

1 **DIRECT TESTIMONY OF**

2 **L. G. SATHER**

3 **ON BEHALF OF AT&T COMMUNICATIONS**

4 **OF THE SOUTHERN STATES, INC.**

5 **Docket No. 960847 - TP**

6
7 **Q. WILL YOU PLEASE IDENTIFY YOURSELF AND STATE YOUR**
8 **BUSINESS ADDRESS?**

9
10 **A.** My name is L. G. Sather. My business address is 1200 Peachtree Street N.E.,
11 Atlanta, Georgia 30309.

12
13 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

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15 **A.** I am employed by AT&T as a District Manager in the Government Affairs
16 organization.

17
18 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

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20 **A.** I have over thirty-five years of service in the telecommunications industry. I started
21 my career at Northwestern Bell in 1960. My assignments at Northwestern included
22 responsibilities in the installation and maintenance of local services, the engineering
23 of local and toll distribution facilities, construction program planning, long range
24 planning of local and toll networks, the determination and administration of local
25 and toll switching machine capacities, network management of the toll network for

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1 peak load conditions, and the economic analysis of network services in support of
2 pricing decisions. In 1978, I transferred to South Central Bell. There I had
3 responsibilities for economic analysis in the areas of Private Line Services, Data
4 Phone Digital Services, Message Toll Service, WATS and 800 Service. From early
5 1982 to December 1983, I worked on the development of state and interstate access
6 charges for South Central Bell and the development of programs and analyses to
7 support the interstate filing of the transport access charges for most of the Bell
8 Operating companies. In 1984, I joined AT&T and have been involved with various
9 aspects of regulatory and economic analysis relating to the provisioning of AT&T
10 services.

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12 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES WITH AT&T?**

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14 A. I am responsible for presenting to regulatory bodies, industry fora, and AT&T
15 management an analysis of industry proposals which impact AT&T's service
16 offerings and capabilities in the nine AT&T Southern Region states. A major
17 portion of my effort is directed towards achieving economically based,
18 nondiscriminatory access charges and structures, together with regulatory rules that
19 will allow AT&T to meet its customer needs with services that are competitively
20 priced.

21

22 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY STATE PUBLIC**
23 **UTILITY COMMISSIONS?**

24

25 A. Yes. I have testified in well over eighty proceedings throughout the southern region

1 on the following issues: appropriate pricing structures and levels for access,
2 promotion of local and toll competition, competitive impacts of various industry
3 proposals, and appropriate regulation of interexchange and local exchange carriers.
4

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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7 **A.** The purpose of my testimony is to recommend that the Commission issue an order
8 directing GTE to offer for resale all of its retail telecommunications services at
9 wholesale rates without resale restrictions. This is necessary to promote the
10 development of competition in the local exchange market. By promoting
11 competition, the Commission will secure for Florida consumers the benefits
12 envisioned by the Act --high quality services and new technologies at competitive
13 prices. On the other hand, GTE will stifle competition if the Commission allows
14 GTE to restrict the types of services available for resale and the manner in which
15 resellers can offer these services to Florida consumers. Indeed, GTE has a financial
16 incentive to maintain its monopoly by limiting competition through imposing
17 restrictions of the resale of local services. Unlike BellSouth, GTE does not have to
18 satisfy the Act's fourteen point checklist in order to enter the interLATA market.
19 GTE is there now! GTE, therefore, has nothing to lose and everything to gain by
20 denying or delaying competition in the local exchange market.

21
22 AT&T's experience is that GTE, if permitted, will deny consumers a competitive
23 choice in order to maintain their monopoly position in the local exchange market.
24 GTE has made every effort to stifle the development of intraLATA toll competition
25 in Florida and other states. There is no reason to believe that GTE will act

1 differently here. The Commission must guard against anti-competitive behavior by
2 taking a proactive role in requiring unrestricted resale of telecommunications
3 services.

