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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

AT& T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,

Plaintiff,

Civil Action No. 4:97CV262-MP

vs.

BELLSOUTH TELECOMMUNICATIONS, INC., and THE COMMISSIONERS OF THE FLORIDA PUBLIC SERVICE COMMISSION, in their Official Capacity,

Defendants.
_____/

COMPLAINT FOR DECLARATORY AND OTHER RELIEF
UNDER THE TELECOMMUNICATIONS ACT OF 1996

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. ("AT&T"), by its attorneys, for its complaint alleges:

INTRODUCTION

1. AT&T brings this action to secure full implementation of the congressionally mandated process for opening local telephone markets to competition under the Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 ("Act" or "1996 Act"). This case arises out of efforts by AT&T to compete with Defendant BellSouth Telecommunications, Inc. ("BellSouth") in providing local telephone services to Florida consumers and to require BellSouth to fulfill its obligations under the Act.

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2. BellSouth is currently the monopoly or near monopoly provider of both local exchange and exchange access telephone services in most of the State of Florida. Local exchange service is the use of the local network to provide local telephone service within a local calling area to residential and business consumers. Exchange access service is the use of these same local network facilities to provide long distance carriers with the ability to originate and terminate long distance calls by their customers.

3. The 1996 Act was passed to end the prior regime in which "incumbent local exchange carriers" ("incumbent LECs" or "incumbents") monopolized these local facilities and services through which consumers place and receive all local exchange and long-distance telephone calls. In its place, the Act mandates a new competitive regime and requires the removal of legal and economic impediments to local exchange and exchange access competition.

4. Congress recognized that to overcome incumbent LEC monopolists' strong economic incentives to delay and impede competition, the 1996 Act had to do more than simply strip away legal barriers to competition. In order to shift monopoly local telephone markets to competition as quickly as possible, the Act requires BellSouth and other incumbent LECs to enter "interconnection" agreements that will allow AT&T and other "requesting telecommunications carriers" to offer consumers local exchange and exchange access services choices immediately.

5. These interconnection agreements set the terms and conditions upon which AT&T and other potential new entrants may use incumbents' services and facilities. Those terms and conditions in turn are defined by the specific duties the 1996 Act places on incumbents. Among other things, the Act requires incumbents to permit new entrants (i) to purchase for resale

at wholesale rates, without any unreasonable and discriminatory conditions or limitations, any telecommunications service that the incumbent provides at retail, and (ii) to obtain nondiscriminatory access to individual "unbundled" elements (including any features, functions and capabilities of such elements) of the incumbent's network at nondiscriminatory cost-based rates and to combine those elements to provide competing exchange and exchange access services.

6. The 1996 Act establishes an expedited procedure for new entrants to secure the agreements with incumbent local telephone companies necessary to create the new competitive regime. Congress directed incumbents to negotiate in good faith with potential competitors seeking interconnection agreements. It also provided for compulsory arbitration by state public utility commissions where interconnection agreements could not be reached through negotiation. To ensure that interconnection agreements resulting from the state-conducted arbitrations comply with the federal requirements in the Act and the Federal Communications Commission's ("FCC") implementing rules, Congress authorized federal court review (and precluded state court review) of completed interconnection agreements approved by state commissions.

7. This action seeks review of certain terms of an interconnection agreement between AT&T and BellSouth ("Agreement") that were imposed by the Florida Public Service Commission ("PSC") and that, as described below, violate the Act and the FCC's implementing regulations. The PSC directed AT&T and BellSouth to execute and file by April 3, 1997 an interconnection agreement consistent with its rulings. The parties were unable to agree on mutually acceptable language implementing the PSC's decision and, as a result, each filed their

own version of the agreement on April 2, 1997. Because it was unclear which, if any, of these documents constituted an "agreement" for purposes of the Act or this action, AT&T filed a complaint on April 18, 1997 as a protective measure to preserve its rights to seek review in this Court under the Act. The April 18 complaint referred to the version of the agreement filed by AT&T with the PSC on April 2, 1997 as the "Agreement." Subsequently, on May 27, 1997, the PSC issued an order approving, with modifications, AT&T's version of the agreement and directing the parties to file within 14 days a signed agreement incorporating specific language identified by the PSC. On June 10, 1997, the parties filed a signed agreement. On June 19, 1997, the PSC issued an order approving the June 10 agreement. In the event that the June 10 agreement is deemed to be the operative agreement, AT&T files this Complaint to preserve its rights to seek review in this Court under the Act. The "Agreement" referred to in this Complaint is the June 10 agreement approved by the PSC on June 19, 1997.

