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November 2, 2004

Ms. Susan K. Duffy, Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

STATE CORPORATION COMMISSION

NOV 02 2004

Re: Docket No. 03-SWBT-330-IAT

 Docket
Room

Dear Ms. Duffy:

Enclosed for filing with the Commission is an original and three (3) copies of an Application for Approval of a Modification to the Interconnection Agreement ("the Agreement") previously approved between Southwestern Bell Telephone, L.P. d/b/a SBC Kansas ("SBC") and American Fiber Systems, Inc. ("American") on January 17, 2003 in the above-captioned docket. Also enclosed is an Affidavit of Michael Scott, Area Manager-Regulatory Issues.

This modification adopts rates, terms and conditions of the FCC's Interim Terminating Compensation plan for Kansas ISP-bound traffic exchanged between the two Parties. This amendment was previously approved by the Commission in Docket No. 03-SWBT-099-IAT. The Agreement, with this modification, and the attachments incorporated therein are an integrated package and are the result of negotiation and compromise. There are no outstanding issues between the parties that need the assistance of mediation or arbitration. American is registered as active and in good standing with the Kansas Secretary of State's office.

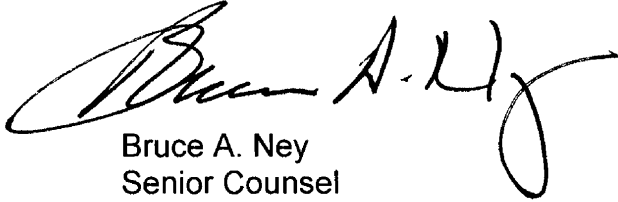
SBC files this modification to the Agreement seeking Commission approval of its terms and conditions consistent with the Federal Telecommunications Act of 1996. SBC represents and believes in good faith that the implementation of this modification to the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. SBC specifically requests that the Commission refrain from taking any action to change, suspend or otherwise delay implementation of this modification to the agreement, in keeping with the support for competition previously demonstrated by the Commission.

Contact information for American is listed below.

CLEC Officer Name:	CLEC Attorney Name:
Mr. Bruce T. Frakiewich	
VP-Legal and Regulatory Affairs	
100 Meridian Center, Suite 150	
Rochester, NY 14618	
Phone: 585-340-5400	
Fax: 585-756-1966	

The Commission's prompt attention to this matter would be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Ney". The signature is fluid and cursive, with a large initial "B" and a stylized "Ney".

Bruce A. Ney
Senior Counsel

Enclosures

cc: Ms. Eva Powers (transmittal letter only)
Mr. Bruce T. Frakiewich

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

NOV 02 2004

In the Matter of the Application of)
Southwestern Bell Telephone Company for)
Approval of Interconnection Agreement)
Under The Telecommunications of 1996)
With American Fiber Systems, Inc.)

Docket No. 03-SWBT-330-IAT

 Docket
Room

**APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY
FOR APPROVAL OF A MODIFICATION TO INTERCONNECTION AGREEMENT**

Southwestern Bell Telephone, L.P., d/b/a SBC Kansas ("SBC") hereby files this Application for Approval of a Modification to the Interconnection Agreement ("the Agreement") under the Telecommunications Act of 1996 ("Federal Act") between SBC and American Fiber Systems, Inc. and would respectfully show the Kansas Corporation Commission ("Commission") the following:

I. INTRODUCTION

SBC presents to this Commission a modification to the Agreement previously negotiated, executed and filed with the Commission on October 23, 2002 pursuant to the terms of the Federal Act. The Commission issued an order approving the Agreement on January 17, 2003. This modification adopts rates, terms and conditions of the FCC's Interim Terminating Compensation plan for Kansas ISP-bound traffic exchanged between the two Parties. This amendment was previously approved by the Commission in Docket No. 03-SWBT-099-IAT. A copy of the executed Amendment which reflects the parties' agreement to incorporate this modification to the Agreement, is attached hereto as Attachment I. .

