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March 27, 1995

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William F. Caton, Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: In re Application of Ellis
Thompson Corporation for
Facilities in the Domestic
Public Cellular Radio
Telecommunications Service on
Frequency Block A in Market No.
134, Atlantic City, New Jersey
CC Docket No. 94-136
File No. 14261-CL-P-134-A-86

Dear Mr. Caton:

Transmitted herewith on behalf of Ameritel is one (1) original
and eleven (11) copies of its Appeal filed with respect to the
above-referenced proceeding.

Should any questions arise with respect to this matter, please
communicate directly with this office.

Respectfully submitted,

Richard S. Becker

Richard S. Becker
Attorney for Ameritel

Enclosures

No. of Copies rec'd 12/11
List A B C D E

lottery for the Authorization held by the Commission on April 21, 1986. Petition, ¶¶1-5. Ameritel's showing that it is the successor-in-interest to an MX applicant for the Authorization was based on a Declaration under penalty of perjury by Richard Rowley, a general partner in Ameritel. Id. at n.7, Exhibit 2. Ameritel demonstrated that pursuant to unambiguous Commission precedent, Ameritel is entitled to intervene as a matter of right.³

2. In the MO&O, Judge Chachkin denied Ameritel's Petition finding that, "Ameritel's claim rests solely on the bare declaration of Richard Rowley, a general partner in Ameritel. Ameritel offers no supporting evidence for Rowley's assertion."⁴ Instead, Judge Chachkin relied upon factual assertions made by the existing parties to the above-captioned proceeding ("Existing Parties") in pleadings (collectively "Oppositions") which challenged Ameritel's Petition.⁵

3. Ameritel must first emphasize that this Appeal is being filed after the time period specified in 47 C.F.R. §1.301(c)(2)

³Petition at ¶¶4-5; Algreg Cellular Engineering, CC Docket No. 91-142 6 FCC Rcd 5299, 5300 (Rev.Bd. 1991) (hereinafter "Algreg"); Virginia Communications, Inc., 2 FCC Rcd 1895 (1987); Elm City Broadcasting Corporation v. United States, 235 F.2d 811, 816 (D.C.Cir. 1956); see also 47 U.S.C. §309(e). In its Petition, Ameritel also demonstrated that it should be granted discretionary intervention pursuant to 47 C.F.R. §1.223(b). Petition at ¶¶6-9.

⁴MO&O at ¶3.

⁵All Existing Parties included in their Oppositions allegations purporting to rebut Ameritel's assertion that Ameritel is the successor-in-interest to Ameritel, Inc. Some Existing Parties requested only that Judge Chachkin require Ameritel to submit additional information regarding Ameritel's ownership structure and its succession to the Atlantic City MX application. Other Existing Parties opposed Ameritel's Petition. Pursuant to 47 C.F.R. §1.294(b), Ameritel was not permitted to reply to the Oppositions.

because the MO&O was not properly served on undersigned counsel for Ameritel. Attached hereto as Exhibit 3 is a Declaration by undersigned counsel Richard S. Becker confirming that: (1) undersigned counsel was unaware of the MO&O until alerted by counsel for the Wireless Telecommunications Bureau on March 21, 1995; and (2) undersigned counsel did not receive a copy of the MO&O until March 21, 1995. Attached hereto as Exhibit 4 is a Declaration by undersigned counsel Jeffrey E. Rummel confirming that: (1) due to Commission error, Ameritel had not been added to the Commission service list in the above-captioned proceeding; and (2) as a result of its omission from the service list, Ameritel was not properly served with the MO&O. Immediately upon becoming aware of the MO&O on March 21, 1995, Ameritel proceeded with preparation of the instant Appeal and this Appeal is being filed within the 47 C.F.R. §1.301(c)(2) five (5) day period after Ameritel's first constructive notice of the MO&O. Based on these facts, Ameritel respectfully submits that this Appeal is timely filed.

