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October 29, 2003

FILED

OCT 29 2003

Mr. Dale Hardy Roberts  
Secretary  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Missouri Public  
Service Commission

RE: Case No. \_\_\_\_\_  
Application of New Access Communications LLC for Approval of Transfer  
of Assets

Dear Mr. Roberts:


Enclosed for filing on behalf of New Access Communications LLC, please find an original and five (5) copies of an "APPLICATION" seeking approval of the Missouri Public Service Commission of a transfer of assets.

Please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you for your cooperation and assistance in this matter.

Sincerely,

WILLIAM D. STEINMEIER, P.C.

By:   
William D. Steinmeier

Enclosures

cc: General Counsel  
Office of Public Counsel  
Mr. Patrick D. Crocker  
Mary Ann (Garr) Young

FILED

OCT 29 2003

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Application of )  
)  
**New Access Communications LLC** )  
)  
for Authority to Acquire Certain Assets of )  
Ciera Network Systems, Inc. )

Case No. \_\_\_\_\_

APPLICATION

COMES NOW New Access Communications LLC ("NAC" or "Applicant"), by its undersigned counsel, and pursuant to Section 392.300 RSMo. and 4 CSR 240-2.060 and 4 CSR 240-3.520, hereby requests approval for NAC to acquire certain assets, including, but not limited to, the interexchange and non-switched local exchange subscriber base of Ciera Network Systems, Inc. ("Ciera"). Ciera and its senior lender, Textron Financial Corporation, (collectively hereinafter, "Textron" or "Seller") have entered into a letter of intent for a voluntary foreclosure arrangement whereby certain Ciera assets will transfer to a specified assignee after a voluntary foreclosure from Ciera. This Application is filed as a result of the execution of an Asset Purchase Agreement (the "Agreement") by NAC and Textron, pursuant to which NAC will acquire certain assets of Ciera and its subsidiaries in a private sale through the lender's foreclosure.

This Application also requests either a waiver of the subscriber authorization and verification requirements for the change of customers' interexchange carrier contained in 4 CSR 240-33.150, or a finding that 4 CSR 240-33.150 is inapplicable to this transaction.

This transaction is being conducted pursuant to a voluntary foreclosure process. A motion for expedited treatment is being filed simultaneously herewith, pursuant to 4 CSR 240-2.080(16). Applicant seeks expedited treatment of this Application to allow the parties to consummate this transaction as soon as possible and, preferably, by November 28, 2003. The expeditious approval of this Application will allow NAC promptly to assume responsibility for the service of Ciera's existing interexchange customer base without interruption of service or other inconveniences to consumers.

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

**1. New Access Communications LLC**

Applicant, New Access Communications LLC, is a Minnesota limited liability company; with its principal business office located at 801 Nicollet Mall, Suite 350, Minneapolis, MN 55402. The company's telephone number is (877) 613-7487, and its fax number is (612) 321-9207. The toll-free number for customer service calls and billing inquiries is (800) 525-9510. The character of business performed by NAC is telecommunications. NAC and its affiliates hold authority to provide facilities-based and/or resold telecommunications services in thirty-two (32) states including Missouri. NAC is authorized to provide competitive interexchange and non-switched local exchange services in Missouri pursuant to authority granted by the Missouri Public Service Commission in its "Order Approving Interexchange and Local Exchange Certificates of Service Authority and Approving Tariff" issued May 18, 2001 in Case No. TA-2001-560.

Information concerning NAC's technical and managerial qualifications to provide service was filed with its application for certificate of service authority in Case No. TA-2001-560, as was its Certificate of Authority to do business in Missouri from the Missouri Secretary of State's Office. Applicant respectfully requests that the Commission take official notice of this information and consider it to be incorporated by reference herein.

**2. Ciera Network Systems, Inc.**

Ciera Network Systems, Inc. is a Texas corporation with its principal place of business located at 1250 Wood Branch Park Drive, Houston Texas 77079. The character of business performed by Ciera is telecommunications. Ciera and its various operating subsidiaries provide resold and facilities-based telecommunications services in various jurisdictions throughout the United States. Ciera also holds authority to provide international telecommunications services as a non-dominant common carrier pursuant to authority of the Federal Communications Commission ("FCC"). Ciera provides interstate telecommunications services pursuant to FCC blanket authority available to non-dominant interexchange providers.

