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**SUPPLEMENTAL DIRECT TESTIMONY OF**  
**L. G. SATHER**  
**ON BEHALF OF AT&T COMMUNICATIONS**  
**OF THE SOUTHERN STATES, INC.**  
**BEFORE THE**  
**FLORIDA PUBLIC SERVICE COMMISSION**

Docket No. [REDACTED]

Filed: August 23, 1996

**Q. WILL YOU PLEASE IDENTIFY YOURSELF AND STATE YOUR BUSINESS ADDRESS?**

A. My name is L. G. Sather. My business address is 1200 Peachtree Street N.E., Atlanta, Georgia 30309.

**Q. HAVE YOU FILED TESTIMONY UNDER THIS DOCKET?**

A. Yes. I filed testimony under Docket No. 960833-TP on behalf of AT&T on July 31, 1996.

**Q. WOULD YOU SUMMARIZE THE PURPOSE OF THE TESTIMONY THAT YOU FILED PREVIOUSLY?**

A. The purpose of my previous testimony was two-fold. First, I explained that the Telecommunications Act of 1996 required BellSouth to offer for resale at wholesale rates any retail telecommunications service provided to non-telecommunications carriers. Second, I explained that the Act prohibits BellSouth from imposing resale restrictions (i. e., use and user restrictions) because such restrictions are unreasonable

1 and discriminatory.

2

3 **Q. WHAT IS THE PURPOSE OF YOUR PRESENT TESTIMONY?**

4 A. On August 8, 1996, the Federal Communications Commission ("FCC") issued an  
5 Order and regulations (collectively referred to as the "FCC Order") to implement the  
6 Telecommunications Act of 1996. The purpose of my present testimony is to explain  
7 how the FCC Order supports AT&T's positions that the Act: (1) requires BellSouth,  
8 without exception, to offer for resale at wholesale rates any telecommunications  
9 service that BellSouth provides at retail to non-telecommunications carriers; and (2)  
10 prohibits BellSouth from imposing any restrictions on the resale of such services  
11 unless specifically permitted by the Florida Commission under certain narrow  
12 exceptions.

13

14 **ISSUE: WHAT SERVICES PROVIDED BY BELLSOUTH, IF ANY, SHOULD**  
15 **BE EXCLUDED FROM RESALE?**

16

17 **Q. PLEASE SUMMARIZE YOUR PREVIOUS TESTIMONY WITH RESPECT**  
18 **TO WHICH SERVICES ARE TO BE MADE AVAILABLE FOR RESALE**  
19 **BY BELLSOUTH.**

20 A. I explained in my previous testimony that the language of the Act is clear and  
21 unequivocal: BellSouth must offer for resale at wholesale rates any  
22 telecommunications service offered at retail to non-telecommunications carriers.  
23 There are no exceptions to that requirement.

24

25 **Q. DOES THE FCC ORDER SPECIFY WHICH SERVICES ARE TO BE**

1           **SUBJECT TO RESALE?**

2       A.     Yes. The FCC Order confirmed AT&T's position by concluding that BellSouth must  
3           offer for resale at a wholesale rate each retail service that: (1) meets the statutory  
4           definition of a "telecommunications service;" and (2) is provided at retail to  
5           subscribers who are not "telecommunications carriers." FCC Order No. 96-325, ¶  
6           871, at 432. The FCC Order does not identify any exceptions to that requirement.

7

8       ***ISSUE:            WHAT TERMS AND CONDITIONS, INCLUDING USE AND USER***  
9           ***RESTRICTIONS, IF ANY, SHOULD BE APPLIED TO THE RESALE OF***  
10          ***BELLSOUTH SERVICES?***

11

12       **Q.     PLEASE SUMMARIZE YOUR PREVIOUS TESTIMONY REGARDING**  
13           **WHETHER USE AND USER RESTRICTIONS SHOULD BE APPLIED TO**  
14           **THE RESALE OF BELLSOUTH SERVICES.**

15       A.     I explained in my previous testimony that use and user restrictions (i. e., resale  
16           restrictions) are unreasonable, discriminatory and anticompetitive because incumbent  
17           LECs can use such restrictions to preserve their market position.

