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July 28, 2003

**FILED<sup>4</sup>**

**JUL 29 2003**

VIA EXPRESS MAIL

Mr. Dale Hardy Roberts  
Secretary/Chief Administrative Law Judge  
Missouri Public Service Commission  
200 Madison Street  
Jefferson City, MO 65102-0360

**Missouri Public  
Service Commission**

Re: Application of American Fiber Systems, Inc., for Approval of an  
Interconnection Agreement with Southwestern Bell Telephone L.P.

Dear Mr. Roberts:

Please find enclosed for filing the original and eight copies of an Application for Approval of an Interconnection Agreement between American Fiber Systems and Southwestern Bell Telephone L.P. One copy of the Interconnection Agreement is enclosed.

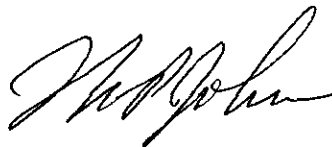
By copy of this letter, I have mailed a copy of the enclosed Application to the Office of Public Counsel.

Thank you for bringing this matter to the Commission's attention.

Very truly yours,

SONNENSCHN NATH & ROSENTHAL LLP

By:



Mark P. Johnson

Enclosures

cc: Office of Public Counsel

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>4</sup>

JUL 29 2003

IN THE MATTER OF THE APPLICATION OF  
AMERICAN FIBER SYSTEMS, INC.  
FOR APPROVAL OF AN INTERCONNECTION  
AGREEMENT WITH SOUTHWESTERN BELL  
TELEPHONE L.P.

) Missouri Public  
) Service Commission  
) Case No. \_\_\_\_\_  
)  
)

**APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT**

Comes now American Fiber Systems, Inc. ("AFS"), and hereby files this Application for Approval of an Interconnection Agreement (the "Agreement") between AFS and Southwestern Bell Telephone, L.P., dba Southwestern Bell Telephone Company ("SWBT"), under the Telecommunications Act of 1996, Public Law No. 104-104 ("Federal Act"), and 4 C.S.R. 240-2.060, stating the following:

**A. PRELIMINARY MATTERS**

1. AFS is a competitive telecommunications company, certificated by the Commission by order dated November 28, 2000, to provide interexchange and nonswitched local exchange services on a competitive basis. AFS's office and principal place of business is located at 100 Meridien Centre, Suite 250, Rochester, New York 14618-3979, and its telephone number is 585/340-5400. AFS is a Delaware corporation authorized to do business in Missouri. A copy of its Certificate of Good Standing from the Missouri Secretary of State is attached as Exhibit A hereto.

2. Correspondence, pleadings, and orders in this matters should be addressed to:

Mark P. Johnson  
Trina R. LeRiche  
SONNENSCHN NATH & ROSENTHAL LLP  
4520 Main Street

Suite 1100  
Kansas City, MO 64111  
816/460-2400  
816/531-7545 (facsimile)

Email: mjohnson@sonnenschein.com  
tleriche@sonnenschein.com

## **B. INTERCONNECTION AGREEMENT REACHED**

3. AFS presents to this Commission for approval the Agreement negotiated and executed pursuant to the terms of the Federal Act (Agreement, Exhibit B). After comprehensive, good faith negotiations to address all of the complex issues involved in such an agreement, AFS and SWBT executed the Agreement on October 9, 2002, and October 16, 2002, respectively. The Agreement is SWBT's 13-State Interconnection Agreement. All matters between the parties have been successfully negotiated, and there are no outstanding issues requiring the assistance of mediation or arbitration.

## **C. REQUEST FOR APPROVAL**

4. AFS seeks the Commission's approval of the Agreement, consistent with the provisions of the Federal Act and Missouri law. AFS believes that the implementation of this Agreement complies fully with Section 252(e) of the Telecommunications Act of 1996 because the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. The Agreement promotes diversity in providers, provides interconnectivity, and increases customer choices for telecommunications services.

5. AFS respectfully requests that the Commission grant expeditious approval of this Agreement, without change, suspension or other delay in its implementation. This is a bilateral

Agreement, reached as a result of negotiations and compromise between competitors, and intervention by other parties is neither necessary nor appropriate.

#### **D. STANDARD FOR REVIEW**

6. The statutory standards of review are set forth in Section 252(e) of the Telecommunications Act of 1996 which provides as follows:

- (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; . . .

7. AFS does not have any pending action or final unsatisfied judgments or unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three years of the date of this Application.

8. AFS does not have any annual report or assessments which are overdue.

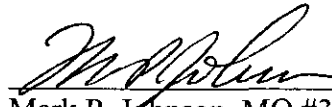
9. The Affidavit attached as Exhibit C establishes that the Agreement submitted herein satisfies these standards.

#### **E. CONCLUSION**

WHEREFORE, AFS respectfully requests that the Commission approve the attached Interconnection Agreement between SWBT and AFS.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL



Mark P. Johnson, MO #30740

Trina R. LeRiche, MO #46080

4520 Main Street, Suite 1100

Kansas City, Missouri 64111

Telephone: (816) 460-2400

Facsimile: (816) 531-7545

ATTORNEYS FOR AMERICAN FIBER  
SYSTEMS, INC.

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that


**AMERICAN FIBER SYSTEMS, INC.**

using in Missouri the name

**AMERICAN FIBER SYSTEMS, INC.  
F00487932**

a DELAWARE entity was created under the laws of this State on the 13th day of September, 2000, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 28th day of July, 2003

  
Secretary of State



Certification Number: 5978064-1 Page 1 of 1 Reference:  
Verify this certificate online at <http://www.sos.state.mo.us/businessentity/verification>

STATE OF MISSOURI     )  
                                      ) SS:  
COUNTY OF JACKSON    )

**VERIFICATION**

I, Mark P. Johnson, being duly sworn upon oath depose and say that I am the attorney for American Fiber Systems, Inc., a Delaware corporation; that I am authorized to make this verification on its behalf; that I have read the above and foregoing Application, and state that its contents are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Mark P. Johnson

Subscribed and Sworn to before me this 28<sup>th</sup> day of July, 2003.

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

My Commission Expires:

