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DIRECT TESTIMONY OF

L. G. SATHER

ON BEHALF OF AT&T COMMUNICATIONS

OF THE SOUTHERN STATES, INC.

Docket No. 960833-TP

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. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

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

Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.

A. I have thirty-five years of service in the telecommunications industry. I started my career at Northwestern Bell in 1960. My assignments at Northwestern included responsibilities in the installation and maintenance of local services, the engineering of local and toll distribution facilities, construction program planning, long range planning of local and toll networks, the determination and administration of local and toll switching machine capacities, network management of the toll network for peak load conditions, and the economic analysis of network services in support of pricing decisions. In 1978 I transferred to South Central Bell. There I had responsibilities for economic analysis in the areas of Private Line Services, Data Phone Digital Services, Message Toll Service, WATS and 800 Service. From early 1982 to December 1983 I worked on the development of state and interstate access charges for South Central Bell and the development of programs and analyses to

1 support the interstate filing of the transport access charges for most of the Bell
2 Operating companies. In 1984 I joined AT&T and have been involved with various
3 aspects of regulatory and economic analysis relating to the provisioning of our
4 services.

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

6 A. I am responsible for presenting AT&T's analysis of industry proposals which impact
7 AT&T's service offerings and capabilities in the nine AT&T Southern Region states.
8 A major portion of my effort is directed towards achieving economically based,
9 nondiscriminatory access charges and structures together with regulatory rules that
10 will allow AT&T to meet its customer needs with services that are competitively
11 priced and profitable.

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

13 A. The purpose of my testimony is to request that the Commission direct BellSouth to
14 eliminate all restrictions on the resale of its telecommunications services contained
15 in its tariffs to promote the development of a competitive telecommunications
16 market.

17 In making this request and recommendation to the Commission I will demonstrate
18 that failure to implement complete and specific requirements for the resale of
19 telecommunications services will allow BellSouth to stifle the development of a
20 competitive local telecommunications environment. The local exchange telephone
21 companies have an economic incentive to utilize resale restrictions to afford
22 themselves a competitive advantage. They have both the economic incentive and,
23 with respect to BellSouth, a long standing history of such behavior.

24 **Q. WHAT IS YOUR UNDERSTANDING OF THE OBLIGATIONS OF LOCAL**
25 **EXCHANGE COMPANIES REGARDING RESALE OF SERVICES UNDER**

1 **THE 1996 TELECOMMUNICATIONS ACT?**

2 A. It is my understanding of the Act that local exchange companies have two
3 obligations with respect to offering their telecommunications services for resale. The
4 first obligation is contained in Section 251(b)(1) and is applicable to all local
5 exchange carriers. It provides that such carriers have “the duty not to prohibit, and
6 not to impose unreasonable or discriminatory conditions or limitations on, the resale
7 of its telecommunications services.”

8 The second obligation is included in Section 251(c)(4), and applies only to
9 Incumbent Local Exchange Carriers (“ILECs”). It requires that they “offer for
10 resale at wholesale rates any telecommunications service that the carrier provides at
11 retail to subscribers who are not telecommunications carriers; and ... not prohibit,
12 and not to impose unreasonable or discriminatory conditions or limitations on, the
13 resale of such telecommunications service ...”.

14 **Q. IN SIMPLE TERMS HOW WOULD YOU DESCRIBE THESE RESELL**
15 **OBLIGATIONS?**

16 A. The local exchange companies are required to make available for resale all existing
17 retail services. That means that any party, or end user, a competing
18 telecommunications carrier, or any entity should be allowed to purchase all
19 telecommunications services that BellSouth offers to end users. Additionally,
20 incumbent local exchange companies must make such telecommunications services
21 available for resale at wholesale rates. Further, BellSouth shall not restrict in any
22 way the manner in which a reseller may configure said services for its customers.