18

19       **Q.     DOES THE FCC ORDER ADDRESS THE REASONABLENESS OF USE**  
20           **AND USER RESTRICTIONS?**

21

22       A.     Yes. The FCC Order concluded that "resale restrictions are presumptively  
23           unreasonable" except under certain limited conditions specifically identified in the  
24           FCC Order and discussed below. FCC Order No. 96-325, ¶ 939, at 465. Before  
25           imposing any additional resale restriction, BellSouth must prove to the Florida

1 Commission that the restriction is reasonable and non-discriminatory, and that the  
2 restriction is narrowly tailored. FCC Order No. 96-325, ¶ 939, at 465; 47 C.F.R.  
3 § 51.613(b) (to be codified). The conditions under which resale restrictions may be  
4 permissible are as follows:

5 Promotions -- The FCC Order provided that BellSouth must offer promotions  
6 for resale, but that short-term promotional prices are not “retail rates” for the  
7 purposes of calculating the wholesale rate. FCC Order No. 96-325, ¶ 949, at 469; 47  
8 C.F.R. § 51.613(a)(2) (to be codified). Like AT&T, the FCC is concerned that an  
9 incumbent LEC could use promotions anticompetitively to avoid its wholesale  
10 obligations. FCC Order No. 96-325, ¶¶ 949-51, at 469-70. The FCC Order provides  
11 that incumbent LECs may not use promotional offerings to avoid their wholesale  
12 obligation. FCC Order No. 96-325, ¶ 950, at 469-70; 47 C.F.R. § 51.613(a)(2) (to  
13 be codified). One example of an impermissible abuse is to offer a series of  
14 consecutive 90 day promotions. FCC Order No. 96-325, ¶ 950, at 469-70; 47 C.F.R.  
15 § 51.613(a)(2) (to be codified). To lower the potential for abusing promotions for  
16 anticompetitive purposes, the FCC Order establishes a presumption that only  
17 promotional prices with a duration of 90 days or less would qualify as short-term  
18 promotional prices and not constitute “retail rates.” FCC Order No. 96-325, ¶ 950, at  
19 469-70; 47 C.F.R. § 51.613(a)(2) (to be codified). The FCC Order does not preclude  
20 the Florida Commission from further reducing the 90 day period or imposing other  
21 conditions to prevent anticompetitive actions.

22 Withdrawn Services -- The FCC Order provides that BellSouth must offer  
23 for resale at wholesale rates withdrawn services, at least for resale, to grandfathered  
24 customers. FCC Order No. 96-325, ¶ 968, at 477; 47 C.F.R. § 51.615 (to be  
25 codified). That is consistent with AT&T’s position on the resale of withdrawn

1 services that are grandfathered.

2 Cross-Class Selling -- The FCC Order provides that State Commissions have  
3 the discretion to permit or prohibit the resale of: (1) residential services to non-  
4 residential end-users; and (2) Lifeline and other means-tested service offerings to end  
5 users who are not eligible to subscribe to such service offerings. FCC Order No. 96-  
6 325, ¶ 962, at 475; 47 C.F.R. 51.613(a)(1) (to be codified).

7

8 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

9 A. The FCC Order makes clear that BellSouth has an absolute duty to offer for resale at  
10 wholesale rates any retail telecommunications service provided to non-  
11 telecommunications carriers. The FCC Order also makes clear that BellSouth cannot  
12 impose restrictions on AT&T's resale of such services unless the Florida Commission  
13 adopts one of the limited exceptions to that requirement. In short, the FCC Order  
14 adopts the AT&T's position on nearly all of the issues related to resale that are before  
15 this Commission.

16

17 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

18 A. Yes.