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March 2, 2000

FILED

MAR 6 2000

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65101

Missouri Public
Service Commission

RE: See Case No. TC-2000-375

Dear Mr. Roberts:

Enclosed please find an original and fifteen (15) Applications to Participate Without Intervention filed on behalf of Cybertel Cellular Telephone Company and Cybertel RSA Limited Partnership d/b/a Ameritech CellularTM. Please file this Application in your usual manner and return the extra enclosed copy with the date of filing stamped thereon directly to the undersigned in the enclosed self-addressed stamped envelope at your earliest convenience.

Should you have any questions with respect to this filing, please contact me. Thank you for your attention to this matter.

Very truly yours,

Thomas E. Pulliam

Thomas E. Pulliam

TEP\wh
Enclosure

cc: Stephanie S. Cassioppi
Jef Leary
Counsel of Record

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

MAR 6 2000

Modern Telecommunications, Co., Northeast)
Missouri Telephone Co., Mid-Missouri)
Telephone Co., and MoKan Dial, Inc.,)
)
Complainants,)
)
vs.)
)
Southwestern Bell Telephone Company,)
)
Respondent.)

Missouri Public
Service Commission

Case No. TC-2000-375

APPLICATION TO PARTICIPATE WITHOUT INTERVENTION

COMES NOW Cybertel Cellular Telephone Company and Cybertel RSA Limited Partnership d/b/a Ameritech CellularTM ("Ameritech CellularTM") and, pursuant to 4 CSR 240-2.075(5) of the rules and regulations of the Missouri Public Service Commission ("Commission"), hereby requests the Commission to allow it to participate without intervention in this docket. In support of its application, Ameritech CellularTM states as follows:

1. Ameritech CellularTM provides cellular telephone service in the St. Louis CGSA and in Missouri RSAs Nos. 8, 12, 18 and 19 through licenses duly issued by the Federal Communications Commission ("FCC"). "Ameritech CellularTM" is a trademark owned by Ameritech Corporation and used pursuant to a license from Ameritech Corporation.

2. Ameritech CellularTM requests that the following persons be added to the official service list for this proceeding and that all correspondence, pleadings, orders, decisions and communications regarding this proceeding be sent to:

James F. Mauzé, Esq.
Thomas E. Pulliam, Esq.
Ottsen, Mauzé, Leggat & Belz, L.C.
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(847) 619-5065
(847) 706-7601 (facsimile)

Mr. Jef Leary
Asst. Director-Network Strategies & Contracts
Ameritech CellularTM
1515 Woodfield Road, Suite 1400
Schaumburg, Illinois 60193
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3. Ameritech CellularTM has contacted various Complainants, from time to time, to ascertain their intentions of entering into interconnection agreements which would establish, among other things, the rates which would be charged Ameritech CellularTM for terminating wireless telecommunications traffic in Complainants' exchanges.

4. Despite clear and unambiguous language of the FCC that wireless traffic which originates and terminates within a Major Trading Area ("MTA") must be billed and charged transport and termination rates as opposed to interstate and intrastate access rates¹, Complainants refused to discuss any terms and conditions of interconnection which did not include the right for Complainants to impose full access charges for wireless traffic that originated and terminated within the same MTA. Since Complainants refused to modify this position, Ameritech CellularTM was unable to reach agreements with any of the Complainants unless it would agree to pay Complainants' access charges for termination of intraMTA wireless traffic, a practice expressly prohibited by the FCC. Unable to overcome Complainants' refusal to negotiate in

¹ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98 (Released August 8, 1996), at ¶ 1036

good faith, Ameritech CellularTM has been unable to execute an agreement for interconnection with any of the Complainants.

5. In July, 1999, Complainants began sending invoices to Ameritech CellularTM for intraMTA traffic terminated in Complainants' exchanges. The amounts due in said invoices were calculated using Complainants' access charges multiplied by Ameritech CellularTM minutes of usage, even though the FCC outlawed imposition of these access charges on this type of traffic years earlier. Despite having no legitimate authority to support their position to charge Ameritech CellularTM access rates for intraMTA traffic, Complainants continued to send invoices to Ameritech CellularTM requesting payment for intraMTA wireless traffic terminating in their exchanges based upon access charges.

