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April 18, 2005

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

STATE CORPORATION COMMISSION

APR 18 2005

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

Susan Talbot 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.

These modifications amend the Agreement to change certain rates for xDSL loops and cross connects that were approved by the Commission in Order No. 24 from Docket No. 01-GIMT-032-GIT. 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. This amendment was previously approved in Docket No. 04-SWBT-499-IAT. American is registered as active and in good standing with the Kansas Secretary of State's office.

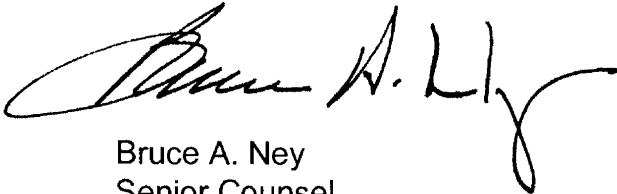
SBC files this modification to the Agreement seeking Commission approval of its terms and conditions consistent with the Federal Telecommunications Act of 1996. SBC represents and believes in good faith that the implementation of this modification to the Agreement is consistent with the public interest, 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. Frankiewicz	
VP-Legal and Regulatory Affairs	
100 Meridian Center, Suite 150	
Rochester, NY 14618	
Phone: 585-340-5400, ext. 129	
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. Frankiewicz

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

APR 18 2005

Susan K. Tate Docket
Room

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.)

**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. These modifications amend the Agreement to change certain rates for xDSL loops and cross connects that were approved by the Commission in Order No. 24 from Docket No. 01-GIMT-032-GIT. This amendment was previously approved by the Commission in Docket No. 04-SWBT-499-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) **GROUND 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 . . .

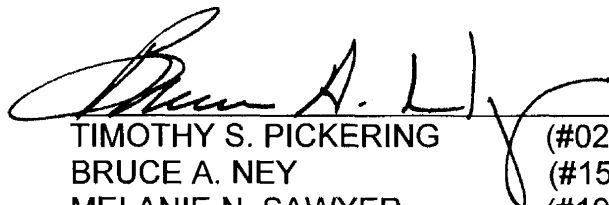
The affidavit of Michael Scott, Area Manager-Regulatory Issues, establishes that the modification to the Agreement submitted herein satisfies the standards for approval under the Federal Act. (Affidavit, Attachment II).

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
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(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)

KANSAS RATE ORDER NOS. 24 AND 25
AMENDMENT TO THE INTERCONNECTION AGREEMENT
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 Kansas¹ ("SBC Kansas") and American Fiber Systems, Inc ("CLEC") is hereby amended as follows:

WHEREAS, on June 29, 2004 the Kansas Corporation Commission ("Commission") issued its Order No. 24: Adopting Stipulation and Determining Remaining Contested Issues in Docket No. 01-GIMT-032-GIT ("Order No. 24"), in which the Commission approved SBC Kansas' proposed stipulation, including certain stipulated rates for certain unbundled network elements, network elements and associated product offerings ("Stipulated Rates"), and all associated terms and conditions set forth in SBC Kansas' October 15, 2003 proposed stipulation (the "Stipulation"), which is incorporated herein by this reference; and

WHEREAS, in its Order No. 24, the Commission also established certain rates for the remaining contested issues not addressed in the Stipulation (collectively the "Commission-ordered Rates"); and

WHEREAS, on August 12, 2004, the Commission issued its Order on Clarification: No. 25, in which the Commission made certain clarifications to its Order No. 24 (collectively the "Orders" or "Order"); and

WHEREAS, this Amendment is to implement the Stipulation and Orders and to incorporate certain of the Commission-ordered Rates and appropriate conforming modifications into the Agreement;

NOW THEREFORE, the Parties agree to amend the Agreement as set forth below.

