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August 22, 2005

Ms. Colleen M. Dale  
Secretary of the Commission  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
Jefferson City, Missouri 65101

Re: American Fiber Systems, Inc.  
MFN Agreement Adopting Arbitrated ICA from  
Case No. TO-2005-0366

Dear Ms. Dale:

Attached for filing with the Missouri Public Service Commission ("Commission"), pursuant to 4 CSR 240-3.513(4)(A), is the short form interconnection agreement between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri and the above CLEC adopting one of the interconnection agreements resulting from the multi-party arbitration in Case No. TO-2005-0336.

As the Commission is aware, this carrier previously signed a Memorandum of Understanding with SBC Missouri in which it agreed to adopt, pursuant to Section 252(i) of the federal Telecommunications Act, one of the interconnection agreements arrived at through arbitration before the Commission in Case No. TO-2005-0336. The short form interconnection agreement specifically identifies the arbitrated agreement the CLEC is adopting and the Commission case number in which that agreement was approved by the Commission.

Please call me with questions or if anything further is needed. Thank you for your assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Leo J. Bub".

Leo J. Bub

Attachments

cc: General Counsel's Office - [gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)  
Office of the Public Counsel - [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)  
Bruce T. Frankiewicz - [bfrankiewicz@americanfibersystems.com](mailto:bfrankiewicz@americanfibersystems.com)

**INTERCONNECTION AGREEMENT  
UNDER SECTIONS 251 AND 252  
OF THE  
TELECOMMUNICATIONS ACT OF 1996**

This Interconnection Agreement (the "Agreement"), is being entered into by and between Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), and American Fiber Systems, Inc ("CLEC"), (each a "Party" and, collectively, the "Parties"), pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").

**RECITALS**

WHEREAS, pursuant to Section 252(i) of the Act, American Fiber Systems, Inc ("CLEC") has requested to adopt the Interconnection Agreement by and between SBC Missouri and the separate CLEC designated in Section 2.4 below for the State of Missouri, which was previously approved by the Missouri Public Service Commission ("the Commission") under Section 252(e) of the Act, including any Commission approved amendments to such Agreement (the "Separate Agreement"), which is incorporated herein by reference (the "MFN Agreement"); and

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLEC and SBC Missouri hereby agree as follows:

**1. Incorporation of Recitals and Separate Agreement by Reference**

- 1.1 The foregoing Recitals are hereby incorporated into and made a part of this MFN Agreement.
- 1.2 Except as expressly stated herein, the MFN Agreement, including any and all applicable Appendices, Schedules, Exhibits, Attachments and Commission approved Amendments thereto, are incorporated herein by this reference and form an integral part of the MFN Agreement.

**2. Modifications to Separate Agreement**

- 2.1 References in the Separate Agreement to "CLEC" or to "Other" shall for purposes of the MFN Agreement be deemed to refer to CLEC.
- 2.2 References in the Separate Agreement to the "Effective Date," the date of effectiveness thereof and like provisions shall for purposes of this MFN Agreement be deemed to be the date this fully executed Short Form is filed with the Commission (the "Effective Date"). In addition, this MFN Agreement shall expire on the original expiration date of the underlying Separate Agreement.
- 2.3 The Notices Section in the Separate Agreement is hereby revised to reflect that Notices should be sent to CLEC under this MFN Agreement at the following address:

NOTICE CONTACT	CLEC CONTACT
NAME, TITLE	Bruce T. Frankiewicz, Vice President
STREET ADDRESS	100 Meridian Centre
ROOM OR SUITE	Suite 250
CITY, STATE, ZIP CODE	Rochester, NY 14618
E-MAIL ADDRESS	bfrankiewicz@americanfibersystems.com
FACSIMILE NUMBER	585.340.5401

- 2.4 CLEC hereby designates the Separate Agreement it is adopting by way of this Short Form for purposes of this MFN Agreement by placing an "X" next to its chosen Separate Agreement immediately below:

00001

- ☐ Case No. TK-2006-0042 (Navigator)
- ☒ Case No TK-2006-0043 (Xspedius)
- ☐ Case No TK-2006-0044 (Sprint)
- ☐ Case No TK-2006-0046 (Wiltel)
- ☐ Case No TK-2006-0047 (Charter)
- ☐ Case No TK-2006-0048 (Birch)
- ☐ Case No TK-2006-0050 (MCI) (If CLEC selects the MCI Separate Agreement, CLEC must indicate if it wishes to take MCI's Amendment, as further addressed in Section 2.5.2 below).
- ☐ Case No TK-2006-0070 (XO) (If CLEC selects the XO Separate Agreement, CLEC must indicate if it wishes to take XO's Amendment, as further addressed in Section 2.5.2 below).
- ☐ Case No TK-2006-0071 (Socket)
- ☐ Case No TK-2006-0072 (NuVox)
- ☐ Case No TK-2006-0073 (Big River)

## 2.5 Intercarrier Compensation Options<sup>1</sup>

2.5.1 For CLECs that Select a Separate Agreement in Section 2.4 above other than the MCI or XO Separate Agreements, CLEC hereby elects the Inter-carrier Compensation Choice it desires for purposes of its MFN Agreement by placing "X" next to its chosen Inter-carrier Compensation Billing Option immediately below. If CLEC fails to designate one of the Inter-carrier Compensation Billing Options below, the default Inter-carrier Compensation Option set forth in the Separate Agreement chosen by CLEC in Section 2.4 above shall automatically apply upon the Effective Date of this MFN Agreement.