8. In at least three important respects, the Agreement conflicts with the Act in a manner that threatens to deny Florida consumers the benefits of effective competition promised by the Act. First, the Agreement violates the Act and the FCC's implementing regulations by imposing exorbitant and arbitrary permanent prices for unbundled network elements which do not comply with the Act's cost-based pricing standard for network elements, are inconsistent with the pricing methodology set forth in the FCC's implementing regulations, and are otherwise arbitrary and capricious.

9. Second, according to BellSouth, the Agreement authorizes BellSouth to double charge AT&T for the use of network facilities by assessing AT&T both: (i) unbundled network element charges, which even if properly cost-based would compensate BellSouth for all

costs associated with AT&T's use of those facilities that are recoverable under the Act; and (ii) exorbitant and in applicable "access" charges that apply to interexchange carriers' use of the same facilities under the old monopoly regime.

10. Third, notwithstanding the Act's clear command that incumbent LECs offer retail telecommunications services for resale at wholesale rates, which must exclude all portions of the retail rate attributable to costs which will be avoided in the wholesale environment, the Agreement requires AT&T to pay for BellSouth's operator services, even where AT&T provides its own operator services and BellSouth will thereby avoid such costs. The Agreement also conflicts with the FCC's order implementing the Act, which requires that incumbent LECs, such as BellSouth, route operator services traffic to the service platforms of resellers and which establishes a presumption that the incumbent LEC's operator services expenses will be avoided in such a resale situation.

11. These unlawful terms of the Agreement deny BellSouth's currently captive Florida consumers the full benefits of fair and open competition and prevent AT&T from competing as envisioned and mandated by Congress. Accordingly, AT&T seeks review of these issues and an order from this Court declaring that these provisions violate the Act and the FCC's implementing regulations.

JURISDICTION AND VENUE

12. This is a civil action arising under the Telecommunications Act of 1996, a law of the United States. This Court has jurisdiction over this action pursuant to 47 U.S.C. §252(e)(6) and 28 U.S.C. §§ 1331, 1337.

13. Venue in this District is proper under 28 U.S.C. § 1391(b). All individual defendants reside in Florida and BellSouth resides in this District. This is an "appropriate Federal district court" within the meaning of 47 U.S.C. §252(e)(6).

PARTIES

14. Plaintiff AT&T Communications of the Southern States, Inc. is a corporation organized under the laws of the State of New York with its principal place of business in Georgia. AT&T is a wholly-owned subsidiary of AT&T Corp., which through its operating subsidiaries currently provides long distance toll and other telephone services in the State of Florida. AT&T is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of the Act.

15. Defendant BellSouth Telecommunications, Inc. is a Georgia corporation with its principal place of business in Georgia. BellSouth provides local exchange, exchange access, and certain intrastate long-distance services within the State of Florida. BellSouth is an "incumbent local exchange carrier" within the meaning of the Act.

16. The Florida Public Service Commission is a "State commission" within the meaning of Sections 153(41), 251 and 252 of the Act. Defendants Commissioners of the Florida Public Service Commission are named as Defendants in their official capacities.

BACKGROUND

BellSouth's Monopoly Control of the Florida Local Telephone Market

17. BellSouth is the incumbent provider of local telephone service in areas that contain a vast majority of the residential and business subscribers in the State of Florida. Its local telephone network generally reaches all residences and businesses in its service area. There currently is no effective local telephone competition in those areas.

18. Although Florida consumers have hundreds of choices regarding which telecommunications carrier they want to handle their long-distance toll calls, for those consumers in BellSouth's service area, those calls must still originate or terminate on BellSouth's local network. It is impractical and uneconomical for any new entrant to duplicate BellSouth's network in the near term, and use of this network is therefore essential to place both local and long distance telephone calls.

The Telecommunications Act of 1996

19. The 1996 Act adopts a comprehensive scheme designed to introduce competition rapidly into historically monopolized local telephone markets. In § 253 of the Act, Congress expressly authorized the FCC to preempt any state laws that have the "effect" of prohibiting any entity from offering any interstate or intrastate service. Congress also recognized the practical reality that competition would take years to develop (and in some areas might not develop at all) if local entry required each new entrant to replicate the local incumbent LEC's

infrastructure network. Accordingly, §251 of the Act includes specific obligations for incumbents to allow competitors to interconnect with and use incumbents' existing networks and, in conjunction with §252, sets federal standards for rates for such use.

