

**Cheryl R. Winn**  
*Attorney At Law*

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RECEIVED

November 8, 2007

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PUBLIC SERVICE  
COMMISSION



Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: Robert J. Strother, Complainant, v. AT&T Communications of the South  
Central States, Inc., Defendant  
PSC 2007-00415

Dear Beth:

Enclosed for filing in the above-referenced case are the original and ten (10)  
copies of the Response of AT&T Corp to the Commission's Order to Satisfy or Answer.

Sincerely,

  
Cheryl R. Winn 

cc: Party of Record

Enclosures

695605



#### **FOURTH DEFENSE**

4. With respect to the allegations contained in grammatical paragraph (a) of the Complaint, AT&T states it has no knowledge or information sufficient to form a belief as to the truth or falsity of such allegations.

5. With regard to the allegations contained in grammatical paragraph (b) of the Complaint, AT&T denies the allegation. AT&T affirmatively states the correct name of the Defendant utility is AT&T Corp. AT&T Corp's headquarters and principal office are located in Bedminster, New Jersey.

6. AT&T denies the allegation contained in paragraph (c) of the Complaint.

#### **FIFTH DEFENSE**

7. AT&T affirmatively states that in December of 1997, Robert Strother PSC established business service with AT&T of the South Central States, LLC for a location of 1025 Dove Run Road, Suite 302, Lexington, KY 40502-3588. The account number assigned to the customer was 019 157 6076 001.

Although Mr. Strother's factual statement in the Complaint is vague, based on prior informal PSC appeal cases filed by Mr. Strother on December 12, 2005, January 23, 2006, and August 15, 2007, AT&T believes the basis of Mr. Strother's Complaint is that he alleges he was overcharged for several years on his long distance service.

Prior to September of 2001, Mr. Strother was eligible for and participated in a five percent (5%) discount on long distance service charges under an "Association Discount" program. However, the "Association Discount" program was discontinued in September of 2001. Indeed, AT&T provided Mr. Strother written notice of the elimination of the "Association Discount" in a Bill Message contained in his monthly billing statement dated August 16, 2001.

Exhibit 1, Account Number 019 157 6076 001 Billing Statement, August 16, 2001 (“Billing Statement”). Specifically, the bill message advised:

Effective August 1, 2001, the tariff associated with the AT&T Business “Association Discount” program will be eliminated. This program has been offered to businesses based on their affiliation with eligible trade associations and chambers of commerce. Effective with the September 2001 bill, the 5% Association Discount will no longer be reflected on your bill. If you have any questions regarding this billing change, please contact AT&T Business at the telephone number that appears on your bill.

Additionally, the Billing Statement also contained a Bill Message that advised:

Additional terms, conditions, charges and price changes information for all detariffed business services can be viewed at <http://www.att.com/serviceguide/business>.” Price changes will be posted at this AT&T web site before they apply to your bill. If you do not have access to the Internet, please contact your AT&T Sales Representative or Customer Care Center for information.

Upon the discontinuance of the “Association Discount” program, because Mr. Strother failed to contact AT&T and request a replacement plan and his account was no longer eligible for the 5% discount and the per minute rate associated with the eliminated “Association Discount” plan, Mr. Strother’s rates were subject to increase to the standard detariffed business service rates. AT&T billed Mr. Strother appropriately according to its rates.

However, even if Mr. Strother had a legitimate billing complaint, and he does not, he is time barred from pursuing it. AT&T Business Communications Services Agreement provides: “If you dispute charges on your bill, you must notify AT&T in writing of the dispute within six (6) months of the dispute on the affected bill, or else you waive the dispute.” Exhibit 2, AT&T Business Communications Services Agreement.

Finally, AT&T business records indicate that in September of 2002, Mr. Strother chose a new calling plan, All In One Location, and was assigned account number 030 403 9577 001.

AT&T made a good will gesture and offered Mr. Strother a six month courtesy adjustment toward the rates billed on account 019 157 6076 001 to the rate of the newly selected calling plan, however, Mr. Strother refused the adjustment.

Mr. Strother disconnected service for account, 030 403 9577 001, on August 16, 2004. An adjustment of \$88.74 was made on the account due to the customer being billed monthly recurring charges after he left AT&T of the South Central States.

