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May 12, 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37245

Re: *Discount Communications, Inc.*
Docket No. 00-00230

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Post-Hearing Brief in the above-referenced matter. A copy of the enclosed is being provided to counsel of record.

Very truly yours,

Patrick Turner

Patrick W. Turner

PWT/jem

Enclosure

POSTED 5-12-00

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: ***Discount Communications, Inc.***

Docket No. 00-00230

POST-HEARING BRIEF OF
BELLSOUTH TELECOMMUNICATIONS, INC.

This docket is about the past. It is about orders that the TRA issued in the past, agreements that the parties entered in the past, tariffs that became effective in the past, and bills that became due in the past. It is about one entity's desperate attempts to escape its past by asking the TRA to forgive debts it has incurred but cannot (or will not) pay.

Since the hearing in this docket was scheduled, Discount has scurried about attempting to distract attention from the simple fact that it has failed to pay its bills. It continued these tactics during the hearing by constantly injecting irrelevant and unsubstantiated claims into this docket under the guise of establishing a background to explain away its failure to pay its bills. When faced with the prospect of having to respond to a question from the bench regarding the amount of payments that are admittedly past due, however, Discount plainly and accurately stated the only two issues it has chosen to present to the TRA: "We are not asking the Authority to resolve all those other billing disputes . . . . We are simply asking this agency to rule on the disputed issues of directory assistance and Lifeline." (Tr. Vol. II at 287) (emphasis added).

The first Resale Agreement Discount signed, the second Resale Agreement Discount signed, the federal Telecommunications Act of 1996, the price regulation statutes, the TRA's Arbitration Order in the AT&T and MCI dockets, and BellSouth's tariffs require Discount to pay for directory assistance and to fund a $3.50 state Lifeline credit amount to its Lifeline end users. Faced with this daunting array of legal authority against it, Discount can do nothing more than: (1) concoct a tortured interpretation of the Resale Agreements that defies both law and fact; and (2) ask the TRA to rule that it acted illegally in allowing BellSouth's most recent Lifeline tariff to become effective. For the reasons set forth below, the TRA should reject Discount's arguments, rule that BellSouth properly billed Discount for directory assistance, and rule that Discount is responsible for funding a $3.50 state Lifeline credit amount to its Lifeline end users.

I. THE FIRST RESALE AGREEMENT DISCOUNT SIGNED, BELLSOUTH'S TARIFFS, AND THE SECOND RESALE AGREEMENT DISCOUNT SIGNED CLEARLY AND UNAMBIGUOUSLY ALLOW BELLSOUTH TO CHARGE FOR DIRECTORY ASSISTANCE.

On January 21, 1999, Discount and BellSouth jointly petitioned the TRA for approval of their first Resale Agreement. (Ex. 18). The TRA granted the petition and approved the agreement on February 16, 1999. On February 5, 2000, Discount signed an interconnection agreement with BellSouth, (Tr. Ex. 8, Part A, Page 18), and included in that interconnection agreement is a new Resale Agreement. (Tr. Ex. 8, Attachment 1).

As explained more fully below and at pages 2 through 4 of the Brief BellSouth filed on April 5, 2000, the language of both Resale Agreements plainly and unambiguously states that the applicable tariffs govern the terms and conditions of services Discount purchases for resale. The TRA, therefore, must look to the applicable tariffs to decide Discount's claims, because "[w]hen the language of a contract is plain and unambiguous, it is the court's duty to interpret it and enforce it as written." *Koella v. McHargue*, 976 S.W.2d 658, 661 (Tenn. Ct. App. 1998). Thus Discount's attempts to escape the provisions of these Agreements (and the tariffs they reference) on the basis of its tortured interpretation of them is inappropriate.

A. Discount's Resale Agreement Requires it to Pay BellSouth the Tariffed Rates That Exist at the Time a Service is Provided Less the Wholesale Discount.

When his own counsel asked, "What does [the first Resale Agreement] say about directory assistance," Discount's witness replied that "[t]he wholesale discount is set as a percentage off the tariff rates." (Tr. Vol. II at 250) (emphasis added). Later, Discount's witness had the following exchange with Director Greer:

> Q. And if, in fact, a tariff changes, then aren't you subject to that tariff according to this [first] agreement you signed?
>
> A. Yes, sir, if there was a tariff to start with.[1]

[1] At the time the first Resale Agreement was signed, BellSouth obviously had a directory assistance tariff. (*See* Attachment 1).

(Tr. Vol. II at 354). Discount's witness is absolutely correct: the Resale Agreement unambiguously requires Discount to pay BellSouth the tariffed rate for directory assistance less the wholesale discount. Section I.C, for instance, provides that:

> The rates pursuant by (sic) which Discount Communications is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Exhibit A, attached hereto and incorporated herein by this reference. Such discounts shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

(Emphasis added). (Tr. Ex. 18 at §I.C) (Tr. Ex. 8, Attachment 1, Page 3 at §1). Section III.A of the Resale Agreement reiterates that "BellSouth shall make available telecommunications services for resale at the rates set forth in Exhibit A to this Agreement . . . ." (Emphasis added). (Tr. Ex. 18 at §III.C) (Tr. Ex. 8, Attachment 1, Page 4, at §3.2).

Exhibit A to the Resale Agreement, in turn, provides that "[t]he telecommunications services available for purchase by Discount Communications for the purpose of resale to Discount Communications' end users shall be available at the following discount off of the retail rate." (Tr. Ex. 18, Exhibit A) (Tr. Ex. 8, Attachment 1, Page 17). This Exhibit clearly states that the discount rate applicable in Tennessee is 16%. (*Id.*) This Exhibit also plainly provides that in Tennessee, "the Wholesale Discount is set as a percentage off the tariffed rates. If OLEC (sic) provides its own operator services and directory services, the discount

shall be 21.56%." (Emphasis added). (Tr. Ex. 18, Exhibit A).[2] Like every other reseller of BellSouth's services in the State of Tennessee, Discount clearly agreed to pay BellSouth the tariffed rate for the services being resold less the applicable resale discount.

In fact, Discount has admittedly reaped the benefits of the fact that the Resale Agreement requires it to pay the tariffed rates that exist at the time a service is provided less the wholesale discount for that service. When Discount started reselling BellSouth's service, it paid BellSouth 84% of the $1.50 tariffed rate for Touch-Tone. (Tr. Vol. II at 305). BellSouth then began reducing its tariffed rate for Touch-Tone, and as Discount's witness acknowledged:

> Q. [A]s [BellSouth] reduced [the tariffed rate for Touch-Tone], whatever the tariff said, [BellSouth] took 16% off that rate and charged you the rate in effect at the time for the Touch-Tone less 16 percent, correct?
>
> A. Correct.

(Tr. Vol. II at 305). Discount's witness also acknowledged that if BellSouth had applied the wholesale discount to the tariffed rate for Touch-Tone that had existed on the date the first Resale Agreement was entered rather than applying the discount to the then-existing tariffed rate for Touch-Tone, Discount would have protested. (Tr. Vol. II at 306-07). Clearly, Discount understood that the first

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[2] The second Resale Agreement signed by Discount provides that in Tennessee, "if a CLEC provides its own operator services and directory services, the discount shall be 21.56%. CLEC must provide written notification to BellSouth within 30 days prior to providing its own operator services and directory services

Resale Agreement required it to pay the tariffed rate as of the date a particular service was provided less the 16% wholesale discount.[3]

B. Discount's Purported Belief That the First Resale Agreement Prevents BellSouth from Charging Discount for Directory Assistance is Irrelevant, and it is Discredited by Discount's Own Actions.

As noted above, the Resale Agreements unambiguously require Discount to pay for directory assistance. Thus parol evidence regarding Discount's purported state of mind at the time the first Resale Agreement was signed should not be considered.[4] To the extent that the TRA considers such parol evidence, however, it should reject it altogether as being entirely inconsistent with Discount's actions.

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to qualify for the higher discount rate of 21.56%." (Tr. Ex. 8, Attachment 1, Page 17).

[3] This is consistent with Section 251(c)(4) of the federal Telecommunications Act of 1996, which requires an incumbent local exchange carrier such as BellSouth "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The Act then provides that for the purposes of implementing this section, "a State commission shall determine wholesale rates on the basis of 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." 47 U.S.C. § 252(d)(3). In accordance with this federal statute, the TRA's Final Order in Docket No. 96-01331 provides "[t]hat the wholesale discount be, and hereby is, established as a percentage off the tariffed rates . . . ." *See* Final Order at 7, ¶2.

[4] Under Tennessee law, "[c]ourts are to interpret and enforce the contract as written, according to its plain terms," and "[w]hen clear contract language reveals the intent of the parties, there is no need to apply rules of construction." *Warren v. Metropolitan Government of Nashville and Davidson County*, 955 S.W.2d 618, 623 (Tenn. Ct. App. 1997). More significantly, "an ambiguity does not arise in a contract merely because the parties may differ as to interpretation of certain provisions. A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one; a strained construction may not be placed on the language used to find an ambiguity where none exists." *Id.*

Discount bases its claim that it is not required to pay for directory assistance on its purported belief "that directory assistance is included in the 16 percent that we're already paying for access to directory assistance in the directory assistance usage." (Tr. Vol. II at 250-51).[5] Discount's witness testified that he had this belief at the time he signed the first Resale Agreement, (Tr. Vol. II at 328-29), and he testified that this has been Discount's position from the beginning of Discount's disputes regarding directory assistance. (Tr. Vol. II at 329). Discount's witness also testified that if he thought BellSouth could charge for directory assistance, Discount would have "petitioned the TRA to arbitrate that [charges for directory assistance] would be inclusive" in the 16% wholesale discount provisions of the Resale Agreement. (Tr. Vol. II at 260-61). Discount's statements under oath in this proceeding are best summarized accordingly:

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[5] To the extent that Discount developed this belief, it did so at its own peril. Discount's witness acknowledged that he signed the first Resale Agreement without seeking any guidance or advice regarding BellSouth's ability to charge for directory assistance from an attorney, the staff of the TRA, or anyone else. (Tr. Vol. II at 327). Had Discount sought such guidance or advice at the time it signed the first Resale Agreement on March 12, 1998, it likely would have discovered that the price regulation statutes had gone into effect some 20 months earlier and that the TRA had issued a final order stating that "directory assistance is a non-basic service under Tennessee Code Annotated § 65-5-208(a)" some six months earlier. *See* September 4, 1997 Order in Docket No. 96-01423 at 17 (emphasis added). The law in effect at the time the contract was signed, therefore, clearly allowed BellSouth to "set rates for [directory assistance] as the company deems appropriate . . . ." T.C.A. § 65-5-209(h). Discount, however, developed its purported "belief" that BellSouth could not charge for directory assistance "mainly because directory assistance hadn't ever been charged," (Tr. Vol. II at 326), and it now improperly asks the TRA to relieve it from the consequences of its own failure to make itself aware of the law governing its business decisions.

Q. Is it fair to say that if you knew then what you know now, you would have asked for some different language in that resale agreement?

A. Precisely.

(Tr. Vol. II at 343) (emphasis added).

Actions, however, speak louder than words. While Discount claims that from the very beginning it believed that directory assistance was included in the 16% wholesale discount rate under the first Resale Agreement, not a single word in the complaints Discount registered with the TRA Staff states this purported belief. (Tr. Vol. II at 341).[6] In fact, the first time this argument appears is in the pre-hearing briefs Discount filed in this docket. (Tr. Vol. II at 341).

Even more telling, however, is the fact that Discount signed a new Resale Agreement with BellSouth in February 2000. (Tr. Vol. II at 246-47). According to Discount's witness, this new Resale Agreement is, "for all practical purposes, the same resale agreement that [Discount] signed back in 1998." (Tr. Vol. II at 333-34). When it signed this new Resale Agreement, Discount knew that BellSouth could charge for directory assistance, it knew that BellSouth had been charging for directory assistance, and it knew that BellSouth intended to continue charging for directory assistance. (Tr. Vol. II at 343). Discount, however, did not ask for any

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[6] Instead, these documents primarily discuss billing blocks. One of these documents for instance, states "Discount Communications will entertain the following option: 1. Discount Communications is opting to provide and/or offer directory assistance to Discount's Customers directory assistance as referenced by the TRA (Tennessee Regulatory Authority) Order in Tennessee . . . ." (Sic) (Tr. Ex.

language referencing directory assistance to be placed in the new Resale Agreement. (Tr. Vol. II at 345). Nor did Discount ask the TRA to act as arbitrators with regard to the new Resale Agreement. (Tr. Vol. II at 345).

Instead, Discount simply signed the new Resale Agreement which it acknowledges is "for all practical purposes, the same resale agreement that [Discount] signed back in 1998." (Tr. Vol. II at 333-34). The same witness who signed this new Agreement is the witness who testified, under oath, that: (1) Discount believed that directory assistance was included in the 16% wholesale discount rate; (2) Discount would have "petitioned the TRA to arbitrate that [charges for directory assistance] would be inclusive" in the 16% provisions of the Resale Agreement if it had known that BellSouth intended to charge Discount for directory assistance; and (3) Discount would have asked for different language in the Resale Agreement had it known BellSouth intended to charge Discount for directory assistance.

