, the Company may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and the Company's equipment and facilities and may continue such interruption until any items of noncompliance or improper equipment operation so identified are rectified.
  
- 2.5.3 Service may be discontinued by the Company without notice to the Customer, by blocking traffic to certain countries, cities or NXX exchanges, or by blocking calls using certain Customer authorization codes, when the Company deems it necessary to take such action to prevent unlawful use of its service. The Company will restore service as soon as it can be provided without undue risk, and will, upon request by the Customer affected, assign a new authorization code to replace the one that has been deactivated.
  
- 2.5.4 The Customer may terminate service upon thirty (30) days written notice for the Company's standard month to month contract. Customer will be liable for all usage on any of the Company's service offerings until the Customer actually leaves the service. Customers will continue to have Company usage until the Customer notifies its local exchange carrier and changes its long distance carrier. Until the Customer so notifies its local exchange carrier, it shall continue to generate and be responsible for long distance usage.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

**2.6 Credit Allowance**

2.6.1 Credit may be given for disputed calls, on a per call basis.

**2.7 Restoration of Service**

The use and restoration of service shall be in accordance with the priority system specified in part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

**2.8 Deposit**

The Company does not require deposits.

**2.9 Advance Payments**

The Company does not require advance payments.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)****2.10 Payment and Billing**

- 2.10.1 Service is provided and billed on a billing cycle basis, beginning on the date that service becomes effective. Billing is payable upon receipt. A late fee will be assessed on unpaid amounts 30 days after rendition of bills.
- 2.10.2 The customer is responsible for payment of all charges for services furnished to the Customer, as well as to all persons using the Customer's codes, exchange lines, facilities, or equipment, with or without the knowledge or consent of the Customer. The security of the Customer's Authorization Codes, presubscribed exchange lines, and direct connect facilities is the responsibility of the Customer. All calls placed using direct connect facilities, presubscribed exchange lines, or Authorization Codes will be billed to and must be paid by the Customer.
- 2.10.3 All bills are presumed accurate, and shall be binding on the customer unless objection is received by the Company in writing within the applicable contract law statute of limitations. No credits, refunds, or adjustments shall be granted if demand therefore is not received by the Company in writing within such applicable contract law statute of limitations.
- 2.10.4 The Company may utilize direct billing and LEC billing. The selection of the billing option is made by the Company. With LEC billing, the Customer's charges for Service(s) are billed with the Customer's bill for local service. If LEC billing is utilized, the rules and regulations applying to rendering and payment of the bill and late charges are the same as covered in the applicable LEC tariff. The Company will make every effort to post any credit due to the Customer account(s) on the Customer's next LEC bill. However, based on the date of the resolution of a dispute and the date credits must be provided to the LEC, it may be two or more billing cycles before a credit will be issued. The Company's name and toll-free telephone number will appear on the Customer's bill.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)**

2.10.5 If the Customer chooses to pay by credit card, the Customer agrees to the rules governing that payment option, including applicable limits on the amount of Service that may be used before making a payment. No additional notice or consent is required before the Company invoices your credit card or debits the account for all amounts due to the Company. Customer will be notified of any limits that are imposed. If such limits are imposed, Customer may be required to pay for Service with a valid major credit card. The Company may stop offering this option at any time upon notice to the Customer. The Company reserves the right to authorize a credit card payment before the end of the billing cycle if the customer shows unusual use of service, including, without limitation, excessive use of service, abnormal calling patterns or high international termination.

**2.11 Collection Costs**

In the event Company is required to initiate legal proceedings to collect any amounts due to Company, or to enforce any judgment obtained against a Customer, or for the enforcement of any other provision of this tariff or applicable law, Customer shall, in addition to all amounts due, be liable to Company for all reasonable costs incurred by Company in such proceedings and enforcement actions, including reasonable attorneys' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to the Company, will be determined by a court of competent jurisdiction or by the Commission.

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**SECTION 2 – RULES AND REGULATIONS (cont'd)****2.12 Taxes**

All federal, state and local taxes, assessments, surcharges, or fees, including sales taxes, use taxes, gross receipts taxes, and municipal utilities taxes, are billed as separate line items and are not included in the rates quoted herein.