II. REQUEST FOR APPROVAL

SBC seeks the Commission's approval of this modification to the Agreement, consistent with the provisions of the Federal Act. The implementation of this modification to the Agreement complies fully with Section 252(e) of the Federal Act because the modifications are consistent with the Commission's previous conclusion that the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier.

SBC respectfully requests that the Commission grant expeditious approval of this modification to the Agreement, without change, suspension or other delay in its implementation. The Agreement, with this modification, is a bilateral agreement, reached as a result of negotiations and compromise between competitors, and the parties do not believe a docket or intervention by other parties is necessary or appropriate.

III. STANDARD FOR REVIEW

The statutory standards of review are set forth in Section 252(e) of the Federal Act which provides as follows:

Section 252(e) of the Federal Act:

(e) APPROVAL BY STATE COMMISSION

- (1) APPROVAL REQUIRED.** -- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) GROUNDS FOR REJECTION.** -- The State Commission may only reject --
 - (A)** an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity . . .


The affidavit of Michael Scott, Area Manager-Regulatory Issues, establishes that the modification to the Agreement submitted herein satisfies the standards for approval under the Federal Act. (Affidavit, Attachment II).

IV. KANSAS LAW

The negotiated and executed modification to the Agreement is consistent with the Kansas regulatory statutes.

V. CONCLUSION

For the reasons set forth above, SBC respectfully requests that the Commission approve this modification to the Agreement previously approved.


TIMOTHY S. PICKERING (#02003)
BRUCE A. NEY (#15554) ◀
MELANIE N. SAWYER (#19945)
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Attorneys for Southwestern Bell Telephone, L.P.,
d/b/a SBC Kansas

**AMENDMENT
to
INTERCONNECTION AGREEMENT UNDER
SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

by and between

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a

SBC KANSAS

and

AMERICAN FIBER SYSTEMS, INC.

(KANSAS)

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC KANSAS
AND
AMERICAN FIBER SYSTEMS, INC.**

The Southwestern Bell Telephone, L.P.¹ d/b/a SBC Kansas, as the Incumbent Local Exchange Carrier in Kansas (hereafter, "ILEC ") and American Fiber Systems, Inc. as a Competitive Local Exchange Carrier ("CLEC"), in Kansas, (referred to as "CARRIER"), in order to amend, modify and supersede any affected provisions of their Interconnection Agreement with ILEC in Kansas ("Interconnection Agreement"), hereby execute this ISP-Bound Traffic Reciprocal Compensation Amendment (Adopting FCC Interim Terminating Compensation Plan) ("Amendment"). CLEC is also referred to as a "LEC."

1. Scope of Amendment

- 1.1 ILEC made an offer to all telecommunications carriers in the state of Kansas (the "Offer") to exchange traffic on and after June 1, 2004 under Section 251(b)(5) of the Act pursuant to the terms and conditions of the FCC's interim terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001)) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).
- 1.2 The purpose of this Amendment is to include in CARRIER's Interconnection Agreement the rates, terms and conditions of the FCC's interim ISP terminating compensation plan for the exchange of ISP-Bound traffic lawfully compensable under the FCC ISP Compensation Order ("ISP-Bound Traffic").
- 1.3 This Amendment is intended to supercede any and all contract sections, appendices, attachments, rate schedules, or other portions of the underlying Interconnection Agreement that set forth rates, terms and conditions for the terminating compensation for all ISP-Bound Traffic exchanged between ILEC and CARRIER. Any inconsistencies between the provisions of this Amendment and provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Amendment.

2. Rates, Terms and Conditions of FCC's Interim Terminating Compensation Plan

- 2.1 ILEC and CARRIER hereby agree that the following rates, terms and conditions shall apply to ISP-Bound Traffic exchanged between the Parties on and after the date this Amendment becomes effective pursuant to Section 4.1 of this Amendment.
- 2.2 Reciprocal Compensation Rate Schedule for ISP-Bound Traffic:
 - 2.2.1 The rates, terms, conditions in this section apply only to the termination of ISP-Bound Traffic and Section 251(b)(5) Traffic, and ISP-Bound Traffic is subject to the growth caps in Section 2.3, the new market restrictions in Section 2.4 and rebuttable presumption in Section 2.6. Notwithstanding anything contrary in this Amendment, the growth caps in Section 2.3, the new market restrictions in Section 2.4 and the rebuttable presumption in Section 2.6 only apply to LECs and ILEC.
 - 2.2.2 The Parties agree to compensate each other for the transport and termination of ISP-Bound Traffic on a minute of use basis, at \$.0007 per minute of use.

