

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>AMERICAN FIBER SYSTEMS, INC.</b>	)	
<b>FOR APPROVAL OF AN INTERCONNECTION</b>	)	<b>Case No. TK-2004-0070</b>
<b>AGREEMENT WITH SOUTHWESTERN BELL</b>	)	
<b>TELEPHONE L.P.</b>	)	

**DIRECT TESTIMONY**

**OF**

**DAVE BAXTER**

**ON BEHALF OF**

**AMERICAN FIBER SYSTEMS, INC.**

**October 2, 2003**

1 Q: State your name and address.

2 A: My name is Dave Baxter. My business address is American Fiber Systems, Inc., 100  
3 Meridien Centre, Suite 250, Rochester, New York 14618.

4 Q: On whose behalf are you testifying today?

5 A: I am testifying on behalf of my employer, American Fiber Systems ("American Fiber"),  
6 which is the Applicant in this case.

7 Q: For how long have you been employed by American Fiber?

8 A: Since May 1, 2000. I presently hold the position of Vice President of Operations &  
9 Engineering.

10 Q: Please describe your duties as Vice President of Operations & Engineering.

11 A: I am responsible for all aspects of planning, design, engineering, construction, splicing  
12 and maintenance of AFS metropolitan fiber optic networks. I am also responsible for  
13 long term strategic network planning to meet evolving customer needs.

14 Q: Do you have any familiarity with American Fiber's negotiation of interconnection  
15 agreements?

16 A: Yes. I am aware that American Fiber has been negotiating interconnection agreements.  
17 In particular, I know that American Fiber has negotiated and entered into an  
18 interconnection agreement with SBC.

19 Q: Who was responsible for negotiating the interconnection agreement with SBC?

20 A: Amy Gilchrist.

21 Q: Who signed the interconnection agreement on behalf of American Fiber?

1 A: Amy Gilchrist.

2 Q: At the time she executed the agreement on American Fiber's behalf, what was her  
3 position with American Fiber?

4 A: Vice President -- Regulatory Relations.

5 Q: Was she authorized to sign the agreement on American Fiber's behalf?

6 A: Yes.

7 Q: Did American Fiber engage in active negotiation with SBC?

8 A: It is my understanding that we did. SBC presented American Fiber with the 13-State  
9 Interconnection Agreement that is used throughout SBC's service territory.

10 Q: Has American Fiber sought approval of this interconnection agreement in other states?

11 A: Yes.

12 Q: In which states has it sought approval, and what was the result?

13 A: The 13-State Interconnection Agreement between American Fiber and SBC has been  
14 approved in the following states: Kansas, Ohio and Connecticut. No state has rejected  
15 the agreement to date.

16 Q: Are you aware of the standard which this Commission must apply in determining  
17 whether to grant American Fiber's request for approval?

18 A: Yes. The standard is set forth in the Communications Act. Under Section 252(e) of the  
19 Communications Act, American Fiber and SBC must submit the Agreement to the  
20 Commission for approval. The same section of the statute outlines the grounds on which  
21 the Commission may reject the Agreement: (1) the Agreement discriminates against a

1 carrier not party to the Agreement, (2) implementation of the Agreement is contrary to  
2 the public interest, or (3) if the Agreement was reached in arbitration, it does not comply  
3 with the requirements of Section 251 of the Act. Clearly, the third ground does not apply  
4 here, as the submitted Agreement was reached as a result of negotiation, not arbitration.

5 Q: From American Fiber's point of view, does the Interconnection Agreement discriminate  
6 against a third party carrier not party to the Agreement?

7 A: No. The language of the Agreement is even-handed and treats all carriers fairly, even  
8 those not party to the Agreement.

9 Q: Do you understand that the intervening carriers, the MITG and STCG, have asserted that  
10 the Agreement discriminates against them?

11 A: Yes, I understand that they have made that allegation.

12 Q: Do you believe that allegation is well-founded?

13 A: I do not. First, they claim that the Agreement "purports to allow SWBT and AFS to  
14 deliver traffic to [their] exchanges in violation of [their] tariffs.

15 Q: Do you understand that to be an allegation that the Agreement as written discriminates  
16 against the ILECs?

17 A: Yes, that is my understanding of the allegation.

18 Q: Do you agree with that?

19 A: No, I don't. Section 9.2 of the Reciprocal Compensation Appendix requires the parties to  
20 enter into agreements with third party carriers before delivering traffic for transit to those  
21 carriers. Without regard to what the ILECs' experience in Missouri has been to date,

1 American Fiber intends to live up to its contractual obligation under the Interconnection  
2 Agreement, that is, to enter into agreements with third party carriers before delivering  
3 traffic to those carriers.