20. Among other things, the Act provides new local carriers with two means of competitive entry through use of the incumbent's network which may be pursued separately or in combination. First, §251(c)(3) of the Act imposes a duty on incumbents to permit new entrants to lease "unbundled elements" of the incumbents' network and facilities and requires incumbents to provide such unbundled network elements in a manner that allows entrants "to combine such elements" to offer "telecommunications service." §251 requires that rates, terms and conditions on which these network elements are provided be just, reasonable and nondiscriminatory. §252(d)(1) further mandates that the rates for such network elements be based on the cost of providing the elements, without reference to the rate of return or other rate-based proceedings that prevailed in the monopoly era.

21. Second, §251(c)(4) of the act requires LECs to allow competing telecommunications service providers to purchase at wholesale rates "any telecommunication service" an incumbent LEC offers at retail and to permit those new entrants to resell those services to consumers. The Act also prohibits LECs from imposing any unreasonable or discriminatory conditions on new entrants' resale of those services by the new entrants. §252(d)(3) requires that wholesale rates for such resold services be based on "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

22. §251(d)(1) of the Act required the FCC to adopt uniform national regulations to implement these and other local competition provisions of the Act within six-months of its date of enactment. The FCC did so on August 8, 1996, releasing its 700-page First Report and Order. On October 15, 1996 in Iowa Utilities Bd. v. FCC, Nos. 96-3321, et al., the United States Court of Appeals for the Eighth Circuit stayed certain of the FCC's pricing rules pending an expedited appeal and left intact the remainder of those rules. The Eighth Circuit has yet to issue any final decision regarding the validity of the stayed and unstayed regulations.

23. In addition to imposing substantive duties on incumbent LECs to foster competition in the local exchange market, the Act establishes an expedited procedure pursuant to which new entrants can obtain the benefits promised by the Act to compete in the local exchange market. Pursuant to §252(a), any telecommunications carrier may request that the incumbent LEC negotiate an interconnection agreement providing for, inter alia, unbundled network elements. The Act requires both incumbents and potential new entrants to negotiate in good faith to reach such agreements.

24. Concerned about the willingness of incumbents voluntarily to reach such agreements with potential competitors, Congress in §252(b) of the Act authorized either party to petition the state public utility commission to arbitrate any open issues.

25. The 1996 Act establishes federal standards for these state commission arbitrations. §252(c) of the Act requires that any resolution of issues by a state commission through arbitration and any conditions imposed on the parties as a result of the arbitration must (i) ensure that the resolution and conditions meet the requirements of §251 and the FCC's

implementing regulations; (ii) establish rates pursuant to §252(d); and (iii) provide a schedule for implementation of the terms and conditions by the parties.

26. After the state commission concludes the arbitration, the parties then submit an "agreement" embodying the agreed to and arbitrated provisions to the state commission pursuant to §252(e) for its approval or rejection.

27. The final step in this process is federal district court review of the agreement to ensure that it meets the standards of federal law. § 252(e)(6) of the 1996 Act provides that any party aggrieved by a determination made by a state commission may bring an action in federal district court to determine whether the agreement meets the requirements of §§ 251 and 252.

Negotiations Between AT&T and BellSouth and the Arbitration Before the Florida Public Service Commission

28. Pursuant to §252(a), on March 4, 1996, AT&T formally requested the commencement of negotiations with BellSouth for an interconnection agreement. After AT&T and BellSouth engaged in extensive negotiations in an unsuccessful attempt to reach a Florida interconnection agreement, AT&T filed a timely Petition for Arbitration with the PSC on July 17, 1996 seeking compulsory arbitration of a number of open issues between AT&T and BellSouth. After the PSC consolidated AT&T's petition with that of MCI Metro Access Transmission Services, Inc. ("MCI"), the PSC conducted an arbitration hearing in the consolidated dockets from October 9-11, 1996. On December 31, 1996, the PSC, acting through the Defendant Commissioners, issued a Final Order on Arbitration, Order No. PSC-96-1579-FOF-TP

(December 31, 1996) ("Arbitration Order"), resolving the disputed issues. A copy of that order is attached hereto as Exhibit A.