23 **Q. HISTORICALLY, WHAT HAS BEEN THE OVERALL RATIONALE FOR**
24 **PROHIBITING RESELL OR IMPOSING USE OR USER RESTRICTIONS?**

25 A. In the monopoly environment where pricing decisions were driven to satisfy the

1 revenue requirements of the local exchange company, the pricing of individual
2 services generally did not reflect underlying costs, but often reflected social pricing
3 objectives. Under rate of return regulation, the local exchange company first
4 determined what part of its revenue requirements could be satisfied from services
5 other than residential basic local exchange service and other services deemed by
6 state regulatory commissions as appropriate for profit maximization rates -- a
7 practice known as residual pricing. That type of pricing resulted in some services
8 being priced significantly above cost (like exchange access). Such rates would not
9 be sustainable in a competitive market. The overall purpose of this pricing
10 philosophy or objective was to minimize upward rate pressure on basic residential
11 local service rates.

12 The resulting rate structure for certain services permitted the monopoly to extract an
13 excessive level of profit from particular service offerings. For example, business
14 local exchange services were priced at a significant multiple above the equivalent or
15 identical service available to residential customers. Another classic example of this
16 pricing practice is reflected in the historically high prices for toll services of the
17 local exchange companies. To ensure that residential local exchange service could
18 not be used by businesses, the ILECs imposed tariffs restrictions on the use of such
19 residential services. When large business customers complained about high toll
20 rates, ILECs created new cut rate offerings to mollify them, such as Foreign
21 Exchange Service and WATS. To ensure that only these large customers could take
22 advantage of these offerings, the ILECs imposed resale restrictions that would not
23 allow end users to aggregate traffic of others and thereby extend the benefit of lower
24 rates to smaller customers. By restricting service arrangements to certain
25 customers, the ILECs chose to extract revenues from small volume customers far in

1 excess of what could be achieved if the same end users had been allowed to join
2 together to take advantage of the volume discounts available to large volume
3 customers.

4 **Q. DOES THE NEED STILL EXIST TO PRICE CERTAIN SERVICES**
5 **SIGNIFICANTLY ABOVE COST TO SUBSIDIZE ANY OTHER SERVICE?**

6 A. No. BellSouth is subject to price regulations and no longer is subject to rate of
7 return regulation. Also, the revenue/cost relationships of local exchange telephone
8 service have changed because of declining cost and frozen local exchange rates.
9 While historically it may have been true that local service, at least local residential
10 service, was priced below cost, that is not true today. There may be specific pockets
11 or small high cost areas where local residential services are priced below cost, but
12 this Commission, in its investigation of Universal Service requirements, determined
13 and noted in its Order that for BellSouth the statewide average revenues for local
14 residential services were in the range of \$23 per month. According to BellSouth, the
15 corresponding cost of this service is purported to be approximately \$19 per month.
16 Therefore, assuming that BellSouth figures are correct -- which we tend to question
17 -- revenues exceed the cost by more than 20%. Under such circumstances there is
18 no longer a need for revenue transfers between services.

19 Unfortunately the use of resale restrictions by ILECs may now be more
20 appropriately termed the abuse of resale restrictions. Today resale restrictions permit
21 ILECs to discriminate — to extract different levels of revenue from different
22 customers who receive similar services. The existence of resale restrictions
23 provides BellSouth the opportunity to stifle the development of competition. The
24 removal of all resale restrictions will promote competition. Contract Service
25 Arrangements (“CSAs”) are another means by which BellSouth can discriminate

1 between individual customers.

2 **Q. WAS RESALE USED TO FOSTER THE DEVELOPMENT OF**
3 **COMPETITION IN THE INTEREXCHANGE MARKET?**

4 A. Yes. Resale was the primary vehicle that was used by new entrants in the long
5 distance market. AT&T, a long distance provider, was required to make all of its
6 services available for unrestricted resale. That requirement remains today. If resale
7 restrictions had been allowed, unquestionably MCI, Sprint, and WorldCom
8 (formerly LDDS and Wiltel) would have had an even more difficult time
9 establishing themselves in the market. A prime example of the value of resale is
10 demonstrated by WorldCom, which originated as a small reseller in Mississippi.
11 Through the use of innovative management and effective resale of other carriers'
12 services and facilities, WorldCom evolved from being a reseller to become the
13 nation's fourth largest facilities based carrier.

