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April 30, 2008

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

STATE CORPORATION COMMISSION

APR 30 2008

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

Dear Ms. Duffy:

 Docket  
Room

Enclosed for filing with the Commission are 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 Company d/b/a AT&T Kansas and American Fiber Systems, Inc. ("American Fiber") on January 17, 2003 in the above-captioned docket. Also enclosed is the supporting Affidavit of Janet Arnold, Manager-Regulatory Relations.

This modification amends the Agreement to extend its expiration date to January 13, 2011. The Agreement, with this modification and the attachments incorporated therein, is an integrated package and is the result of negotiation and compromise. There are no outstanding issues between the parties that need the assistance of mediation or arbitration. American Fiber is registered as active and in good standing with the Kansas Secretary of State's office.

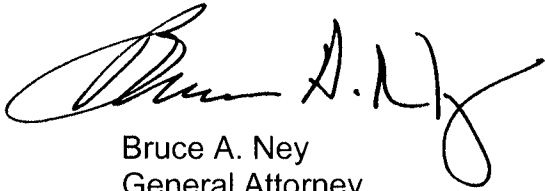
AT&T Kansas files this modification to the Agreement seeking Commission approval of its terms and conditions consistent with the Federal Telecommunications Act of 1996. AT&T Kansas represents and believes in good faith that the implementation of this modification to the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. AT&T Kansas 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 Fiber is listed below.

CLEC Officer Name:	CLEC Attorney Name:
Bruce T. Frankiewicz	
VP of Legal and Regulatory	
100 Meridian Centre, Suite 250	
Rochester, NY 14618	
Phone: 585-785-5821	
Fax: 585-785-5822	
E-mail: bfrankiewicz@afsnetworks.com	

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  
General Attorney

Enclosures

cc: Ms. Colleen Harrell (transmittal letter only)  
Mr. Bruce Frankiewicz

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

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

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

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

**I. INTRODUCTION**

AT&T Kansas 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 amends the Agreement to extend its expiration date to January 13, 2011. 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**

AT&T Kansas 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.

AT&T Kansas 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 . . .

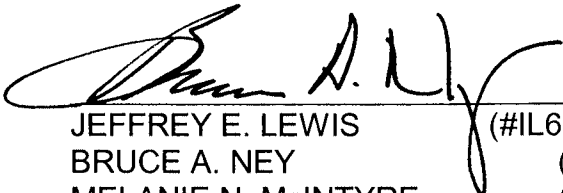
The affidavit of Janet Arnold, Manager-Regulatory Relations, establishes that the modification to the Agreement submitted herein satisfies the standards for approval under the Federal Act. (Affidavit, Attachment II).

#### **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, AT&T Kansas respectfully requests that the Commission approve this modification to the Agreement previously approved.

  
JEFFREY E. LEWIS (#IL6198060)  
BRUCE A. NEY (#15554) ◀  
MELANIE N. McINTYRE (#19945)  
220 E. Sixth Street, Room 515  
Topeka, Kansas 66603-3596  
(785) 276-8413  
(785) 276-1948 (Facsimile)  
Attorneys for Southwestern Bell Telephone  
Company d/b/a AT&T Kansas

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

**by and between**

**SOUTHWESTERN BELL TELEPHONE COMPANY**

**d/b/a  
AT&T KANSAS**

**and**

**AMERICAN FIBER SYSTEMS, INC.**

**AMENDMENT TO  
INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE  
TELECOMMUNICATIONS ACT OF 1996  
BETWEEN  
SOUTHWESTERN BELL TELEPHONE COMPANY d/b/a AT&T KANSAS  
AND  
AMERICAN FIBER SYSTEMS, INC.**

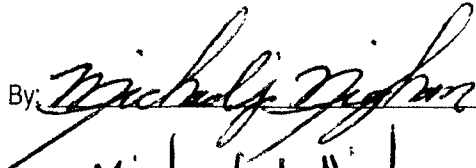
The Interconnection Agreement dated October 16, 2002 by and between Southwestern Bell Telephone Company d/b/a AT&T Kansas ("AT&T")<sup>1</sup> and American Fiber Systems, Inc. ("AFS") ("Agreement") effective in the state of Kansas is hereby amended as follows:

1. Section 5 Effective Date, Term and Termination of the General Terms and Conditions is amended by adding the following section:
  - 5.2.1 Notwithstanding anything to the contrary in this Section 5, the original expiration date of this Agreement, as modified by this Amendment, will be extended for a period of three (3) years commencing on January 13, 2008 until January 13, 2011 (the "Extended Expiration Date"). The Agreement shall expire on the Extended Expiration Date; provided, however, that during the period from the effective date of this Amendment until the Extended Expiration Date, the Agreement may be terminated earlier either by written notice from AFS, by AT&T pursuant to the Agreement's early termination provisions, by mutual agreement of the parties, or upon the effective date of a written and signed superseding agreement between the parties.
2. The Parties acknowledge and agree that AT&T Kansas shall permit the extension of this Agreement, subject to amendment to reflect future changes of law as and when they may arise.
3. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
4. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
5. This Amendment shall be filed with and is subject to approval by the Kansas Corporation Commission and shall become effective ten (10) days following approval by such Commission.

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<sup>1</sup> 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. On June 29, 2007, Southwestern Bell Telephone, L.P., a Texas limited partnership, was merged with and into SWBT Inc., a Missouri corporation, with SWBT Inc. as the survivor entity. Simultaneous with the merger, SWBT Inc. changed its name to Southwestern Bell Telephone Company. Southwestern Bell Telephone Company is doing business in Kansas as "AT&T Kansas".

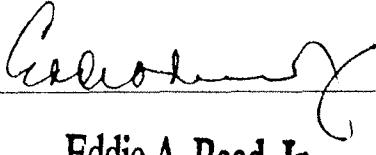
American Fiber Systems, Inc.

By:   
Name: Michael J. Nighan  
(Print or Type)

Title: Director - Regulatory Affairs  
(Print or Type)

Date: March 27, 2008

Southwestern Bell Telephone Company d/b/a AT&T  
Kansas by AT&T Operations, Inc., its authorized agent

By:   
Name: Eddie A. Reed, Jr.  
(Print or Type)

Title: Director-Interconnection Agreements

Date: 04-21-08

Resale OCN # 5352

Switch Based OCN # 786C

ACNA: MFY



BEFORE THE KANSAS CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

AFFIDAVIT OF JANET ARNOLD

STATE OF KANSAS )  
 ) ss  
COUNTY OF SHAWNEE )

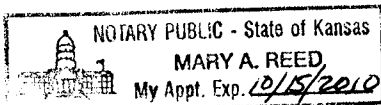
Before me, the Undersigned Authority, on the 30th day of April, 2008, personally appeared Janet Arnold of Southwestern Bell Telephone Company d/b/a AT&T Kansas who, upon being by me duly sworn on oath deposed and said the following:

1. My name is Janet Arnold. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am the Manager-Regulatory Relations for AT&T Kansas, and I have personal knowledge concerning the Interconnection Agreement ("the Agreement") between AT&T Kansas 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 amends the Agreement to extend its expiration date to January 13, 2011.
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.

  
\_\_\_\_\_  
Janet Arnold

Subscribed and sworn to before me this 30<sup>th</sup> day of April, 2008.



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

My Commission Expires: *October 15, 2010*