29. On January 15, 1997, BellSouth and AT&T filed Motions for Reconsideration of the Arbitration Order. On March 19, 1997, the Defendant Commissioners issued a Final Order on Motions for Reconsideration and Amending Order No. PSC-96-1579-FOF-TP, Order No. PSC-97-0298-FOF-TP (March 19, 1997) ("Reconsideration Order"), which is attached hereto as Exhibit B.

30. On the same day, the Defendant Commissioners issued a Final Order Approving Arbitrated Agreement between BellSouth Telecommunications, Inc. And AT&T Communications of the Southern States, Inc. and Granting Extension of Time, Order No. PSC-97-0300-FOF-TP ("Initial Approval Order"). The Initial Approval Order approved the provisions of the Agreements for which AT&T and BellSouth were able to agree on language implementing the Arbitration Order. The Initial Approval Order also directed the parties to execute and file by April 3, 1997 an agreement which included approved or agreed language on those provisions that were still in dispute between the parties. A copy of that order is attached hereto as Exhibit C. The parties were unable to agree on mutually acceptable language. As a result on April 2, 1997, AT&T and BellSouth each filed its own version of the Agreement which each party indicated reflected the Arbitration Order, the Reconsideration Order and the Initial Approval Order.

The PSC's Orders and the Agreement Fail to Meet the Requirements of Sections 251 and 252 and FCC Regulations

A. Pricing of Unbundled Network Elements

31. On May 27, 1997, the PSC issued an order approving, with modifications, AT&T's version of the agreement and directing the parties to file a signed agreement incorporating language identified by the PSC within 14 days. Order on Agreement Between AT&T Communications of the Southern States, Inc. and BellSouth Telecommunications, Inc., Order No. PSC-97-0600-FOF-TP. A copy of that order is attached hereto as Exhibit D. On June 10, 1997, the parties filed a signed agreement ("Agreement," as previously noted). On June 19, 1997, the PSC issued an order approving the Agreement. Order Approving Agreement, Order No. PSC-97-0724-FOF-TP ("Final Approval Order"). A copy of that order is attached hereto as Exhibit E, and a copy of the Agreement is attached as Exhibit F. Collectively, the orders reproduced in Exhibit A-E will be referred to in this Complaint as the "PSC Orders."

32. The Agreement violates the Act by imposing permanent recurring and non-recurring charges for unbundled network elements that do not comply with the pricing standard in §252(d)(1) of the Act. Those permanent prices terms also violate the FCC's implementing regulations, which although temporarily stayed by the United States Court of Appeals for the Eighth Circuit, may ultimately be upheld when the Court of Appeals issues its final opinion on those regulations. Further, the PSC's use of Bell South's costs studies to calculate unbundled network element prices and its reliance on unsupported and erroneous inputs in those studies are arbitrary and capricious.

33. §251(c)(3) of the Action requires that rates for unbundled elements be just, reasonable and nondiscriminatory, and §252(d)(1) of the Act requires that state commissions set the rates for network elements "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the . . . network element." The network element rate terms of the Agreement violate these provisions in at least three respects.

34. First, by requiring that rates be set without reference to rate-based proceedings, Congress precluded state commissions from using traditional monopoly approaches to setting rates based on historical or embedded costs. Rather, state commissions must set rates under the Act based on forward-looking, economic costs, because forward-looking pricing is the only methodology consistent with the Act. In imposing prices for unbundled network elements in the Agreement, the PSC purported to employ a forward-looking approach, but in fact employed an impermissible embedded cost methodology. Specifically, the PSC employed the same total service long run incremental cost or "TSLRIC" approach which it had previously used in proceedings conducted pursuant to state legislation that were initiated prior to the enactment of the Act. The PSC defined its so-called "TSLRIC" cost standard to require that unbundled network element prices be based on costs that reflect BellSouth's embedded network design and structure. The use of this embedded network structure resulted in rates that: (i) reflect obsolete and inefficient network design and technology, (ii) reflect excess levels of capacity caused by inefficiency and BellSouth's strategic attempts to position itself for long distance and other opportunities unrelated to its obligations under § 251 of the Act, and (iii) are uneconomic, unjust, unreasonable, discriminatory and far in excess of the costs of such elements within the meaning of

the Act. As a result, local service competition is artificially discouraged in Florida to the detriment of all consumers.