1. **Recitals:** The foregoing Recitals are hereby incorporated into and made a part of this Amendment.
2. **Rates and Rate Effective Date(s):**
 - 2.1 Solely to conform the Agreement to effectuate certain Commission-established rates established by the Commission in the Orders, the Agreement is amended to add the attached pricing schedule labeled Attachment A (which is incorporated herein by this reference), to replace and supersede the corresponding rates set forth in the Parties' underlying Agreement. The Commission-established rates set forth on Attachment A shall be deemed to begin to apply to the Parties under this Agreement as of the date that is the later of: (1) the effective date of the Agreement between the Parties; or (2) June 29, 2004 ("Rate Effective Date"), and on a prospective basis upon the Amendment Effective Date as defined in Section 3.0 below (with SBC Kansas performing any necessary adjustments and therefore, issuing the necessary credits or bills, as appropriate, to apply the Commission-established rates from the Rate Effective Date going forward).²
 - 2.2 To the extent any of the rates set forth on Attachment A are explicitly noted as interim and subject to true-up following establishment of final rates by the Commission in the underlying Agreement, then in addition to any adjustments necessary to effectuate Section 2.1 above, SBC Kansas will, following the Amendment

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

² 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 the Agreement pursuant to Section 252(i) of the Act ("Adopting CLEC"), the rates and rate structures in this Agreement and Amendment shall begin to apply prospectively from the date that the MFN Agreement becomes effective between SBC Kansas and the Adopting CLEC, following the date the Commission approves or is deemed to have approved the Adopting CLEC's Section 252(i) adoption ("Section 252(i) Effective Date"). In no event shall an Adopting CLEC be entitled to the application of any rate or rate structures under its MFN Agreement to a date prior to its Section 252(i) Effective Date.

Effective Date as defined in Section 3.0 below, perform any necessary adjustments and calculate and apply to CLEC's bill any applicable credits or charges due CLEC after applying the Commission-established rates from the Rate Effective Date back to the Effective Date of the underlying Agreement between the Parties as to any corresponding interim rates for which CLEC was billed and paid pursuant to the underlying Agreement between the Effective Date of the Agreement and the Rate Effective Date set forth in Section 2.1 above.

- 2.3 To the extent the Commission-established rates set forth in Attachment A replace and supersede any rates noted as interim and/or subject to true-up/retroactive adjustment in the underlying Agreement, the "interim" and/or "true-up/retroactive adjustment" notation(s) set forth in the underlying Agreement are hereby deleted.
3. **Amendment Effective Date:** The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Commission and shall become effective ten (10) days following the date this Amendment is approved or is deemed to have been approved by the Commission under Section 252(e) of the Act ("Amendment Effective Date"); provided, however, that the rates contained herein shall be applied in accordance with Section 2.0 and subject to Footnote 2, as applicable.
4. **General Provisions:**
 - 4.1 The Parties acknowledge and agree that any billing adjustments and payments made in accordance with this Amendment are not subject to SBC Kansas' 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.
 - 4.2 Nothing in this Amendment expands, contracts, or otherwise affects either SBC Kansas' or CLEC's rights or obligations under the Agreement beyond the express provisions of this Amendment. Notwithstanding anything to the contrary herein, to the extent the underlying Agreement does not contain terms and conditions for any of the rate elements set forth on Attachment A, which are being incorporated into this Agreement by way of this Amendment, this Amendment does not provide CLEC with the ability to obtain and/or order such products, network elements and/or UNEs ("Product(s)"), as applicable. Rather, CLEC must negotiate a separate amendment incorporating the appropriate terms and conditions into the Agreement before ordering and/or obtaining any such Product(s), if and to the extent available.
 - 4.3 This Amendment shall not modify or extend the Effective Date or Term of the Agreement, but rather, will be coterminous with such Agreement.
5. **Reservation of Rights:**
 - 5.1 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, any of the rights, remedies and arguments it may have including, without limitation, as to the appropriate costs/rates for the Stipulated Rates and in this Amendment in any pending or future regulatory, judicial or legislative proceedings and/or negotiations, and that 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, including, without limitation, 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*, et. al 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 (rel. Aug. 21, 2003) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004); 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), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). The Parties further acknowledge and agree that this Amendment is solely to effectuate the Stipulation and Orders and addresses rates/rate structures. Accordingly, no aspect of this Amendment qualifies for portability into any other state under any state or federal statute, regulation, order

or legal obligation (collectively "Law"), if any. Nothing herein shall constitute a concession or admission by either Party and shall not foreclose any Party from taking any position in the future in any forum addressing the appropriate costs/rates as to the Stipulated Rates addressed in this Amendment and the Commission-ordered Rates established by the Commission in its Order s and also as addressed in this Amendment.