4. The MO&O must be reversed because it improperly denied Ameritel's request to intervene as a matter of right as the successor-in-interest to an MX applicant for the Authorization. In its Petition, Ameritel clearly stated its status and its right to intervene.⁶ This showing was unequivocally supported by a Declaration under penalty of perjury by Richard Rowley, a person with personal knowledge of these facts.⁷ This showing is entirely consistent with 47 U.S.C. §309(e), 47 C.F.R. §1.223(a) and the

⁶Petition at n.7; ¶¶4-5.

⁷Id. at Exhibit 2.

Review Board's decision in Algreg. In response to this showing, the Existing Parties mounted a campaign of disinformation based on incomplete, inaccurate and misleading allegations. Pursuant to 47 C.F.R. §1.294(b), Ameritel was not entitled to reply to these allegations. Unfortunately, the MO&O makes clear that Judge Chachkin was deceived by these inaccurate allegations. In point of fact, on March 21, 1995, when Ameritel believed that Judge Chachkin still had not ruled on Ameritel's Petition, Ameritel submitted a "Response," which demonstrated that the allegations in the Oppositions were inaccurate and in no way rebutted the original showing in Ameritel's Petition that Ameritel is entitled to intervene as a matter of right as the successor-in-interest Ameritel, Inc.⁸ A copy of Ameritel's Response is included herewith as Exhibit 5.

5. These facts make clear that the MO&O improperly rejected Ameritel's original showing of its status as successor-in-interest to an MX applicant for the Authorization. At a minimum, if Judge Chachkin believed that the Oppositions raised an issue regarding the accuracy of the showing made in Ameritel's Petition, Ameritel

⁸For example, Judge Chachkin was simply wrong when he held that Ameritel is not the successor-in-interest to Ameritel, Inc. because "Ameritel, Inc. ... ceased to exist when it was merged into another entity" and that "while a new entity also calling itself Ameritel, Inc. was incorporated in Ohio in 2993 [sic], there is no record of a general partnership under the name Ameritel doing business in Ohio." MO&O at ¶3. As demonstrated in the Response, Ameritel, Inc.'s original MX application for the Authorization passed from Ameritel, Inc. to Metrotec, Inc. upon merger of these corporations and subsequently to the Ameritel general partnership upon liquidation of Metrotec, Inc. See Response, p.1-4, Exhibit 1. Ameritel has no relationship whatsoever with the new Ameritel, Inc. formed in 1993 and Ameritel is a general partnership in Ohio using the name Ameritel pursuant to a properly registered service mark owned by Gene A. Folden, another partner in Ameritel. Id.

should have been afforded the opportunity to reply to the Oppositions before dismissal of Ameritel's Petition. Instead, Judge Chachkin acted arbitrarily, contrary to established Commission precedent (including the Review Board's decision in Algreg) and in violation of Ameritel's due process rights, by rejecting Ameritel's request to intervene as a matter of right based on the inaccurate factual allegations contained in the Oppositions.⁹

WHEREFORE, for all of the foregoing reasons, Ameritel hereby respectfully requests that the Review Board reconsider and reverse the MO&O and grant Ameritel's Petition to intervene as a matter of right in the above-captioned proceeding as the successor-in-interest to MX applicant, Ameritel, Inc.

Respectfully submitted,

AMERITEL

By: Richard S. Becker
Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel
Its Attorneys

Richard S. Becker & Associates, Chartered
1915 Eye Street, NW; Eighth Floor
Washington, DC 20006
(202) 833-4422
Date: March 27, 1995

⁹The MO&O also incorrectly denied Ameritel discretionary intervention. As set forth herein, contrary to Judge Chachkin's finding, Ameritel did properly specify in the Petition Ameritel's interest in this proceeding as the successor-in-interest to Ameritel, Inc. Moreover, Judge Chachkin improperly discounted Ameritel's showing that only the underlying interests of Ameritel will be served by a finding that Ellis Thompson is unqualified to hold the Authorization. Accordingly, Ameritel respectfully submits that the Review Board must also reverse the MO&O's rejection of Ameritel's request for discretionary intervention.

