

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners:                      John Wine, Chair  
   Cynthia L. Claus  
   Brian J. Moline

In the Matter of the 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.                      )

**ORDER**

COMES NOW, the above captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

1.        On November 29, 2000, American Fiber Systems, Inc. ("AFS") was granted a Certificate of Convenience and Authority to provide local exchange service in Docket No. 01-AFST-274-COC.

2.        On October 23, 2002, Southwestern Bell Telephone Company ("SWBT") filed an application for approval of an Interconnection Agreement ("Agreement") between SWBT and AFS. This Agreement supersedes and replaces the Interconnection Agreement between SWBT and AFTS approved by the Commission in Docket No. 01-SWBT-524-IAT on January 2, 2001.

3.        The parties state that this is a bilateral agreement, reached as a result of comprehensive, good faith negotiations and compromise between competitors. SWBT and AFS do not believe a docket or intervention by other parties is necessary or appropriate. The

companies further state that there are no outstanding issues between SWBT and AFS that need the assistance of mediation or arbitration.

4. On December 23, 2002, Commission staff ("Staff") submitted a memorandum recommending the Commission approve the Agreement. Staff found the resale agreement, including the conditions and rules for resale, to be clear and reasonable and not discriminatory against other carriers. Staff notes that the "Non-exclusivity" clause clearly states that SWBT can provide the same or similar services to other local service providers and that AFS can obtain equal or similar services from other local exchange carriers. Staff indicated that in the "Effect of Other Agreements" clause, the parties agree that SWBT will treat AFS no less favorably than other competitive carriers, and that new entrants can do so upon the same rates and terms as AFS.

5. SWBT contends that implementation of the Agreement complies fully with Section 252(e) of the Federal Act. SWBT believes approval is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier.

6. Staff believes that approval of the Agreement will further the public interest by increasing consumer choice. While this is not the facilities-based competition ultimately desired, it does add an option for the telephone consumer and therefore is beneficial since it introduces one form of competition in the local service market.

7. The Federal Telecommunications Act of 1996, Section 252(e) states the Commission may only reject:

(A) an agreement (or any portion thereof) adopted by negotiation . . . 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 . . .

8. The Commission finds and concludes that the application for approval of the Agreement between SWBT and AFS should be granted. The Agreement does not, on its face, discriminate against any telecommunications carrier not a party to the Agreement. Implementation of the Agreement is consistent with the public interest, convenience and necessity.

IT IS THEREFORE, BY THE COMMISSION ORDERED:

A. The Interconnection Agreement between Southwestern Bell Telephone Company and American Fiber Systems, Inc. is hereby approved.

B. A party may file a petition for reconsideration of this Order within fifteen days of the service of this Order. If this Order is mailed, service is complete upon mailing, and three days may be added to the above time frame.

C. The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary and proper.

**BY THE COMMISSION IT IS SO ORDERED.**

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: JAN 17 2003

**ORDER MAILED**

**JAN 21 2003**

 Executive  
Director

Thomas A. Day  
Acting Executive Director

AEB:cg