¹ On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership. Southwestern Bell Telephone, L.P. is now doing business in Kansas as SBC Kansas.

2.3 ISP-Bound Traffic Minutes Growth Cap

- 2.3.1 On a calendar year basis, as set forth below, LEC and ILEC agree to cap overall compensable Kansas ISP-Bound Traffic minutes of use in the future based upon the 1st Quarter 2001 ISP-Bound Traffic minutes for which LEC was entitled to compensation under its Kansas Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule.

Calendar Year 2001	1st Quarter 2001 compensable ISP-Bound minutes, times 4, times 1.10
Calendar Year 2002	Year 2001 compensable ISP-Bound minutes, times 1.10
Calendar Year 2003	Year 2002 compensable ISP-Bound minutes
Calendar Year 2004	Year 2002 compensable ISP-Bound minutes
Calendar Year 2005 and thereafter	Year 2002 compensable ISP-Bound minutes

Notwithstanding anything contrary herein, in Calendar Year 2004, CLEC and ILEC agree that ISP-Bound Traffic exchanged between CLEC and ILEC during the entire period from January 1, 2004 until December 31, 2004 shall be counted towards determining whether LEC has exceeded the growth caps for Calendar Year 2004.

- 2.3.2 ISP-Bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and Keep" refers to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other network.

2.4 Bill and Keep for ISP-Bound Traffic in New Markets

- 2.4.1 In the event LEC and ILEC have not previously exchanged ISP-bound Traffic in any one or more Kansas LATAs prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-bound Traffic between LEC and ILEC for the remaining term of this Agreement in any such Kansas LATAs.
- 2.4.2 Wherever Bill and Keep is the traffic termination arrangement between LEC and ILEC, both Parties shall segregate the Bill and Keep traffic from other compensable local traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.

- 2.5 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-Bound Traffic and does not include Optional Calling Area traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.

2.6 ISP-Bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, LEC and ILEC agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-Bound traffic exchanged between LEC and ILEC exceeding a 3:1 terminating to originating ratio is presumed to be ISP-Bound Traffic subject to the compensation and growth cap terms in this Section 2.0. Either party has the right to rebut the 3:1 ISP presumption by filing an action at the appropriate Commission and identifying the actual ISP-Bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, LEC and ILEC will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 2.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

3.0 Reservation of Rights

- 3.1 The Parties reserve the right to raise the appropriate treatment of Voice Over Internet Protocol ("VoIP") and traffic utilizing in whole or part Internet Protocol technology under the Dispute Resolution provisions of this

Agreement, including but not limited, to any rights they may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (Rel. April 21, 2004). The Parties acknowledge that there is an on-going disagreement between LECs and ILEC over whether or not, under the law, VoIP traffic or traffic utilizing in whole or part IP technology is subject to reciprocal compensation or switched access charges. The Parties therefore agree that neither one will argue or take the position before any regulatory commission or court that this Amendment constitutes an agreement as to whether or not reciprocal compensation or switched access charges apply to that traffic or a waiver by either party of their position or their rights as to that issue. The Parties further agree that they each have reserved the right to advocate their respective positions relating to the treatment and compensation for VoIP traffic and traffic utilizing in whole or part Internet Protocol technology before any state commission or the Federal Communications Commission ("FCC") whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, state commission or FCC established rulemaking dockets, or before any judicial or legislative body.