4
5 **Q. WHAT DUTIES DOES THE TELECOMMUNICATIONS ACT OF 1996**
6 **IMPOSE UPON GTE WITH RESPECT TO OFFERING**
7 **TELECOMMUNICATIONS SERVICES FOR RESALE?**

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9 A. It is my understanding that Section 251(c)(4) of the Act imposes two duties on GTE
10 and other incumbent local exchange companies. The first duty can be broken down
11 into two parts: (i) GTE must offer for resale any telecommunications service that
12 GTE provides at retail to subscribers who are not telecommunications carriers; and
13 (ii) GTE must offer those telecommunications services for resale at wholesale rates.
14 47 U.S.C. § 251(c)(4)(A). The Act defines *Telecommunications Service* as “the
15 offering of telecommunications for a fee directly to the public, or to such classes of
16 users as to be effectively available directly to the public, regardless of the facilities
17 used. 47 U.S.C. § 153(46). The Act defines *Telecommunications* as “the
18 transmission, between or among points specified by the user, of information of the
19 user’s choosing, without change in the form or content of the information as sent
20 and received.” 47 U.S.C. § 153(43).

21
22 The second duty also can be broken down into two parts: (i) GTE shall not prohibit
23 the resale of telecommunications services; and (ii) GTE shall not impose
24 unreasonable or discriminatory conditions or limitations on the resale of
25 telecommunications services. 47 U.S.C. § 251(c)(4)(B). The Act, however,

1 provides that the Commission -- not GTE -- may prohibit a reseller from offering
2 telecommunications services obtained at wholesale rates to a category of subscribers
3 who are not otherwise eligible to purchase those services at retail from GTE,
4 provided that any such prohibition is consistent with the Federal Communications
5 Commission ("FCC") regulations. 47 U.S.C. § 251(c)(4)(B).

6
7 **Q. HAS THE FCC ISSUED REGULATIONS IMPLEMENTING THE ACT?**

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9 A. Yes. On August 8, 1996, the FCC released Order No. 96-325 and the regulations
10 implementing the Act. The order and regulations clarify and expand on certain
11 aspects of the Act. The FCC confirmed that GTE has a statutory obligation to offer
12 for resale at wholesale rates any telecommunications service that it provides at retail
13 to subscribers who are not telecommunications carriers. 47 C.F.R. § 51.605(a) (to
14 be codified); FCC Order No. 96-325, ¶ 870, at 442 (Aug. 8, 1996). The FCC also
15 determined that resale restrictions are presumptively unreasonable except that State
16 Commissions have the discretion to prohibit the resale of: (1) residential services to
17 non-residential customers; (2) Lifeline or other means-tested service offerings to
18 non-eligible subscribers; and (3) withdrawn services to consumers that are not
19 current subscribers. 47 C.F.R. § 51.613(a)(1), 51.615 (to be codified); FCC Order
20 No. 96-325, ¶¶ 961, 967, at 486, 488. GTE has the burden of proving to the State
21 Commission that any other resale restrictions are reasonable and non-discriminatory.
22 47 C.F.R. § 51.613(b) (to be codified). The Commission should take note that these
23 are extremely narrow restrictions.

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25 **Q. HAVE REGULATORY BODIES PREVIOUSLY USED RESELL TO**

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**PROMOTE COMPETITION IN THE TELECOMMUNICATIONS
INDUSTRY?**

A. Yes. Resale was the primary vehicle that new entrants used to begin competing in the long distance market against AT&T, who previously had a monopoly on long distance service. Today, resale continues to play a major role in promoting competition in the long distance market.

**Q. DID REGULATORY BODIES PERMIT AT&T TO RESTRICT THE
RESALE OF LONG DISTANCE SERVICES?**

A. No. The FCC required AT&T to offer for resale all of its services without restrictions. That requirement, which remains today, allowed companies like MCI, Sprint, and WorldCom (formerly LDDS and Wiltel) to establish themselves and succeed in the long distance market. The story of WorldCom demonstrates the value of resale in fostering competition. WorldCom started as a small reseller in Mississippi. Through the use of innovative management and effective resale of other carriers' services and facilities, WorldCom evolved from being a small local reseller to become the nation's fourth largest facilities based carrier.

**Q. DID CONSUMERS BENEFIT FROM THE COMPETITION IN THE LONG
DISTANCE MARKET THAT RESALE HELPED CREATE?**

A. Yes. As the Commission is well aware, competition forced interexchange carriers like AT&T to drop their prices dramatically, add many new services, and deploy

1 new technologies.

2

3 **Q. WHAT TELECOMMUNICATIONS SERVICES HAS AT&T REQUESTED**
4 **THAT GTE OFFER FOR RESALE AT WHOLESALE RATES?**

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6 A. AT&T requested that GTE comply with the Act by offering for resale at wholesale
7 rates any telecommunications service that GTE provides at retail to subscribers who
8 are not telecommunications carriers. AT&T also requested that GTE not impose
9 any resale restrictions on those services.

10

11 **Q. WHAT WAS GTE'S RESPONSE TO AT&T'S REQUEST?**

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13 A. GTE proposed to restrict AT&T's resale of telecommunications services in two
14 ways. First, GTE proposed to restrict the types of services it would offer for resale
15 at wholesale rates. Second, GTE proposed to place use and user restrictions on the
16 services that GTE would offer for resale.

17

18 **Q. HOW DID GTE PROPOSE TO RESTRICT THE TYPES OF SERVICES IT**
19 **WOULD OFFER FOR RESALE AT WHOLESALE RATES?**

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21 A. GTE stated that some services will not be available for resale. Other services will
22 be available for resale, but not at wholesale rates.

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24 **Q. WHAT TYPES OF SERVICES DID GTE REFUSE TO OFFER FOR**
25 **RESALE?**

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A. It is AT&T's understanding, based on a culmination of communications, that GTE would not agree to offer all of its retail telecommunications services for resale. Listed below are some but not all of the types services that GTE refused to offer for resale and AT&T's understanding of the basis of GTE's position. Given the vast amount of information that the parties have exchanged and the dynamic nature of negotiations, it is possible that AT&T may misunderstand some of GTE's positions on the resale of local exchange services. Certainly, the best source for GTE's position is GTE itself. Nevertheless, I have tried to summarize GTE's position for the convenience of the Commission.

- Withdrawn Services -- Often referred to as grandfathered services, these are telecommunications services available only to a limited group of customers who have purchased such services in the past. GTE argues that the Act does not cover withdrawn services because such services are not offered to the general public. Exhibit RS-1, Tab 112, at 2. AT&T asserts that the Act's definition of telecommunications services includes withdrawn services because GTE offers withdrawn services to "such classes of users as to be effectively available directly to the public." 47 U.S.C. § 153(46). The FCC regulations confirm the validity of AT&T's position by providing that GTE must make withdrawn services available at wholesale rates so that AT&T can offer such services to the same limited group of customers. 47 C.F.R. § 51.615 (to be codified).
- Promotional Offerings -- These are retail services offered at special prices.

1 GTE argues that it should not have to make its promotional offerings
2 available to AT&T because promotions are short term and offered at GTE's
3 discretion. Exhibit RS-1, Tab 112, at 2-3. The FCC Order established a
4 presumption that promotional prices offered for a period of 90 days or less
5 need not be offered at wholesale rates. FCC Order 96-325, ¶ 949, at 480.
6 AT&T believes that Incumbent Local Exchange Carriers like GTE can and
7 will use promotional offerings to avoid their duty to offer retail
8 telecommunications services at wholesale rates. The Commission,
9 therefore, should reject or tightly control any exception for promotional
10 offerings from GTE's resale obligation.

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12 • "Below Cost" Residential Services -- These are retail residential services
13 that GTE offers at retail rates that are purportedly below the cost of
14 providing that service. GTE argues that it should not have to offer these
15 services for resale. Exhibit RS-1, Tab 112, at 3. The Act and its
16 implementing regulations, however, do not exempt services that are
17 provided at below cost from GTE's duty to offer any retail
18 telecommunications service for resale at wholesale rates. See 47 U.S.C.
19 § 251(c)(4)(A); 47 C.F.R. §§ 51.605(a), 51.613(a) (to be codified).