Exhibit 1

MO&O

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 95M-68

In re Application of) CC DOCKET NO. 94-136
)
ELLIS THOMPSON CORPORATION) File No. 14261-CL-P-134-A-86
)
For facilities in the Domestic)
Public Cellular Radio Telecom-)
munications Service on Frequency)
Block A in Market No. 134,)
Atlantic City, New Jersey)

MEMORANDUM OPINION AND ORDER

Issued: March 3, 1995; Released: March 7, 1995

1. Under consideration are "Petition To Intervene" filed February 6, 1995 by Ameritel, Comments On Petition To Intervene filed February 15, 1995 by The Wireless Telecommunications Bureau and Telephone and Data Systems, Inc., Opposition To Petition For Leave To Intervene filed February 15, 1995 by American Cellular Network Corp. (Amcell), and Opposition To Petition To Intervene filed February 21, 1995 by Ellis Thompson Corporation.

2. Ameritel seeks to intervene as a matter of right pursuant to Section 1.223(a) of the Rules. In support, Ameritel claims that it is "an Ohio general partnership that is the successor-in-interest to Ameritel, Inc." (Petition, p. 2, n. 7). Ameritel, Inc. is the fifth selected MX applicant for the Atlantic City non-wireline authorization.

3. Ameritel has failed to establish that it is the successor-in-interest to Ameritel, Inc., the 1986 applicant for the non-wireline authorization. Ameritel's claim rests solely on the bare declaration of Richard Rowley, a general partner in Ameritel. Ameritel offers no supporting evidence for Rowley's assertion. In any event, the available facts do not support a finding that Ameritel is the successor-in-interest of Ameritel, Inc. As related by the parties, based on state records, Ameritel, Inc., the applicant, ceased to exist as a separate entity when it was merged into another entity, Metrotec, Inc. on June 15, 1988. Further, while a new entity also calling itself Ameritel, Inc. was incorporated in Ohio in 1993, there is no record of a general partnership under the name of Ameritel doing business in Ohio. Under Ohio law, all persons or entities transacting business in the state must, at the very least, file a fictitious name report with the Secretary of State (see Amcell Opposition, Exhibit 1). Therefore, Ameritel's request to intervene as a matter of right will be denied.

4. In the alternative, Ameritel argues that it should be allowed to intervene pursuant to the discretionary authority specified in Section 1.223(b) of the Rules. However, Section 1.223(b) expressly requires that a petitioner seeking intervention: (1) "must set forth the interest of petitioner in the proceedings," and (2) "must show how such petitioner's participation will assist the Commission in the determination of the issues in question." The subject Petition is insufficient on both counts. Ameritel's case for discretionary intervention rests solely on its contention that it is the successor-in-interest to Ameritel, Inc. However, for the reasons discussed above, that contention has been rejected.

5. Ameritel has also failed to show how its participation "will assist the Commission in the determination of the issues in question." As the Commission has stated:

Such showing would require that the intervenors raise substantial issues of law or fact which have not or would not otherwise be

properly raised or argued; and that the issues be of sufficient import and immediacy to justify granting the intervenor the status of a party. Victor Muscat, 31 FCC 2d 620, 621 (1971).

6. Other than to offer the Commission its assistance in "fully exploring the relationship between" the parties to this proceeding, Ameritel does not demonstrate that it will make any specific contribution to the resolution of the designated issue. Nowhere does Ameritel allege, much less show, that if it is not allowed to intervene, important issues of fact or law will not be adequately raised or argued. Ameritel appears to believe its presence is required to ensure that the examination of Ellis Thompson's qualifications as a licensee in the hearing is sufficiently thorough. Ameritel ignores the fact that the Wireless Bureau is a party. Ameritel offers no evidence that the Wireless Bureau will be less than vigorous in its prosecution of this case. The Presiding Judge is fully confident that the Bureau's participation and that of the other named parties assures that the designated issue will be fully explored. Ameritel's request to intervene pursuant to Rule 1.223(b) is, therefore, also denied.