6. High Frequency Portion of the Loop ("HFPL"):

6.1 The following provisions are hereby added as a new Section 4.10, et. seq. to Appendix xDSL of the Agreement:

4.10 Grandfathered Line Sharing Arrangements: SBC Kansas will continue to provide access to the HFPL to CLEC (or CLEC's successor or assign), where: (i) prior to October 2, 2003, CLEC began providing DSL service to a particular end-user customer and has not ceased providing DSL service to that customer ("Grandfathered End-Users"); and/or (ii) CLEC began providing xDSL service to a particular end-user customer on or after October 2, 2003, and on or before the close of business December 3, 2004 ("New End-Users"). Such access to the HFPL shall be provided at a \$0.00 monthly recurring rate and shall continue for Grandfathered End-Users until the earlier of: (1) CLEC's xDSL-base service to the end-user customer is disconnected, or (2) the FCC issues its Order in its Biennial Review Proceeding or any other relevant government action which modifies the FCC's HFPL grandfather clause established in its Triennial Review Order and as to New End-Users, the earlier of: (1) and (2) immediately above; or (3) October 2, 2006. Beginning October 2, 2006, SBC Kansas shall have no obligation to continue to provide the HFPL for CLEC to provide xDSL-based service to any New End-User(s) that CLEC began providing xDSL-based service to over the HFPL on or after October 2, 2003 and before December 3, 2004. Rather, effective October 2, 2006, CLEC must provide xDSL-based service to any such New End-User(s) via a line splitting arrangement, over a stand-alone xDSL Loop purchased from SBC Kansas, or through an alternate arrangement, if any, that the Parties may negotiate.

6.2 The ILEC-owned Splitter provisions set forth in Section 5.1.2 of Appendix xDSL to the Agreement are hereby deleted.

6.3 Any references to the HFPL being made available as an unbundled network element or "UNE" are hereby deleted from the underlying Agreement.

7. 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 12th day of April, 2005, by Southwestern Bell Telephone, L.P. d/b/a SBC Kansas, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

American Fiber Systems, Inc.

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

By: Bruce T. Frankewick

By: Mike Auinbaugh

Printed: Bruce T. Frankewick

Printed: Mike Auinbaugh

Title: Vp of Legal-Regulatory

Title: AVP. Local Interconnection Marketing

Date: 4/8/05

Date: 4-12-05

FACILITIES-BASED OCN # 786C

ACNA MFY

**SBC KANSAS RATES per
DOCKET No. 01-GIMT-032-GIT**

ATTACHMENT A
Effective Date: 06/29/04
SBC KS/AMERICAN FIBER SYSTEMS, INC.