14 **Q. IN WHAT WAY HAS BELLSOUTH ATTEMPTED TO RESTRICT AT&T'S**
15 **RESALE OF BELLSOUTH'S LOCAL SERVICES?**

16 A. BellSouth has restricted the resale of its retail services in two ways. First, it has
17 limited who can purchase certain services. Second, it has imposed unreasonable
18 conditions on how and to whom the services are to be resold.
19 By precluding specific services or categories of services from being resold,
20 BellSouth effectively isolates these services to their existing customers, thereby
21 shielding particular customer classes from competition. As a result, consumers are
22 stripped of their choice to receive such services from a different provider and
23 continue to be subjected to whatever price BellSouth decides to charge. By
24 restricting how services may be resold or to whom they may be resold, BellSouth
25 controls resellers' ability to compete against it by eliminating the ability to be

1 innovative in packaging and pricing services. As a result, consumer choice remains
2 limited to the services that have traditionally been offered by BellSouth.

3 **Q. WHAT SERVICES HAS BELL SOUTH INDICATED IT WILL NOT MAKE**
4 **AVAILABLE FOR RESALE?**

5 **A. BellSouth has informed AT&T that it will not make the following services available**
6 **for resale:**

- 7 • obsoleted/grandfathered services;
- 8 • contract service arrangements (“CSA”);
- 9 • promotional offerings;
- 10 • Link-up and Lifeline services;
- 11 • 911 and E911 services;
- 12 • state specific discount plans or services; and
- 13 • N11 service.

14 **Q. DESCRIBE THE GRANDFATHERING PROCESS FOR OBSOLETE**
15 **SERVICES.**

16 **A. ILECs have historically obsoleted services to remove them from the marketplace**
17 **because of new or advanced technology. Customers of obsoleted services may be**
18 **handled in two ways: they may be forced to migrate to a substitute service, or they**
19 **may be permitted to continue with their service on an “as is” basis. This practice of**
20 **allowing them to continue their service “as is” is known as “grandfathering.”**

21 **BellSouth has stated that its goal is to migrate these grandfathered customers to**
22 **substitute services. In practice, it has allowed, and even encouraged, grandfathered**
23 **customers to maintain their obsoleted service for years. Generally, as long as**
24 **grandfathered customers do not attempt to add new locations, expand their service,**
25 **or move to a new location, they may keep their grandfathered status indefinitely.**

1 **Q. WHY IS IT IMPORTANT THAT OBSOLETE SERVICES BE MADE**
2 **AVAILABLE FOR RESALE?**

3 A. First of all, it is important to note that AT&T is not asking this Commission to
4 require BellSouth to allow resellers to market and sell obsolete services to new
5 customers who would be new to these services. AT&T is asking this Commission to
6 require BellSouth to allow the grandfathered customers to be given a choice of
7 being provided their obsolete service directly from BellSouth or indirectly, through
8 resale, from a reseller. If AT&T is prohibited by BellSouth from offering the
9 obsolete service to the existing grandfathered customers, these customers will have
10 no choice but to remain with BellSouth if they want to keep their current service. In
11 effect, by limiting the availability of services exclusively to its customers, BellSouth
12 robs these customers of their ability to benefit from competition. Therefore, in order
13 for consumers to have the most choice as envisioned by Congress, it is crucial that
14 resellers be able to resell obsolete services to the embedded base of grandfathered
15 customers.

16 **Q. IS THERE POTENTIAL FOR BELL SOUTH TO ABUSE THE**
17 **GRANDFATHERING PROCESS IF GRANDFATHERED SERVICES ARE**
18 **NOT MADE AVAILABLE FOR RESALE?**

19 A. Absolutely. By grandfathering customers, BellSouth possesses the ability to close
20 off an entire segment of the market from competition. Given that there are very
21 loose standards regarding how long a grandfathered customer may maintain the
22 obsolete service, and what services BellSouth can choose to grandfather, BellSouth
23 would have the ability to foreclose market segments from competition indefinitely,
24 thereby snuffing out burgeoning competition.

25 It is crucial that the Commission understand that if BellSouth is permitted to

1 grandfather customers and exclude obsolete services from resale, it will have license
2 to strategically categorize its local services into designated service classifications
3 which are exclusively made available to its existing customers. Such strategic
4 categorizations will allow BellSouth to protect its customer base not on the basis of
5 customer service or superior service performance, but instead, solely because
6 arbitrary barriers to competition will have effectively been put in place.