Accordingly, IT IS ORDERED, That the "Petition To Intervene" filed February 6, 1995 by Ameritel IS DENIED

FEDERAL COMMUNICATIONS COMMISSION


Joseph Chachkin
Administrative Law Judge

Exhibit 2

AMERITEL PETITION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)	CC DOCKET NO. 94-136
ELLIS THOMPSON CORPORATION)	File No. 14261-CL-P-134-A-86
For Facilities in the)	
Domestic Public Cellular)	
Radio Telecommunications)	
Service on Frequency Block A)	
in Market No. 134, Atlantic)	
City, New Jersey)	

To: Administrative Law Judge Joseph Chachkin

PETITION TO INTERVENE

Ameritel ("Ameritel"), by its attorneys and pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"),¹ and Section 1.223 of the Commission's Rules,² hereby requests that it be permitted to intervene as a party in interest in the hearing designated by the Commission in the above-captioned matter.³ In support of this Petition, the following is respectfully shown:

I. Factual Background

1. By Public Notice dated April 23, 1986,⁴ the Commission announced the first ten (10) mutually-exclusive ("MX") applications that had been selected in a lottery held on April 21, 1986, for the

¹47 U.S.C. §309(e).

²47 C.F.R. §1.223.

³The above-captioned application was designated for hearing in Ellis Thompson Corporation, CC Docket No. 94-136, 9 FCC Rcd 7138 (1994) (hereinafter "HDO").

⁴Public Notice, Mimeo No. 4024 (April 23, 1986) (hereinafter "PN"). A copy of the PN is attached hereto as Exhibit 1.

nonwireline cellular authorization ("Authorization") to serve the Atlantic City, New Jersey Metropolitan Statistical Area ("MSA").⁵ The first-selected MX application was the above-captioned application ("Application") of Ellis Thompson.⁶ The fifth-selected MX application was the application of Ameritel, Inc.⁷

2. Pursuant to the results of the April 21, 1986, lottery, the Commission processed and granted the Application and issued Thompson the Authorization to construct and operate the nonwireline Atlantic City cellular system (the "System"). Pursuant to a management agreement with American Cellular Network Corporation ("Amcell"), Thompson constructed and currently operates the System.⁸

3. As specified in the HDO, however, pursuant to timely-filed appeals, the Commission has now rescinded the Authorization pending the outcome of a hearing for the purpose of resolving the following issue:

To determine whether [Amcell] is a real-party-in-interest in the application of [Thompson] ... and, if so, the effect thereof on [Thompson's] qualifications to be a

⁵Market No. 134, Frequency Block A.

⁶The original applicant in the Application was Ellis Thompson. PN at 4. On November 21, 1988, however, the Commission granted its consent to the pro forma assignment of the Authorization from Ellis Thompson to Ellis Thompson Corporation ("Thompson"). As a result, the HDO captioned Thompson as the applicant. For ease of reference throughout this pleading, Thompson will be specified as the applicant and original holder of the Authorization.

⁷File No. 14310-CL-P-134-A-86. It should be noted that the petitioner herein, Ameritel, is an Ohio general partnership that is the successor-in-interest to Ameritel, Inc. For ease of reference throughout this pleading, Ameritel will be specified as the original applicant.

⁸See HDO at 7138, 7143.

Commission licensee.⁹

In the event that Thompson is found unqualified to be a Commission licensee, the Application will be dismissed and Thompson will no longer be the licensee of the System. In that case, the Commission must then examine the qualifications of the alternative lottery selectees in descending order of their rank as established by the Commission's April 21, 1986, lottery.¹⁰ The next-highest ranked lottery selectee found to be qualified under the Commission's Rules will be granted the Authorization.¹¹

**II. Ameritel's Status As An MX Applicant
And Fifth-Ranked Lottery Selectee
Provides It Standing To Intervene
In This Proceeding As A Matter Of Right**

4. Section 1.223(a) of the Commission's Rules provides, in relevant part, that:

Where ... the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing, under oath and not more than 30 days after the publication in the Federal Register of the hearing issues ... a petition for intervention showing the basis of its interest. ... Where the person's status as a party in interest is established, the petition to intervene will be granted.

47 C.F.R. §1.223(a); see also 47 U.S.C. §309(e).

In Algreg Cellular Engineering, the Review Board held unequivocally that an intervenor's status as an MX applicant provided the

⁹Id. at 7143. It should be noted that Thompson was granted interim authority to continue operating the System pending the outcome of the hearing. Id.

