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April 22, 2002

Secretary of the Commission
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Ciera Network Systems, Inc.

Dear Mr. Roberts:

Please find enclosed for filing an original and eight (8) copies each of: 1) Application For Approval Of Acquisition Of Assets; 2) Application For Cancellation Of Certificate and Tariffs; and 3) Application For Waiver Of 4 CSR 240-33.150 all filed on behalf of Ciera Network Systems, Inc. A copy of this filing has been sent this date to the General Counsel's office and the Office of the Public Counsel. Thank you.

Sincerely,



Brent Stewart

CBS/bt

Enclosure

cc: General Counsel's Office
Office of the Public Counsel
Bob Livingston

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)
Ciera Network Systems, Inc. for Approval)
of the Acquisition of the Assets of) Case No. _____
Incomnet Communications Corporation,)
for Cancellation of Certificate and Tariffs,)
and for Waiver of 4 CSR 240-33.150.)

APPLICATION FOR APPROVAL OF ACQUISITION OF ASSETS

COMES NOW Ciera Network Systems, Inc. ("Ciera"), by and through counsel and pursuant to the applicable provisions of Sections 392.300 and 392.410(5) RSMo 2000 and 4 CSR 240-2.060(7) and (14), and for its Application For Approval of Transfer of Assets, Cancellation of Certificate and Tariffs, and Waiver of 4 CSR 240-33.150, respectfully states as follows:

I. EXECUTIVE SUMMARY

This Application involves both companies and services that have been previously classified as competitive by the Commission and does **not** involve the provision of basic local telecommunications service. Pursuant to Section 392.361 RSMo 2000, the Commission consistently has found it in the public interest that such competitive companies and services be subject to a lesser degree of regulation by the Commission than traditional, non-competitive public utilities. Against that backdrop, this Application requests Commission approval of: 1) the acquisition of the assets of Incomnet Communications Corporation ("Incomnet"), a now defunct but still certificated interexchange telecommunications company, by Ciera, an operating certificated interexchange telecommunications company; 2) the cancellation of Incomnet's existing interexchange certificate of service authority and tariffs; and 3) a wavier of

the anti-slamming rule, 4 CSR 240-33.150.¹

II. CHRONOLOGY AND EXPLANATION

1. Incomnet was an interexchange telecommunications operating company providing long distance service in Missouri and elsewhere for several years.² Incomnet's parent company (Incomnet Communications Corporation) eventually sought Chapter 11 Reorganization bankruptcy protection from the United States Bankruptcy Court on September 2, 1999. On May 22, 2001 the Bankruptcy Court issued its Chapter 11 order transferring ownership of Incomnet to Ironwood Telecom L.L.C. Despite the bankruptcy reorganization, Incomnet in the fall of 2001 decided to exit the telecommunications market and contacted Ciera about immediately purchasing Incomnet's existing customer base and other related long distance telecommunications assets. In order to avoid the immediate disruption and cancellation of long distance service to Incomnet's then existing customers, which necessarily would have occurred upon Incomnet's market exit, on November 30, 2001 Ciera and its corporate parent (CCC GlobalCom Corporation) quickly executed an Asset Purchase Agreement ("the Agreement") with Incomnet and its new owner, and with written notice to

¹ Pursuant to past Commission practice and for purposes of logical and efficient presentation to the Commission of inter-related issues, counsel prepared *one* application document which covered all three requests. However, after the original application was prepared for filing, counsel received word that the Commission's Data Center had unexpectedly recently rejected a similar style pleading in another case and that it was now Commission policy that *three* separate pleadings would be required. Counsel was aware that Motions For Expedited Treatment were to be separately filed, but due to the inter-relationship of these three particular requests, a "combination pleading" here appeared to be the most logical and cost efficient. In any event, additional time was required for counsel to prepare three separate pleadings to comport with the new directive and has this date concurrently filed a separate request for the certificate/tariff cancellation and for waiver of the anti-slamming rule. This unfortunately added to further delay in making this filing.

² Incomnet, under its prior name National Telephone Communications, Inc., first received its Commission certificate in 1995 in Case No. TA-95-201. Its name change and tariff revisions were subsequently recognized and approved in Case Nos. TO-97-548 and TO-99-322.

customers, Ciera immediately began providing service to Incomnet's customers under Ciera's Commission-approved tariffs with no increase in customer rates.