Discount's witness tried to explain away the signing of the new Resale Agreement by suggesting that Discount felt powerless to either ask for different terms or to ask the TRA to arbitrate the agreement. (Tr. Vol. II at 345-46). The same company, however, certainly felt empowered to contact state legislators, (*see* Tr. Ex. 6, 17) federal legislators (*id.*), the CAD, (CAD's Petition to Intervene, Ex. B), the TRA Staff (Tr. Ex. 4, 5, 6, 7, & 17), and anyone else who would listen

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7). Even to this day, however, Discount admits that it is not technically capable of providing operator services or directory assistance services. (Tr. Vol. II at 339).

to its complaints against BellSouth. Moreover, as noted from the bench during the hearing, Discount was under absolutely no pressure to sign a new Resale Agreement in February 2000. The first Resale Agreement provided that it was automatically renewed for "two additional one-year periods" unless either party indicated in writing its intent not to renew "within 60 days prior to the then-existing contract period." (Tr. Vol. II at 348) (Ex. 18 at §I.B). Discount concedes that it never received such a written notice, (Tr. Vol. II at 348), and Discount's witness acknowledged that Director Greer was correct in stating that any pressure Discount felt to sign the new Resale Agreement was self-imposed. (Tr. Vol. II at 348).

C. The TRA Should Reject Discount's Blocking Arguments.

To the extent that Discount attempts to use the absence of a service that blocks access to directory assistance after the first six calls as an excuse for not paying its bills, those attempts should be rejected. The Resale Agreement provides that "resold services can only be used in the same manner as specified in [BellSouth's] Tariff," and they are "subject to the same terms and conditions as are specified for such services when furnished to an individual end user of [BellSouth] in the appropriate section of [BellSouth's] Tariffs." (Tr. Ex. 18 at §IV.B) (Tr. Ex. 8, Attachment 1, Page 8 at §4.2) (emphasis added). BellSouth's tariffs do not offer a service that blocks calls to directory assistance only after an end user's allowance

has been depleted, and the mere fact that Discount requested such a service does not negate its duty to pay for directory assistance.[7]

Discount's request for such a block raises additional concerns. First, it is unclear how the block would address Discount's billing woes if a Discount end-user did not voluntarily elect the block, and it is uncertain whether Discount legally could impose such a block on its Lifeline end-users against their will. (Tr. Vol. I at 149; Vol. II at 254). Moreover, Discount's representations that "BellSouth can accomplish the six-call directory assistance limitation with minimal changes to their LENS ordering system" or by "a few changes to the CREX and FIDS now offered by BellSouth" is less than accurate. (Tr. Ex. 4, 5). Discount's witness acknowledges that he has no experience with switches, no experience with the LENS system, and no other personal experience or knowledge to support those statements. (Tr. Vol. II at 325-26; 333-35). Although this witness tried to say that he had gleaned such knowledge from purported conversations with BellSouth employees in which he was told "it just wouldn't be feasible for BellSouth to do this," (Tr. Vol. II at 334), the witness admitted that no BellSouth employee told him

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[7] Discount also claims that the LENS system does not provide for an exemption for directory assistance charges. In the context of this billing dispute, however, this claim is a red herring: Discount's own witness testified that "to this date, we've never charged any of our customers for directory assistance. So the exemption wouldn't have been necessary for one of our customers because we do not charge any customer to this day, Lifeline or otherwise, directory assistance." (Tr. Vol. II at 267) (emphasis added). Like any other CLEC, however, Discount may submit a Directory Assistance Exemption Form on behalf of its end users. (Tr. Ex. 3). This is the same manner in which BellSouth handles requests for exemptions from directory assistance charges from its own end users.

that it would take minimal changes to the LENS ordering system to implement a block of this nature. (Tr. Vol. II at 334).[8] To the contrary, BellSouth's witness Ed Davis offered uncontradicted testimony that implementing such a block would be a time-consuming and costly endeavor requiring extensive work by several vendors on many types of switches. (Tr. Vol. II at 477-80).

II. THE NEW FCC UNIVERSAL SERVICE ORDER DOES NOT INTRUDE ON THE FACT THAT THE TRA'S ARBITRATION ORDER, BELLSOUTH'S TARIFFS, AND DISCOUNT'S RESALE AGREEMENTS ALL REQUIRE DISCOUNT TO PROVIDE A $3.50 STATE LIFELINE CREDIT AMOUNT TO ITS OWN END USERS.

A. BellSouth's Lifeline Tariff, Which Has the Effect of Law, Binds BellSouth and Discount.

On May 8, 1997, the Federal Communications Commission ("FCC") issued Order No. 97-157 in Docket No. 96-45 ("the new FCC Universal Service Order"). At that time, BellSouth's standard resale agreement provided that:

> In Tennessee, [Reseller] shall purchase BellSouth's Message Rate Service at the stated tariff rate less the wholesale discount. [Reseller] must further discount the wholesale Message Rate Service to Lifeline customers with a discount which is no less than the minimum discount that BellSouth now provides. [Reseller] is responsible for recovering the [amount of the federal credit] from the National Exchange Carriers Association interstate toll settlement pool just as BellSouth does today.

(Tr. Collective Ex. 16, September 2, 1999 letter from TRA Staff to BellSouth) (emphasis added); (Tr. Ex. 18, Exhibit B, Note 4). This language comes largely

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[8] How the witness made the leap from "it just wouldn't be feasible for BellSouth to do this" to "BellSouth can accomplish the six-call directory assistance limitation with minimal changes to their LENS ordering system" was never (and probably cannot be) explained.

from the TRA's Second and Final Order of Arbitration Awards in Dockets No. 96-01152 and 96-01271 (the Arbitration Order). (Tr. Collective Ex. 16, September 2, 1999 letter).

The new FCC Universal Service Order expanded federal support for Lifeline. (*See Id.*). Consistent with that Order, BellSouth filed tariff revisions which, effective January 1, 1998, "expanded the availability of the Lifeline credits to 'any local service offering available to other residence customers.'" (*Id.*). The Authority approved these revisions on December 16, 1997. (*Id.*).

On September 2, 1999, the TRA Staff sent a letter to BellSouth recapping these events and noting that the new FCC Universal Service Order precludes non-ETC's (like Discount) from recovering the amount of the federal credit from the National Exchange Carriers Association interstate toll settlement pool. (*Id.*) The Staff's letter then expressly quotes paragraph 370 of the new FCC Universal Service Order and asks "[i]n light of the [new] Universal Service Order, is it appropriate for BST to update Note 4 of its resale agreements and its tariffs, to the extent that the Universal Service Order superseded them?" (*Id.*).

BellSouth responded that "[a]ssuming that a mechanism can be put in place that will allow BellSouth to provide the reseller's individual customer Lifeline certification to NECA as needed, BellSouth is willing to negotiate an amendment to Note 4 of its resale agreements that would address BellSouth's role as an ETC and the pass-through of the federal Lifeline credit." (Tr., Collective Ex. 16, September 9, 1999 letter from to TRA Staff from BellSouth)(emphasis added).

BellSouth also stated that it had no objection to amending the tariffed references to the TRA's Arbitration Orders "[t]o the extent that these provisions have been superseded by the Universal Service Order." (*Id.*). On October 8, 1999, BellSouth filed a tariff "to clarify language pertaining to the provision of Federal Lifeline and Link-Up credits to resellers." (*Id.*, October 8, 1999 tariff package)(emphasis added). The "Executive Summary" contained in this package states "[i]t is the reseller's responsibility to fund the additional $3.50 (state) credit so that the Lifeline customer receives the full $10.50 in monthly benefits." (*Id.*). On October 18, 1999, BellSouth filed revisions to this package "to make minor tariff language changes, as agreed to by BST and Staff." (*Id.*, October 18, 1999 tariff package). Section A3.31.2.A.8 of the tariff included in this package expressly states that:

> The non-discounted federal Lifeline credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. The additional credit to the end user will be the responsibility of the reseller. Eligible Telecommunications Carriers, as defined by the FCC, are required to establish their own Lifeline programs.

(Collective Ex. 16, October 18, 1999 Tariff Filing) (emphasis added).[9] On November 4, 1999, the Staff sent BellSouth a letter that acknowledged receipt of both the October 8, 1999 and October 18, 1999 packages and stated that "[t]his tariff filing is to "Clarify Language Pertaining to the Provisions of Federal Lifeline and Link-Up Credits to Resellers." (Ex. 16, November 4, 1999 Letter to BellSouth

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[9] The identical language appears in the October 8, 1999 Tariff Filing.

from TRA Staff) (emphasis added). The letter then states that this "tariff will become effective November 8, 1999, in accordance with [T.R.A. Rule 1220-4-1-.04]." (*Id.*).

In light of the deliberate nature of these events, Discount's implication by analogy that "BellSouth passed a tariff at this agency that somehow slipped through" is simply not true. (Tr. Vol. I at 95). The Staff reviewed the new FCC Universal Service Order (including paragraph 370 upon which Discount so heavily relies), and it asked BellSouth to address the fact that the new Order prohibits non-ETC resellers from obtaining the federal credit directly from NECA. Nothing in this series of correspondence suggests any changes in the manner in which the state credit amount is generated in Tennessee, and for good reason -- the new FCC Universal Service Order expressly states that:

> We see no reason to at this time to intrude in the first instance on states' decisions about how to generate intrastate support for Lifeline [the $3.50 state credit amount]. We do not currently prescribe the methods states must use to generate intrastate Lifeline support, nor does this Order contain any such prescriptions. Many methods exist, including competitively neutral surcharges on all carriers or the use of general revenues, that would not place the burden on any single group of carriers.

FCC Order at ¶361(emphasis added). Thus the manner in which the state credit is generated in Tennessee is not inconsistent with the new FCC Universal Service Order, and despite Discount's accusations to the contrary, the TRA did not allow an illegal tariff to go into effect.

Nor did BellSouth's tariff alter the manner in which the state Lifeline credit amount had been generated in Tennessee up to that point. The TRA's Arbitration Order provides that when Lifeline is resold: (1) BellSouth must charge the reseller the tariffed rate for the local exchange service chosen by the Lifeline customer less the wholesale discount; and (2) the reseller must further discount this rate by a "discount which is no less than the minimum discount that BellSouth now provides." *See* Second and Final Order of Arbitration Awards in Docket Nos. 96-01152 and 96-01271 at 15-16. (Tr. Vol. III at 513-516). Clearly, the "minimum discount that BellSouth now provides" refers to both the federal credit amount and the state credit amount.[10] Accordingly, the Arbitration Order provides that the $3.50 state credit amount is the responsibility of the reseller, and BellSouth's approved Lifeline tariff that was in effect at the time of the Staff's September 2, 1999 letter incorporated the provisions of the Arbitration Order.[11] (*See* Ex. 16,

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[10] As BellSouth's witness Ms. O'Bannon explained, at the time the TRA entered its Arbitration Order, the FCC's Universal Service Order (that is, the old order) provided that the federal credit was not available unless the state provided a matching credit. (Tr. Vol. III at 511, 514). The "minimum credit that BellSouth now provides," therefore, clearly is a reference to both the state and the federal credit, because without the state credit, there would have been no federal credit. (Tr. Vol. III at 514). Analogously, the new FCC Universal Service Order provides that a federal credit in the amount of $7.00 is available only if the state generates a credit of $3.50. If the state does not generate this credit, the amount of the federal credit is reduced to $5.25. *See* New FCC Universal Service Order at ¶350-354. The "minimum credit that BellSouth now provides," therefore, is the federal credit of $7.00 and the state credit of $3.50, and the Arbitration Order provides that resellers like Discount are required to fund the state credit amount for their own end users.

[11] Discount purportedly "crafted their tariff" with the understanding that BellSouth would flow both the federal and state Lifeline credit amounts through to

September 9, 1999 letter). Thus, BellSouth's 1999 Lifeline tariff filing merely preserved the existing method of generating the $3.50 state credit amount in a resale environment, which is clearly permitted by Paragraph 361 of the new FCC Universal Service Order.

BellSouth's 1999 Lifeline tariff filing, therefore, is consistent with the provisions of the TRA's Arbitration Order that address the resale of Lifeline, it is consistent with the Staff's correspondence, and it is consistent with the new FCC Universal Service Order. The tariff filing did not "slip through" the Staff and it certainly is not "illegal." Instead, this published tariff has the effect of law, and it binds BellSouth and Discount. *See GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) ("The published tariffs of a common carrier are binding upon the carrier and its customers and have the effect of law. The provisions of the tariffs should govern the parties.").

All parties to this docket agree that under the plain language of BellSouth's tariff, BellSouth is <u>not</u> required to pass the state credit amount of $3.50 to Discount. *See* (Tr. Vol. I at 95)("I do not dispute that the tariff says what it says. I do not dispute that BellSouth has complied with the tariff."); (Tr. Vol. I at

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Discount. (Tr. Vol. I at 96). It is difficult to understand how Discount can claim that it expected to receive <u>any</u> Lifeline credits from BellSouth in light of the Arbitration Order. Moreover, Discount obviously was aware of the Arbitration Order when it crafted its tariffs, because Discount's own tariff expressly states that "Resale of Lifeline is subject to the conditions set forth in the Second and Final Order of Arbitration Awards dated January 23, 1997 (Docket Nos. 96-001152 and 96-01271)." (Attachment 2 at §1.1.A.8).