6. Believing in good faith that the invoices tendered by the Complainants had no basis or support under law, Ameritech CellularTM has refused to pay such invoices.

7. On January 27, 2000, this Commission entered its Report and Order in Case No. TT-99-428 wherein it expressly rejected the Complainants' position that access charges were applicable to intraMTA wireless traffic which terminated in their exchanges. Complainants' Motion for Rehearing filed in said docket has also been denied by the Commission (See TT-99-428, Report and Order dated February 29, 2000, p.2).

8. In the instant proceeding (which appears to be nothing more than an attempt to end-run the Commission's Report and Order in TT-99-428), Complainants allege certain sums being due and owing to them by Ameritech CellularTM. (See paragraphs 12, 15, 18 and 21 of the Joint Complaint). Since Southwestern Bell Telephone Company ("SWBT") may have certain indemnification rights against Ameritech CellularTM under Ameritech Cellular'sTM interconnection agreement with SWBT, any decision adverse to SWBT may negatively impact

Ameritech CellularTM. Therefore, Ameritech CellularTM undeniably has an interest in this proceeding different from that of the general public.

9. Ameritech CellularTM agrees with and herewith joins in the Motion to Dismiss filed by SWBT on January 27, 2000, and SWBT's supplement to said Motion to Dismiss filed after this Commission's Report and Order was issued in TT-99-428, and adopts the reasoning set forth by SWBT as to why the Joint Complaint should be dismissed.

10. In addition, Ameritech CellularTM submits that the Joint Complaint should be dismissed because it is premature. The only invoices Ameritech CellularTM has received from the Complainants are for charges for termination of intraMTA wireless traffic calculated using the Complainants' access charges. This practice is expressly and explicitly prohibited by the FCC and this Commission. Since the Complainants' invoices to Ameritech CellularTM have been calculated using these unauthorized charges, it is Ameritech Cellular'sTM position that, until such time as an agreed upon and a lawful charge has been negotiated between Ameritech CellularTM and the individual complaining parties, the amounts due and owing by Ameritech CellularTM to each of the Complainants is not determinable. If the amount in controversy cannot be ascertained as to Ameritech CellularTM, then the Complainants clearly have no right to seek compensation of an indeterminate amount from SWBT. As such, this proceeding by Complainants is premature and should be dismissed.

11. At this point in time, Ameritech CellularTM does not need to become a full intervenor in these proceedings and therefore requests that the Commission grant it status as a participant without intervention. However, in the event the Joint Complaint survives the well reasoned Motion to Dismiss of SWBT, Ameritech CellularTM would like to reserve the option to

seek full intervenor status in this proceeding at a later date and contest the relief sought by the Complainants.

WHEREFORE, Ameritech CellularTM hereby respectfully requests an order of this Commission: (1) granting Ameritech Cellular'sTM status as a participant without intervention in this proceeding; (2) dismissing the instant proceeding for the reasons set forth herein; and (3) for such other and further relief as the Commission deems just and reasonable in the circumstances.

Respectfully submitted,

OTTSEN, MAUZÉ, LEGGAT & BELZ, L.C.

By: 

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Certificate of Service

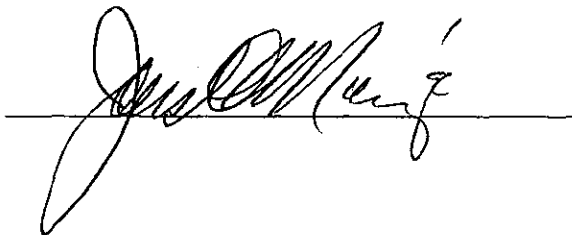
The undersigned hereby certifies that a true and correct copy of the foregoing was sent via first-class U.S. mail, postage prepaid, this 2nd day of March, 2000 to:

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Leo J. Bub
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Dan Joyce
Missouri Public Service Commission
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Michael F. Dandino
Office of the Public Counsel
P.O. Box 7800
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A handwritten signature in cursive script, appearing to read "Joseph D. Mangi", is written over a horizontal line.