Service	Rate Elements	USOC	Recurring Rate	Nonrecurring Rate - First	Nonrecurring Rate -Additional
NETWORK ELEMENTS					
xDSL Cross Connects	2-Wire Analog Loop to Collocation Shielded (without Testing)	UXRRX	\$ 3.26	\$17.29	\$ 9.90
	2-Wire Analog Loop to Collocation Non-Shielded (without testing)	UCX92	\$ 0.24	\$13.69	\$ 7.43
	4-Wire Analog Loop to Collocation Non-Shielded (without testing)	UCX94	\$ 0.48	\$20.45	\$ 13.80
Loop Qualification Process	Loop Qualification Process - Mechanized	NR98U		\$0.06	
	Loop Qualification Process - Manual	NRBXU		\$25.65	
DSL Conditioning Options	Removal of Repeaters (0- 1 7.5K ft)	NRBXV		\$610.45	N/A
	Incremental Removal of Repeater (> than 17.5 Kft.same location/same cable)	NRBNL		\$610.45	N/A
	Removal of Excessive Bridged Taps and Repeaters (0 - 17.5K ft)	NRBXH		\$849.59	N/A
	Incremental Removal of Excessive Bridged Taps and Repeaters (>than 17.5K same location/same cable)	NRBTV		\$790.35	N/A
	Removal of Excessive Bridged Taps (0 - 17.5K ft)	NRBXW		\$748.54	N/A
	Incremental Removal of Excessive Bridged Tap (> than 17.5 Kft.same location/same cable)	NRBNK		\$552.22	N/A
	Removal of Excessive Bridged Taps and Load Coils (0 - 17.5K ft)	NRBXF		\$1,108.76	N/A
	Incremental Removal of Load Coil & Excessive Bridge Tap (> than 17.5 Kft.same location/same Cable)	NRBM8		\$750.96	N/A
	Removal of Load Coils (0 - 17.5K Ft)	NRBXZ		\$883.94	N/A
	Incremental Removal of Load Coil (> than 17.5 Kft.same location/same Cable)	NRBNJ		\$567.37	N/A
LST *	Simple LST in the Feeder Cable	PENDING		\$51.45	\$ 24.60
	Simple LST in the Distribution Cable	PENDING		\$39.45	\$ 18.46
	Complex LST in the Feeder Cable	PENDING		\$102.85	\$ 74.17
	Complex LST in the Distribution Cable	PENDING		\$90.85	\$ 68.04
HFPL	HFPL Cross Connect - CLEC Owned	UKCGE	\$ 0.48	\$ 27.38	\$ 14.86
	HFPL Cross Connect - SBC Owned	UKCGX	\$ 0.72	\$ 41.07	\$ 22.29
	SBC Owned Splitter - line at a time	MYQXB	\$ 0.89		
	Grandfathered HFPL End Users Only				
	HFPL - Zone 1	ULPPX	\$ -		
	HFPL - Zone 2	ULPPX	\$ -		
	HFPL - Zone 3	ULPPX	\$ -		
<p>* - maintenance phases and does not currently assess such a charge for LSTs performed in the provisioning phase. Upon implementation of these LST rates for LSTs performed in lieu of conditioning in the xDSL Loop provisioning phase, SBC Kansas shall provide written notice to CLEC of the application of the rates and CLEC's billing tables will be updated to reflect (and CLEC will be charged) such LST rates and such rates will be deemed effective between the Parties as of the implementation date of such LST rates for LSTs performed in the xDSL Loop provisioning phase, and on a prospective basis. To the extent SBC Kansas performs any LST(s) on CLEC's behalf in the xDSL Loop provisioning phase prior to implementation of the Commission-ordered LST rates, SBC Kansas' performance of such work shall in no way constitute a waiver of SBC Kansas' right to charge and collect payment for such LSTs performed in lieu of conditioning in the xDSL</p>					

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 18th day of April, 2005, 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:

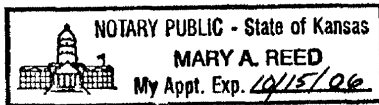
1. My name is Michael Scott. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am the Area Manager-Regulatory Issues for SBC, and I have personal knowledge concerning the Interconnection Agreement ("the Agreement") between SBC and American Fiber Systems, Inc. which was approved by the Commission on January 17, 2003, and the proposed modification to that Agreement.
2. These modifications amend the Agreement to change certain rates for xDSL loops and cross connects that were approved by the Commission in Order No. 24 from Docket No. 01-GIMT-032-GIT. This amendment was previously approved by the Commission in Docket No. 04-SWBT-499-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 18th day of April, 2005.



Mary A. Reed
Notary Public

My Commission Expires: *October 15, 2006*