35. Second, the Agreement violates the Act's pricing standards because the PSC impermissibly refused to "deaverage" certain network element rates. The cost of providing certain network elements differs among geographic areas in the state of Florida. Specifically, the cost of providing local loop and "subloop" elements--the copper wires and other facilities that connect and users' premises with BellSouth's end office switches--generally is lower in relatively more "dense" (e.g., more urban) areas of Florida than in relatively less dense (e.g., more rural) areas. AT&T presented unrebutted evidence that the cost of providing local loops (and their subloop elements) in Florida varies among geographic areas in this manner. AT&T accordingly proposed geographically deaveraged cost-based local loop (and subloop) rates.

36. The PSC rejected geographically deaveraged cost-based local loop and subloop rates. Instead, the PSC approved statewide "average" rates for loops and subloop elements. These average rates reflect average costs and not the actual cost of providing the loops and subloops requested by AT&T. Average loop and subloop rates deny Florida local telephone consumers the full benefits of competition mandated by the 1996 Act. Because average rates for loops and subloops--which represent a substantial portion of the cost of providing local service--artificially inflate the cost of providing competitive local service in relatively low cost areas, competitive entry is less likely to occur in those areas if rates are averaged, and consequently consumers in those areas are likely to receive the enormous benefits of competition, including lower prices, better quality, and more innovation.

37. Because the PSC failed to account properly for the different costs of providing loop and subloop elements in different geographic areas, the loop and subloop rates it approved are not appropriately cost-based and, accordingly, violate § 252(d)(1) of the Act. The PSC's approval of identical rates for loop and subloop elements with different cost characteristics is also discriminatory, unjust and unreasonable. Accordingly, the average loop and subloop rates approved by the Board violate § 251(c)(3) of the Act.

38. Third, the Agreement also violates the Act by imposing a "per message" charge as part as part of the initial minute local switching charge. The per message charge is not cost-based (and could more than double AT&T's switching cost for three-minute call) and it therefore violates § 252(d)(1) of the Act. The per message charge is also unjust, unreasonable and discriminatory in violation of § 251(c)(3) of the Act.

39. Each of these aspects of the Agreement also violates the FCC's currently stayed implementing regulations. The FCC's implementing regulations expressly require that the forward-looking costs for network elements be calculated based on "the most efficient telecommunications technology currently available and the lowest cost network architecture, (given the existing location of the incumbent LEC's wire centers"), and not the incumbent's embedded network design and structure. 47 C.F.R.¶51.505(b)(1). The FCC regulations also expressly prohibit the use of averaged loop and subloop rates. Specifically, 47 C.F.R. § 51.507(f) provides that "State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences." The FCC regulations also require that local switching rates consist only of flat-rated port charges and per-minute usage charges, and not per message charges. 47 C.F.R. § 51.509(b). In the event the stay

is lifted and the FCC's regulations are upheld, the Agreement's violation of these rules forms an additional and independent basis for the relief requested herein.

40. Further, the permanent rate provisions, averaged rates, and per message switching charges as well as the PSC's use of incomplete TSLRIC cost studies submitted by BellSouth to calculate the network element rates and the PSC's reliance on unsupported and/or erroneous inputs in those cost studies are and were arbitrary and capricious. For example, the PSC's imposition of a per message switching charge is also arbitrary and capricious because, inter alia, the BellSouth cost study relied upon by the PSC did not explain the purpose of this "per message" charge or what cost it was designed to recover. Similarly, the PSC arbitrarily and capriciously accepted certain unsupported and/or erroneous BellSouth "non-recurring" charge proposals notwithstanding the PSC's recognition that such charges "are, in some instances, excessive."

B. Imposition of Switched Access Charges

41. Although the PSC's determinations on this issue are unclear, BellSouth contends that the Agreement authorizes it to assess AT&T "switched access" charges in addition to unbundled element charges when AT&T uses unbundled elements purchased from BellSouth to terminate long distance calls. Switched access charges are paid by long-distance carriers for the use of BellSouth's local exchange facilities to originate and terminate long distance calls. Such access charges cannot, consistent with the Act, be assessed on purchasers of unbundled elements.