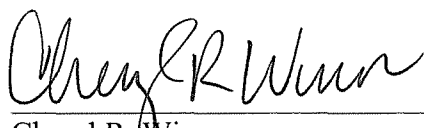
In summary, no additional adjustments are due Mr. Strother because: (1) Mr. Strother received written notice of the elimination of the "Association Discount" plan and failed to contact the company to change to a new plan; (2) The monthly bill advises that detariffed price changes are posted in advance on the company's website; and (3) Mr. Strother did not timely dispute any billing within the time frame required by the AT&T Business Communications Services Agreement. Accordingly, AT&T respectfully requests this Complaint be dismissed.

8. All allegations contained in the Complaint not specifically admitted are denied.

9. AT&T reserves the right to assert additional affirmative defenses should they be appropriate.

WHEREFORE, AT&T respectfully requests that this Complaint be dismissed and held for naught and AT&T be granted any and all other relief to which it may appear entitled.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cheryl R. Winn".

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Cheryl R. Winn  
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Louisville, KY 40232  
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Facsimile: 502.582.1573  
[Cheryl.winn@att.com](mailto:Cheryl.winn@att.com)

COUNSEL FOR AT&T CORP

695572

00000001

Account Number	Bill Date	Payment Due Date
019 157 6076 001	AUG 16, 2001	SEP 16, 2001

ROBERT STROTHER PSC  
1025 DOVE RUN RD  
SUITE 302  
LEXINGTON KY 40502-3588

<b>Association Discount</b>		<b>For Customer Care: 1 800 524-2455</b>	
<b>AT&amp;T Business Service</b>			
<b>ACCOUNT STATUS</b>		<b>TOTAL DISCOUNTS</b>	
PREVIOUS BALANCE	\$422.49	The Total Long Distance Discount	
PAYMENT RECEIVED 8/04/01	\$422.49%	For Your Account Is \$19.16	
ADJUSTMENTS	\$0.00		
TOTAL CURRENT CHARGES	\$480.73		
<b>TOTAL AMOUNT DUE</b>	<b>\$480.73</b>		

**\*\*\*\* Important News About Your Account \*\*\*\***

**Just For Your Business**

Choose the right mix of High-Speed Internet and Data Connections from AT&T. Are slow communications strangling your business? High-speed Internet connectivity and secure data transport can be the solution. Visit our small business center website to learn more at: [www.att.com/smallbusiness](http://www.att.com/smallbusiness).

Find out how a super fast DSL connection from AT&T can make a difference for your business. Learn about DSL or order online at: [www.ipsservices.att.com/dsl4](http://www.ipsservices.att.com/dsl4).

Effective August 1, 2001, the tariff associated with the AT&T Business "Association Discount" program will be eliminated. This program had been offered to businesses based on their affiliation with eligible trade associations and chambers of commerce. Effective with the September 2001 bill, the 5% Association Discount will no longer be reflected on your bill. If you have any questions regarding this billing change, please contact AT&T Business at the telephone number that appears on your bill.

*See next page for more news!*

Please make checks payable to AT&T and include your account number on payment.  
Make sure that the AT&T P.O. Box address is showing through the envelope window.  
AT&T will no longer reply to comments on this document. Submit correspondence to [www.att.com/bcs](http://www.att.com/bcs)

**TO ENSURE PROPER CREDIT, PLEASE DETACH THIS PORTION AND RETURN WITH REMITTANCE.**

001044 3 SP .80 M35  
!405023588771!  
ROBERT STROTHER PSC  
1025 DOVE RUN RD  
SUITE 302  
LEXINGTON KY 40502-3588

Account Number: 019 157 6076 001  
Bill Date: AUG 16, 2001  
Payment Due Date: SEP 16, 2001

Check here for name/  
address/telephone  
number corrections  
only. See reverse side.

**AT&T**  
P O BOX 9001309  
LOUISVILLE KY 40290-1309  
!402901309093!

Total Amount Due: **\$480.73**  
Amount Enclosed: \$

019157607600103925000000480730000048073000000000007

ROBERT STROTHER PSC  
1025 DOVE PLD RD  
SUITE 102  
LEXINGTON KY 40502-3588

Account Number	Bill Date	Payment Due Date
019 157 6076 001	AUG 16, 2001	SEP 16, 2001

**Association Discount**

**AT&T Business Service**

**Just For Your Business**

You can manage all of your ordering and billing inquiries with just a click. Visit us at [www.att.com/customer-care](http://www.att.com/customer-care) for details on AT&T on-line customer service.

