

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

ORIGINAL

APR 22 2002

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 CANCELLATION OF CERTIFICATE AND TARIFFS**

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

**I. 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

2

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](mailto: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.

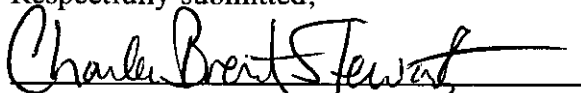
8. Pursuant to 4 CSR 240-2.060(1)(M), the notarized verification of Robert W. Livingston, Chief Executive Officer of Ciera, is attached hereto.

9. As part of the Commission's approval of Ciera's Application For Approval Of Transfer Of Assets, Incomnet Communications Corporation's ("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).

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

STEWART & KEEVIL, L.L.C.

1001 Cherry Street, Suite 302

Columbia, Missouri 65201

(573) 499-0635

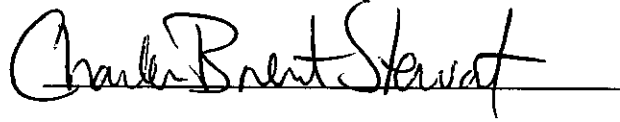
(573)499-0638 (fax)

[Stewart499@aol.com](mailto: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 22<sup>nd</sup> day of April, 2002.

A handwritten signature in cursive script, reading "Charles Brent Stewart", is written over a horizontal line.

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.

(seal) 

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

My commission expires: 5-30-05