7 **Q. CAN YOU PROVIDE ANY SPECIFIC EXAMPLES OF BELLSOUTH'S**
8 **ABUSING THE GRANDFATHERING PROCESS?**

9 **A. Yes. On May 15, 1996, BellSouth filed in Florida to (1) obsolete their ESSX and**
10 **Digital ESSX Service, (2) introduce MultiServ and MultiServPlus as replacement**
11 **services, and (3) grandfather all existing ESSX and Digital ESSX customers.**
12 **BellSouth made similar filings in its other states last year. In those states, BellSouth**
13 **sent letters to its ESSX and Digital ESSX subscribers informing them of the new**
14 **services and indicating that if they wished to maintain their ESSX and Digital ESSX**
15 **service beyond December 31, 1996, they were required to sign a three year term**
16 **plan within 90 days of the tariff approval.**
17 **In addition to having its customers sign three year term agreements to continue to**
18 **receive ESSX, BellSouth has since filed in Georgia and Mississippi to make changes**
19 **to its grandfathered ESSX tariffs. Among the changes proposed to the**
20 **grandfathered ESSX service in the filings were pricing changes and the authority to**
21 **order additional lines. BellSouth's proposed changes would result in enhancements**
22 **being made to grandfathered services that have supposedly become obsolete and**
23 **that are to be provided to existing customers solely on an "as is" basis.**
24 **It is clear from BellSouth's actions with respect to ESSX and Digital ESSX that its**
25 **motives have been based on reasons other than traditional reasons for**

1 grandfathering. Since BellSouth has the ability to manipulate the marketplace
2 through grandfathering, and in fact has done so, AT&T is requesting that this
3 Commission restrict BellSouth's ability to do so in the future. By requiring
4 BellSouth to make obsolete (and grandfathered) services available for resale,
5 BellSouth will be precluded from manipulating the process to shield its customers
6 from competition.

7 **Q. WHAT ARE CONTRACT SERVICE ARRANGEMENTS?**

8 A. A contract service arrangement ("CSA") is an offering of tariffed services at
9 customer-specific, non-tariffed rates. In order to be competitive and entice
10 customers to purchase services from it and not a competitor, an ILEC will offer a
11 contract (CSA) to customers for a specified period of time in which designated
12 services can be received at a discounted rate.

13 **Q. WHY IS IT IMPORTANT THAT CSAs BE AVAILABLE FOR RESALE?**

14 A. There is significant potential for competitive abuse if these services are not made
15 available for resale in all manners.

16 It is imperative that all retail offerings including contract service arrangements be
17 made available with the appropriate wholesale discount the same as other offerings,
18 if resale is to discipline BellSouth in its pricing so that it cannot discriminate against
19 customers and so that customers will have maximum choice.

20 Additionally, contract service arrangements need to be made available to the public
21 to ensure that there is awareness of this service arrangement being available. This is
22 necessary so that similarly situated customers may understand whether they would
23 like to avail themselves of the contract if similarly situated.

24 **Q. WHAT ARE PROMOTIONAL OFFERINGS OR PLANS?**

25 A. Promotional plans are specific pricing arrangements designed to entice customers to

1 purchase particular services and new features. Generally BellSouth's promotional
2 plans involve waiving a fee, such as a non-recurring charge, or offering the first
3 month of service free of charge.

4 **Q. WHY DOES AT&T VIEW IT IS NECESSARY FOR BELL SOUTH TO**
5 **MAKE PROMOTIONAL OFFERINGS AVAILABLE FOR UNRESTRICTED**
6 **RESALE?**

7 A. First, the 1996 Telecommunications Act requires that such services be made
8 available for resale. Promotional offerings are telecommunications services made
9 available to the public and as such meet the requirements for resale, which the Act
10 contemplates. Additionally, allowing BellSouth to utilize promotional offerings to
11 the general public without allowing resellers the same discounting arrangements
12 would constitute an unfair competitive advantage.

13 **Q. PLEASE DESCRIBE LIFELINE AND LINK-UP SERVICES.**

14 A. Link-up and Lifeline are services that include arrangements to help defray the cost
15 of the non-recurring installation fees and to provide reduced monthly service
16 charges for customers who qualify for financial assistance.

