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

Missouri Public
Service Commission

In the Matter of the Application of)
Ciera Network Systems, Inc. for Approval)
of the Acquisition of the Assets of)
Incomnet Communications Corporation,)
for Cancellation of Certificate and Tariffs,)
and for Waiver of 4 CSR 240-33.150.)

Case No. _____

APPLICATION FOR WAIVER OF 4 CSR 240-33.150

COMES NOW Ciera Network Systems, Inc. ("Ciera"), by and through counsel and pursuant to the applicable provisions of 4 CSR 240-2.060(14), and for its Application For Waiver of 4 CSR 240-33.150, respectfully states as follows:

4 CSR 240-2.060(1) REQUIREMENTS

1. Ciera provides the following information in this pleading although same has been previously provided in Ciera's asset acquisition Application filed this date.

2. 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.

3. 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.

4. 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.

5. 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

6. 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.

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

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

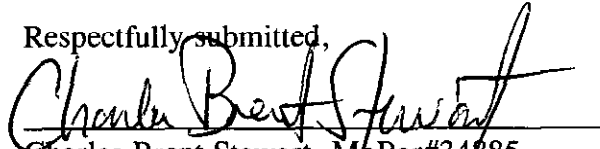
9. The asset transfer from Incomnet Communications Corporation ("Incomnet) to Ciera has been designed to be as transparent as possible and to avoid immediate disruption and cancellation of long distance service to Incomnet's customers. Ciera notified Incomnet's customers in writing of the asset transfer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

Approval Of Transfer Of Assets 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.

WHEREFORE, for all the reasons above-stated, Ciera Network Systems, Inc. respectfully requests that the Commission issue one order in this case: 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,



Charles Brent Stewart, MoBar#34885

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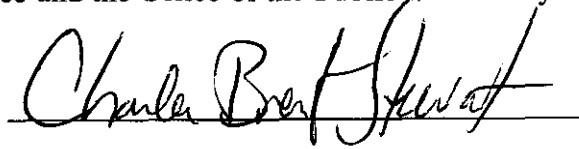
(573)499-0638 (fax)

Stewart499@aol.com

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)
) SO
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.

(seal) 



Notary Public

My commission expires: 5-30-05