**2.13 Late Charge**

A late fee of the greater of \$5.95 or 1.5% per month will be charged on any past due balances.

**2.14 Returned Check Charge**

A fee of \$20.00 will be charged whenever a check or draft presented for payment for service is not accepted by the institution on which it is written.

**2.15 Reconnection Charge**

A reconnection fee of \$25.00 per occurrence will be charged when service is reestablished for Customers which have been disconnected due to non-payment. Payment of the reconnection fee and any other outstanding amounts will be due in full prior to reconnection of service.

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**SECTION 3 – DESCRIPTION OF SERVICE****3.1 Computation of Charges**

- 3.1.1 The total charge for each completed call may be a variable measured charge dependent on the duration, distance and/or time of day of the call. The variable measured charge is specified as a rate per minute which is applied to each minute. All calls are measured in increments as set forth in the Rates Section of this tariff. For all calls, fractions of an increment are rounded up to the next whole increment. For example, a call with a one (1) minute increment lasting 35 seconds will be rounded to one (1) minute. Calls with charges that include a fraction of a cent .5 or greater will be rounded to the next highest cent. For example, a Customer making a call with a computed charge of \$1.434 will be charged \$1.43 and a Customer making a call with a computed charge of \$1.435 will be charged \$1.44.
- 3.1.2 Where mileage bands appear in a rate table, rates for all calls are based upon the airline distance between the originating and terminating points of the call, as determined by the vertical and horizontal coordinates associated with the exchange (the area code and three digit central office code) associated with the originating and terminating telephone numbers. If the Customer obtains access to the Company's network by a dedicated access circuit, that circuit will be assigned an exchange for rating purposes based upon the Customer's main telephone number at the location where the dedicated access circuit terminates. The vertical and horizontal (V & H) coordinates for each exchange and the airline distance between them will be determined according to industry standards.

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**SECTION 3 – DESCRIPTION OF SERVICE (cont'd)**

- 3.1.3 Timing begins when the called station is answered and two way communication is possible, as determined by standard industry methods generally in use for ascertaining answer, including hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. Recognition of answer supervision is the responsibility of the Underlying Carrier. Timing for each call ends when either party hangs up. The Company will not bill for uncompleted calls.
- 3.1.4 If the Customer uses a calling plan with a monthly recurring charge, that monthly charge is charged for every billing or calendar month in which a customer uses the service as defined by placing a call from a working telephone number.

**3.2 Customer Complaints and/or Billing Disputes**

Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

3340 W. Market St.  
Akron, OH 44333  
800-274-1015

An objection to billed charges should be reported promptly to the Company. Adjustments to Customers' bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate.

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**SECTION 3 – DESCRIPTION OF SERVICE (cont'd)**

The Company will respond within seventy two (72) hours of receipt of an inquiry. If the Customer is dissatisfied with the Company's response to a complaint or inquiry, the Customer may file a complaint with the Commission for resolution of the conflict. The South Dakota Public Utilities Commission can be reached at:

500 East Capitol  
Pierre, SD 57501-5070  
(605) 773-3201  
(800) 332-1782  
TTY through Relay Service South Dakota (800) 877-1113

If a Customer accumulates more than One Dollar of undisputed delinquent Company 800 Service charges, the Company Resp. Org. reserves the right not to honor that Customer's request for a Resp. Org. change until such undisputed charges are paid in full.

The Company reserves the right to suspend or cancel without advance written notice and without any liability whatsoever, the provision of Toll-Free Service to any Toll-Free Service customer if the Company determines in its sole discretion that the customer is using the Toll Free Service to make or permit any telephone facility under such customer's control to be used for any purpose or activity including, calling card platforms, prepaid calling card platforms, any obscene, indecent or harassing purpose or activity, prohibited by Section 223 of the Communications Act of 1934, as amended. (Calling card platform, debit card platform)

**3.3 Level of Service**

A Customer can expect end to end network availability of not less than 99% at all times for all services.