¹⁰See Report and Order, CC Docket No. 83-1096, 98 FCC 2d 175, 219-221 (1984), recon., 101 FCC 2d 577 (1985); see also 47 C.F.R. §1.823.

¹¹ Id.

intervenor standing to intervene in a hearing proceeding as a matter of right pursuant to Section 309(e) of the Act and Section 1.223(a) of the Commission's Rules.¹²

5. As demonstrated above, Ameritel is an MX applicant for the Authorization. As the fifth-ranked selectee in the Commission's April 21, 1986, lottery, Ameritel could become the tentative selectee and ultimately obtain the Atlantic City Authorization.¹³ Based on these facts, Ameritel has standing to intervene as a matter of right in the above-captioned hearing proceeding.¹⁴ Accordingly, Ameritel respectfully requests that the instant Petition should be granted.¹⁵

III. Ameritel Should Also Be Permitted To Intervene To Assist In Determination Of The Issue Designated In The HDO

6. Although Ameritel is entitled to intervene in the above-captioned hearing as a matter or right pursuant to Section 1.223(a)

¹²Algreg Cellular Engineering, CC Docket No. 91-142 6 FCC Rcd 5299, 5300 (Rev.Bd. 1991) (hereinafter "Algreg"); see also Virginia Communications, Inc., 2 FCC Rcd 1895 (1987) (competing applicants for MMDS licenses were parties in interest with respect to the determination of whether lottery winners were qualified); Elm City Broadcasting Corporation v. United States, 235 F.2d 811, 816 (D.C.Cir. 1956) (the Commission "may not deny intervention to a party in interest merely because it thinks his participation would not aid its decisional process.")

¹³See note 10, supra.

¹⁴Algreg, 6 FCC Rcd at 5299.

¹⁵It should be noted that the HDO was published in the Federal Register on January 5, 1995. 60 Fed. Reg. 1776. Accordingly, the instant Petition is timely filed within thirty (30) days of such publication as required by Section 309(e) of the Act and Section 1.223(a) of the Commission's Rules. 47 U.S.C. §309(e); 47 C.F.R. §1.223(a). In addition, attached hereto as Exhibit 2 is a Declaration on behalf of Ameritel supporting the instant Petition as required by Section 1.223(a) of the Commission's Rules. 47 C.F.R. §1.223(a).

of the Commission's Rules, Ameritel also respectfully submits that it should be allowed to intervene pursuant to the discretionary authority specified in Section 1.223(b) of the Commission's Rules. Specifically, Section 1.223(b) provides that the presiding officer may allow any other person to intervene upon a showing that the "petitioner's participation will assist the Commission in the determination of the issues in question...."¹⁶

7. In the instant case, the HDO designated only three non-Commission parties to the proceeding: Thompson, the applicant; Amcell, the entity that constructed the System and manages it pursuant to a management agreement (and who has other contractual relationships with Thompson relating to the Authorization); and Telephone and Data Systems, Inc. ("TDS"), the entity that holds an option to purchase Thompson's interest in the Authorization.¹⁷ Neither Amcell nor TDS were among the ten MX applicants selected in the Commission's April 21, 1986, lottery for the Atlantic City Authorization. In point of fact, if Thompson is found unqualified to be a Commission licensee, neither Amcell nor TDS will have any interest in the Authorization or right to operate the System. Accordingly, even though Amcell and TDS have engaged in extensive litigation in this proceeding to date, a finding that Thompson is unqualified to hold the Authorization will result in neither TDS nor Amcell retaining any interest in the Atlantic City Authorization. This "lose-lose" scenario substantially lessens the incentive of both TDS and Amcell to fully investigate and examine

¹⁶47 C.F.R. §1.223(b).

¹⁷HDO at 7138, 7143.

the issue designated in the HDO. Success in such efforts would result in Thompson's loss of the Authorization and would leave neither TDS nor Amcell with any interest in the Authorization or right to operate the System.