42. The PSC "conclude[d] that no additional charges shall be assessed for unbundled local switching over and above those already approved in this Order . . . as applied to local interconnection traffic. However, with respect to toll traffic, Florida law does not allow

carriers to bypass switched access charges. Therefore, under this Commission's toll default policy . . . the company terminating a toll call shall receive terminating switched access from the originating company unless the originating company can prove that the call is local." Arbitration Order at 101. To the extent that AT&T is the "terminating" carrier within the meaning of the Agreement, this aspect of the Agreement does not violate the Act. But is BellSouth is considered to be the "terminating" carrier, as BellSouth apparently believes, the Agreement violates both §§ 251 and 252 of the Act.

43. §251(c)(3) requires BellSouth to "provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and nondiscriminatory." Further, under both § 251(c)(3) of the Act and the FCC's binding regulations set forth in 47 C.F.R. § 51.309, AT&T may use unbundled elements to provide any service, including exchange access service. Requiring AT&T to pay access charges on unbundled elements in addition to the costs of those elements is discriminatory because BellSouth itself does not pay such additional access charges. Moreover, by requiring AT&T to pay access charges when purchasing unbundled network elements, the Agreement requires AT&T to pay twice for the same facilities on terms that are unjust and unreasonable.

44. The imposition of access charges is likewise inconsistent with § 252(d)(1) of the Act, both because it discriminates in favor of BellSouth over its potential local service competitors, and because it permits BellSouth to receive compensation in excess of costs, thus contravening the requirement in § 252(d)(1) that rates for the use of a network element be "based on cost."

45. Finally, to the extent that the PSC imposed access charges under state law that conflict with the Act, state law is preempted, and AT&T cannot be required to comply with such state law.

46. Access charges on unbundled network elements would represent an enormous competitive handicap to AT&T and other potential new entrants that may effectively preclude the efficient, cost-based unbundled network element competition envisioned and mandated by Congress.

C. **Failure to Apply Proper Standard in Establishing Wholesale Resale Discounts**

47. The Agreement also violates the Act by imposing wholesale rates which do not comply with the pricing standard in § 252(d)(3), which requires that wholesale rates exclude "the portion [of retail rates] attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." In particular, the Agreement requires AT&T, in all cases, to pay rates for wholesale services which include costs attributable to BellSouth's provision of operator services, even in those cases where AT&T provides its own operator services and BellSouth will avoid the costs associated with the provision of operator services.

48. The PSC established wholesale discounts of 16.81% for business and 21.83% for residential services, but in establishing these discounts the PSC refused to treat BellSouth's operator services expenses as avoided when AT&T provides its own operator services. Binding and unstayed FCC regulations require incumbent LECs to unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent "technically feasible" and "provide

customized routing . . . to a competitor's operator services or directory assistance platform." ¶536. The Agreement requires that BellSouth route operator services traffic to AT&T's operator services platform. BellSouth's operator services will not be used by AT&T, and BellSouth thus will not incur--and therefore will avoid--operator services costs in providing wholesale services to AT&T. Under the Act, such costs should have been considered avoided for purposes of calculating the wholesale discounts for business and residential services, and the Agreement therefore violates § 252(d)(3).

49. In addition, this aspect of the Agreement violates the FCC's currently stayed implementing regulations. The FCC established a presumption that "call completion services" costs (i.e., operator services costs) are avoided by resellers "because resellers have stated that they will either provide these services themselves or contract for them separately from the LEC or from third parties." First Report and Order ¶ 917; 47 C.F.R. § 51.609(c)(1). In event the stay is removed and the FCC's regulations are upheld, the Agreement's violation of this rule forms an additional independent basis for the relief requested herein.

COUNT ONE

(Failure to Price Unbundled Network Elements in Accordance with the Act)

50. AT&T repeats and realleges paragraphs 1 through 49 above as if fully set forth herein.

51. The Agreement and the PSC's determinations relating to unbundled network element prices violate the Act's pricing standards, fail to comply with the FCC's implementing regulations and are otherwise arbitrarily and capricious. This violates and does not

meet the requirements of 47 U.S.C. § 252(d)(1), 251(c)(3) and the FCC's implementing regulations.

52. The Agreement and the PSC's determinations, in failing to require cost-based pricing for unbundled network elements, failing to apply the pricing methodology for unbundled network elements set forth in the FCC's implementing regulations, and imposing recurring and non-recurring unbundled network elements charges which are based on unsupported and/or erroneous cost studies, are arbitrary and capricious, an abuse of discretion, contrary to law, and not supported by the record.