20

21 • In Contact Services -- These are retail services that utilize AIN triggers
22 within the GTE's switch to allow customized call handling, such as having
23 calls delivered to one location at specified times and to another location at a
24 different time. GTE has not agreed to offer such services for resale. Exhibit
25 RS-1, Tab 112, at 3. The Act and its implementing regulations, however, do

1 not exempt In Contact Services from GTE's duty to offer any retail
2 telecommunications service for resale at wholesale rates. 47 U.S.C.
3 § 251(c)(4)(A); 47 C.F.R. § 51.605(a), 51.613(a) (to be codified).

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5 • Payphone Services -- These are services for public, semi-public, and
6 customer-owned, customer-operated telephones. GTE argues that the Act
7 does not require GTE to offer such services for resale at wholesale rates.
8 Matrix 5. The FCC order, however, provides that Incumbent Local
9 Exchange Carriers must offer certain payphone services for resale at
10 wholesale rates to telecommunications carriers like AT&T. FCC Order No.
11 96-325, ¶ 875, at 444.

12
13 **Q. WHAT TYPES OF SERVICES DID GTE AGREE TO OFFER FOR RESALE,**
14 **BUT NOT AT WHOLESALE RATES?**

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16 **A.** The types of services that GTE agreed to offer for resale but not at wholesale rates
17 included, but are not limited to:

18
19 • Discount Calling Plans and Packages -- GTE argues that these plans reflect
20 GTE's economic cost savings from dealing in bulk and should not be
21 offered at wholesale rates. Exhibit RS-1, Tab 112, at 3. The Act and the
22 implementing regulations, however, do not exempt discount calling plans
23 and packages from GTE's duty to offer any retail telecommunications
24 service for resale at wholesale rates. See 47 U.S.C. § 251(c)(4)(A); 47
25 C.F.R. §§ 51.605(a), 51.613(a) (to be codified).

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- Non-Recurring Charge Services -- These are services that are provided and billed on a non-recurring basis. GTE argues that it does not avoid any costs in providing these services at wholesale. Exhibit RS-1, Tab 112, at 3. The Act and its implementing regulations require that GTE must offer for resale at wholesale prices any telecommunications service sold at retail to subscribers who are not telecommunications carriers. 47 U.S.C. § 251(c)(4)(A); 47 C.F.R. §§ 51.605(a), 51.613(a) (to be codified). Non-recurring charges are retail prices. Consequently, GTE must offer such services for resale at wholesale rates.

Q. WHY SHOULD THE COMMISSION REQUIRE GTE TO OFFER FOR RESALE ALL RETAIL SERVICES AT WHOLESALE RATES?

A. First, the Act and its implementing regulations require GTE to offer for resale at wholesale rates any telecommunications service that GTE provides at retail to subscribers who are not telecommunications carriers. 47 U.S.C. § 251(c)(4)(A); 47 C.F.R. § 51.605(a) (to be codified).

Second, even if there were not a strict legal requirement that GTE offer for resale all retail telecommunications services at wholesale rates, the availability of resale under such conditions has significant public interest benefits. Resale fosters competition which benefits consumers because it leads to higher quality services and new technologies at competitive prices. The Commission only has to look at the interexchange market to see how consumers benefit from the competition that resale

1 helped create. By requiring GTE to offer for resale all retail services at wholesale
2 rates, the Commission provides all consumers with a real choice for all
3 telecommunications services.

4
5 Third, requiring GTE to offer all telecommunications services for resale at
6 wholesale rates creates a bright-line test to determine GTE's compliance with its
7 statutory duties. That bright-line test will prove to be an effective and efficient
8 regulatory tool because the Commission will not have to police any exception to
9 GTE's resale duties, or at most only a few limited exceptions that the Commission
10 deems appropriate and consistent with the FCC regulations. Allowing GTE to
11 restrict the types of services it would offer for resale at wholesale rates, on the other
12 hand, would provide a giant loophole for anti-competitive behavior such as
13 grandfathering customers to prevent competition in select market segments or
14 abusing promotions to avoid offering services for resale at wholesale rates. Absent
15 a bright-line test, new entrants would have to petition the Commission each time
16 GTE attempts to exclude a service from its duty to offer that service for resale at
17 wholesale rates. A bright-line test, therefore, will reduce the need for regulatory
18 intervention.