159)(Mr. Hickerson agreed that the tariff requires Discount to fund the $3.50 state credit amount.). As explained below, if Discount or the CAD would like to ask the TRA to change the manner in which the state Lifeline credit amount is generated in the future, they are required by statute to make that request in the TRA's pending Universal Service Fund docket. It is improper, however, for Discount and the CAD to ask the TRA to retroactively modify a published tariff. Even if the TRA had the statutory authority to do so (which it does not), granting such a request would improperly open a Pandora's Box of policy and implementation issues.[12]

B. The Subsidy Argument Espoused by Discount and the CAD is Invalid Both as a Matter of Fact and as a Matter of Law.

The dispute regarding Lifeline arises from the erroneous assertion by Discount and the CAD that a subsidy for the $3.50 state Lifeline credit amount is somehow built into BellSouth's rates. Mr. Hickerson, for example, testified that "I

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[12] To give but one example of the chaos that would result if a party could seek retroactive modification of a published tariff, consider the position espoused by Discount and the CAD in this very docket. Mr. Hickerson claims that the Arbitration Order (which provides that the wholesale discount is applied to the tariffed service rate before the federal and state credits for Lifeline are applied) is inconsistent with the new Universal Service Order (which, according to Mr. Hickerson, requires the federal and state credits to be applied to the tariffed service rate before the wholesale discount is applied). BellSouth's witness Ms. O'Bannon demonstrated that the methodology espoused by Mr. Hickerson results in a higher resale rate for Lifeline than the methodology ordered by the TRA in the Arbitration Order, (Tr. Vol. III at 538; Ex. 14), and Mr. Hickerson himself concedes that this is true. (Tr. Vol. I at 156). Mr. Hickerson also concedes that if BellSouth is required to retroactively provide a $3.50 state credit amount to Discount, then absent "some impact that I'm not aware of," Discount should be required to retroactively pay the higher resale rate for Lifeline. (Tr. Vol. I at 165-66). Implementing such an approach, however, would be unmanageable in this one docket, let alone in all other dockets to which similar reasoning could apply.

thought that what we were addressing here is the disposition of that subsidy . . . because I thought we all agreed that Bell is currently collecting that subsidy through its rates, and the issue is whether that subsidy gets passed on to . . . Discount and ultimately to Discount's customers."[13] (Tr. Vol. I at 173). Additionally, while Mr. Hickerson claims that BellSouth's tariff is not "competitively neutral" as required by the new FCC Universal Service Order, he agrees that his "competitively neutral" claim is based entirely on his position that a subsidy for the state Lifeline credit amount is somehow built into BellSouth's rates. (Tr. Vol. I at 169).

The CAD and Discount are wrong. Even if a subsidy had existed in the days of rate-of-return regulation, the enactment of the price regulation statutes would make any such subsidies irrelevant.[14] No such subsidy ever existed, however, because no BellSouth rates were ever increased in order to provide BellSouth with revenue with which to fund this $3.50 state credit. Instead, BellSouth was instructed to recover any revenue deficiency created by the Lifeline service plan from its deferred revenue account in accordance with its Regulatory Reform Plan.

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[13] BellSouth noted on the record that it disagreed that such a subsidy exists. (Tr. Vol. I at 173-74). Additionally, there is no dispute that the end-user Lifeline customer should receive the $3.50 credit -- BellSouth's tariff simply provides that the reseller is responsible for providing that credit to its own end users.

[14] The TRA's Directory Assistance rulings bear this out. Mr. Hickerson analogized the purported Lifeline subsidy to the purported directory assistance subsidy. (Tr. Vol. I at 139, 170). The CAD challenged various directory assistance filings on the basis of this purported subsidy, and Mr. Hickerson conceded "I know you're right; that [the TRA] disagreed with us on that." (Tr. Vol. I at 171). This subsidy argument, therefore, is a bridge the TRA already has crossed.

That deferred revenue account, however, no longer exists, and as of the date it went out of existence, it was overdrawn to the tune of $7.7 million. Even at the time of its demise, therefore, the deferred revenue account provided no subsidy for the state Lifeline credit amount.

1. Whether a Subsidy Ever Existed is Irrelevant to this Proceeding Because BellSouth is Operating Under an Approved Price Regulation Plan.

Attempts to resurrect anachronistic and arcane rate-of-return concepts and apply them to BellSouth (which is operating under an approved price regulation plan) are simply improper. In fact, the Court of Appeals ordered the Public Service Commission to cease an earnings investigation regarding BellSouth for this very reason. In *BellSouth Telecommunications, Inc. v. Bissel*, 1996 WL 557846 (Tenn. Ct. App. October 2, 1996) (copy attached as Attachment 3), the Public Service Commission decided to continue an "earnings investigation" regarding BellSouth despite the fact that BellSouth already had applied for price regulation. In summarily reversing this decision, the Court of Appeals first noted that the price regulation statutes "created an alternative to the traditional method of establishing consumer telephone rates by future rate-of-return analysis." *Id* at *1. The Court then said

> We think the PSC's decision to continue the investigation is simply arbitrary, a decision "that is not based on any course of reasoning or exercise of judgment."

* * *

> We are aware that in adopting regulatory reform the legislature was careful to say that nothing in the act would "affect the authority and duty of the Commission to complete any investigation pending at the time" the act became effective. We do not think the legislature intended to authorize the PSC to continue an investigation that no longer had any purpose.

Id. at *2 (emphasis added). If the price regulation statutes barred the Public Service Commission itself from continuing a pre-existing earnings investigation prior to the approval of BellSouth's price regulation plan, they certainly bar Discount and the CAD from attempting to effectively conduct such an investigation after BellSouth's plan has been approved and has become effective.

BellSouth clearly is operating under an approved price regulation plan. *See* December 9, 1998 Order in Docket No. 95-02614 at 21 ("BellSouth's application for a price regulation plan with an effective date of October 1, 1995 with the rates existing on June 6, 1995, is hereby approved."). BellSouth's rates on the effective date of its plan, therefore, are affordable[15] as a matter of law. *See* T.C.A. §65-5-209(a). Moreover, BellSouth's rates continue to be affordable -- and, therefore, just and reasonable -- as long as they generate aggregate revenues that "do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan." T.C.A. §65-5-209(e). Attempts to delve into the manner in which a particular rate was established in bygone years, therefore, are neither

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[15] Because these rates are affordable, they are also just and reasonable. *See* T.C.A. §65-5-209(a)("Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this section.").

relevant nor permissible. *See BellSouth Telecom., Inc. v. Greer*, 972 S.W.2d 663, 681-82 (Tenn. Ct. App. 1997)(summarily rejecting AT&T's argument that in auditing BellSouth's 3.01 report under T.C.A. §65-5-209(c) and (j), the Public Service Commission "did not complete its task because it failed to review each of BellSouth's rates and tariffs to determine whether they were affordable and non-discriminatory.").

2. Even if the Purported Existence of a Subsidy at Some Point in the Past Was Relevant to BellSouth's Current Lifeline Program (Which It Is Not), the TRA is Required to Address Any Such Purported Subsidy in the Pending Universal Service Fund Docket.

Even if the purported existence of a subsidy had any relevance whatsoever to the Lifeline program (which it does not), that relevance is limited to the application of the Tennessee Universal Service statute. *See* T.C.A. §65-5-207. Among other things, this statute directs the TRA to "formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service." T.C.A. §65-5-207(a) (emphasis added). Under this statute, the TRA is to "determine the need and timetable for modifying current universal service support mechanisms and implementing alternative universal service support mechanisms," *id,* §65-5-207(b), and it is required to "create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines" that the alternative mechanism will "prevent the unwarranted subsidization of any

telecommunications service provider's rates by consumers or by another telecommunications service provider." *Id*, §65-5-207(c)(emphasis added). Finally, and most significantly, the TRA is directed to make these decisions in a "generic contested case proceeding," *id.*, §65-5-207(b), not in a docket involving a billing dispute between two service providers. If the TRA is to consider these subsidy arguments at all, therefore, it is required by statute to consider them only in the context of the Universal Service Fund docket.

C. Even if a Subsidy Existed in South Central Bell's Rate-of-Return Past, no Subsidy Exists in BellSouth's Price Regulation Present.

The Lifeline program in Tennessee was established by the Public Service Commission pursuant to its December 20, 1991 Order in Docket No. 91-08797.[16] (Tr. Ex. 15). At that time, under the old FCC Universal Service Order, the FCC would approve a federal credit of $3.50 per month to be applied to a Lifeline

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[16] The Public Service Commission issued two subsequent orders in this docket, each of which made minor modifications to this order. Neither of these modifications is relevant to this docket. The first modification extended the tariff filing deadlines established in this order "until FCC certification is obtained . . . ." *See* January 31, 1992 Order in Docket No. 91-08797 at 1. (Attachment 4). This order expressly stated that "all other provisions of [the December 20, 1991] order shall remain in full force and effect." (*Id.* at ¶2). The second modification allowed Lifeline subscribers "to subscribe to the fixed message monthly rate for local telephone service with a reduction of three dollars and fifty cents ($3.50) per month. Lifeline subscribers must pay ten cents ($.10) for each call in excess of the thirty call message rate allowance." *See* March 4, 1992 Order in Docket No. 91-08797 at ¶1. (Attachment 5). This order expressly stated that "all other provisions of [the Commission's order in this docket issued on December 20, 1991 shall remain in full force and effect." (*Id.* at ¶3). Neither modification provided for any rate increases to offset the costs of the Lifeline program, and neither modification altered the fact that BellSouth was to recover any revenue deficiencies resulting from the Lifeline program from the deferred revenue account.

subscriber's account, but only if the state provided a matching credit of $3.50. (Tr. Vol. I at 129; Vol. III at 511; Ex. 15 at 1). In Tennessee, the Public Service Commission generated this matching credit of $3.50 by requiring Lifeline customers to "subscribe to the measured rate service with a calling allowance of 65 calls and to incur a charge of $.10 per call in excess of that allowance up to the amount of the flat residential service rate."[17] (Tr. Vol. I at 129; Vol. III at 511-512; Ex. 15 at 6, ¶6). As Mr. Hickerson conceded, the Public Service Commission's order implementing the Lifeline program does not attempt to calculate the actual negative revenue impact this would have on BellSouth, (Tr. Vol. I at 89; Vol. I at 137-38), and it does not provide for any rate increases to offset this negative revenue impact. (Ex. 15)(Tr. Vol. III at 512). Instead, the PSC's order provides that BellSouth "shall recover any revenue deficiency created by this Lifeline service plan from its deferred revenues in accordance with the Regulatory Reform Plan." (Ex. 15 at 6, ¶7)(Tr. Vol. I at 130; Vol. III at 512).

As Discount's witness noted during the hearing, the Public Service Commission subsequently conducted an investigation into BellSouth's earnings, and on August 20, 1993, the Public Service Commission entered an order in that

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[17] This generated a $3.50 credit because the message rate service in effect at the time of the order allowed a customer "to make 30 calls per month for a set rate with each call thereafter at an additional charge. Lifeline participants will be permitted to utilize this same set rate with a call allowance of 65 calls with each additional call being charged at $.10 a call . . . . This service provision will give eligible Lifeline participants a potential benefit of $3.50 per month which should entitle them to the FCC waiver of the interstate SLC ($3.50)." (Tr. Ex. 15 at 3-4). (Tr. Vol. III at 129; Vol. III at 511).

earnings investigation docket. (Attachment 6). This order did not mention Lifeline, nor did it allow BellSouth to increase any rates to fund the $3.50 state Lifeline credit amount. Instead, this order required BellSouth to implement rate reductions (Tr. Vol. I at 131-32), and it ordered BellSouth to "maintain the deferred revenue account established by the Commission for the period January 1, 1993 through December 31, 1995." (Attachment 6 at 16). Clearly, even after the 1993 earnings investigation, the only means by which BellSouth was allowed to recover revenue deficiencies resulting from the Lifeline program was by drawing a corresponding amount from the deferred revenue account in accordance with the Regulatory Reform Plan. As explained below, however, that deferred revenue account no longer exists, and when it went out of existence, it had a deficit of $7.7 million.

BellSouth opted to operate under the Regulatory Reform Plan "as an alternative to traditional ratemaking procedures." Rule 1220-4-2-.55(1). The term of the Plan was fixed based upon the length of the forecast test period used by the Commission. Under the Commission's rules, for any carrier electing alternative reform regulation, the Commission was required to project the carrier's earnings over a forecast test period of two to four years, "which will be the period of the regulatory reform plan." Rule 1220-4-2-.55(1)(a) (emphasis added). In BellSouth's case, after filing a petition for conditional election of alternative regulation in January 1993, the Commission projected BellSouth's earnings over a three year forecast test period, commencing in 1993 and ending in 1995. *See* August 20,

1993 Order in *In Re: Earnings Investigation of South Central Bell Telephone Company,* 1993-1995, Docket No. 92-13527. Thus, consistent with the Commission's rules, BellSouth's regulatory reform plan was only in effect during the period from 1993 through the end of 1995. The plan did not extend beyond that date and certainly is not in place today. Indeed, BellSouth elected not to continue to operate under a regulatory reform plan by virtue of its applying for price regulation on June 20, 1995.

Moreover, the PSC required BellSouth to maintain the deferred revenue account only "for the period January 1, 1993 through December 31, 1995." *See* August 20, 1993 Order, *In re: Earnings Investigation of South Central Bell Telephone Company,* 1993-1995, Docket No. 92-13527, at page 16. As the CAD well knows, the funds placed in BellSouth's deferred revenue account have long since been dispersed. *See, e.g.,* August 1, 1994 Order, *In re: Earnings Investigation of South Central Bell Telephone Company,* 1993-1995, Docket No. 92-13527. Indeed, in its Order approving BellSouth's price regulation application, the Commission noted that there was "a $7.7 million deficit in the deferred revenue account to pay for rate reductions ordered in 1993." Order, *In re: Application of BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company For a Price Regulation Plan,* Docket No. 95-02614, at 3 (Jan. 23, 1996).

Thus, even to the extent that a purported subsidy for the $3.50 state Lifeline credit amount existed as of June 6, 1995, that subsidy had a negative balance. It could not possibly have provided funds to offset the state Lifeline credit amount.