Designate Choice with X	Option Number	Description
	Option 1	Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic
X	Option 2	All ISP-Bound Traffic and All Section 251(b)(5) Traffic at the FCC's ISP Terminating Compensation Plan Rate
	Option 3	Long-term local Bill and Keep as the reciprocal compensation arrangement for Section 251(b)(5) Traffic and ISP-Bound Traffic

2.5.2 For CLECs that Select the MCI or XO Separate Agreement, the MCI and XO Separate Agreements respectively, each incorporate, and are subject to, an Amendment Superseding Certain Reciprocal Compensation, Interconnection and Trunking Terms (the "Amendment"). Accordingly, if CLEC elected to adopt the MCI or XO Separate Agreement in Section 2.4 above, CLEC shall affirmatively indicate with an "X" below if it wishes to also take the MCI or XO Amendment, as applicable, in connection with its MFN Agreement, according to its terms. (CLEC should leave blank and not check the Option below if it does not wish to adopt the Amendment for purposes of its MFN Agreement). If CLEC does not indicate with an "X"

<sup>1</sup> Please note that in the event that CLEC has an existing 13-State Superseding Reciprocal Compensation Amendment in place with the SBC ILECs, it shall file such Amendment, along with the Short Form, with the Commission to ensure that this successor MFN Agreement on file with the Commission is complete.

immediately below that it wishes to take the MCI or XO Amendment in conjunction with its adoption of the MCI or XO Separate Agreement, as applicable, then the Inter-carrier Compensation Option that shall apply to CLEC is the Inter-carrier Compensation Option set forth in the underlying MCI or XO Separate Agreement (i.e., Contract Rates for Section 251(b)(5) Traffic and FCC's Interim ISP Terminating Compensation Plan rate for ISP Bound Traffic). In such case, the Parties' MFN Agreement is hereby deemed modified to delete any and all references to the Amendment Superseding Reciprocal Compensation, Interconnection and Trunking Terms from such ICA.

\_\_\_\_\_ CLEC has elected to adopt the MCI Separate Agreement in Section 2.4 above and hereby affirmatively elects to adopt the MCI Amendment in conjunction with its adoption of the Separate MCI Agreement for purposes of this MFN Agreement.

\_\_\_\_\_ CLEC has elected to adopt the XO Separate Agreement in Section 2.4 above and hereby affirmatively elects to adopt the XO Amendment in conjunction with its adoption of the Separate XO Agreement for purposes of this MFN Agreement.

### 3. Clarifications

3.1 In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party is waiving, and each Party hereby expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement (including intervening law rights asserted by either Party via written notice as to the Separate Agreement), with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, state utility commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of any associated appeal and/or further government review.<sup>1</sup> If any action by any federal court of competent jurisdiction in connection with the appeal in Case No. 4:05CV01264-CAS and/or on remand of such case to the Commission ("Government Action"), invalidates, modifies, or stays provisions of the Separate Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by the Separate Agreement specifically including but not limited to those arising with respect to a Government Action, the affected provision(s) in this MFN Agreement shall be immediately invalidated, modified or stayed consistent with such Government Action as to the Separate Agreement.

3.2 It is SBC Missouri's position that this MFN Agreement (including all attachments thereto) and every interconnection, service and network element provided hereunder, is subject to all rates, terms and conditions contained in the MFN Agreement (including all attachments/appendices thereto), and that all of such provisions are integrally related and non-severable.

<sup>1</sup> To the extent CLEC elected to adopt the MCI or XO Separate Agreement in Section 2.4 above and elected to take as part of its MFN Agreement the MCI or XO Amendment, as applicable, or CLEC currently has its own 13-State Superseding Reciprocal Compensation Amendment in place with the SBC ILECs, nothing in this paragraph is intended or should be construed as modifying or superseding the rates, terms and conditions in the Parties' Amendment Superseding Certain Compensation, Interconnection and Trunking Provisions ("Superseding Amendment"), in which the Parties waived certain rights they may have under the Intervening/Change in Law provisions(s) in the Agreement with respect to any reciprocal compensation or Total Compensable Local Traffic (as defined in the Superseding Amendment), POIs or trunking requirements that are the subject of the Superseding Amendment for the term of such Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 22<sup>nd</sup>  
day of August, 2005.

American Fiber Systems, Inc

Signature: 

Print Name: Bruce T. Frankiewicz

Title: Vice President of Legal and Regulatory Affairs

Date: August 19, 2005

Southwestern Bell Telephone, L. P. d/b/a SBC  
Missouri By SBC Operations, Inc., Its authorized  
agent

Signature: 

Print Name: Mike Auinbauh

Title: AVP-Local Interconnection Marketing

Date: AUG 22 2005

Facilities: OCN/AECN# 788C

Resale: OCN/AECN# 082D

Please note that CLEC previously agreed to adopt, pursuant to the provisions of Section 252(i) of the Act, one of the M2A successor Separate Agreements approved by the Commission in the M2A successor docket(s) no later than 10 business days after the issuance of the decision of the Commission approving the first successor Separate Agreement. The first successor Separate Agreement approved by the Commission was the Sprint Communications Company, L.P. Separate Agreement on August 5, 2005. Therefore, please note that it is important for CLEC to provide accurate and complete information in a timely manner. The failure to do so may result in return of this Short Form to CLEC and a delay in the processing of CLEC's MFN Agreement. If CLEC fails to provide this executed and completed Short Form to SBC Missouri before August 19, 2005, CLEC will be deemed to have selected the Sprint Communications Company, L.P. Separate Agreement.

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