53. AT&T has been aggrieved by the PSC's determination as set forth herein.

54. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201, 2202 and 27 U.S.C. §252 (e)(6).

COUNT TWO

(Impermissible Application of State Switched Access Charges)

55. AT&T repeats and realleges paragraph 1 through 54 above as if fully set forth herein.

56. The Agreement and the PSC's determinations, to the extent they require AT&T to pay switched access charges in addition to unbundled element charges when it uses unbundled elements to terminate interexchange calls, impose charges for use of unbundled network elements that are discriminatory and are not cost-based, and impermissibly apply state law that is inconsistent with the provisions of the Act. This violates and does not meet the requirements of 47 U.S.C. §§ 251(c)(3) and 252(d)(1) and the FCC implementing regulations.

57. The Agreement and the PSC's determinations, in imposing access charges for the use of unbundled network elements that are discriminatory and are not cost-based and impermissibly applying state law which is inconsistent with the provisions of the Act, are arbitrary and capricious, contrary to law, and not support by the record.

58. AT&T has been aggrieved by the PSC's determinations as set forth herein.

59. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§2201, 2202 and 47 U.S.C. § 252(e)(6).

COUNT THREE

(Failure to Apply Proper Standard in Establishing Wholesale Resale Discounts)

60. AT&T repeats and realleges paragraphs 1 through 59 above as if fully set forth herein.

61. The Agreement and the PSC's determinations failed to impose wholesale discounts which comply with the pricing standard for resale services set forth in the Act. This violates and does not meet the requirements of 47 U.S.C. §252(d)(3) and the FCC's implementing regulations.

62. The Agreement and the PSC's determinations, in failing to impose wholesale discounts which comply with the pricing standard for resale services set forth in the Act and the FCC's implementing regulations, are arbitrary and capricious, contrary to law, and not supported by the record.

63. AT&T has been aggrieved by the PSC's determinations as set forth herein.

64. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§2201, 2202 and 47 U.S.C. §252(e)(6).

PRAYER FOR RELIEF

WHEREFORE, AT&T requests that this Court grant it the following relief:

(a) Declare that the provisions of the Agreement and the PSC Orders, failing to comply with the Act's pricing standards, failing to apply the pricing methodology for unbundled network elements set forth in the FCC's implementing regulations, and arbitrarily and capriciously imposing unbundled network element rates which are based on unsupported and/or erroneous cost studies, violate §252 of the Telecommunications Act of 1996 and the FCC's implementing regulations and are arbitrary and capricious;

(b) Declare that the provisions of the Agreement and the PSC Orders, interpreted to require AT&T to pay switched access charges in addition to unbundled element charges, are discriminatory and are not cost-based, impermissibly apply state law which is inconsistent with the provisions of the Act, and violate §§ 251 and 252 of the Telecommunications Act of 1996 and the FCC's implementing regulations;

(c) Declare that the provisions of the Agreement and the PSC Orders, failing to impose wholesale discounts which comply with the pricing standard for resale services set forth in the Act violate §252 of the Telecommunications Act of 1996 and the FCC's implementing regulations;

(d) Enjoin defendants from enforcing any provision of the Agreement that are inconsistent with the declaratory relief sought herein;

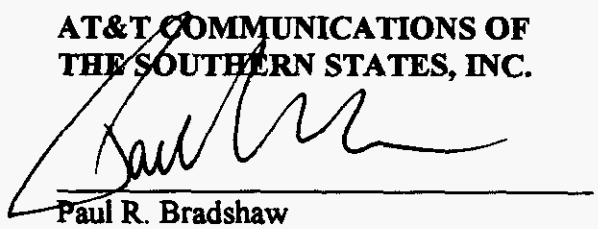
(e) Enjoin defendants from imposing any agreement on AT&T that does not contain language (1) requiring nondiscriminatory, cost-based pricing under §252(d)(1) for all network elements requested by AT&T; (2) applying the pricing methodology for unbundled network elements set forth in the FCC's implementing regulations then in force; (3) prohibiting the application of inconsistent state law; and (4) requiring wholesale discount pricing under §252(d)(3) for all wholesale services provided to AT&T for resale;

(f) Direct the reformation of the Agreement and the inclusion of contract language consistent with the Act and the decision of this Court; and

(g) Award AT&T such other and further relief as the Court deems just and proper.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.



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