Regulatory News

The terms, conditions and charges that apply to all your detariffed AT&T services can be viewed at the AT&T web site: <http://www.att.com/business/agreement>. Important limits of liability apply, including: AT&T is not liable for indirect or consequential damages (such as your lost profits or other economic loss) and direct damages during any 12 months cannot exceed one month of your payments for affected service.

Additional terms, conditions, charges and price change information for all detariffed business services can be viewed at <http://www.att.com/serviceguide/business>. Price changes will be posted at this AT&T web site before they apply to your bill. If you do not have access to the Internet, please contact your AT&T Sales Representative or Customer Care Center for information.

*Thank you for using AT&T where every customer counts*



## AT&T BUSINESS COMMUNICATIONS SERVICES AGREEMENT

**Please read this agreement carefully.**

***Your use of the AT&T Services provided under this Agreement constitutes your acceptance of the terms of this Agreement. If you do not agree with the terms of this Agreement, do not use the Service and immediately contact your AT&T customer care center or sales representative to cancel the Service.***

### **1. AT&T Services.**

**a. Services Covered.** This Agreement applies to AT&T business domestic intrastate, interstate, and international telecommunications services ("Services"), as such Services become detariffed. The applicable AT&T tariffs continue to apply to AT&T services that remain tariffed. This Agreement does not apply to AT&T Term Plan arrangements, or to other AT&T services that you purchase under a separate contract or AT&T Tariff.

**b. Additional Terms.** The AT&T Service Guide (which includes prices, service descriptions and other terms) pertaining to your Services is incorporated into this Agreement by reference and is considered part of the Agreement. You can review the AT&T Service Guide at <http://www.att.com/serviceguide/business>. If you do not have access to the Internet, you may call your AT&T customer care center for assistance.

### **2. Changes.**

AT&T may from time to time change the prices and other terms of this Agreement. CHANGES WILL BE POSTED AT THE AT&T INTERNET SITE SPECIFIED ABOVE BEFORE THE BILLING PERIOD IN WHICH THE CHANGES BECOME EFFECTIVE. Your use of the Services after the changes are effective constitutes your acceptance of them.

### **3. Responsibilities of the Parties.**

**a. AT&T.** AT&T agrees to provide Services to you subject to the availability of the required service components and in accordance with this Agreement.

**b. Customer.** You warrant that use of the Services and Content of communications by you and those who access or use the Services purchased by you ("Users") will at all times comply with all applicable laws, regulations and instructions for use. "Content" includes information made available, displayed or transmitted in connection with the Services. No actions or inaction by AT&T shall constitute review or approval of your or Users' use or Content. You are responsible for ensuring that all of the equipment that you and Users use is compatible with the Services.

**c. Fraudulent Use.** If you suspect that the Services provided to you have been fraudulently used, you must immediately notify AT&T.

**d. Indemnity.** AT&T grants to you the right to permit Users to access and use the Services, provided that you shall remain solely responsible for the access and use by any User of the Services. You shall defend, indemnify and hold harmless AT&T from and against all Damages arising out of third party claims relating to Your or Users' use of the Service or Content or performance of the Service.

#### **4. Charges/Payments.**

**a. Generally.** You agree to pay AT&T for your and Users' use of the Services at the charges specified in the AT&T Service Guide, as amended from time to time, without deduction, setoff or delay for any reason. At any time, AT&T may require you to pay a deposit or increase an existing deposit as a condition of providing Services. You authorize AT&T to investigate your credit history at any time and to share credit information about you with credit reporting agencies.

**b. Taxes/Regulatory Surcharges.** Charges as stated in the AT&T Service Guide are exclusive of any applicable taxes. You are responsible for all taxes, gross receipts taxes, fees and surcharges relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent that you provide AT&T with a valid tax exemption certificate before AT&T provides Services to you. You are responsible for payment of surcharges, including but not limited to UCC, USF, P ICC and payphone charges, specified in the AT&T Service Guide.

**c. Payment.** Payment of all charges is due within thirty (30) days after the date of invoice, in U.S. currency. Restrictive endorsements or other statements on checks accepted by AT&T will not apply. You will be responsible for reimbursing AT&T for all costs (including reasonable attorney fees) associated with collecting delinquent or dishonored payments. If AT&T does not receive payment by the due date, you may be charged interest on any unpaid balances at the rate of up to 1 1/2% per month or the maximum rate allowed by law.

**d. Billing Disputes.** IF YOU DISPUTE CHARGES ON YOUR BILL, YOU MUST NOTIFY AT&T IN WRITING OF THE DISPUTE WITHIN SIX (6) MONTHS OF THE DATE ON THE AFFECTED BILL, OR ELSE YOU WAIVE THE DISPUTE.