Ciera is authorized to provide competitive interexchange and non-switched local exchange services in Missouri pursuant to authority granted by the Missouri Public Service Commission in its "Order Approving Interexchange and Non-Switched Local Exchange Certificates of Service Authority and Order Approving Tariff" issued October 19, 1999 in Case No. TA-2000-216. Ciera is authorized to provide competitive basic local exchange and exchange access services in Missouri pursuant to authority granted by the Missouri Public Service Commission in its "Order Granting Certificate to Provide

Basic Local and Exchange Access Telecommunications Services" issued November 19, 1999 in Case No. TA-2000-228.

Information concerning Ciera's technical and managerial qualifications to provide service was filed with its applications for certificate of service authority in Case Nos. TA-2000-216 and TA-2000-228, as was its Certificate of Authority to do business in Missouri from the Missouri Secretary of State's Office. Applicant respectfully requests that the Commission take official notice of this information and consider it to be incorporated by reference herein.

**3. Designated Contacts**

All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this case should be addressed to:

William D. Steinmeier  
Mary Ann (Garr) Young  
William D. Steinmeier, P.C.  
2031 Tower Drive  
P.O. Box 104595  
Jefferson City, Missouri (MO) 65110-4595  
Telephone: (573) 659-8672  
Fax: (573) 636-2305  
Email: wds@wdspc.com  
Myoung0654@aol.com

With a copy to:

Patrick D. Crocker  
Early, Lennon, Crocker & Bartosiewicz, P.L.C.  
900 Comerica Building  
Kalamazoo, Michigan (MI) 49007-4752  
Telephone: (269) 381-8844  
Fax: (269) 381-8822  
Email: pcrocker@earlylennon.com

and

Steven Clay  
New Access Communications LLC  
801 Nicollet Mall, Suite 350  
Minneapolis, MN 55402  
Telephone: (612) 256-0060  
Fax: (612) 339-0835

and

Steve Jaffee  
Textron Financial Corporation  
RFC Capital Corporation  
130 Chestnut Street  
Columbus, OH 43215  
Telephone: (614) 229-7979  
Fax: (614) 229-7980

#### **4. The Transaction**

NAC proposes to acquire certain assets of Ciera in connection with a reorganization of Ciera currently being overseen by Textron. Textron and New Access have executed the Asset Purchase Agreement under which NAC will acquire assets of Ciera as assignee/purchaser of the assets under the voluntary foreclosure procedure. Among other things, NAC will acquire all assets associated with Ciera's interexchange and non-switched local exchange telecommunications operations in Missouri including, but not limited to, Ciera's customer base.

The Applicant will be filing with the Federal Communications Commission ("FCC") to use the FCC's streamlined procedures for the acquisition of another telecommunications carrier's subscriber base. A draft of the customer notification required by the FCC's rules is attached hereto as **Exhibit A**.

NAC has determined that the proposed acquisition of Ciera's assets in the proceeding will enhance its competitive position and ability to provide an array of high

quality services to consumers in Missouri. Although the proposed acquisition will result in a transfer of substantially all of Ciera's telecommunications assets, the Agreement will not involve a change in the manner in which Ciera customers will receive telecommunications services, and the transfer will be virtually seamless to customers. Specifically, customers will continue to receive the high quality, affordable telecommunications services that they presently receive. NAC will mirror the terms and conditions of Ciera's tariff, thus providing a seamless transition for existing customers of Ciera. As a result, the proposed acquisition will be virtually transparent to Ciera's customers as the rates, terms, and conditions of NAC's services will be identical to those of Ciera. Moreover, once the transaction is complete, Ciera customers will receive service from NAC's team of well-qualified telecommunications managers and its customer services department. To ensure a seamless transition and avoid customer confusion, inconvenience, or disconnection, the Parties will notify customers of this transaction and of the change in carrier upon Commission approval, and prior to consummation of the transaction, consistent with all state and federal regulations and statutes.

#### **5. Public Interest Considerations**

New Access has sufficient managerial and financial qualifications to acquire the customer assets of Ciera and to ensure the uninterrupted provision of telecommunications services to customers upon approval of this Application. Applicant respectfully submits that significant public interest benefits will result from NAC's acquisition of the assets of Ciera, including Ciera's customer base. The proposed transaction will enable Ciera's customers to continue to receive high quality,

competitively priced telecommunications services without interruption. At the same time, the proposed asset acquisition through the voluntary foreclosure process will promote competition in Missouri by enhancing NAC's ability to take advantage of certain efficiencies that will support expanded services and more competitive rates. By creating a more effective and multifaceted telecommunications carrier, the proposed transaction will expand competitive choices for U.S. telecommunications customers, including customers in Missouri. Applicant hopes to complete the proposed acquisition as quickly as possible in order to avoid any interruption of service or other inconvenience to Ciera's existing customers.