2. Ciera does not dispute the Commission's statutory jurisdiction over the transfer of regulated assets between Commission-certificated operating companies. However, Ciera was unable to file this Application until this time due to a combination of all of the following reasons: practical problems involved in negotiating and implementing an asset purchase agreement on an expedited basis; the need to take steps to notify and preserve service to Incomnet's customers without service disruption; Ciera's limited in-house regulatory resources and practical difficulties in coordinating all required regulatory filings in multiple jurisdictions with differing regulatory requirements; ongoing complications involving the regulatory status of Incomnet in Missouri due to issues arising out of still pending Commission Case No. TM-2002-213;³ uncertainties relating to Incomnet's status as an ongoing corporate entity for purposes of preparing and filing this Application as a joint application with Incomnet as a joint applicant;⁴ and whether or not Incomnet as a corporate entity was, was not, is or is not, currently represented by other counsel.⁵

³ *In the Matter of the Contingent Application of Incomnet, Inc., its Subsidiary, Incomnet Communications Corporation, and Ironwood Telecom, LLC For Approval Nunc Pro Tunc of a Transfer of Control of Incomnet Communications Corporation, or alternatively, Retroactive Waiver of Section 392.300.2 RSMo.* This case was first filed on October 29, 2001 by different counsel who has since sought Commission permission to withdraw from the case. Incomnet's counsel's motion to withdraw from the case and the case itself are still pending before the Commission.

⁴ Incomnet's current corporate status is unclear, but Incomnet apparently no longer has a board of directors or officers to authorize the filing of a joint application in any event.

⁵ Ciera's undersigned counsel specifically has not undertaken, and is not by filing this Application undertaking, legal representation of Incomnet, its corporate affiliates, or its shareholders in this or in any other legal proceeding.

3. In this Application, Ciera is *not* requesting a retroactive waiver of any statute. Instead, Ciera is seeking Commission approval of its acquisition of Incomnet's Missouri assets pursuant to the Agreement on a going-forward basis and respectfully is asking the Commission to recognize that Ciera has acted in good faith in executing the Agreement, notifying and providing uninterrupted service to Incomnet's customers pursuant to Ciera's Commission-approved tariffs, and in filing this Application unilaterally without the assistance of Incomnet as a joint applicant.

4. As part of the Commission's approval of this Application, Incomnet's existing certificate and tariffs necessarily should be canceled. Incomnet already has manifested its intent to exit the telecommunications market and abandon its certificate of service authority in Missouri by executing the Agreement. Section 392.410(5) RSMo 2000 authorizes the Commission to modify a company's certificate of service authority on its own motion after notice and hearing. Ciera submits that the Commission may lawfully cancel Incomnet's certificate and tariffs in this proceeding by providing notice to Incomnet at its last known address, and that if no requests for a hearing are filed, the Commission may act on this verified Application without the need of the added expense and resource commitment of an evidentiary hearing pursuant to *State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C.*, 776 S.W.2d 494 (Mo App. 1989).

5. The asset transfer from Incomnet to Ciera has been designed to be as transparent as possible and to avoid immediate disruption and cancellation of long distance service to Incomnet's customers. Ciera notified Incomnet's customers in writing of the asset transfer first on January 3, 2001. A copy of the customer notice sent by Ciera (through its corporate

parent) is attached hereto as **Appendix A**. Subsequent customer bills show the Ciera operating company name and Ciera customer contact information. Ciera's actions not only permitted Incomnet's customers to continue to receive their long distance service without interruption or other inconvenience, it also provided those customers the ability to make an informed choice of either continuing to receive service under Ciera's Commission-approved tariffs, or if they so desired, the opportunity to switch to another competitive long distance carrier. No customer received a rate increase as a result of the asset transfer. Under the circumstances, Ciera submits that the public policy underlying the Commission's anti-slamming rule, 4 CSR 240-33.150, has been fulfilled and that further imposition of the rule for purposes of this Application would be both unnecessary, possibly confusing to customers, and to the extent that it might otherwise apply, should be waived pursuant to 4 CSR 240-2.060(14). The Commission in past cases has waived application of this rule on similar grounds in appropriate circumstances. *See, e.g.*, Case No. TM-2001-700, *In the Matter of the Application of Big River Telephone Company*, Order issued August 13, 2001; Case No. TE-2001-376, *In the Matter of the Request For Expedited Treatment of Bell Atlantic Communications, Inc.*, Order issued January 18, 2001.