4 Q: In its Application to Intervene and Request for Hearing, the STCG points to Section 3.1  
5 of the Reciprocal Compensation Appendix to the Agreement as proof that the Agreement  
6 authorizes SWBT and American Fiber to deliver traffic in violation of ILEC tariffs. Do  
7 you agree with that characterization?

8 A: No, I don't, because it overlooks Section 9.2, which I mentioned above. American Fiber  
9 intends to live up to its contractual commitment.

10 Q: To your knowledge, is there any evidence that American Fiber has not lived up to any  
11 contractual commitment it has made?

12 A: No. We take our agreements seriously. We did not enter into the 13-State Agreement  
13 lightly. We know that it imposes many obligations on American Fiber, and it is our  
14 intention to fulfill those obligations.

15 Q: The MITG claims that the "transit" provisions in the Agreement have, in the context of  
16 other interconnection agreements between CLECs and large ILECs such as SBC, resulted  
17 in other discriminatory and prejudicial impacts. First, these provisions have hindered the  
18 growth of competition in rural areas. Do you agree with that?

19 A: I do not agree with the claim. I cannot speak for other CLECs. I can only speak to AFS'  
20 performance to date. None of the conduct complained of by MITG or STCG has been  
21 committed by AFS. It is frustrating to me to have my company's business operations  
22 disrupted and be forced to lose time and incur expenses to defend ourselves when AFS

1 has not breached its obligation under the Interconnection Agreement we are seeking  
2 approval of. When AFS elects to enter the rural markets, the Commission should be  
3 assured that American Fiber will abide by all Commission requirements for termination  
4 of traffic.

5 Q: When those interconnection agreements are negotiated, will the ILECs be able to  
6 measure and bill for the traffic they receive from American Fiber?

7 A: They should be able to do that. Although we anticipate the volumes of traffic will be  
8 very small, even when American Fiber starts sending that traffic.

9 Q: Has American Fiber approached any of the ILECs to enter into negotiation of  
10 interconnection agreements?

11 A: No, we have not yet done so.

12 Q: Why not?

13 A: As I mentioned above, American Fiber will commence negotiation of interconnection  
14 agreements with the third party ILECs when its business plan has matured to the point  
15 that American Fiber intends to utilize the public switched network for interexchange  
16 calls. As our plans evolve, it is quite likely that American Fiber will enter this market.

17 Q: Will the interconnection agreements compensate the ILECs?

18 A: I am quite sure that the ILECs will insist on some sort of compensation scheme, even if it  
19 is only compliance with their intrastate access charge tariffs. Thus, the objection that  
20 American Fiber's Interconnection Agreement with SBC will deprive the ILECs of  
21 appropriate compensation simply does not hold water.

1 Q: Why has American Fiber not made an approach to the ILECs as yet?

2 A: Because we do not yet provide switched toll service in Missouri. As the Interconnection  
3 Agreement mandates in Section 9.2, American Fiber will "..enter into [its] own  
4 agreement with third party telecommunications carriers prior to delivering traffic for  
5 transiting to the third party." The key words -- with respect to the timing of negotiation  
6 of an interconnection agreement -- are "prior to delivering traffic." American Fiber will  
7 meet that obligation, assuming the third party carriers are reasonable in their negotiations,  
8 and, like American Fiber, intend to act in good faith.

9 Q: Has American Fiber had any contact with the ILECs?

10 A: I understand that our counsel have attempted to respond to the concerns raised by the  
11 ILECs in their interventions. Although I do not want to delve into information protected  
12 by the attorney-client privilege, I just want to assure the Commission the American Fiber  
13 has not ignored the ILECs and has made proposals to try to eliminate their concerns  
14 about the Interconnection Agreement.

15 Q: Have the discussions been fruitful?

16 A: At this point, no. We tried to set up a conference call for yesterday afternoon, but MITG  
17 did not have time to talk. We were disappointed. If the ILECs are truly serious about  
18 trying to resolve these issues short of hearings, which are time-consuming, expensive,  
19 and inefficient methods of resolving such problems, we would hope they would make  
20 time to talk.

21 Q: Does that conclude your testimony?

1     A:     Yes, it does.  However, I want to reiterate that American Fiber intends to live up to its  
2           contractual obligations, and absolutely nothing has been presented to this Commission in  
3           this case to indicate to the contrary.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Direct Testimony of Dave Baxter have been transmitted to the parties below via electronic mail and/or First-Class U.S. mail, postage prepaid, this 2<sup>nd</sup> day of October, 2003, to:

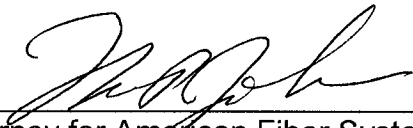
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