#### **5. Default/Termination.**

You can end this Agreement at any time just by giving us notice and AT&T can do the same. If any of the Services are toll switched telephone service, you may terminate these Services only by contacting your local exchange provider or by contacting a new service provider to order service. You will be responsible for payment of all charges due under this Agreement through the effective date of termination. Additionally, AT&T may immediately terminate, restrict or suspend your Services without notice to you if: you fail to pay AT&T any charges when due; you make any false statement to AT&T; AT&T suspects fraud, abuse or misuse by you, Users or third parties; AT&T believes your or Users' use or Content may violate this Agreement or any laws or regulations or interferes in any way with AT&T's provision of AT&T services to its customers or its business operations; or you become insolvent or are subject to any proceeding under bankruptcy or similar laws.

#### **6. Limitations of Liability.**

**a.** For purposes of all indemnity obligations, exclusive remedies and limitations of liability set forth in this Agreement, "AT&T" shall be defined as AT&T, its affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers; "Customer" shall be defined as Customer, its affiliates, and its and their employees, directors, officers, agents and representatives; and "Damages" will refer collectively to all injury, damage, liability, loss, penalty, interest and expense incurred.

**b.** EITHER PARTY'S ENTIRE LIABILITY, AND THE OTHER PARTY'S EXCLUSIVE REMEDIES, FOR ANY DAMAGES CAUSED BY ANY SERVICE DEFECT OR FAILURE, OR FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT SHALL BE:

(i) FOR BODILY INJURY OR DEATH TO ANY PERSON OR REAL OR TANGIBLE PROPERTY DAMAGE NEGLIGENTLY CAUSED A PARTY, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF PARTY OR FROM A BREACH OF THE PROVISIONS OF SECTION 10.h., THE OTHER PARTY'S RIGHT TO PROVEN DIRECT DAMAGES;

(ii) FOR INDEMNITY, THE REMEDIES STATED IN SECTIONS 3.d. AND 9;

(iii) FOR ALL OTHER DAMAGES OTHER THAN THOSE SET FORTH ABOVE AND NOT EXCLUDED UNDER THIS AGREEMENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES NOT TO EXCEED IN THE AGGREGATE DURING ANY TWELVE (12) MONTH PERIOD AN AMOUNT EQUAL TO THE TOTAL NET PAYMENTS PAYABLE BY CUSTOMER FOR THE AFFECTED SERVICE DURING THE ONE (1) MONTH PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES UNDER THIS AGREEMENT.

**c.** EXCEPT FOR SECTIONS 3.d. and 9.a., IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**d.** AT&T ALSO SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS NOT PROVIDED BY AT&T; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS (EXCEPT TO THE EXTENT CREDIT ALLOWANCES ARE SPECIFIED IN THE AT&T SERVICE GUIDE); OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF YOUR, USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.

**e.** The limitations of liability set forth in this Section 6 shall apply: (i) regardless of the form of action, whether in contract, tort, strict liability, equity or otherwise; and (ii) whether or not damages were foreseeable. These limitations of liability shall survive failure of any exclusive remedies provided in this Agreement.

## **7. Warranties.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AT&T MAKES NO EXPRESS OR IMPLIED WARRANTY AND DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AT&T DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE SERVICES WILL PREVENT UNAUTHORIZED ACCESS. EQUIPMENT PROVIDED BY AT&T IN CONJUNCTION WITH A SERVICE IS PROVIDED ON AN "AS IS" BASIS. AT&T DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND YOU SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS.

#### **8. Credit Allowances for Interruptions.**

If an interruption or failure of Services is caused solely by AT&T and not by you or a third party or other causes beyond AT&T's reasonable control, you may be entitled to a Credit Allowance as specified in the AT&T Service Guide.

#### **9. Infringement Indemnity.**

**a.** AT&T agrees to defend or settle any claim against you and to pay all Damages that a court may award against you in any suit alleging that a Service furnished under this Agreement infringes any United States patent, trademark, copyright or trade secret, except where the claim or suit arises out of or results from: your or User's Content in connection with the Service; modifications to the Service made by or combinations of the Service with services or products provided by you or others; AT&T's adherence to your written instructions or specifications; or use of the Service in violation of this Agreement. You agree to defend or settle at your own expense all claims or suits against AT&T covered by the exceptions in the preceding sentence and to immediately cease any activity which gives rise to the alleged infringement. The indemnifying party will also pay all Damages and costs that by final judgment may be assessed against the indemnified party due to infringement by the indemnifying party.