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Issued:  
Issued by:

Joseph R. Morris  
Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:

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**SECTION 3 – DESCRIPTION OF SERVICE (cont'd)****3.4 Service Offerings****3.4.1 Presubscribed 1+ Dialing**

This service permits Customers to originate calls via switched or dedicated access lines, and to terminate intrastate calls. The customer dials "1+" followed by "ten digits". The customer is presubscribed to the Company's service.

**3.4.2 Casual Calling**

This service permits Customers to originate calls via switched access lines, and to terminate intrastate calls via a 10XXX or 101XXXX Access Code. The Customer dials the Access Code followed by "1+ ten digits". This service is Non Primary Interexchange Carrier Service. Non Primary Interexchange Carrier Service is available to residences and businesses, except hospitals, payphones, hotels and in-mate only facilities, that demonstrate credit-worthiness.

**3.4.3 Travel Cards**

The Customer utilizes an 11 digit "toll-free" access number established by the Company to access a terminal. Upon receiving a voice prompt, the Customer uses push button dialing to enter an identification code assigned by the Company, and the ten digit number of the called party.

**3.4.4 Toll-Free Service**

This service is inbound calling only where an 800, 888 or other toll-free prefix number rings into a Customer's premise routed to a specific telephone number or terminated over a dedicated facility.

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**SECTION 3 – DESCRIPTION OF SERVICE (cont'd)****3.4.5 Directory Assistance.**

Access to long distance directory assistance is obtained by dialing 1 + 555-1212 for listings within the originating area code and 1 + (area code) + 555-1212 for other listings. When more than one number is requested in a single call, a charge will apply for each number requested. A charge will be applicable for each number requested, whether or not the number is listed or published. Directory assistance is available to any Customer that has access to the directory assistance bureau of the DUC.

**3.4.6 Specialized Pricing Arrangements.**

Customized service packages and competitive pricing packages at negotiated rates may be furnished on a case by case basis in response to requests by Customers to the Company for proposals or for competitive bids. Service offered under this tariff provision will be provided to Customers pursuant to contract. Unless otherwise specified, the regulations for such arrangements are in addition to the applicable regulations and prices in other sections of the tariff. Specialized rates or charges will be made available to similarly situated Customers on a non discriminatory basis.

**3.4.7 Emergency Call Handling Procedures**

Emergency "911" calls are not routed to company, but are completed through the local network at no charge.

**3.4.8 Promotional Offerings**

The Company may, from time to time, make promotional offerings to enhance the marketing of its services. These offerings may be limited to certain dates, times and locations. The Company will notify the Commission of such offerings as required by Commission rules and regulations.

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Chief Operating Officer  
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**SECTION 4 – RATES**

**4.1 Presubscribed 1+ Dialing – COMMERCIAL**

**Premier Business**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$6.95 applies

A low usage fee of \$5.95 applies to monthly usage under \$25

**Premier Business Summer Savings w/WWB**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$4.95 applies

A low usage fee of \$5.95 applies to monthly usage under \$25

**Premier Business Free Month**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

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Akron, OH 44333

Effective:

**SECTION 4 – RATES (cont'd)**

**4.1 Presubscribed 1+ Dialing – COMMERCIAL (cont'd)**

**Business Mexico**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A low usage fee of \$3.95 applies to monthly usage under \$35

**Simplicity Business**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

**Simplicity Business w/WWB**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$4.95 applies

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Akron, OH 44333

Effective:



**SECTION 4 – RATES (cont'd)**

**4.1 Presubscribed 1+ Dialing – COMMERCIAL (cont'd)**

**Elite Business**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A low usage fee of \$2.50 applies to monthly usage under \$5.00

**Elite Business w/WWB**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$4.95 applies

A low usage fee of \$3.95 applies to monthly usage under \$25

**Premier Business Summer Savings \$50**

\$.179per minute

Billed in six second increments with an 18 second initial charge

**Business Connections Standard**

\$.1803 per minute

Billed in six second increments with an 18 second initial charge

**RSL Integrated**

\$0.279 per minute

Billed in six second increments

A Low Usage Fee of \$2.50 applies to monthly usage under \$10.00

Monthly PICC Fee of \$4.31 applies

**Transpoint**

\$0.279 per minute

Billed in six second increments with an 18 second initial charge

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Issued by:

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Chief Operating Officer  
First Communications, LL  
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Akron, OH 44333

Effective:

---

**SECTION 4 – RATES (cont'd)**

**4.2 Casual Calling – COMMERCIAL**

**Premier Business**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$6.95 applies

A low usage fee of \$5.95 applies to monthly usage under \$25

**Premier Business Summer Savings w/WWB**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$4.95 applies

A low usage fee of \$5.95 applies to monthly usage under \$25

**Premier Business Free Month**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

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Akron, OH 44333

Effective:

**SECTION 4 – RATES (cont'd)**

**4.2 Casual Calling – COMMERCIAL (cont'd)**

**Business Mexico**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A low usage fee of \$3.95 applies to monthly usage under \$35

**Simplicity Business**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

**Simplicity Business w/WWB**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$4.95 applies

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Akron, OH 44333

Effective:

**SECTION 4 – RATES (cont'd)**

**4.2 Casual Calling – COMMERCIAL (cont'd)**

**Elite Business**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A low usage fee of \$2.50 applies to monthly usage under \$5.00

**Elite Business w/WWB**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

A monthly recurring charge of \$4.95 applies

A low usage fee of \$3.95 applies to monthly usage under \$25

**Premier Business Summer Savings \$50**

\$.179 per minute

Billed in six second increments with an 18 second initial charge

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Akron, OH 44333

Effective:

**SECTION 4 – RATES (cont'd)**

**4.2 Casual Calling – COMMERCIAL (cont'd)**

**Business Connections Standard**

\$ .1803 per minute

Billed in six second increments with an 18 second initial charge

**RSL Integrated**

\$0.279 per minute

Billed in six second increments

A Low Usage Fee of \$2.50 applies to monthly usage under \$10.00

Monthly PICC Fee of \$4.31 applies

**Transpoint**

\$0.279 per minute

Billed in six second increments with an 18 second initial charge

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Effective:

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**SECTION 4 – RATES (cont'd)**

**4.3 Travel Cards – COMMERCIAL**

**Premier Business**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

**Premier Business Summer Savings w/WWB**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

**Premier Business Free Month**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

**Business Mexico**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

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Joseph R. Morris  
Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:

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**SECTION 4 – RATES (cont'd)**

**4.3 Travel Cards – COMMERCIAL (cont'd)**

**Simplicity Business**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

**Simplicity Business w/WWB**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

**Elite Business**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

A low usage fee of \$2.50 applies to monthly usage under \$5.00

**Elite Business w/WWB**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

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Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:

**SECTION 4 – RATES (cont'd)**

**4.3 Travel Cards – COMMERCIAL (cont'd)**

**Premier Business Summer Savings \$50**

\$0.099 per minute

Billed in six second increments with an 18 second initial charge

**RSL Integrated**

\$0.279 per minute

Billed in six second increments

A Low Usage Fee of \$2.50 applies to monthly usage under \$10.00

Monthly PICC Fee of \$4.31 applies

**Transpoint**

\$0.279 per minute

Billed in six second increments with an 18 second initial charge

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Issued:  
Issued by:

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Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:



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**SECTION 4 – RATES (cont'd)**

**4.4 Toll-Free Service – COMMERCIAL**

**Premier Business**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**Premier Business Summer Savings w/WWB**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**Premier Business Free Month**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**Business Mexico**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**Simplicity Business**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

---

Issued:  
Issued by:

Joseph R. Morris  
Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:

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**SECTION 4 – RATES (cont'd)**

**4.4 Toll-Free Service – COMMERCIAL (cont'd)**

**Simplicity Business w/WWB**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**Elite Business**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

A low usage fee of \$2.50 applies to monthly usage under \$5.00

**Elite Business w/WWB**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**Premier Business Summer Savings \$50**

\$0.15 per minute

Billed in six second increments with an 18 second initial charge

**RSL Integrated**

\$0.279 per minute

Billed in six second increments

A Low Usage Fee of \$2.50 applies to monthly usage under \$10.00

Monthly PICC Fee of \$4.31 applies

**Transpoint**

\$0.279 per minute

Billed in six second increments with an 18 second initial charge

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Akron, OH 44333

Effective:

**SECTION 4 – RATES (cont'd)**

**4.5 Directory Assistance**

\$1.50

**4.6 Returned Check Charge**

\$20.00

**4.7 Rate Periods**

	Monday – Friday	Sat.	Sun.
8 a.m. to 5 p.m.*	Daytime Rate Period		
5 p.m. to 11 P.M.*	Evening Rate Period		Evening Rate Period
11 p M. to 8 a.m.*	Night/Weekend Rate Period		

\* To, but not including

When a message spans more than one rate period, total charges for the minutes in each rate period are calculated and the results for each rate period are totaled to obtain the total message charge. If the calculation results in a fractional charge, the amount will be rounded down to the lower cent.

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Effective:

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**SECTION 4 – RATES (cont'd)****4.8 Payphone Dial Around Surcharge**

A dial around surcharge of \$0.75 per call will be added to any completed INTRASTATE toll access code and subscriber Toll-Free 800/888 type calls placed from a public or semi public payphone.

**4.9 Universal Service Fund Assessment & Presubscribed Interexchange Carrier Charge**

The Customer will be assessed a monthly Universal Service Fund Contribution charge on all telecommunications services, which in no event shall be less than the prevailing contribution percentage rate charged the Company on intrastate traffic by the Universal Service Administrative Company (or any successor) or any state agency or its administrator. A Presubscribed Interexchange Carrier Charge ("PICC") applies on a monthly basis to all Customer monthly bills at the prevailing rate.

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Issued:  
Issued by:

Joseph R. Morris  
Chief Operating Officer  
First Communications, LL  
3340 W. Market Str.  
Akron, OH 44333

Effective:

**BEFORE THE  
STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**RECEIVED**

AUG 18 2006

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

In the Matter of the Application of )  
 )  
**First Communications, LLC** ) Docket No. \_\_\_\_\_  
 )  
for a Authority to Provide )  
Resold Interexchange Telecommunication )  
Services in the State of South Dakota )

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**REQUEST FOR CONFIDENTIAL TREATMENT**

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**INTRODUCTION**

First Communications, LLC (“First Communications” or “Movant”), by its attorneys and pursuant to S.D. ADMIN. R. 20:10:01:40-42, hereby files this Request for Confidential Treatment (“Request”) in the above-captioned proceeding. First Communications submits this Request for the purpose of seeking the confidential treatment of certain commercially-sensitive financial information, which has been appended as *Exhibit C* to its Application for a Certificate of Public Convenience and Necessity to Provide Resold Interexchange Services in the State of South Dakota (“Application”). Because the instant Request is an inseparable part of the Application, it is being filed concurrently with Movant’s Application.

In support of this Request, First Communications states the following:

1. The exact legal name, address, and telephone number of the Movant are:

First Communications, LLC  
3340 West Market Street  
Akron, OH 44333  
Telephone: (216) 468-1614  
Facsimile: (216) 468-1680

2. The designated contact for this Request is:

Katherine Barker Marshall  
KELLEY DRYE & WARREN LLP  
3050 K Street NW, Suite 400  
Washington, D.C. 20007  
Telephone: (202) 342-8519  
Facsimile: (202) 342-8451

All correspondence, notice, orders and inquiries regarding the processing of this Application should be sent to:

Katherine Barker Marshall  
KELLEY DRYE & WARREN LLP  
3050 K Street NW, Suite 400  
Washington, D.C. 20007  
Telephone: (202) 342-8519  
Facsimile: (202) 342-8451

With a copy to:

Mary Cegelski  
FIRST COMMUNICATIONS, LLC  
15166 Neo Parkway  
Garfield Heights, OH 44128  
Telephone: (216) 468-1614  
Facsimile: (216) 468-1680  
Telephone: (216) 468-1614  
Facsimile: (216) 468-1680