19

20 **Q. WHAT ARE USE AND USER RESTRICTIONS?**

21

22 A. Use and user restrictions are limitations that local exchange carriers impose to limit
23 who can purchase a particular service and how that consumer can use the service.

24

25 **Q. WHAT IS THE ORIGIN OF USE AND USER RESTRICTIONS?**

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2 A. Use and user restrictions are a by-product of pricing practices in a non-competitive,
3 monopolistic environment. In the past under rate of return regulation, pricing often
4 reflected social objectives (like minimizing the rates for residential basic local
5 exchange service) rather than reflecting the underlying cost to provide a particular
6 service. Local exchange carriers would satisfy the majority of their revenue
7 requirements by pricing non-residential services as high as possible and would raise
8 rates for residential service only as a last resort. Large business customers with
9 leverage in the marketplace would object to the high rates and the local exchange
10 carrier would respond by lowering rates for those large business customers. In the
11 end, some customers were paying much higher rates than other customers for
12 essentially the same service. As a result, the local exchange carrier had to create use
13 and user restrictions to protect its ability to generate sufficient revenues by
14 preventing one class of customers from taking advantage of lower prices offered to a
15 different class of customers.

16

17 Most States now have stopped rate of return regulation. Use and user restrictions,
18 however, remain in place.

19

20 **Q. WHAT IS GTE'S POSITION REGARDING USE OR USER**
21 **RESTRICTIONS?**

22

23 A. GTE's position is that the Act permits GTE to impose reasonable and
24 nondiscriminatory restrictions on resale. Exhibit RS-1, Tab 112, at 2. It is AT&T's
25 understanding that GTE believes that all current category-to-category resale

1 restrictions are reasonable and non-discriminatory, and should remain in place. The
2 one exception is that GTE will permit resellers to offer business services to
3 residential customers.

4

5 **Q. ARE SUCH USE AND USER RESTRICTIONS APPROPRIATE IN THE**
6 **RESALE ENVIRONMENT?**

7

8 A. No. The Act and its implementing regulations do not permit use and user
9 restrictions in the competitive resale market. The Act provides that Incumbent
10 Local Exchange Carriers like GTE cannot impose unreasonable or discriminatory
11 conditions or limitations on the resale of telecommunications services. 47 U.S.C.
12 § 251(c)(4)(B). The FCC regulations implementing the Act provide that all resale
13 restrictions are presumptively unreasonable and that GTE has the burden to prove to
14 the Commission that a particular resale restriction is reasonable and
15 nondiscriminatory. 47 C.F.R. § 51.613(b) (to be codified); FCC Order No. 96-325,
16 ¶ 938, at 476. The only recognized exception to the prohibition against resale
17 restrictions is that State Commissions, and not GTE, have the discretion to restrict
18 the resale of: (1) residential services to non-residential customers; (2) Lifeline or
19 other means-tested service offerings to non-eligible subscribers; and (3) withdrawn
20 services to consumers that are not current subscribers. 47 C.F.R. § 51.613(a)(1),
21 51.615 (to be codified).

22

23 Competition is the new order in telecommunications, and resale restrictions are
24 incompatible with competition. While use and user restrictions may have served a
25 legitimate purpose in the past, such restrictions now only serve to limit competition.

1 All local exchange carriers should be able to offer telecommunications services to
2 anyone for any lawful purpose and should not be bound by restrictions imposed by
3 competing carriers. That will help ensure robust competition.

4

5 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

6

7 A. AT&T has requested that GTE offer all of its retail telecommunications service for
8 resale at wholesale prices and without resale restrictions. That is what the Act and
9 the FCC regulations require, and that is what is necessary to promote robust
10 competition. GTE, however, has refused to agree to AT&T's reasonable request.
11 Consequently, AT&T requests that the Commission order GTE to: (1) offer for
12 resale at wholesale rates any telecommunications service that GTE provides at retail
13 to subscribers who are not telecommunications carriers; and (2) offer those
14 telecommunications services for resale without any resale restrictions.

15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17

18 A. Yes.