8. Ameritel, on the other hand, is an MX applicant for the Authorization with every incentive to fully examine Thompson's qualifications. If Thompson is found unqualified to be a Commission licensee, Ameritel -- unlike TDS and Amcell -- stands in line to receive the Authorization. As a result, Ameritel respectfully submits that its participation in the above-captioned proceeding will assist the Commission in fully exploring the relationship between Thompson and Amcell and whether that relationship renders Thompson unqualified to be a Commission licensee. Ameritel's interests in participating in the above-captioned hearing proceeding are different than those of TDS or Amcell. Of these parties, only Ameritel ultimately stands to benefit from a finding that Thompson is unqualified to be a Commission licensee.

9. Accordingly, Ameritel respectfully submits that the instant Petition should also be granted pursuant to the discretionary authority specified in Section 1.223(b) of the Commission's Rules.¹⁸

¹⁸This Petition is both timely and properly supported by the Declaration attached hereto as Exhibit 2 as required by Section 1.223(b) of the Commission's Rules. See note 15, supra.

WHEREFORE, for all of the foregoing reasons, Ameritel hereby respectfully requests grant of the instant Petition To Intervene.

Respectfully submitted,

AMERITEL

By: *Richard S. Becker*

Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel

Its Attorneys

Richard S. Becker & Associates, Chartered
1915 Eye Street, Northwest
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(202) 833-4422

Date: February 6, 1995

Exhibit 1

APRIL 23, 1986, PN

Market 131 Rockford, Illinois

1.	13462-CL-P-131-A-86	National Cellular Communications
2.	15024-CL-P-131-A-86	Warren American Oil Company
3.	13710-CL-P-131-A-86	Dr. A. L. Rice
4.	12816-CL-P-131-A-86	Causs Associates
5.	17501-CL-P-131-A-86	Ronald & Darlene Baccino
6.	14569-CL-P-131-A-86	Miller Communications, Inc.
7.	15896-CL-P-131-A-86	G. K. M. E. Partnership
8.	10748-CL-P-131-A-86	Mary Ruth Roberts
9.	14406-CL-P-131-A-86	David S. Smith
10.	11844-CL-P-131-A-86	Edward J. Conlon Cellular Company

Market 132 Kalamazoo, Michigan

1.	16546-CL-P-132-A-86	GTEW Partnership
2.	11269-CL-P-132-A-86	Metromedia Telecommunications, Inc.
3.	10239-CL-P-132-A-86	R & W Partnership
4.	15486-CL-P-132-A-86	Taylor Interactive Components, Inc.
5.	18088-CL-P-132-A-86	WWB Cellular Joint Venture
6.	13459-CL-P-132-A-86	AGLA Investments
7.	14233-CL-P-132-A-86	KE Partners
8.	15175-CL-P-132-A-86	J.T.A., Inc.
9.	12073-CL-P-132-A-86	Charles M. Miller
10.	11299-CL-P-132-A-86	Alpha Cellular

Market 133 Manchester-Nashua, New Hampshire

1.	13998-CL-P-133-A-86	JMP-Partnership
2.	12024-CL-P-133-A-86	Councilly Associates
3.	10787-CL-P-133-A-86	Flint A. Price
4.	16195-CL-P-133-A-86	A. Douglas Sims, Sr.
5.	11642-CL-P-133-A-86	Reality Properties, Inc.
6.	13521-CL-P-133-A-86	David L. Fehrenkamp
7.	13643-CL-P-133-A-86	Richard J. Rose
8.	13506-CL-P-133-A-86	The Blythe Group
9.	13254-CL-P-133-A-86	Theodore E. Koenig, Jr.
10.	14711-CL-P-133-A-86	Dr. Pinaudal

Market 134 Atlantic City, New Jersey

1.	14261-CL-P-134-A-86	Ellis Thompson
2.	12179-CL-P-134-A-86	J. Dudeck Communications
3.	14566-CL-P-134-A-86	RJR Communications, Inc.
4.	17649-CL-P-134-A-86	F & F Communications
5.	14310-CL-P-134-A-86	American, Inc.
6.	12812-CL-P-134-A-86	Canon Car Phone
7.	12516-CL-P-134-A-86	Christopher Kane
8.	11315-CL-P-134-A-86	S. Ouchi Communications
9.	15284-CL-P-134-A-86	Tom McAdan
10.	14608-CL-P-134-A-86	Metrecall of North Carolina, Inc.