III. 4 CSR 240-2.060(1) REQUIREMENTS

6. Ciera is a privately-held corporation incorporated under the laws of the state of Texas and is duly authorized by the Missouri Secretary of State to do business in Missouri. Ciera also is a competitive telecommunications company duly authorized to provide interexchange and non-switched local exchange telecommunications service pursuant to its certificate of service authority and tariff granted and approved by the Commission on October

19, 1999 in Case No. TA-2000-216.

7. Relevant documents from the Missouri Secretary of State's Office have been provided to the Commission previously in the above-referenced case, and pursuant to 4 CSR 240-2.060(1)(G), Ciera verifies same are still accurate and hereby incorporates same herein by reference for purposes of this Application.

8. Ciera's principal offices are located at 1250 Wood Branch Park Drive, Houston, Texas 77079, telephone number (281) 529-4600, fax number (281) 529-4686.

9. All correspondence, communications, notices, and orders regarding this application should be addressed to:

Charles Brent Stewart
STEWART & KEEVIL, L.L.C.
1001 Cherry Street
Suite 302
Columbia, Missouri 65201
(573) 499-0635
(573) 499-0638 (fax)
Stewart499@aol.com

10. Pursuant to 4 CSR 240-2.060(1)(K), Ciera states that it has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this Joint Application.

11. Pursuant to 4 CSR 240-2.060(1)(L), Ciera states that no annual reports or assessment fees are overdue.

12. Pursuant to 4 CSR 240-2.060(1)(M), the notarized verification of Robert W. Livingston, Chief Executive Officer of Ciera, is attached hereto.

13. While not specifically required of competitive telecommunications companies due to 4 CSR 240-2.060(3) for purposes of filing this Application, Ciera certainly has no objection in providing the Commission Staff with a copy of the Agreement immediately upon its request pursuant to the provisions of Section 386.480 RSMo 2000.

14. Pursuant to Ciera's existing certificates, the Commission has granted Ciera the standard statutory waivers routinely granted to competitive interexchange/non-switched local exchange telecommunications companies. The statutes previously waived for Ciera by the Commission included Section 392.270 (property values), 392.290 (issuance of securities), 392.300.2 (issuance of stock), 392.310 (issuance of stock and debt), 392.320 (stock dividend payment), 392.330 (issuance of securities, debts and notes), and 392.340 (reorganizations). To the extent any of the transactions involved with this proposed asset acquisition might or might not fall under these statutes, Ciera respectfully submits that Commission approval of the Application under such statutes is not required due to the statutory waivers previously granted.

15. Ciera requests that the Commission promptly approve its acquisition of Incomnet's assets under the Agreement, pursuant to Section 392.300 RSMo 2000, as being not detrimental to the public interest on the basis that the Agreement and asset transfer:

- (a) impose no detriment to Incomnet's customers in terms of services offered and the rates charged for those services;
- (b) have avoided and continues to avoid customer confusion and disruption in the continuing provision of competitive long distance service to Incomnet's customers; and
- (c) enable Ciera to achieve increased economies of scale and compete more effectively in the competitive telecommunications marketplace, thereby promoting competition in

telecommunications in Missouri to the benefit of individual customers and the public.

Moreover, as a practical matter Commission approval of this Application will promote judicial economy for the Commission and the parties by hopefully resolving a company-specific regulatory quagmire involving Incomnet which has been pending since October 2001 and by authorizing Ciera's provision of service to Incomnet's former customers under Ciera's Commission-approved tariffs on a going forward basis.

IV. 4 CSR 240-2.060 (7) REQUIREMENTS

16. Only the provisions of 4 CSR 240-2.060(7) appear to apply for purposes of this Application. However, Ciera as a competitive telecommunications company is exempt from subsections (7)(A)-(E) and (8)(A)-(E) by virtue of 4 CSR 240-2.060(3) in any event.