Moreover, the negative balance as of June 1995 was supposed to have funded the expenses associated with the 12,903 Lifeline end-user customers BellSouth had at the time. (*See* BellSouth's Late-Filed Exhibit 7). Today, BellSouth has 25,782 Lifeline end-user customers[18] -- nearly twice as many as it had in June of 1995 -- and it has no deferred revenue account whatsoever to draw from to fund the increased expenses associated with the increased number of Lifeline customers. Finally, this purported subsidy ceased to exist altogether at the end of 1995.

Lastly, BellSouth had no Lifeline customers as of the beginning of the 1993 earnings investigation, and it had only 15,641 Lifeline customers as of the completion of that investigation. (BellSouth's Late-Filed Ex. 7). BellSouth, therefore, had significantly fewer Lifeline customers at the time the Public Service Commission considered its revenues during the 1993 rate case than it has today. Moreover, BellSouth has implemented major rate reductions since that rate case (including without limitation access charge reductions and Touch-Tone reductions) which would have more than eliminated the amount of any purported Lifeline subsidy from its rates. Finally, the deferred revenue account no longer exists. Clearly, any Lifeline subsidy that may have been in South Central Bell's rates under rate-of-return regulation simply is not available to BellSouth under price regulation.

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[18] This figure reflects BellSouth end-user Lifeline accounts -- BellSouth has no way of knowing how many persons have access to each account. Assuming that four members of a household have access to each account, for instance, the 25,782 figure for March 2000 represents more than 103,000 persons with access to BellSouth end-user Lifeline accounts.

III. DISCOUNT'S "BACKGROUND EVIDENCE" IS NEITHER RELEVANT NOR CREDIBLE.

Having addressed the only two issues that Discount has elected to present to the TRA, (Tr. Vol. II at 287), this should be the end of BellSouth's brief. Discount, however, constantly digressed from these two issues by injecting irrelevant and unsubstantiated claims into this docket under the guise of establishing a background to explain away its failure to pay its bills. While BellSouth firmly believes that these digressions have no place in this docket, the fact remains that they are in the record and BellSouth must address them as best it can.

A. Discount Cuts Off Customers Who Do Not Pay Their Bills.

When providing Lifeline services to its end users, BellSouth takes residential services, applies a $7.00 federal credit for which it is reimbursed through NECA, applies an additional $3.50 state credit for which it is not reimbursed from any source, and provides a service that is already priced below cost at an even lower rate. Discount, on the other hand, charges $12.15 per month for Lifeline service. (Tr. Vol. II at 304). That is Discount's price for basic service -- Touch-Tone and other features cost extra. (Tr. Vol. II at 262). Discount admits that its Lifeline rate of $12.15 per month for the most rudimentary of local service represents a forty percent markup on the service. (Tr. Vol. II at 304). This is, of course, in addition to the markups implicit in the $29.95 it charges Link-Up customers for connection, (Tr. Vol. II at 303), the $59.00 it charges its regular residential customers for

connection, (Tr. Vol. II at 301); the $22.95 per month it charges its regular residential customers for local service, (Tr. Vol. II at 301); and the $65 per month it charges its business customers for local service. (Tr. Vol. II at 300). If a Discount customer fails to pay a bill for any of these charges within 15 days after it becomes due, Discount disconnects the customer. (Tr. Vol. II at 302).

B. Discount Sings a Different Tune When it Fails to Pay Its Own Bills.

When Discount fails to pay its own bills, however, it sings a different tune. Rather than accepting the consequences of its failure to pay its bills, Discount cries foul. It complains that it is being unfairly painted as a company that has "not paid its bills on time," (Tr. Vol. I at 77), and it "take[s] exception to the fact that we are a company that does not pay." (Tr. Vol. II at 226-27). As with most of Discount's claims in this docket, however, the real story lies just below the surface.

For instance, Discount acknowledged on direct examination that it owed at least $7,900 in undisputed charges when BellSouth disconnected its access to LENS in February 2000. (Tr. Vol. II at 234).[19] Later on direct, Discount's witness

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[19] In response to questions from the bench as to why Discount did not pay this undisputed amount, Discount's witness claimed that a verbal agreement from November 1999 permitted Discount to pay 60% of a given bill by its due date and the remaining 40% of that bill a week later, apparently in perpetuity. (Tr. Vol. II at 235). This claim lacks credibility on its face, and BellSouth witness Claude Morton confirmed that it is not accurate. As Mr. Morton explained, in November 1999, he met with representatives of Discount to discuss Discount's billing concerns. (Tr. Vol. II at 394-95). Mr. Morton agreed to reactivate Discount's access to LENS on that very day in return for Discount's promise to pay 60% of the amount due the following day and 40% of the amount due the following week. (Tr. Vol. II at 394-

claimed that Discount has paid the amount of BellSouth's bill that it does not dispute, (Tr. Vol. II at 238), but cross-examination revealed otherwise. Discount's witness candidly stated that even after removing the disputed amounts for Lifeline, Link-Up, and directory assistance, Discount still owes BellSouth "at least some" of the amount it has been billed for telephone service. (Tr. Vol. II at 279). Discount's witness also admitted that Discount is not current on its BellSouth bill. (Tr. Vol. II at 327). The same witness -- a college graduate who has by his own account "managed two Fortune 500 companies" and who currently is "President of Discount Communications" (Tr. Vol. II at 196) -- was unable to testify that his company did not owe others money for other business expenses. (Tr. Vol. II at 327-28).

C. Discount's Actions are Not Consistent With its Claims That it is Not Using the Regulatory Process to Avoid Paying its Bills.

Discount justified much of the irrelevant matters it presented in the hearing as an attempt to address "an unspoken issue that pervades this entire case, and that is whether or not [Discount has] tried to use the regulatory process to evade paying their bills." (Tr. Vol. II at 232). Discount, however, has in fact been less than up front regarding the amounts it admittedly owes BellSouth. The Agreed Procedural Order that Discount signed in this docket, for example, provides that "[t]he parties will seek in good faith to stipulate to the amount of the undisputed

95). Mr. Morton testified that this was a one-time-only agreement. (Tr. Vol. II at 395). It clearly did not extend to every bill in perpetuity.

sums owed to BellSouth by Discount and submit any such stipulation to the Authority by noon, April 6, 2000." Agreed Procedural Order at 1 (emphasis added). Rather than stipulating to the amount of undisputed sums it owes BellSouth, however, Discount would only stipulate to the "value" of the disputes it originally presented to the TRA.[20] *See* Discount's Pre-Hearing Reply Brief.

During the hearing itself, Discount continued to evade questions aimed at determining the amount of the undisputed sums Discount owes BellSouth. After admitting that it owes BellSouth money, for instance, Discount's witness testified that he could not tell the TRA how much Discount owes BellSouth. (Tr. Vol. II at 280). After stating that Discount had submitted itemized billing disputes to BellSouth, (Tr. Vol. II at 280), the witness claimed he could not state the total amount of disputes Discount had submitted to BellSouth because "I don't have the exact figure with me" on this, his day in court. (Tr. Vol. II at 284-85; 325).[21]

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[20] This came after Discount breached this same Agreed Scheduling Order by failing to procure an appropriate escrow agreement -- a breach which led to an order by the Hearing Officer requiring Discount's attorneys to hold these amounts in escrow as officers of the court. *See* Transcript of April 5, 2000 Hearing. This also came after Discount breached the spirit of the agreement to hold an expedited hearing by asking the CAD to intervene in this docket (which the CAD did mere minutes before the hearing began). (CAD's Petition to Intervene, Exhibit B). (Tr. Vol. I at 14). Upon intervening, the CAD immediately requested a continuance, and Discount urged the TRA to grant the continuance. (Tr. Vol. I at 23).

[21] Discount was, once again, less than up front in discussing whether Discount has ever paid a BellSouth bill with a check that was returned for insufficient funds. In responding to a question from the bench, Discount's witness testified that a check for $13,300 was returned by the bank. (Tr. Vol. II at 319). When asked to clarify that "there is at least one check for $13,300 that Discount used to pay a BellSouth telephone bill that was returned for insufficient funds," however, the witness responded "No, sir. That was made good actually." (*Id.*). In response to

D. Discount's Claim That it Could Not Find a BellSouth Service Representative Who Knew About Lifeline Until Two Weeks Before the Hearing Lacks Credibility.

Discount claims that it could not find a BellSouth service representative who knew about Lifeline until two weeks before the hearing and that an unidentified BellSouth employee claimed that BellSouth only handles one or two Lifeline accounts per year. (Tr. Vol. II at 199; 203). These claims should be discarded because they are irrelevant to the two billing issues before the Authority, and Discount improperly precluded BellSouth's ability to respond to these claims by refusing to address them in its issues list or in its pre-hearing briefs.[22] Additionally, these unsubstantiated assertions are refuted by the fact that: (1) between January 1999 and February 2000, BellSouth added more than 1000 end-user Lifeline accounts with Shelby County tax codes alone (*see* BellSouth's Response to CAD's Request for Information, Item No. 3); and (2) between December 1998 and March 2000, BellSouth added more than 8,500 end-user Lifeline accounts across the

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a follow-up question from the bench, the witness conceded that there has, in fact, been a check returned to BellSouth because of insufficient funds. (Tr. Vol. II at 320).

[22] Additionally, Discount committed to provide BellSouth with a copy of the disc that was the subject of one of its complaints, but Discount's witness conceded that Discount did not honor that commitment. (Tr. Vol. II at 307). Discount also agreed to provide BellSouth with specific information regarding its allegations of being billed for customers that are not theirs, but Discount never provided that information either. (Tr. Vol. II at 307-08). Instead, Discount claims to have honored this agreement by bringing the information with it on the day of the hearing, coyly stating "You didn't say when we had to give it to you." (Tr. Vol. II at 308).

state of Tennessee. (BellSouth Late-filed Ex. 7). BellSouth obviously knows how to sign customers up for Lifeline despite Discount's accusations to the contrary.

E. Discount Signed a Resale Agreement That Allows BellSouth to Disconnect LENS for Nonpayment of Bills.

Discount claims that disconnecting the LENS system "is a fairly diabolical way of putting this company out of business because without the LENS system, they can't turn anybody off." (Tr. Vol. I at 104). Setting aside for a moment the fact that it is Discount's inability (or refusal) to pay its bills that led to the disconnection of the LENS system, the fact remains that the Resale Agreement signed by Discount allows BellSouth to take this action. As BellSouth's witness Mr. Morton explained, the first Resale Agreement provides that

> [BellSouth] may provide written notice to Discount Communications that additional applications for service will be refused and that any pending orders for service will not be completed. And that is essentially what LENS is. It's saying that we're stopping your new processes for orders.

(Tr. Vol. II at 408-09).[23] (Tr. Ex. 18 at VIII.B.2) (Tr. Ex. 8, Attachment 1, Page 14 at §8.2.2.). The same Resale Agreement also permits Discount to request in writing that its end users be disconnected, (Tr. Ex. 18 at VIII.A.1-3) (Tr. Ex. 8, Attachment 1, Page 14 at §8.1.1-3), and Discount admits that it never submitted a

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[23] As Mr. Morton noted, the first Resale Agreement also provides that "if [BellSouth] does not refuse additional applications for service on the date specified in the notice and Discount Communications' noncompliance continues, nothing contained herein shall preclude [BellSouth's] right to refuse additional applications for service without further notice." (Tr. Vol. II at 424)(Tr. Ex. 18 at VIII.B.2). Discount had received notices in November 1999 as well as in February 2000. (Tr. Vol. II at 423-24).

written request for BellSouth to disconnect its delinquent customers. (Tr. Vol. II at 365). Discount, therefore, is simply wrong when it claims that it "can't turn anybody off" when its access to LENS has been disconnected.

F. Discount's Accusation Regarding Exhibit 2 and Collective Exhibit 9 Are Not True.

Discount pointed out that Exhibit 2 does not contain any payment entries in November 1999, claimed that this is inaccurate, and stated that BellSouth passed out this exhibit "in an attempt to make it look like we never paid them." (Tr. Vol. II at 373). While BellSouth used this Exhibit during cross-examination of Discount's witness to prove that Discount owes undisputed amounts to BellSouth, it did not even attempt to introduce this document into evidence until BellSouth's witness Claude Morton took the stand. Upon taking the stand, Mr. Morton carefully explained each column, each payment, and each adjustment that appeared on this Exhibit. (Tr. Vol. II at 382-88). He explained that the payment and adjustment columns aggregate all activity during that billing month, (Tr. Vol. II at 384-85), and he explained which amounts were past due. (Tr. Vol. II at 385). He then explained that the November payments referenced by Discount's witness are reflected in the December "payments" column of the document. (Tr. Vol. II at 386-88). Additionally, on cross-examination, Mr. Morton explained that a few weeks earlier, he had walked Discount through the information appearing on that document and that Discount had agreed that all payments it had made to BellSouth were reflected

on the document. (Tr. Vol. II at 399-400). Discount's accusation that BellSouth passed out an inaccurate document to make Discount look bad is simply not true.

Mr. Morton also addressed Discount's contention regarding Collective Exhibit 9. As Mr. Morton explained, one letter contains the amount of the most recent bill that had become overdue, and the other contains the total amount that was overdue. (Tr. Vol. II at 392-93). Mr. Morton testified that the timing of the letters was a mistake on BellSouth's part, (Tr. Vol. II at 407), and nothing in the record suggests that this isolated mistake is part of some grand scheme to mistreat Discount.

