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STATE CORPORATION COMMISSION

September 8, 2003

SEP 08 2003

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

Susan K. Duffy Docket
Room

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

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 amends the Agreement to incorporate a new non-recurring rate for HFPL Line and Station Transfer – Maintenance Phase which replaces and supersedes the rate currently shown as "to be determined." 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 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.

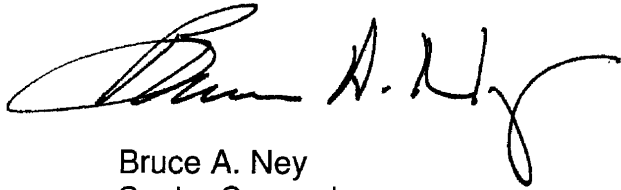
SBC files this modification to the Agreement seeking Commission approval of its terms and conditions consistent with the Federal Telecommunications Act of 1996. SBC represents and believes in good faith that the implementation of this modification to the Agreement is consistent with the public interest, 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:
Ms. Amy Gilchrist	
VP-Regulatory	
100 Meridian Center, Suite 150	
Rochester, NY 14618	
Phone: 585-340-5400, ext. 135	

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

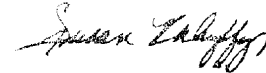
cc: Ms. Eva Powers (transmittal letter only)
Ms. Aisha Barron
Ms. Amy Gilchrist

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

STATE CORPORATION COMMISSION

SEP 08 2003

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
Room

Docket No. 03-SWBT-330-IAT

**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 amends the Agreement to incorporate a new non-recurring rate for HFPL Line and Station Transfer – Maintenance Phase which replaces and supersedes the rate currently shown as "to be determined." 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 . . .

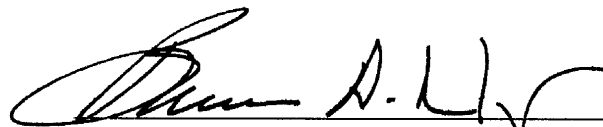
The affidavit of Michael Scott, Area Manager-Regulatory Issues, establishes that the modification to the Agreement submitted herein satisfies the standards for approval under the Federal Act. (Affidavit, Attachment II).

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)
220 E. Sixth Street, Room 515
Topeka, Kansas 66603-3596
(785-276-8413)
(785) 276-1948 (Facsimile)
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 – KANSAS

By and Between

SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC KANSAS

and

American Fiber Systems, Inc

The Interconnection Agreement ("the Agreement") by and between Southwestern Bell Telephone, L.P. d/b/a SBC Kansas ("SBC Kansas") and American Fiber Systems, Inc ("CLEC") is hereby amended as follows:

(1) The Pricing Schedule – Kansas to the Agreement is hereby amended to incorporate the following non-recurring HFPL Line and Station Transfer Rate – Maintenance Phase to replace and supersede the HFPL Line and Station Transfer Rate – Maintenance Phase currently noted as "to be determined" or "TBD" in the underlying Agreement.

Non-Recurring

HFPL Line and Station Transfer Rate – Maintenance Phase:	\$186.32
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(2) The HFPL Line and Station Transfer Rate – Maintenance Phase set forth in Paragraph 1 was implemented on June 3, 2003 ("Rate Effective Date") and will apply going forward to any HFPL LSTs which are performed by SBC Kansas.¹ SBC Kansas will calculate and apply to CLEC's bill any applicable credits or charges due CLEC as a result of such pricing change as of the Rate Effective Date; provided however, the Parties agree that any billing adjustments and payments made in accordance with this Amendment are not subject to SBC Kansas's obligations under the Service Performance Measurements and that liquidated damages shall not apply to any adjustment or credits made in connection with this Amendment and will not be included in or affect any past, current or future performance measurement results.

(3) The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Kansas Corporation Commission.

(4) This Amendment shall not modify or extend the Effective Date or Term of the Agreement, but rather, will be coterminous with such Agreement.