Exhibit 2

DECLARATION OF RICHARD ROWLEY

EXHIBIT 2

DECLARATION OF
RICHARD ROWLEY

I, Richard Rowley, hereby declare under penalty of perjury under the laws of the United States of America as follows:

1. I am a general partner in Ameritel ("Ameritel"), successor-in-interest to Ameritel, Inc.

2. I have reviewed the foregoing "Petition To Intervene" ("Petition") to be filed on behalf of Ameritel with the Federal Communications Commission ("Commission") with respect to the hearing designated by the Commission in CC Docket No. 94-136 in connection with the application of Ellis Thompson Corporation for nonwireline cellular facilities to operate on frequency block A in Atlantic City, New Jersey (File No. 14261-CL-P-134-A-86).

3. Except for those facts of which official notice may be taken by the Commission, all facts set forth in the foregoing Petition are true and correct of my own personal knowledge and belief.

DATE: February 3, 1995


Richard Rowley

CERTIFICATE OF SERVICE

I, Vicky Chandor, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 6th day of February, 1995, sent by First Class United States mail, postage prepaid, copies of the foregoing "PETITION TO INTERVENE" to the following:

Honorable Joseph Chachkin*
Federal Communications Commission
2000 L Street, N.W.
Washington, DC 20554

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Counsel for Ellis Thompson/
Ellis Thompson Corporation


Vicky Chandor

Exhibit 3

BECKER DECLARATION

Exhibit 3

DECLARATION OF
RICHARD S. BECKER

I, Richard S. Becker, hereby declare under penalty of perjury under the laws of the United States of America as follows:

1. I am the owner of Richard S. Becker & Associates, Chartered ("BA"), a law firm engaged in the practice of communications law before the Federal Communications Commission ("Commission").

2. BA represents Ameritel, a party seeking to intervene in the hearing proceeding ("Hearing") in Commission CC Docket No. 94-136 regarding the application of Ellis Thompson Corporation for the Atlantic City, New Jersey, Metropolitan Statistical Area ("MSA") nonwireline cellular authorization. On February 6, 1995, we submitted on behalf of Ameritel a "Petition To Intervene" ("Petition") in the Hearing.

3. The existing parties to the Hearing ("Existing Parties") submitted pleadings ("Oppositions") challenging Ameritel's Petition. BA received service copies of all Oppositions filed by the Existing Parties.

4. Aside from the Oppositions, however, prior to March 21, 1995, BA received no service copies of any decision issued by Administrative Law Judge Joseph Chachkin in the Hearing. Specifically, prior to March 21, 1995: (1) BA did not receive a service copy of Judge Chachkin's Memorandum Opinion and Order, FCC 95M-68 (released March 7, 1995) ("MO&O"); and (2) BA had no notice whatsoever of the MO&O.

5. On March 21, 1995, BA submitted on behalf of Ameritel a "Response" and "Motion For Leave To File Response" ("Motion") in the Hearing. In the afternoon of March 21, 1995, Mr. Joseph Weber, Commission attorney representing the Wireless Telecommunications Bureau ("Bureau") in the Hearing, contacted me by telephone and indicated that he had received his hand-delivered service copy of the Response and Motion. Mr. Weber advised me, however, that Judge Chachkin had issued the MO&O denying Ameritel's Petition. When I advised Mr. Weber that BA had not received a copy of the MO&O, Mr. Weber indicated that he had also not been served with the MO&O. Mr. Weber pointed out that he only became aware of the MO&O when he was contacted by counsel for Existing Party Telephone and Data Systems, Inc., whose law firm, Koteen & Naftalin, had been served with a copy of Judge Chachkin's MO&O. Mr. Weber forwarded a copy of the MO&O to me via fax machine at approximately 3:30 PM on March 21, 1995.