G. Discount's Testimony Regarding BellSouth Representations Should Be Rejected.

As shown throughout this brief, Discount's understanding of events do not always convey a full and accurate picture of those events. Discount's claim that BellSouth represented that the Staff of the TRA had already decided the issues in this docket in BellSouth's favor is no different. It is undisputed that the TRA Staff told representatives of BellSouth that it was a business decision whether to disconnect the LENS system for Discount. (Tr. Vol. III at 656). BellSouth submits that this is what was conveyed to Discount.[24]

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[24] The record does reflect that on February 17, 2000 a member of a federal congressman's staff spoke with members of the TRA Staff regarding Discount's billing concerns. (Ex. 17, 2/17 entry). In response to a question regarding who is responsible for the $3.50 state Lifeline credit amount, the Staff replied that "according to TRA (sic), the reseller would be responsible for the $3.50." (Ex. 17, 2/17 entry)(emphasis added). Additionally, the February 22 entry on Exhibit 17 states "Informed had list of disputed charges from Discount for the $56,339.52

CONCLUSION

For the reasons set forth above, the TRA should rule that BellSouth properly billed Discount for directory assistance and that Discount is responsible for funding a $3.50 state Lifeline credit amount to its Lifeline end users.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

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past due billing. Indicated that Discount believed that they owed BellSouth $37,993.49. This still remained $7,993.49 that remained as undisputed outstanding charges which BellSouth could deny request to not disconnect." (Sic) (Ex. 17, 2/22 entry)(emphasis added). This exhibit also states that on March 16 the Staff was contacted concerning a statement by Discount "that per a BellSouth representative that a formal complaint had not been filed." The Staff explained that "all complaints filed with Consumer Services are not formal complaints but informal complaints. Explained that a formal complaint is one that is heard before the Directors as a result of a request for hearing made and approved by the Executive Director." (*Id*, 3/16 entry).

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

[✓] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0500

[ ] Hand
[✓] Mail
[ ] Facsimile
[ ] Overnight

Henry Walker, Esquire
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Vance Broemel, Esquire
Consumer Advocate Division
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Nashville, Tennessee 37243-0500

Patrick Ture

ATTACHMENT 1

A3. BASIC LOCAL EXCHANGE SERVICE

A3.12 Network Access Register Usage Package (Cont'd)

A3.12.3 Reserved For Future Use

A3.13 Local Directory Assistance Service

This service is a Flex-Price service and is regulated under terms and conditions as described in A2.3.26 of this Tariff. (N)

A3.13.1 General

A. In addition to providing telephone directories to all Local Exchange Service subscribers, the Company furnishes Local Directory Assistance Service whereby customers may obtain assistance in determining telephone numbers, directory addresses and ZIP Codes. (N)

B. The charging application and rates set forth in A3.13.2. and 3. following apply to Sent-Paid Mobile Service Provider (MSP) requests for Local Directory Assistance Service in determining, or attempting to determine, the telephone number and/or address of any party located in, or thought to be located in, the local calling area. (N)

C. Local Directory Assistance Service Allows A Subscriber To Provide (N)

1. a name to get telephone number, ZIP Code and/or directory address (N)

D. Local Directory Assistance Service does not provide the telephone number, address or ZIP Code on a private (nonpublished) listing but does furnish these items from informational records on a semiprivate listing. (N)

A3.13.2 Application Of Charges

A. The charges specified in A3.13.3. following will be applicable to all Mobile Service Providers (MSPs). (N)

B. Chargeable Calls (N)

For charging purposes a call to Local Directory Assistance is defined as a call (N)

1. resulting in obtaining telephone number, address and/or ZIP Code for a maximum of two subscribers; or (N)
2. resulting in obtaining no telephone number, address and ZIP Code; because there was no such listing, or there was a private listing. (N)

A3.13.3 Rates And Charges

A. Service Charges (N)

1. Each call (N)

	Charge Per Call	USOC	
(a) Directory assistance service charge	$.30	NA	(N)

A3.14 Operator Assisted Local Calls And Local Calling Card Service Calls

This service is a Flex-Price service and is regulated under terms and conditions as described in A2.3.26 of this Tariff.

A3.14.1 General

A. When the caller requests operator assistance and the call is completed within the local calling area, a service charge will be applied except as specified in A3.14.2.A.

(M)

Material previously appearing on this page now appears on page(s) 54.1.1 of this section

ATTACHMENT 2

BASIC LOCAL EXCHANGE SERVICE
Lifeline

1. Description of Service

A. The Lifeline program is designed to increase the availability of telecommunications services to low income subscribers by providing a credit to monthly recurring local service to qualifying residential subscribers. Basic terms and conditions are in compliance with the FCC's Order on Universal Service in FCC 97-157, which adopts the Federal-State Joint Board's recommendation in CC Docket 96-45, which complies with the Telecommunications Act of 1996. Specific terms and conditions are as prescribed by the Tennessee Regulatory Authority and are as set forth in this tariff.

B. Lifeline is supported by the federal universal service support mechanism.

C. Federal baseline support of $5.25 is available for each Lifeline service and is passed through to the subscriber. An additional $3.50 credit is provided by the Company. Supplemental federal support of $1.75, matching one half of the Company contribution will also be passed along to the Lifeline subscriber. The total Lifeline credit available to an eligible customer in Tennessee is $10.50. The amount of credit will not exceed the charge for local service.

1.1 Regulations

A. General

1. Customers eligible under the Lifeline program are also eligible for connection assistance under the Link-Up program.

2. One low-income credit is available per household and is applicable to the primary residential connection only. The named subscriber must be a current recipient of any of the low income assistance programs identified in 1. following.

3. A Lifeline customer may subscribe to the current capped flat rate Lifeline plan (USOC 1FR) or any local service offering available to other residence customers. ***Since the Lifeline credit is applicable to the primary residential connection only, it may not be applied to a multiple line package local service offering.***

4. Toll blocking, if elected, will be provided at no charge to the Lifeline subscriber.

5. The deposit requirement is not applicable to a Lifeline customer who subscribes to toll blocking. If a Lifeline customer removes toll blocking prior to establishing an acceptable credit history, a deposit may be required. When applicable, advance payments will not exceed the connection and local service charges for one month.

6. The PICC will not be billed to Lifeline customers who subscribe to toll blocking and do not pre-subscribe to a long distance carrier.

7. A Lifeline subscriber's local service will not be disconnected for non-payment of regulated toll charges. Local service may be denied for non-payment of local calls in accordance with Section A2. Access to toll service may be denied for non-payment of regulated tolls. A Lifeline subscriber's request for reconnection of local service will not be denied if the service was previously denied for non-payment of toll charges.

8. Resale of Lifeline is subject to the conditions set forth in the Second and Final Order of Arbitration Awards dated January 23, 1997 (Docket Nos. 96-01152 and 96-01271).

BASIC LOCAL EXCHANGE SERVICE
Lifeline (Continued)

Regulations (Cont'd)

B. Eligibility

1. To be eligible for a Lifeline credit, a customer must be a current recipient of any one of the following low income assistance programs.

   a. Temporary Assistance to Needy Families (TANF), previously known as AFDC

   b. Supplemental Security Income (SSI)

   c. Food Stamps

   d. Medicaid, as provided under TennCare

2. Additionally, a customer with total gross annual income that does not exceed 125% of the federal poverty income guidelines may apply directly to the Tennessee Regulatory Authority (TRA) for Lifeline eligibility certification.

3. All applications for service are subject to verification with the TRA or state agency responsible for administration of the qualifying program.

Note 1: Lifeline replaces the Interstate Subscriber Line Charge Waiver and Matching Program.

BASIC LOCAL EXCHANGE SERVICE
Lifeline (Continued)

Regulations (Cont'd)

C. Certification

1. Proof of eligibility in any of the qualifying low income assistance programs should be provided to the Company at the time of application for service. The Lifeline credit will not be established until proof of eligibility has been received by the Company. If the customer requests installation prior to the Company's receipt of proof of eligibility, the requested service will be provided without the Lifeline credit. When eligibility documentation is provided subsequent to installation, the Lifeline credit will be provided on a going forward basis.

2. The Company reserves the right to periodically audit its records, working in conjunction with the appropriate state agencies, for the purpose of determining continuing eligibility. Information obtained during such audit will be treated as confidential information to the extent required under State and Federal laws. The use or disclosure of information concerning enrollees will be limited to purposes directly connected with the administration of the Lifeline plan.

3. When a customer is determined to be ineligible as a result of an audit, the Company will contact the customer. If the customer cannot provide eligibility documentation, the Lifeline credit will be discontinued.

D. Rates and Charges

A. General

1. Lifeline is provided as a monthly credit on the eligible residential subscriber's access line bill for local service.

2. Service Charges are applicable for installing or changing Lifeline service.

3. Link-Up connection assistance may be available for installing or relocating Lifeline service.

4 The Secondary Service Charge is not applicable when existing service is converted intact to Lifeline.

B. The Total Lifeline Credit Consists Of One Federal Credit Plus One State Credit.

(1) Federal credit

	Monthly
(a) Temporary Assistance to Needy Families (TANF)	$7.00
(b) Supplemental Security Income (SSI)	$7.00
(c) Food Stamps	$7.00
(d) Medicaid (under TennCare)	$7.00
(e) TRA Certified	$7.00

(2) State credit

(a) One per Lifeline	$3.50

BASIC LOCAL EXCHANGE SERVICES
Link-Up

2. Description of Service

A. Link-Up is *a program designed to increase the availability of telecommunications services to low income subscribers by providing a credit to the non-recurring installation and service charges to qualifying residential subscribers. Basic terms and conditions are in compliance with the FCC's Order on Universal Service in FCC 97-157, which adopts the Federal-State Joint Board's recommendation in CC Docket 96-45, which complies with the Telecommunications Act of 1996. Specific terms and conditions are as prescribed by the Tennessee Regulatory Authority, as set forth in this tariff.*

B. Link-Up is supported by the federal universal service support mechanism.

C. A federal credit amount of fifty percent (50%) of the non-recurring charges for connection of service, up to a maximum of $30.00, is available to be passed through to the subscriber.

2.1 Regulations

A. General

1. Customers eligible under Link-Up are also eligible for monthly recurring assistance under the Lifeline program.
2. Link-Up connection assistance is available per household and is applicable to the primary residential connection only.
3. The Link-Up credit is available each time the customer installs or relocates the primary residential service.
4. To receive the credit, proof of eligibility must be provided prior to installation of service.
5. The total tariffed charges for connecting service, including service and other installation charges, are considered in the credit calculation.
6. Resale of Link-Up is subject to the conditions set forth in the Second And Final Order Of Arbitration Awards dated January 23, 1997 (Docket Nos. 96-01152 and 96-01271).

B. Eligibility

1. To be eligible for a Link-Up credit, the named subscriber must be a current recipient of any of the following low-income assistance programs.
   a. Temporary Assistance to Needy Families (TANF), previously known as AFDC
   b. Supplemental Security Income (SSI)
   c. Food Stamps
   d. Medicaid, as provided under TennCare
2. Additionally, a customer with total gross annual income that does not exceed 125% of the federal poverty income guidelines may apply directly to the Tennessee Regulatory Authority (TRA) for Lifeline eligibility certification.
3. All applications for service are subject to verification with the TRA or state agency responsible for administration of the qualifying program.

C. Certification

1. Proof of eligibility in any of the qualifying low income assistance programs should be provided to the Company at the time of application for service. The Link-Up credit will not be established until proof of eligibility has been received by the Company. If the customer requests installation without proof of eligibility, the requested service will be provided without the Link-Up credit.
2. The use or disclosure of information concerning enrollees will be limited to purposes directly connected with the administration of the Link-Up plan.

2.2 Rates and Charges

A. The federal credit available for a Link-Up connection is $30.00 (maximum) or fifty percent (50%) of the installation and service charges from this Tariff, whichever is less.

ATTACHMENT 3

SEE COURT OF APPEALS RULES 11 AND 12

BELLSOUTH TELECOMMUNICATIONS, INC.,
Petitioner/Appellant,
v.
Keith BISSELL, Steve Hewlett, Sara Kyle,
Constituting the Tennessee Public
Service Commission, Respondents/Appellees.

No. 01-A-01-9509-BC00400.

Court of Appeals of Tennessee.

Oct. 2, 1996.

FOR APPELLANT: Bennett L. Ross Nashville, Tennessee

FOR INTERVENOR AT & T COMMUNICATIONS, INC: Val Sanford John Know Walkup Nashville, Tennessee FOR APPELLEES: Dianne F. Neal Public Service Commission Nashville, Tennessee

FOR TENNESSEE CONSUMERS: Charles W. Burson Attorney General & Reporter Michael E. Moore Solicitor General L. Vincent Williams Consumer Advocate Division Nashville, Tennessee

OPINION

CANTRELL, Judge.

***1** The Tennessee Public Service Commission ordered the completion of a previously authorized investigation of the future earnings of BellSouth Telecommunications, despite legislative developments that stripped the Commission of its authority to use such an investigation to set telephone rates. BellSouth filed a petition with this court for review of the PSC's order, arguing that completion of the investigation was inconsistent with the legislative purpose. We reverse the Commission's order and remand the case for further consideration by the Tennessee Regulatory Commission.

I.

Prompted by a petition filed by the State Consumer Advocate, the Public Service Commission voted on March 28, 1995 to conduct an investigation of the intrastate earnings of South Central Bell (now BellSouth Telecommunications) for a one-year future test period. Under the statute in effect at that time, such an investigation of future earnings was a required preliminary step in the performance of the P.S.C.'s function of establishing "just and reasonable rates" for telephone service.

On May 25, 1995, the Legislature enacted the Teleommunications Reform Act, now codified at Tenn.Code Ann. § 65-5-201 et seq. The new act was expressly designed to encourage competition in the telecommunications services market, and it created an alternative to the traditional method of establishing consumer telephone rates by future rate-of-return analysis.

