

**MEMORANDUM
UTILITIES DIVISION**

TO: Chair Wine
Commissioner Claus
Commissioner Moline

FROM: Susan Palmer

DATE: December 19, 2002

DATE SUBMITTED TO LEGAL: 12/20/02

DATE SUBMITTED TO COMMISSIONERS: CP/11/13/02

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

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

BACKGROUND:

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

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

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 assistance of mediation or arbitration.

Approval of the contract is sought under the terms of the Federal Telecommunications Act of 1996, Section 252 (e) (Federal Act). The parties believe that the agreement is consistent with the public interest, convenience, and necessity and does not discriminate against any carrier that is not a party to the contract.

ANALYSIS:

Staff finds that this resale agreement, including the conditions and rules for resale are clear and reasonable and do not discriminate against other carriers. 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. 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.

SWBT contends that implementation of this 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.

Staff believes that approval of this 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.

Section 252(e) of the Federal Act states that state commissions may reject an agreement arrived at through negotiations only if it finds that the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or the implementation of such an agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. Staff finds no such cause for concern.

RECOMMENDATION:

Staff recommends the Commission grant approval of this agreement for interconnection of local service and associated local service features.

cc: Joe White
Tom Behner

Jeff Wagaman
Pat Shurtz

Anne Bos
Eva Powers