(5) In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's

¹ Notwithstanding anything to the contrary in the Agreement (including, as applicable, this Amendment and any other Amendments to the Agreement ("Agreement")), in the event that any other telecommunications carrier should adopt provisions in the Agreement pursuant to Section 252(i) of the Act ("Adopting CLEC") after the effective date of a particular rate change, that rate change shall only apply prospectively beginning from the date that the MFN provisions becomes effective between Pacific and the Adopting CLEC following the Commission's order approving the Adopting CLECs Section 252(i) adoption or, the date such Agreement is deemed approved by operation of law ("Section 252(i) Effective Date"), and that rate change would not in any manner apply retroactively prior to the Section 252(i) Effective Date.

opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("USTA decision"); the FCC's Triennial Review Order, adopted on February 20, 2003, on remand from the USTA decision and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760 (FCC 99-370) (rel. Nov. 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; 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); or the Public Utilities Act of Illinois, which was amended on May 9, 2003 to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law"). On May 9, 2003, the Public Utilities Act of Illinois was amended to add Sections 13-408 and 13-409, 220 ILCS 5/13-408 and 13-409, and enacted into law ("Illinois Law"). The Illinois Law establishes a specific method for setting certain UNE rates in Illinois, mandates that the Illinois Commerce Commission ("ICC") apply the method and determine the rates ("ICC Rates"), and expressly deems all interconnection agreements to be amended to contain the ICC Rates immediately upon the ICC's announcement of such adjusted rates, without further action. Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings and the Illinois Law, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Notwithstanding anything to the contrary in this Agreement and in addition to fully reserving its other rights, SBC Kansas reserves its right, to the extent SBC Kansas has not already invoked the FCC ISP terminating compensation in Kansas and incorporated the rates, terms and conditions of such plan into this Agreement, to exercise its option at any time to adopt on a date specified by SBC Kansas the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding, finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party ("Written Notice"). In addition, to the extent this Agreement is in effect in Illinois, the Parties agree that any ICC orders implementing the Illinois Law, including, without limitation, the ICC Rates, shall automatically apply to this Agreement (for the state of Illinois only) as of the effective date of any such order(s) upon Written Notice, and as soon as practical thereafter, SBC Illinois shall begin billing CLEC the ICC Rates; provided, however, the Parties acknowledge and agree that no later than sixty (60) days from the Written Notice, the Parties will execute a conforming Amendment to this Agreement so that the Agreement accurately reflects the ICC Rates and SBC Illinois will issue any adjustments, as needed, to reflect that the ICC Rates became effective between the Parties as of the effective date of the applicable ICC order(s). With respect to all other 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 required 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 interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

(6) EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this 28th day of July, 2003, by SBC Kansas, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

AMERICAN FIBER SYSTEMS, INC

By: Bruce T. Frankiewicz
Printed: Bruce T. Frankiewicz
Title: VP of Legal & Regulatory
Date: 7/24/03

**SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A
SBC KANSAS**

By its Authorized Agent,
SBC Telecommunications, Inc.

By: Christy Gehlbach
Printed: Christy Gehlbach
Title: for President - Industry Markets
Date: 7-28-03

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 8th day of September, 2003, 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:

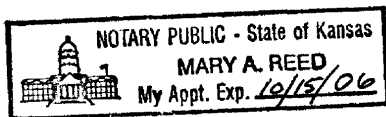
1. My name is Michael Scott. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am the Area Manager-Regulatory Issues for SBC, and I have personal knowledge concerning the Interconnection Agreement ("the Agreement") between SBC and American Fiber Systems, Inc. which was approved by the Commission on January 17, 2003, and the proposed modification to that Agreement.
2. This modification amends the Agreement to incorporate a new non-recurring rate for HFPL Line and Station Transfer – Maintenance Phase which replaces and supersedes the rate currently shown as "to be determined."
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 8th day of September, 2003.



Mary A. Reed
Notary Public

My Commission Expires: *October 15, 2006*