Under the new procedure, a telephone company could apply for price regulation, and the P.S.C. was required to implement a price regulation plan within 90 days, based on an audit of the rate of return earned by the utility within the most recent reporting period. See Tenn.Code Ann. § 65-5-209(c)and (j). Thus the statute permitted expedited decision-making based on retrospective rather than prospective financial data.

BellSouth applied on June 20, 1995 for price regulation under the new statute. Nonetheless, on July 14, 1995 the Commission voted to complete the earnings investigation, reserving the issue of "whether any use could be made of the results of this investigation under the price regulation scheme set out in the Telecommunications Act...." BellSouth filed a petition under Rule 12, Tenn.R.App.P. to appeal that order. The PSC and intervenor AT & T filed a joint motion to dismiss the petition, on the ground that the order of investigation was not a final order subject to appellate review.

On October 25, 1995, this court dismissed the joint motion on the ground that "interlocutory administrative orders are reviewable where the agency has plainly exceeded its statutory authority or threatens irreparable injury in clear violation of an individual's rights." This court also stayed all proceedings in the Commission related to the earnings investigation, and directed that the appeal proceed.

On July 1, 1996, the PSC was replaced by a new,

appointed agency called the Tennessee Regulatory Authority. See Tenn.Code Ann. § 65-1-201. On June 11, 1996, this court heard oral arguments on BellSouth's petition for review. Neither in the briefs nor in oral argument did the PSC articulate a reason why the investigation should continue. The parties all acknowledge that the information gained through the investigation would be irrelevant to BellSouth's rates. The PSC argues only that the investigation might serve some purpose.

***2** We think the PSC's decision to continue the investigation is simply arbitrary, a decision "that is not based on any course of reasoning or exercise of judgment." See Jackson Mobilphone v. Tennessee PSC, 876 S.W.2d 106 at 111 (Tenn.App.1993). An agency's arbitrary decision--even a preliminary, procedural, or intermediate one--may be reversed by the reviewing court. Tenn.Code Ann. § 4-5-322(a)(1), (h)(4).

We are aware that in adopting regulatory reform the legislature was careful to say that nothing in the act would "affect the authority and duty of the Commission to complete any investigation pending at the time" the act became effective. See Acts 1995, ch. 408. But we do not think the legislature intended to authorize the PSC to continue an investigation that no longer had any purpose.

We, therefore, reverse the PSC's order continuing the earnings investigation and remand the cause to the Tennessee Regulatory Authority for further proceedings consistent with this opinion. Tax the costs on appeal to the PSC. LEWIS and KOCH, JJ., concur.

END OF DOCUMENT

ATTACHMENT 4

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

STEVE HEWLETT, CHAIRMAN
FRANK COCHRAN, COMMISSIONER
KEITH BISSELL, COMMISSIONER

PAUL ALLEN, EXECUTIVE DIRECTOR
HENRY M. WALKER, GENERAL COUNSEL

TRANSMITTAL LETTER

I HAVE ATTACHED A COPY OF A RECENT COMMISSION ORDER WHICH IS BEING SENT TO PARTIES OF RECORD AND/OR OTHER INTERESTED PARTIES.

PAUL ALLEN
EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE
January 31, 1992

IN RE: ADOPTION OF LIFELINE ASSISTANCE PROGRAM

DOCKET NO. 91-08797

O R D E R

This matter is before the Tennessee Public Service Commission upon its own motion to modify and amend the Final Order issued in this docket to the extent described herein.

The Commission in its Final Order adopted a Lifeline Assistance Program for the benefit of low income telephone users in this state. In order to obtain federal matching finds to help fund the state Lifeline program, certification by the FCC is required.

The Commission Staff has notified the Commission that federal certification cannot be obtained within the time frame established for Lifeline implementation in the Final Order. The Staff has recommended that the Commission amend its Final Order and extend the time periods in which certain telephone companies must file tariffs to implement Lifeline.

The Commission considered this matter at its regularly scheduled Commission Conference held on January 21, 1992. It was concluded that the tariff filing deadlines established in this order should be extended until FCC certification is obtained but

that all other provisions of this order shall remain in full force and effect.

IT IS THEREFORE ORDERED:

1. That the Commission's Final Order in this docket shall be amended to provide that the implementation dates for Lifeline service shall be as follows:

a. South Central Bell shall file tariffs in accordance with the provisions of this order within ten days of the certification of the Tennessee Lifeline program by the FCC or by March 1, 1992 whichever occurs later;

b. United Inter-Mountain, GTE, and Tennessee Telephone Company shall continue to work with the Commission staff to develop a similar Lifeline plan with a target date for implementation of May 1, 1992 or one month after certification by the FCC whichever occurs later;

c. All other local exchange companies shall file a proposal for Lifeline service consistent with this Order for eligible persons in their calling areas;

2. That all other provisions of the Commission's Final Order issued on December 20, 1991 shall remain in full force and effect;

3. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order;

4. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle

Section, within thirty (30) days from and after the date of this Order.

CHAIRMAN

ATTEST:

EXECUTIVE DIRECTOR

COMMISSIONER

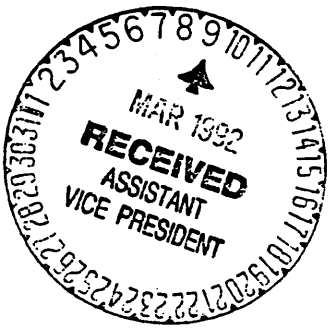
COMMISSIONER

ATTACHMENT 5

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

STEVE HEWLETT, CHAIRMAN
FRANK COCHRAN, COMMISSIONER
KEITH BISSELL, COMMISSIONER

PAUL ALLEN, EXECUTIVE DIRECTOR
HENRY M. WALKER, GENERAL COUNSEL



TRANSMITTAL LETTER

I HAVE ATTACHED A COPY OF A RECENT COMMISSION ORDER WHICH IS BEING SENT TO PARTIES OF RECORD AND/OR OTHER INTERESTED PARTIES.

PAUL ALLEN
EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
March 4, 1992

IN RE: ADOPTION OF LIFELINE ASSISTANCE PROGRAM

DOCKET NO. 91-08797

AMENDED ORDER

This matter is to be reconsidered by the Tennessee Public Service Commission upon its own motion. On December 20, 1991, the Commission issued an order in this docket to implement a Lifeline Assistance program to benefit low income telephone users.

This program was specifically designed for the purpose of providing low income consumer assistance for telephone service and for meeting certification criteria of the Federal Communications Commission (FCC) in order to be eligible for a federal matching assistance program.

The Commission was recently notified that the Commission's Lifeline plan does not meet FCC criteria. The Commission Staff in concert with South Central Bell has proposed another telephone assistance plan to satisfy federal requirements.

The new plan would reduce the monthly fixed message rate for local telephone service for the Lifeline eligible customer by three dollars and fifty cents ($3.50). This customer would be permitted the full call allowance of 30 calls under this reduced message rate with each call above this amount resulting in a $ .10 per call charge. However, the charge for additional calls above the thirty (30) call allowance would be capped at the monthly flat local telephone service rate and would not exceed this amount.

For example, the fixed monthly message rate for Nashville is $6.10. An eligible customer would have this rate reduced by $3.50 for a monthly telephone service rate of $2.60. This customer could make additional calls above the 30 call fixed message rate allowance at $ .10 a call. Regardless of the number of calls, this customer's monthly charge would not exceed the flat monthly rate for local telephone service in Nashville which is $12.15 at this time.

The Commission carefully considered the proposed amendment to the originally adopted Lifeline assistance plan and has concluded that the fixed message rate should be reduced and capped in accordance with the proposal agreed to by the Commission staff and South Central Bell as described herein. All other provisions of the Final Order in this docket and any amendatory orders thereto not in conflict with this Order shall remain in full force and effect.

IT IS THEREFORE ORDERED:

1. That the tariff filed by South Central Bell to implement a Lifeline Assistance Program in Tennessee shall permit qualified Lifeline subscribers to subscribe to the fixed message monthly rate for local telephone service with a reduction of three dollars and fifty cents ($3.50) per month. Lifeline subscribers must pay ten cents ($ .10) for each call in excess of the thirty call message rate allowance. This excess call charge added to the monthly fixed

rate shall not exceed the flat monthly rate for telephone service applicable to that customer's exchange;

2. That the Commission's order, dated December 20, 1991, in the above-captioned docket is hereby amended by deleting all provisions pertaining to the tariff language ordered to implement the telephone service rate applicable to eligible Lifeline assistance program participants and by replacing those provisions with the tariff requirements contained in this Order;

3. That all other provisions of the Commission's order in this docket issued on December 20, 1991, shall remain in full force and effect;

4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order;

5. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

COMMISSIONER

ATTACHMENT 6

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee
August 20, 1993

IN RE: EARNINGS INVESTIGATION OF SOUTH CENTRAL BELL TELEPHONE COMPANY, 1993-1995
DOCKET NO. 92-13527

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC., D/B/A SOUTH CENTRAL BELL TELEPHONE COMPANY FOR CONDITIONAL ELECTION OF REGULATION PURSUANT TO CHAPTER 1220-4-2-.5 OF THE TENNESSEE PUBLIC SERVICE COMMISSION'S RULES AND REGULATIONS
DOCKET NO. 93-00311

ORDER

This matter is before the Commission pursuant to a Staff investigation concluding that South Central Bell Telephone Company should reduce its earnings[1] during the 1993-1995 period. See T.C.A. § 65-2-106 and § 65-5-201.

The investigation began in early 1992 and over the succeeding months the Company submitted voluminous information concerning its operations in response to Staff Requests and on its own initiative. The parties in these cases have served data requests and received responses to those requests. This information, and all of the evidence presented at the hearings on April 6 and 7, 1993, comprise the record before this agency. Based on that record, the Commission adopts the Findings of Fact and Conclusions of Law set forth below:

---

1 See attached Appendix A itemizing the differences between the Staff's presentation and the Company's projections of earnings during the forecast period.

I. RATE OF RETURN/CAPITAL STRUCTURE

The Staff recommends 12 percent as a reasonable return on equity. The Staff further recommends an overall return on rate base of 10.26 percent. This return is based on the Staff's proposal for a double-leverage capital structure.

The Company asked for a continuation of its 11.6 percent overall return granted in 1990. This implies an approximate 14 percent return on equity. The Company recommends use of its actual capital structure.

a. Capital Structure

Until the first day of the hearing (April 6), capital structure was not a contested issue in this case. The Staff and the Company agreed that the Company's actual capital structure (33.41% long term debt, 5.11% short term debt, and 61.48% common equity) was appropriate for ratemaking purposes. This agreement was supported by Staff witness Klein in his direct and rebuttal testimony and by several facts: first, that the Company's actual capital structure remained very stable over the course of the initial regulatory reform plan; second, the actual capital structure reflects the realities of the Company's financial situation; and finally, the recent regulatory practice of this Commission has been to use the Company's actual capital structure.

Dr. Klein in his surrebuttal testimony on April 6 recommended the use of a "double leverage" capital structure. This recommendation changed the earlier Staff position that had accepted the Company's capital structure.

The source of the revised Staff recommendation is the guarantee by BellSouth (the parent of the Company) of debt which supports an Employee Stock Ownership Plan. The Staff recommends recognition of this debt in the Company's capital structure. The Company opposes this recommendation, citing Dr. Klein's original reasoning and additionally presenting evidence that the Staff recommendation would unnecessarily penalize the Company for the tax savings associated with the debt, which is already accounted for through the Company's compensation expense accounting.

The Commission has used double-leverage capital structures in setting rates for other utilities, and such findings will continue to be made where appropriate. In light of the specific evidence in this case relating to this Company's capital structure, however, we find that the Company's actual capital structure is appropriate for the 1993-95 plan for the Company.

b. Authorized Rate of Return Range

Testimony on the required return on equity was presented by a Staff witness, Dr. Klein, and a witness presented by the Company, Professor Vander Weide. These witnesses disagreed on at least three points: (1) Dr. Klein's use of the annual Discounted Cash Flow (DCF) model as opposed to the quarterly DCF model used by Professor Vander Weide; (2) Dr. Klein's use of short term U. S. Treasury bills for the risk premium analyses versus Professor Vander Weide's use of long term corporate bonds; and (3) the selection of firms for the analysis of required return on equity.

In addition to witnesses Klein and Vander Weide, the Staff and Company presented differing views of the competitive risk

that will be faced by the Company over the next three years. The Staff contends that Company financials indicate that the risk facing the Company from competition is minimal over the next three years, while the Company contends that the risk is clearly greater. The Company asserts that the threat of local competition from co-locators, cable television companies, and wireless companies has contributed to increase the Company's risk, and consequently its required return.

In considering all of the evidence, the Commission finds that a range of return on rate base of 10.65% to 11.85%, with a mid-point of 11.25%, is just and reasonable.

II. USE OF THE FORECAST

The regulatory reform rule requires that we project Bell's earnings over a forecast test period of two to four years. Both Bell and the Staff have provided us with forecasts of each of the next three years.

The Staff and Bell have different opinions as to how the forecast should be used. The Staff proposes that we use the forecast as we did in 1990, when we took each of the three years and ordered in advance three separate rate adjustments, after which we allowed the sharing matrix to make any other adjustments.

The only sharing which occurred was "negative" as Bell was unable to achieve the targeted rate of return in any of the three years of the plan, and fell below the authorized range of 11% to 12.2% in the latter two years.