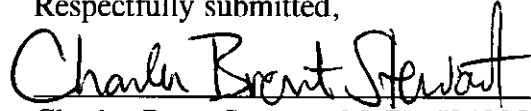
17. Pursuant to 4 CSR 240-2.060(7)(F), the proposed acquisition will have no impact on the tax revenues of any political subdivision in the State of Missouri in which any structure, facilities, or equipment of Ciera or Incomnet are located.

18. In order to comply with what appears to be a new filing procedure, Ciera has this date also included separate pleadings requesting cancellation of Incomnet's certificate and tariff and its request for waiver of 4 CSR 240-33.150.

WHEREFORE, for all the reasons above-stated, Ciera Network Systems, Inc. respectfully requests that the Commission issue its order: 1) approving the acquisition of Incomnet's assets by Ciera pursuant to the Asset Purchase Agreement executed on November 30, 2001 between Ciera and Incomnet; 2) canceling Incomnet's certificate of service authority and tariffs; 3) waiving the application of 4 CSR 240-33.150 for purposes of this proceeding to the extent it applies; and 4) making any other orders deemed necessary and just and reasonable

in the premises.

Respectfully submitted,

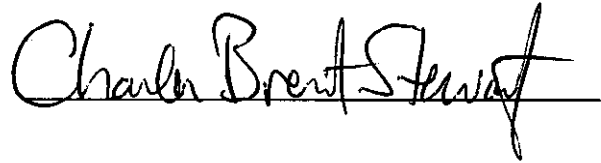


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ATTORNEY FOR APPLICANT
CIERA NETWORK SYSTEMS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Application and Appendices was sent to the General Counsel's Office and the Office of the Public Counsel by hand-delivery this 22nd day of April, 2002.



VERIFICATION

State of Texas)
) SS
County of Harris)

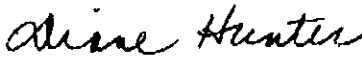
My name is Robert W. Livingston and I am the Chief Executive Officer of Ciera Network Systems, Inc. I have knowledge of the asset purchase agreement and related transactions between Ciera Network Systems, Inc. and Incomnet Communications Corporation, have read the forgoing Application and have authorized its filing with the Missouri Public Service Commission, and the statements contained therein are true to the best of my knowledge, information and belief.



Robert W. Livingston

Subscribed and sworn to before me this 18 day of April, 2002.





Notary Public

My commission expires: 5-30-05

CIERA NETWORK SYSTEMS, INC.
INCOMNET ASSET TRANSFER
APRIL 22, 2002

APPENDIX A
CUSTOMER NOTICE



December 28, 2001

Dear Valued Customer:

We are pleased to announce that the customer base and selected assets of Incomnet Communications Corporation have been acquired by CCC GlobalCom Corporation.

Throughout the coming months, you will notice several positive changes in the ways we bring you a more varied selection of telecommunication services. Our billing and brand name will become CCC GlobalCom and you will notice this change on your bill. In addition to our current product offerings, we will also offer "local telephone service", flexible packages for bundled local and long distance, and the ability to provide you one bill for all of your services.

Your existing Incomnet service agreements and competitive Incomnet rates will continue to be honored and supported by CCC GlobalCom. There will be no changes or interruptions in your existing service. In addition, you may continue to rely on outstanding customer service and your knowledgeable Customer Care team. If you have any questions about the transfer, any complaints or if a problem may arise after the transition, please call our Customer Care team toll free at 1-800-569-4682.

You have a right to select your preferred local service and long distance provider before February 1, 2002 and may select CCC GlobalCom or another company. If you wish to keep the same service, do nothing and your account will be transferred with no changes or service interruptions. All existing Preferred Inter Exchange Carrier ("PIC") freezes will be lifted when the account is transferred. You will need to contact your local service provider to arrange a new PIC freeze.

If you select another company, you should contact that company immediately to ensure your service is transferred before February 1, 2002. You will be responsible for any carrier change charges associated with the transfer of your account. If you have a long-term agreement with Incomnet, you may face early termination fees if you change providers prior to the expiration.

We appreciate your patience and continued business through this transition period and look forward to continuing to provide you outstanding telecommunications services as CCC GlobalCom.

Sincerely,

Regan Gaul
Director of Customer Relations
CCC GlobalCom Corporation



CCC GlobalCom Corporation
OTC: CCGC
www.cccglobalcom.com