**b.** In the event of a claim of infringement for which AT&T is the indemnifying party under Section 9.a., AT&T may at its option either procure the right to continue using, or replace or modify, the alleged infringing Service so that the Service becomes noninfringing and substantially compliant with the requirements in this Agreement. Upon inability to reasonably perform either of the foregoing options, AT&T may terminate this Agreement, without liability other than as stated in Section 9.a.

**c.** With respect to the indemnification obligations in this Section 9: (i) the indemnified party will notify the indemnifying party in writing promptly upon learning of any claim or suit for which indemnification may be sought; (ii) the indemnifying party shall have control of the defense or settlement, provided that the indemnified party shall have the right to participate in such defense or settlement with counsel of its own selection and at its expense; and (iii) the indemnified party shall reasonably cooperate with the defense, at the indemnifying party's expense.

#### **10. General Provisions.**

**a. Acts Beyond Control.** NEITHER YOU NOR AT&T SHALL BE LIABLE FOR ANY DELAY, FAILURE IN PERFORMANCE, LOSS OR DAMAGE DUE TO: FIRE, EXPLOSION, POWER BLACKOUT, EARTHQUAKE, VOLCANIC ACTION, FLOOD, THE ELEMENTS,

STRIKE, EMBARGO, LABOR DISPUTES, ACTS OF CIVIL OR MILITARY AUTHORITY, WAR, ACTS OF GOD, ACTS OR OMISSIONS OF CARRIERS OR SUPPLIERS, ACTS OF REGULATORY OR GOVERNMENTAL AGENCIES, OR OTHER CAUSES BEYOND THEIR REASONABLE CONTROL, EXCEPT THAT YOUR OBLIGATION TO PAY FOR CHARGES INCURRED FOR SERVICES RECEIVED BY YOU SHALL NOT BE EXCUSED.

**b. No Third Party Rights.** This Agreement does not provide any third party, including Users, with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

**c. Assignment.** This Agreement may not be assigned by you without AT&T's prior written consent. AT&T may assign all or part of our rights and duties under this Agreement to a present or future affiliate or successor. AT&T may subcontract work to be performed under this Agreement, but will retain responsibility for all such work.

**d. Notices.** Notices from you to AT&T shall be made by following the customer service instructions on your bill. You are responsible for notifying AT&T of any changes in your authorized billing address and other contact information.

**e. Severability.** If any part of this Agreement is found invalid, the rest of the Agreement remains enforceable.

**f. Governing Law.** State law issues concerning the construction, interpretation and performance of this Agreement shall be governed by the substantive laws of the State of New York, excluding its choice of law rules.

**g. Two Year Limit on Actions.** Any legal action arising in connection with this Agreement must begin within two (2) years after the cause of action arises.

**h. Publicity and Marks.** No public statements or announcements relating to this Agreement shall be issued by you or AT&T without the prior written consent of the other. You and AT&T agree not to display or use, in advertising or otherwise, any trade names, logos, trademarks, service marks or other indicia of origin (collectively "Marks") belonging to the other without obtaining the other's prior written consent, provided that such consent may be revoked at any time.

**i. Waiver of Rights.** We may from time to time waive the enforcement of any of the provisions of this Agreement. If we do, this will not affect our ability to enforce that provision in our dealings with other customers or in our future dealings with you, nor will it be considered an amendment of this Agreement.

**j. Survival of Obligations.** The respective obligations of you and AT&T, which by their nature would continue beyond the termination of this Agreement, such as the obligations regarding limitations of liability, shall survive termination.

**k. Entire Agreement.** This Agreement, which includes the AT&T Service Guide, constitutes the entire agreement between you and AT&T with respect to the Services provided hereunder. In the event of any inconsistencies between this Agreement and the AT&T Service Guide, this Agreement will govern. This Agreement supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating


to those Services. This Agreement shall not be contradicted, explained or supplemented by any written or oral statements, proposals, representations, advertisements or service descriptions not expressly set forth in this Agreement.

**THANK YOU FOR USING AT&T.**

CERTIFICATE OF SERVICE – PSC 2007-00415

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof, this 8th day of November, 2007.

Robert S. Strother  
1080 Lake Front Drive  
Lexington, KY 40517

  
Cheryl R. Winn