Bell's proposal in this case is to make a different use of the forecast than that made in 1990. Bell proposes that only the first year of the forecast be used to set rates. If the first year forecasted rate of return is outside the rate of return range, rates will be adjusted to the nearest end of the range. If the forecasted rate of return does not fall outside of the range, no rate adjustment will be made. After the initial rate adjustment, the sharing matrix would be used to determine the funds available for future rate adjustments.

Both the Staff and Bell, as expected, criticize each other's positions. The Staff says Bell's plan causes earnings to accrue to the company which should be used for rate reductions or for the accelerated deployment of technology, and that Bell ignores the second and third years of the forecast. Bell criticizes the Staff plan as one which is more draconian than traditional regulation because it eliminates any possibility of the Company's sharing in efficiencies as spurred by an incentive regulation environment and limits the Company to sharing only 40-60% of any "extra" efficiencies; under traditional regulation the Company claims it would retain 100% of the extra efficiencies. In addition, Bell claims the Staff plan is flawed because it relies on speculative "out year" forecasts for some of its rate adjustments, rather than relying on actual results.

The contention over use of the forecast in the renewal of incentive plans requires resolution. Our regulatory reform rule requires us to make a multi-year forecast, but it does not require any particular use of the forecast. In fact, the rule

states clearly that "all or part" of projected earnings above the prescribed return may be placed in a deferred revenue account "in appropriate circumstances." Accordingly, we are free to tailor the incentive renewals in a way that will best serve the public interest.

The Staff has raised a legal issue regarding Bell's proposal. The Staff argues that a three year forecast must be utilized to set rates so that all "known and reasonably anticipated" changes are taken into account in setting rates.

We are satisfied that the law allows the Commission the discretion to use a forecast test period, a historical test period, or any other accepted method to determine a fair rate of return.

Both the Company and the Staff have proved that forecasting the results of the "out" years (i.e., the second and third years of the forecast) is a problematic exercise. Neither party predicted with any precision in 1990 what actually happened in 1991 and 1992. The causes of the misses cannot be, and probably could never be, identified with certainty. Changes in Tennessee's and the nation's economies, rapid technological change, increasing competition, and regulatory changes could have contributed to the inaccuracy of these predictions.

Whatever the cause may be, however, the potentially perverse results should be avoided. For example, Bell in 1991 earned below the range of 11-12.2% which was determined reasonable by this Commission. Yet the 1990 order mandated a rate

reduction/deferred revenue account (DRA) contribution of $74.0 million in 1992 despite the underearnings in 1991. Continuation of a policy similar to that which we started in 1990 could, if forecasts continue to be missed, result in rate decreases for companies that need rate increases, and rate increases for companies that are overearning. While our 1990 policies may have been correct in starting regulatory reform, we will not continue a policy that could have such contrary results. In the future, rate adjustments and Deferred Revenue Account contributions flowing from the Company's regulatory reform plan will be based only on actual results. Use of actual results will allow us to take into account all changes, known or unknown, reasonably anticipated or ignored by any forecast.

Basing future adjustments only on actual results is also consistent with our view of how regulatory reform ought to work. Companies that have been operating under a Regulatory Reform Plan have made decisions for which they should bear at least part of the potential consequences and reap at least part of the potential rewards. By focusing only on actual results, the Company will share in the consequences of earnings outside its authorized rate of return range, and will not be shielded or disincented from those consequences by a stale and speculative forecast adjustment.

In considering all of the evidence, the Commission finds that it is reasonable to adopt the Company's recommendations respecting use of the forecast.

III. FORECAST/ACCOUNTING/REGULATORY ISSUES

The Staff and the Company differed greatly in their respective predictions of the next three year's performance of the Company.

The difference in calculations of historical returns were not as great. Both the Staff and the Company presented evidence that the overall return was between 11.18% and 11.34% in 1990, and between 10.5% and 10.96% during 1991 and 1992.

The 1993 forecast filed by the Company predicts an 11.45% return on rate base. The Staff forecasts a return of 14.06%.

The trend shown above by actual results speaks for itself. We find the Company forecast to be more in line with the trend from previous actual results. Accordingly, we accept the use of the Company's forecast, by each component and in total, with the following exceptions and explanations:

(a) Inside Wire

The Staff proposed to treat the maintenance plan payment option for inside wire maintenance service as an above the line item, while recommending that maintenance paid for on a "time and materials" basis and installation should be below the line items. The Staff believes that the maintenance plan activity is unique and not subject to competition, but believes that installation is a competitive business.

In response to the Staff's position, the Company states that if part of the inside wire business is to be imputed, then the whole business should be imputed. The Company expresses a preference for accounting for all inside wire operations below the line, which will remove all inside wire revenues and expenses from ratemaking and would leave the Company free to set any price it wants for any of the services. Thus, the sum of the Company's position is that the entire inside wire business should be treated as a whole, either above or below the line. In particular, the Company contests the Staff position that maintenance is a separable activity; the Company contends that maintenance is a single activity with two payment options. Recognizing the Commission's history of imputing total inside wire operations in 1990-92, the Company filed tariffs for the installation and maintenance of inside wire. The Company states that if inside wire operations are to be imputed, then it favors formalizing the process through tariffing.

While there is disagreement over how the revenues and expenses should be treated, there is agreement that the total inside wire operations of the Company are losing money. Based upon records submitted by the Company, the Staff calculates that the maintenance plan service of Bell loses approximately $200,000 per year. The Staff also calculates much larger losses on the time and materials maintenance and installation segments of the inside wire business. The Commission finds that the inside wire operations of the Company are losing money as a whole, and that

each of the components of the inside wire line of business are losing money.

While inside wire has existed in a turbulent regulatory environment for many years, it is now clear that the FCC acquiesces in state decisions to account for inside wire operations either above or below the line in setting rates and regulating those operations. The FCC and many other states require that inside wire operations be accounted for below the line. Given our clear flexibility, and the evidence of competition in the inside wire business, we believe it is appropriate to end inclusion of the inside wire business in the calculation of the Company's revenue requirement.

Accordingly, we require the Company to account for all inside wire operations below the line and we deny the tariff filed by the Company. It is necessary, however, to continue the exercise of our jurisdiction with respect to the price and service rendered pursuant to the Company's monthly maintenance plan. In order to maintain reasonable rates for monthly inside wire maintenance services, we require the Company to maintain the current price of $1.25 per month through the end of 1993. In 1994, the Company may raise the price to and including $1.75 per month. In 1995, the Company may increase the price above $1.75 by no more than 10%, and the Company will be limited to an increase of 10% per year thereafter. In addition, we will continue to exercise jurisdiction over complaints regarding the maintenance service rendered by the Company.

(b) L.M. Berry Adjustment

In the 1990 case, the Staff recommended, and the Commission adopted, an adjustment to the Company's revenue requirement based on the difference between new and old contracts that BAPCO had with L.M. Berry.

BellSouth acquired L.M. Berry in 1986. Prior to the acquisition, L.M. Berry had performed yellow pages advertising sales services for South Central Bell. The contract negotiated with South Central Bell in the 1970s provided for the payment of certain commissions to L.M. Berry for its efforts. In 1989, L.M. Berry and BAPCO entered into an agreement which the Staff found resulted in a higher percentage of commission payments to L.M. Berry. The Staff recommended we disallow the difference in the two contracts, and the Commission adopted the Staff recommendation. Accordingly, the revenue requirement for the 1990 through 1992 period reflected this adjustment. The basis for the Commission's decision was a lack of evidence on the part of the Company justifying the change in the commission rate. The Commission was presented with no evidence that L.M. Berry had a similar rate with companies similar to South Central Bell.

In this case, however, the Company did present similar contracts to the Staff for review. The Staff continued to recommend that we disallow the difference. We find, however, that the evidence presented by the Company supports its contention that similar commission rates are paid to L.M. Berry by telephone companies of similar size and influence.

Accordingly, the Commission orders that the disallowance respecting the L.M. Berry contract be discontinued.

(c) BAPCO Rate Base/Yellow Page Revenue Growth[2]

1. Yellow Page Revenue Growth

The Staff forecasted yellow and white page directory advertising revenue to be $288.1 million using an average growth rate of 8.4%. The Company projected these same revenues to be $262.8 million using an average growth rate of 3.6%.

	Staff	Company	Difference
Yellow Page Publishing Fee	$189.0	$166.7	$22.3
BAPCO Yellow Page Rev.	63.5	59.4	4.1
White Pages	35.6	36.8	-1.2
Total Directory Rev.	$288.1	$262.9	$25.2

Company witness Cochran stated in his rebuttal testimony that only the $22.3 million difference in the Yellow Page publishing fee remains an issue. Therefore, the Company apparently accepts the Staff's numbers on White Pages and BAPCO revenue.

The Company's only argument on the publishing fee revenues is that the Staff used too high a growth rate. Staff witness Gaines explained that his forecast of revenues was made using an average growth rate which considered that the individual components making up the Directory Revenue account grow at

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[2] This is actually a "forecast" rather than an "accounting" issue but is included here because it relates to BAPCO and the proper amount of the Yellow Page imputation.

different rates. He pointed out that the Company only chose to take issue with the one area of this account where the Staff's forecast was higher than the actually achieved rates. As an example, he pointed out that BAPCO Tennessee Net Income had actually grown at an average annual rate of 16.3% -- not the 9.2% used in the Staff's forecast. Therefore, he stated that the growth of one component of the account should not be changed unless the growth in the other areas is also adjusted. To emphasize this, Staff witness Gaines indicated that he had arrived at virtually the same Directory Revenue forecast by pricing out the individual components at the individual growth rates.

Staff witness Gaines also pointed out that his methodology for forecasting the Yellow Pages revenues had been found reasonable by BAPCO and may well be conservative since BAPCO itself refused to tell the Staff what price increases BAPCO expected to make during the 1993-95 period. Finally, Staff witness Gaines stated, and Company witness Cochran confirmed on cross examination, that BAPCO itself failed to provide any workpapers to support the growth rate used in the Company's forecast.

Based on the lack of documentation supporting the Company's Yellow Page revenue and the Staff's ability to demonstrate that using individual growth rates produces approximately the same revenues as the average growth rate, the Commission adopts the Staff's projected Directory Revenues of $288.1 million for 1993-1995.

2. BAPCO Rate Base Addition

The Staff's rate base addition for BAPCO's Tennessee Yellow Page operations is $28.2 million less than the Company's rate base addition. The revenue requirement of this issue is $4.0 million for the three years.

Staff witness Gaines pointed out in surrebuttal testimony that the Staff's rate base addition is less than the Company's because Bell's figures reflect investment while the Staff's figures reflect equity. The Company presented no evidence to support its position which, in any event, is not consistent with prior Commission decisions on this issue. Therefore, the Commission adopts the Staff's BAPCO rate base addition of $75.2 million for 1993-1995.

(d) Other Disallowances

In addition to the BAPCO and L.M. Berry disallowances discussed above, the Commission has in previous cases ordered various disallowances that have been reflected in the Company's earnings. The Company's forecast was computed using the Commission's methods. The Staff proposed an increase in the percentages applied in computing the disallowance for certain lobbying and advertising expenses. The Commission finds that the other disallowances as computed by the Company are appropriate, and, accordingly, no change is required.

(e) Conclusion

Our rulings on the L.M. Berry issue discussed in (b) above and the BAPCO issues discussed in (c) above have only a slight impact (See Appendix A, page 1) on the Company's forecast

of an 11.45 percent return on rate base for 1993. After the change made for Inside Wire, the forecasted return for 1993 is approximately 11.75% and thus falls within the rate of return range approved in this Order. Accordingly, no rate adjustment based on the forecast is ordered.

IV. RATE DESIGN

a. Cap for Local Residential and Business Rates

The Commission finds that it is just and reasonable and in the public interest to cap the current rate levels for basic flat rate local residential and business services.

b. Optional Calling Plans

The Commission finds that it is in the public interest to create optional calling plans for calls within a 40-mile radius of the customer's serving wire center. South Central Bell is hereby ordered to develop and submit such plans to the Commission by March 31, 1994. The plan shall be submitted on a revenue neutral basis.

c. Rate Changes to Be Funded From the Deferred Revenue Account

The Commission established a deferred revenue account in the 1990 regulatory reform order adopted for South Central Bell. Although the legal status of that deferred revenue account has been in question because of the Tennessee Court of Appeals decision on appeal of that Order, the Company committed to

maintain a deferred revenue account whose balance would be based on the rate reductions/deferred revenue account contributions flowing from the 1990 Order. The new regulatory reform rule adopted in January, 1993, allows for creation and maintenance of a deferred revenue account. The Commission has adopted, in another docket, a motion that establishes the deferred revenue account and balance for that account based on the Company's commitment.

Accordingly, the Commission finds and orders that the Company maintain the deferred revenue account established by the Commission for the period January 1, 1993 through December 31, 1995. Based on the record before it, the Commission finds and orders that the deferred revenue account be used for the following rate adjustments:

(1) Access/Toll Reductions

The Commission finds that it is in public interest to reduce South Central Bell's access rates by an amount that will allow long distance companies to reduce their toll rates to interstate levels, and to reduce South Central Bell's toll rates consistent with the method used to reduce toll rates in Docket 89-11065. This action continues the Commission's consistent practice of reducing toll rates to all Tennessee customers and moving access rates closer to parity with interstate rates. The Commission intends to continue this practice as appropriate opportunities present themselves. Accordingly, effective September 1, 1993, the Company is hereby required to reduce switched access rates by an amount which will allow long distance companies to reduce

their intrastate toll rates to currently effective interstate levels, and to reduce South Central Bell's toll rates consistent with the method used in Docket No. 89-11065, and the funds for these reductions will be drawn annually from the deferred revenue account. AT&T, the state's dominant interlata carrier, shall flow through, on a dollar-for-dollar basis, these access reductions to their customers.[3]

(2) County Wide Calling

The Commission finds that it is in the public interest to complete county wide calling in Tennessee. To the extent that there are any counties where county wide calling without toll charges is not available, the Company will file tariffs to accomplish such county wide calling, and the funding required to provide such county wide calling will be drawn from the deferred revenue account.