4.0 Miscellaneous

- 4.1 This Amendment will be effective on June 1, 2004 ("Effective Date"), and will apply to all ISP-Bound Traffic exchanged between ILEC and CARRIER on and after that date, contingent upon any necessary commission approval of the Amendment
- 4.2 To the extent that compensation for intercarrier traffic on or after June 1, 2004 was already billed and/or paid prior to the time that the state commission approved this Amendment, the Parties agree to implement any adjustments, reimbursements, or other "true ups" necessary to make the rates and terms set forth in this Amendment effective for all traffic terminated on and after June 1, 2004.
- 4.3 This Amendment is coterminous with the underlying Interconnection Agreement and does not extend the term or change the termination provisions of the underlying Interconnection Agreement.
- 4.4 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED.
- 4.5 Every rate, term and condition of this Amendment is legitimately related to the other rates, terms and conditions in this Amendment. Without limiting the general applicability of the foregoing, the change of law provisions of the underlying Interconnection Agreement, including but not limited to the "Intervening Law" or "Change of Law" or "Regulatory Change" section of the General Terms and Conditions of the Interconnection Agreement and as modified in this Amendment, are specifically agreed by the Parties to be legitimately related to, and inextricably intertwined with this the other rates, terms and conditions of this Amendment.
- 4.6 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, et al, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC-KANSAS shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal

regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that SBC KANSAS has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") KANSAS and as of the date of that election by SBC KANSAS, the FCC Plan shall apply to this Agreement, as more specifically provided for in this Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

IN WITNESS WHEREOF, this Reciprocal Compensation Amendment for ISP-Bound Traffic (Adopting FCC Interim Terminating Compensation Plan) to the Interconnection Agreement was exchanged in triplicate on this 20th day of October, 2004, by SBC Kansas, signing by and through its duly authorized representative, and CARRIER, signing by and through its duly authorized representative.

American Fiber Systems, Inc.

Signature: Bruce T. Frankiewicz

Name: Bruce T. Frankiewicz
(Print or Type)

Title: Vp of Legal - Regulatory
(Print or Type)

Date: 10/14/04

FACILITIES-BASED OCN # 786C

ACNA MFY

Southwestern Bell Telephone, L.P. d/b/a SBC Kansas
by SBC Telecommunications, Inc., its authorized agent

Signature: Mike Auinbaub

Name: Mike Auinbaub
(Print or Type)

Title: For/ Senior Vice President -
Industry Markets & Diversified Businesses

Date: OCT 20 2004

BEFORE THE KANSAS CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of)
Southwestern Bell Telephone Company for)
Approval of Interconnection Agreement) Docket No. 03-SWBT-330-IAT
Under The Telecommunications of 1996)
With American Fiber Systems, Inc.)

AFFIDAVIT OF MICHAEL SCOTT

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

Before me, the Undersigned Authority, on the 2nd day of November, 2004, personally appeared Michael Scott of Southwestern Bell Telephone, L.P., d/b/a SBC Kansas ("SBC") who, upon being by me duly sworn on oath deposed and said the following:

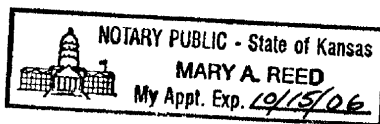
1. My name is Michael Scott. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am the Area Manager-Regulatory Issues for SBC, and I have personal knowledge concerning the Interconnection Agreement ("the Agreement") between SBC and American Fiber Systems, Inc. which was approved by the Commission on January 17, 2003, and the proposed modification to that Agreement.
2. This modification adopts rates, terms and conditions of the FCC's Interim Terminating Compensation plan for Kansas ISP-bound traffic exchanged between the two Parties. This amendment was previously approved by the Commission in Docket No. 03-SWBT-099-IAT.
3. There are no outstanding issues between the parties that need the assistance of mediation and arbitration relating to the modification to the Agreement.
4. The implementation of this modification to the Agreement is consistent with the public interest, convenience and necessity.

5. This modification to the Agreement does not discriminate against any telecommunications carrier. The modification is available to any similarly situated local service provider in negotiating a similar agreement.
6. The negotiated and executed modification to the Agreement is consistent with Kansas law.

Michael Scott

Michael Scott

Subscribed and sworn to before me this 2nd day of November, 2004.



Mary A. Reed

Notary Public

My Commission Expires: *October 15, 2006*