The corporate contact for consumer issues or customer complaints is:

Andre Duckworth  
Manager, Customer Relations  
First Communications, LLC  
3340 W. Market Street  
Akron, OH 44333  
Telephone: (330) 835-2312  
Toll Free: (800) 274-1015  
Facsimile: (888) 274-1015

## **I. DESCRIPTION OF CONFIDENTIAL INFORMATION**

3. SDCL § 49-31-3 requires telecommunications applicants seeking the authority to provide competitive interexchange telecommunications services as public utilities to provide financial information in support of their ability to provide the services requested in their applications. In conformity with these rules, Navigator has appended to the above-referenced Application as *Exhibit C* its most recent annual financial statements. Because *Exhibit C* contains highly-confidential and strictly-proprietary information, the public disclosure of which potentially may result in direct and immediate harm to the competitive position of Navigator in South Dakota and elsewhere, Navigator seeks the confidential treatment of this information.

## **II. GROUNDS FOR CLAIM OF CONFIDENTIAL TREATMENT**

4. First Communications is a privately-held limited liability company presently immune from a legal obligation to prepare or submit financial statements to any public entity. As such, the financial statements set forth in *Exhibit C* to Movant's Application are not readily ascertainable by persons external to the Company.

5. Because Movant's financial statements contain confidential and commercially-sensitive information from which its competitors may derive economic value, First Communications actively seeks to protect such material from public disclosure. First Communications derives independent economic value from the fact that significant, detailed and proprietary information regarding its financial structure and current financing activities is unknown to its competitors. Given this fact, the disclosure of this information could provide existing and potential competitors, including competitive local exchange carriers ("CLECs"), incumbent local exchange carriers ("ILECs"), independent local exchange carriers, and interexchange carriers ("IXCs") in South Dakota, as well as in other states in which First

Communications provides or intends to provide telecommunication services, with an unfair and undeserved competitive advantage over First Communications and its affiliates.

### **III. PERIOD OF NONDISCLOSURE**

6. Navigator requests that the material contained in *Exhibit C* be held confidential for a period of three (3) years.

### **CONCLUSION**

7. The information for which confidential treatment is sought in this Application is both private and competitively-sensitive. The direct harm that could be caused to First Communications as a result of any such disclosure is real and not speculative. Moreover, to date, no other jurisdiction or governmental agency has required First Communications to make its financial statements available to the public. For all of these reasons, First Communications' financial statements should be protected from public disclosure.



WHEREFORE, First Communications, LLC respectfully requests that the Commission grant its Request for Confidential Treatment with respect to *Exhibit C* of its Application for a Certificate of Public Convenience and Necessity to Provide Resold Interexchange Telecommunications Services in the State of South Dakota.

Respectfully submitted,

**First Communications, LLC**

By: 

Joan Griffin  
Melissa Conway  
Katherine Barker Marshall  
Kell y, Drye & Warren LLP  
3050 K Street, NY, Suite 400  
Washington, ,D.C. 20007  
Telephone: (202) 342-8519  
Facsimile:: (202) 342-8415

Its Attorneys

August 17, 2006

## VERIFICATION

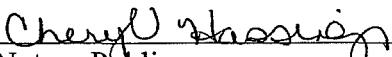
I, Joseph R. Morris, am Chief Operating Officer of First Communications, LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to First Communications, LLC and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



---

Subscribed and sworn to before me this 18<sup>th</sup> day of July 2006.

  
Notary Public

**Cheryl L. Hassinger**  
my commission expires  
**January 8, 2008**

My Commission expires: \_\_\_\_\_

**KELLEY DRYE & WARREN LLP**  
1200 19TH STREET, N.W.  
WASHINGTON, DC 20036

8453

15-122/540  
BRANCH 00480

DATE August 16, 2006

PAY  
TO THE  
ORDER OF South Dakota Public Utilities Commission

\$ 250.00

Two Hundred Fifty and xx/100

DOLLARS

Security features included. Details on back.

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TC06-147  
First Communications, LLC

**CONFIDENTIAL**

**#** 1