(3) Depreciation

The three-way meeting between the Staffs of the FCC and this Commission and the Company was held April 5, 6, 1993. Agreement has now been reached between the Company and the Staff respecting the capital recovery program for the Company. The Company is hereby ordered to implement the depreciation schedules attached as Appendix B effective September 1, 1993. The funding for 1993 shall be drawn from the deferred revenue account. The funding

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[3] AT&T shall reduce its intrastate rates so that they are no higher than the comparable interstate rates. Any intrastate rates which are currently below the comparable interstate rates are not affected by this Order.

for 1994 and 1995 will be drawn from the deferred revenue account and such deferred revenue account will include any applicable accruals for sharing associated with 1994 and 1995 results. If, at the end of 1995, the Company has recorded changed depreciation expense[4] for the combined years of 1994 and 1995 in excess of the sum of all sharing amounts attributed to customers during those two years, the Company shall contribute the amount of such excess, with appropriate interest, to the deferred revenue account.

(4) Dickson County

The Dickson County Chamber of Commerce was an intervenor in this proceeding. Its witness, Richard Bibb, requested that Dickson County be added to the Metro Area Calling (MAC) area. Dickson County was not included in the MAC plan for Nashville originally because Dickson County is not a county contiguous to Davidson County. Dickson County argues that it is in the Metropolitan Statistical Area (MSA) for Nashville, and that it ought therefore to be included in the MAC plan for Nashville.

After consideration of the evidence on this issue, the Commission finds that Dickson County should be included in the Metro Area Calling area for Nashville. The Company is hereby ordered to include Dickson County in the Nashville Metro Area

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[4] "Changed depreciation expense" is the difference between the actual revenue requirement calculated using the previous depreciation rates and the actual revenue requirement calculated using the depreciation rates adopted in this order.

Calling area effective January 15, 1994, and the funding shall be drawn from the Deferred Revenue Account.

V. PETITION FOR RECONSIDERATION

Any party aggrieved with the Commission's decision of this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order.

VI. JUDICIAL REVIEW

Any party aggrieved with the Commission's decision of this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

IT IS SO ORDERED, this 20TH day of August, 1993.

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTEST:

EXECUTIVE DIRECTOR

South Central Bell
Revenue Requirement of Rate Review Issues
1993 Forecast Year Based on Single-Year Methodology
(Millions)

	Approximate Amounts
COMPANY METHODOLOGY FOR PLAN IMPLEMENTATION A/	-2.5
RATE OF RETURN:	
ESOP Debt (ROR 10.35% to 10.26%)	2.2
Updated Feb Debt Cost Interest Synch	-0.4
Change in Rate of Return - 11.6% to 10.06%	33.6
Total Rate of Return	35.4
ACCOUNTING/REGULATORY ISSUES:	
Inside Wire	6.1
Pension	9.5
OPEBS	1.5
Disallowances	0.6
BAPCO Rate Base	1.2
LM Berry	2.4
ESOP (Interest Synchronization)	2.0
Total Accounting/Regulatory Issues	23.3
FORECAST ISSUES:	
Local Revenues	5.3
Access Revenues	1.8
Long Distance Revenues	-0.2
Miscellaneous Revenues	0.6
Uncollectible Revenues	1.7
Total Revenue Issues	9.2
	9.2
Salary & Wage Expenses	10.6
Other O & M Expenses	-1.6
Other Taxes	2.3
MemoryCall	0.2
BAPCO Income	-0.3
Def'd FIT	4.6
Other	25.0
Total Expense/Other	90.4
GRAND TOTAL	

A/ Difference in Company proposed Plan to continue the incentive plan methodology with sharings above 12.2% versus the Staff's proposed continuation with rate reductions down to 11.6%. (See Note A/ on the 3 year forecast sheet).

Note 1: The above quantifications have been developed by the Staff and include the Staff's proposed rate of return of 10.06%. The Company and Staff agree that a different rate of return will cause the value of the accounting issues to be different than the amounts listed above. This difference would not be expected to significantly change the quantification of those issues.

Note 2: The Staff's use of a 10.06% rate of return if a single year review period is utilized to set revenue requirements is different than the 10.26% rate of return that was utilized in the quantification of issues over the three-ye period of 1993-1995. However, neither the Company nor the Staff recommended a one-year review period.

South Central Bell
Revenue Requirement of Rate Review Issues
Three Year Forecast
(Millions)

	Approximate Amounts
COMPANY METHODOLOGY FOR PLAN IMPLEMENTATION A/	46.6
RATE OF RETURN:	
ESOP Debt (ROR 10.35% to 10.26%)	6.3
Updated Feb Debt Cost Int Synch	-1.2
Change in Rate of Return - 11.6% to 10.35%	87.8
Total Rate of Return	92.9
ACCOUNTING/REGULATORY ISSUES:	
Inside Wire	22.0
Pension	27.6
OPEBS	2.5
Disallowances	1.7
BAPCO Rate Base	4.0
LM Berry	8.0
ESOP (Interest Synchroniztion)	7.4
Total Acoounting Issues	73.2
FORECAST ISSUES:	
Revenues:	12.0
Local	4.9
Access	2.9
Long Distance	10.7
Miscellaneous	5.4
Uncollectibles	35.9
Total Revenue	21.2
Expenses:	59.6
Salaries & Wages	1.3
Other O & M Expenses	3.3
Other Taxes	4.1
MemoryCall	2.5
BAPCO Income	6.4
Def'd FIT	98.4
Other	
Total Expense/Other	347.0
GRAND TOTAL	

A/ (Staff Calculated excess based on amount above 11.6% using the Company's forecast for 1993-1995.) Difference in Company's proposed continuation of the incentive plan methodology (i.e., based upon 1 year forecast with rate reductions in years 2 and 3 based upon actual results) and the Staff's proposed continuation of the incentive plan methodology (i.e., based upon a 3 year forecast with rate reductions in years 2 and 3 based upon forecasted results presented in the hearings).

Note: The above quantifications have been developed by the Staff and include the Staff's proposed rate of return of 10.26%. The Company and the Staff agree that a different rate of return will cause the value of the accounting issues to be different than the amounts listed above. This difference would not be expected to significantly change the quantification of those issues.

Run Date : 04/19/93 - 07.54.45
Report : STH-A-RL, PSC_3WAY
Proposed

Company : BellSouth Telecommunications
State : Tennessee
Statement A - Remaining Life

Summary of Changes in Depreciation Rates

Account Number	Class or Subclass of Plant	Rates in Effect				Rates Effective 1993			
		RL Life Years	Reserve Percent	Future Net Salv	Depr. Rate %	RL Life Years	Reserve Percent	Future Net Salv	Depr. Rate %
		A	B	C	D	E	F	G	H
2112.00	Motor Vehicles	4.2	42.1	16	10.0	3.7	52.5	16	8.5
2115.00	Garage Work Equipment	13.1	24.8	-1	5.8	13.3	9.4	-1	6.9
2116.00	Other Work Equipment	13.1	24.8	-1	5.8	12.6	30.7	-1	5.6
2121.00	Buildings	30.0	26.2	1	2.4	29.0	28.9	1	2.4
2122.00	Furniture	11.0	29.4	9	5.6	10.1	24.0	9	6.6
2123.00	Office Equipment	3.9	19.6	28	13.4	3.9	21.3	28	13.0
2124.00	Genl Purpose Computers	3.6	71.3	2	7.4	3.8	38.8	2	15.6
2211.00	Analog ESS	3.6	52.8	3	12.3	2.0	71.7	3	12.7
2212.00	Digital ESS	12.2	20.1	5	6.1	10.3	23.0	4	7.1
2220.00	Operator Systems	7.7	37.2	5	7.5	7.7	46.5	5	6.3
2231.00	Radio Systems	7.8	31.1	0	8.8	8.0	53.8	0	5.8
2232.00	Circuit-Other	6.2	36.4	2	9.9	5.8	43.6	0	9.7
2232.11	Circuit-DDS	4.4	42.1	10	10.9	4.1	48.1	2	12.2
2311.00	Station Apparatus	4.6	7.4	4	19.3	3.2	60.2	4	11.2
2341.00	Large PBX	4.6	10.8	-4	20.3	3.3	45.7	-4	17.7
2351.00	Public Telephone	3.8	48.4	20	8.3	2.9	60.5	20	6.7
2362.00	Other Terminal Equip.	3.2	60.0	3	11.6	3.0	66.8	3	10.1
2411.00	Poles	23.0	44.9	-48	4.5	22.0	43.8	-48	4.7
2421.10	Aerial Cable Metal	12.7	38.0	-15	6.1	10.8	44.6	-15	6.5
2421.20	Aerial Cable Fiber	20.0	15.0	-20	5.3	20.0	10.8	-20	5.5
2422.10	Undergrd Cable Metal	17.0	33.5	-9	4.4	14.4	41.9	-8	4.6
2422.20	Undergrd Cable Fiber	19.2	19.1	-20	5.3	18.9	19.0	-20	5.3
2423.10	Buried Cable Metal	13.6	35.3	-5	5.1	11.5	41.6	-5	5.5
2423.20	Buried Cable Fiber	13.1	32.5	-9	5.8	14.6	25.1	-9	5.7
2424.00	Submarine Cable	15.4	43.6	-1	3.7	13.6	40.2	-1	4.5
2426.00	Intra-Bldg Netwk Cable	13.6	24.8	-10	6.3	12.5	37.1	-10	5.8
2431.00	Aerial Wire	14.5	71.0	-40	4.8	14.1	74.8	-40	4.6
2441.00	Conduit System	49.0	21.7	-5	1.7	46.0	23.2	-5	1.8
Composite Rate					6.7				7.2

Run Date : 04/19/93 - 07.54.45
Report : STM-B-SP, PSC_3WAY
Proposed

Company : BellSouth Telecommunications
State : Tennessee
Statement B - RL Separated

Change in Annual Depreciation Expense
Resulting from Changes in Depreciation Rates and Amortization
(Separated on an INTRASTATE basis)
(000)

Account Number	Class or Subclass of Plant	INTRASTATE Separations Factor	Investment 1-1-93 Combined	Investment 1-1-93 Separated	Rates in Effect Combined	Rates in Effect Separated	Rates Effective 1993 Combined	Rates Effective 1993 Separated	INTRASTATE Change in Expense
		Q	R=I	S=Q*R	T=L	U=Q*T	V=O	W=Q*V	X=W-U
2112.00	Motor Vehicles	.766	58,066	44,479	5,807	4,448	4,936	3,781	-667
2115.00	Garage Work Equipment	.766	1,687	1,292	98	75	116	89	14
2116.00	Other Work Equipment	.766	31,644	24,239	1,835	1,406	1,772	1,357	-48
2121.00	Buildings	.766	208,632	159,812	5,007	3,835	5,007	3,835	0
2122.00	Furniture	.766	2,601	1,993	146	112	172	132	20
2123.00	Office Equipment	.766	7,340	5,622	984	753	954	731	-22
2124.00	Genl Purpose Computers	.766	140,915	107,941	10,428	7,988	21,983	16,839	8,851
2211.00	Analog ESS	.838	239,868	201,010	29,504	24,724	30,463	25,528	804
2212.00	Digital ESS	.838	539,766	452,324	32,926	27,592	38,323	32,115	4,523
2220.00	Operator Systems	.844	10,599	8,945	795	671	668	564	-107
2231.00	Radio Systems	.660	27,924	18,430	2,457	1,622	1,620	1,069	-553
2232.00	Circuit-Other	.660	703,833	464,530	69,679	45,988	68,272	45,059	-929
2232.11	Circuit-DDS	.660	11,238	7,417	1,225	808	1,371	905	96
2311.00	Station Apparatus	.751	324	244	63	47	36	27	-20
2341.00	Large PBX	.751	5,913	4,440	1,200	901	1,047	786	-115
2351.00	Public Telephone	.751	26,216	19,688	2,176	1,634	1,756	1,319	-315
2362.00	Other Terminal Equip.	.751	30,488	22,897	3,537	2,656	3,079	2,313	-343
2411.00	Poles	.739	104,339	77,106	4,695	3,470	4,904	3,624	154
2421.10	Aerial Cable Metal	.739	463,721	342,690	28,287	20,904	30,142	22,275	1,371
2421.20	Aerial Cable Fiber	.739	27,805	20,548	1,474	1,089	1,529	1,130	41
2422.10	Undergrd Cable Metal	.739	217,201	160,512	9,557	7,063	9,991	7,384	321
2422.20	Undergrd Cable Fiber	.739	34,120	25,215	1,808	1,336	1,808	1,336	0
2423.10	Buried Cable Metal	.739	642,869	475,080	32,786	24,229	35,358	26,129	1,900
2423.20	Buried Cable Fiber	.739	17,773	13,134	1,031	762	1,013	749	-13
2424.00	Submarine Cable	.739	1,215	898	45	33	55	40	7
2426.00	Intra-Bldg Netwk Cable	.739	18,592	13,740	1,171	866	1,078	797	-69
2431.00	Aerial Wire	.739	20,141	14,884	967	714	926	685	-30
2441.00	Conduit System	.739	155,132	114,642	2,637	1,949	2,792	2,064	115
	TOTAL		3,749,963	2,803,752	252,324	187,676	271,173	202,661	14,986
	Composite Rate (%)				6.7	6.7	7.2	7.2	