17 **Q. WHY SHOULD LIFELINE AND LINK-UP SERVICES BE MADE**
18 **AVAILABLE FOR RESALE?**

19 A. The reason for making both Link-up and Lifeline services available for resale is so
20 that consumers will be offered the greatest choice possible

21 **Q. WHY SHOULD STATE MANDATED DISCOUNT AND SERVICE PLANS**
22 **BE MADE AVAILABLE FOR RESALE?**

23 A. State mandated discount plans also are retail offerings, admittedly targeted to a
24 distinct group of customers, such as educational institutions. Although BellSouth is
25 required to make discounted services available to a select group of customers and

1 not the general public, it is still providing telecommunications service to retail
2 customers who are not telecommunications providers. Therefore, BellSouth must
3 make them available for resale as specified by the Act. Furthermore, by making
4 these services available for resale, these customers will be able to select another
5 provider from which to obtain services if they decide they no longer want to receive
6 service from BellSouth.

7 **Q. HOW DOES PROVIDING SERVICES SUCH AS E911/911 AND N11**
8 **SERVICE FOR RESALE BENEFIT COMPETITION?**

9 A. Making these services available for resale prevents BellSouth from maintaining
10 monopoly control over providing such services. BellSouth provides these services
11 to customers who are not telecommunications carriers and, therefore, must offer
12 them for resale. In addition, permitting the services to be resold will ensure that
13 consumers can look to other carriers to provide at a minimum, the same type and
14 quality of services they have received from the incumbent LEC.

15 **Q. IN ADDITION TO EXCLUDING CERTAIN SERVICES FROM RESALE,**
16 **BELLSOUTH HAS PROPOSED CERTAIN USE AND USER**
17 **RESTRICTIONS UPON SERVICES IT IS WILLING TO MAKE**
18 **AVAILABLE FOR RESALE. WHAT ARE SOME PROBLEMS**
19 **ASSOCIATED WITH SUCH RESTRICTIONS?**

20 A. In order for competition to fully develop and for customers to benefit from increased
21 choice, lower prices, and new technology, new entrants must be able to distinguish
22 themselves from BellSouth by repackaging services to offer consumers new services
23 or existing services at different prices. When a new entrant is prohibited from
24 making creative offerings because the incumbent LEC has imposed restrictions on
25 the resale of specific services, the development of competition will be impeded and

1 customer benefits will be realized more slowly. This anti-competitive result is why
2 the Act requires ILECs such as BellSouth “not to prohibit, and not to impose
3 unreasonable or discriminatory conditions or limitations on, the resale
4 of . . .telecommunications service[s]”

5 **Q. WHAT TYPES OF RESTRICTIONS HAS BELL SOUTH PROPOSED TO**
6 **PLACE ON SERVICES THEY AGREE TO MAKE AVAILABLE FOR**
7 **RESALE?**

8 A. BellSouth has proposed to restrict services available for resale in two ways: (1)
9 BellSouth has designated specific restrictions it proposes to impose on the use and
10 user of resold services, and (2) BellSouth has indicated that all services available for
11 resale will generally be subjected to the same terms and conditions as are specified
12 for such services in the appropriate section of BellSouth’s tariffs.

13 The proposed restrictions are unreasonable and discriminatory because they prohibit
14 innovation, which impedes competition. Additionally, they are unreasonable
15 because they require resellers to provide services to their customers in the exact
16 same manner as BellSouth provides these services to its customers.

17 **Q. WHAT MAKES THESE RESTRICTIONS INAPPROPRIATE IN A RESALE**
18 **ENVIRONMENT?**

19 A. Imposition of restrictions is inappropriate in a resale environment because they limit
20 rather than enhance competition. To permit BellSouth to impose such restrictions is
21 to dilute the intended effect of the Act, which is to promote competition so that
22 consumers can have increased choices. If resellers are precluded from reselling
23 services in ways that will permit them to offer better, or at least different, choices to
24 consumers, then the Act will have had no effect on monopolists in the local market.
25 The Commission must remove these restrictions to ensure that BellSouth has no

1 authority to control how its competitors will make services available to their new
2 customers, nor the authority to determine to whom such services will be provided.

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

4 **A. Yes.**