To that end, Applicant respectfully requests that the Commission expedite the processing of this Application and grant the requested authority as soon as possible, and preferably by November 28, 2003. As stated above, a Motion for Expedited Treatment of this Application is being filed simultaneously with this filing.

#### **6. Waiver Request**

Applicant submits that the notice to be provided to customers upon approval of the transfer will reasonably and adequately advise customers of the corporate change in their telecommunications services, and therefore respectfully requests that the Commission either find that its anti-slamming rule (4 CSR 240-33.150) is inapplicable to this transfer or, in the alternative, find good cause to waive the applicability of 4 CSR 240-33.150 to this transaction.

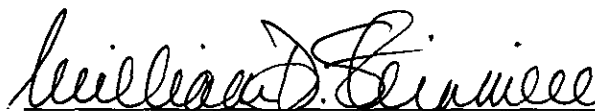
#### **7. Tax Revenue Impact**

The proposed transaction will not have any impact on the tax revenues of any political subdivision in the State of Missouri.

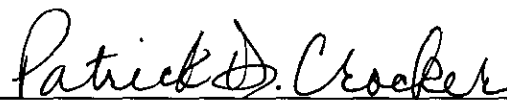


**WHEREFORE Applicant, New Access Communications LLC, respectfully requests** that the Commission approve the proposed transfer of assets of Ciera Network Systems, Inc., including but not limited to Ciera's Missouri interexchange and non-switched local exchange customers, to New Access Communications LLC, and grant a waiver of 4 CSR 240-33.150. Applicant respectfully requests that the authority sought in this Application be granted on an expedited basis, by November 28, 2003, in order to avoid any interruption of service or inconvenience to Ciera's existing customers in Missouri.

Respectfully submitted,



William D. Steinmeier, Mo.Bar #25689  
Mary Ann (Garr) Young, Mo.Bar #27951  
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Myoung0654@aol.com



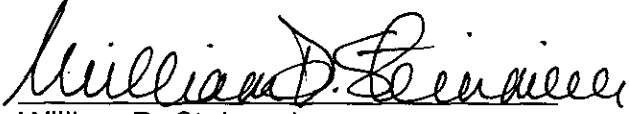
Patrick D. Crocker, MI Bar #P43527  
Early, Lennon, Crocker  
& Bartosiewicz, P.L.C.  
900 Comerica Building  
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Tel.: (269) 381-8844  
Fax: (269) 381-8822  
Email: pcrocker@earlylennon.com

ATTORNEYS FOR APPLICANT, NEW  
ACCESS COMMUNICATIONS LLC

Dated: October 29, 2003

Certificate of Service

I hereby certify that a copy of this document has been hand delivered or mailed by first class mail, postage prepaid, to the Office of the General Counsel of the Missouri Public Service Commission, and to the Office of Public Counsel, on this 29<sup>th</sup> day of October 2003.

  
William D. Steinmeier

## LIST OF EXHIBITS

<b>Exhibit A</b>	<b>Customer Notice</b>
<b>Verification</b>	

**Exhibit A**  
**Customer Notice**

[Ciera Network Systems, Inc. - Company Letterhead]

RE: New Service Provider

Dear Valued Customer:

On \_\_\_\_\_, 2003, New Access Communications, LLC. ("New Access") will acquire certain assets of Ciera Network Systems, Inc., including the carrier's subscriber base.

New Access has no plans to change the rates, terms, and conditions of services currently provided to you. In addition, no charges or fees will be imposed as a result of this transfer. New Access will provide at least thirty (30) days prior written notice of any changes to these rates, terms, and conditions.

As our customer, you have the right to choose your long distance provider; you are free to choose another carrier to supply the services currently provided if an alternative carrier is available.

All subscribers receiving this notice, even those who have arranged PIC freezes through the local exchange carrier (LEC), will transfer to New Access unless another carrier has been selected prior to \_\_\_\_\_, 2003. If you have a PIC freeze on your account, you will need to contact the LEC to arrange for a new freeze.

Should you have a question or complaint concerning this transfer, please contact New Access Communications LLC by dialing the following toll-free number: (877) 330-4937.

Sincerely,

Ciera Network Systems, Inc.

## Verification

# VERIFICATION

I, Steven C. Clay, am the President of Carrier Services for New Access Communications LLC, and am authorized to make this verification on its behalf. I do hereby verify that I have read the foregoing Application and the statements made therein are true, correct, and complete to the best of my knowledge, information, and belief.

Executed on the 26<sup>th</sup> day of July 2003.

New Access Communications LLC

  
Steven C. Clay  
President of Carrier Services

Subscribed and sworn before me this 26<sup>th</sup> day of July 2003.

  
Notary Public:

