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EXECUTIVE SECRETARY

October 20, 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

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

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of Response of BellSouth Telecommunications, Inc. to Discount's Petition for Reconsideration in the above-referenced matter. A copy of the enclosed is being provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line.

Guy M. Hicks

GMH/jem

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re: *Discount Communications, Inc.*

Docket No. 00-00230

**RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO DISCOUNT'S PETITION TO RECONSIDER**

The arguments Discount presents in support of its Petition to Reconsider ignore: the state of the law that existed at the time Discount signed the Resale Agreement; the TRA's Order in the MCI/AT&T Arbitration; the FCC's new Universal Service Order; BellSouth's valid Lifeline tariff; the 1995 Telecommunications Reform Act; and the evidence of record in this proceeding. Meanwhile, as Discount's attorneys are continuing to argue that Discount should receive state Lifeline credits in violation of this mountain of legal authority, Discount itself continues to refuse to pay -- or even discuss -- the large and growing debt it admittedly owes BellSouth. The TRA, therefore, should summarily reject Discount's erroneous arguments regarding state Lifeline credits.

I. THE TRA'S DECISION ON THE LIFELINE ISSUE IS SUPPORTED BY THE TRA'S ORDER IN THE MCI/AT&T ARBITRATION, THE FCC'S NEW UNIVERSAL SERVICE ORDER, BELL SOUTH'S LIFELINE TARIFF, AND THE EVIDENCE OF RECORD.

Discount's arguments in support of its Petition for Reconsideration ignore the legal effect of prior TRA rulings and misapprehend the record in this proceeding. As explained below, both the controlling law and the facts of record support the

TRA's decision on the Lifeline issue in this docket. The TRA, therefore, should deny Discount's Petition for Reconsideration.

A. Discount ignores the plain language of the Resale Agreement as well as the state of the law that existed at the time it entered the Resale Agreement.

One provision of the Resale Agreement provides that "[r]esold services are subject to the same terms and conditions as are specified for such services when furnished to individual end users of the Company in the appropriate section of the Company's Tariffs." *See* Agreement at §IV.B. This is not, however, all that the Resale Agreement has to say about the resale of Lifeline in Tennessee. Instead, as discussed below, the Resale Agreement contains additional language which specifically addresses the resale of Lifeline service in Tennessee, and this language explicitly requires the reseller to fund the state Lifeline credit amount for its own end users. Discount chooses to either ignore this controlling language or to claim that it is somehow "inapplicable to" the resale of Lifeline in Tennessee. As explained below, however, Discount is wrong.

Comment 4 to Exhibit B of the Resale Agreement explicitly addresses the resale of Lifeline in Tennessee. *See* Agreement at Exhibit B, Comment 4. The language that Discount wishes the TRA would ignore provides that:

Lifeline/Linkup services may be offered only to those subscribers who meet the criteria that BellSouth currently applies to subscribers of these services. In Tennessee, Discount Communications shall purchase BellSouth's Message Rate Service at the stated tariff rate, less the wholesale discount. Discount must further discount the

wholesale Message Rate Service¹ to LifeLine customers with a discount which is no less than the minimum discount that BellSouth now provides. Discount Communications is responsible for recovering the Subscriber Line Charge from the National Exchange Carriers Association interstate toll settlement pool just as BellSouth does today. The maximum rate that Discount Communications may charge for LifeLine service shall be capped at the flat retail rate offered by BellSouth.

Id. (emphasis added). This language is the direct result of the TRA's Order in the ATT/MCI Arbitrations, which provides a detailed blueprint for implementing the resale provisions of the Telecommunications Act of 1996 as they apply to the resale of Lifeline in Tennessee. See Second and Final Order of Arbitration Awards ("Arbitration Order") in the AT&T/MCI Arbitration Proceedings (Docket Nos. 96-01152 and 96-01271) at 15-16. This language, therefore, must be construed in light of the TRA's Arbitration Order.

Despite Discount's claims to the contrary, the Arbitration Order is neither "inapplicable" nor superseded by the FCC's new Universal Service Order.² The new Universal Service Order expressly states that:

¹ As explained below, Discount is simply wrong when it states that "it would have been impossible for Discount to comply with footnote 4 [of the Resale Agreement] since, by March, 1998, BellSouth was no longer offering discounted Message Rate Service under its Lifeline tariff." Petition at 6.

² Discount itself admits that the TRA must decide the Lifeline issue in this docket "in light of the legal and regulatory decisions in effect at the time," see Petition at 4, and the Arbitration Order clearly is a "regulatory decision in effect at the time" Discount signed its Resale Agreement with BellSouth. Knowing what the Arbitration Order says about the resale of Lifeline in Tennessee, however, Discount attempts to evade the terms of the Order by claiming that it was and is somehow "inapplicable to" the resale of Lifeline in Tennessee. Petition at 7. As explained below, however, Discount is simply wrong.

We see no reason 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). By its own terms, therefore, the FCC's new Universal Service Order does not intrude upon the TRA's Arbitration Order -- an Order which clearly and deliberately spelled out the fact that in Tennessee, the burden of generating intrastate Lifeline support is not placed on any single group of carriers but is instead borne in a competitively neutral fashion by all carriers.

In the Arbitration Order, the TRA ruled that when Lifeline is resold in the state of Tennessee: (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 Lifeline credit amount and the state Lifeline credit amount.³ Accordingly, the Arbitration Order provides that the \$3.50 state

³ As BellSouth's witness Bonnie 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). More recently, the FCC's CALLS Order provides for an even higher Federal credit if the state generates a credit of \$3.50.

credit amount is the responsibility of the reseller. The Resale Agreement mirrors this provision by stating that after receiving the wholesale discount, "Discount must further discount the wholesale Message Rate Service⁴ to LifeLine customers with a discount which is no less than the minimum discount that BellSouth now provides." See Resale Agreement at Exhibit B, Comment 4 (emphasis added). Similarly, this same requirement that appears in both the Arbitration Order and the Resale Agreement also appears in BellSouth's approved Lifeline tariff.⁵ BellSouth's Lifeline tariff, therefore, simply incorporates the existing method of generating the

If the state does not generate a credit of \$3.50, under the CALLS Order the amount of the federal credit is reduced. 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.

⁴ As explained above, Discount is simply wrong when it states that "it would have been impossible for Discount to comply with footnote 4 [of the Resale Agreement] since, by March, 1998, BellSouth was no longer offering discounted Message Rate Service under its Lifeline tariff."

⁵ Discount purportedly "crafted their tariff" with the understanding that BellSouth would flow both the federal and state Lifeline credit amounts through to Discount. (Tr. Vol. I at 96). It is difficult to understand how Discount can claim that it expected to receive any 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)." (See Attachment 1 at §1.1.A.8).

\$3.50 state credit amount in a resale environment, which is clearly permitted by Paragraph 361 of the new FCC Universal Service Order.

Some things have changed since the Arbitration Order was entered. Rather than having to subscribe to Message Rate Service, for example, Lifeline customers may subscribe to any local service provided by BellSouth. See Section II.B. below. Rather than non-ETCs retrieving the federal Lifeline credit amount directly from the National Exchange Carriers Association ("NECA"), BellSouth now obtains the federal Lifeline credit amount from NECA on their behalf and passes this amount through to the non-ETC reseller. Finally, the dollar amount of the federal Lifeline credit has been increased.

None of these changes, however, alter the Arbitration Order's blueprint for the resale of Lifeline in Tennessee. The reseller still purchases local service from BellSouth at the wholesale rate. The reseller still retrieves the federal Lifeline credit amount from NECA -- either directly or through BellSouth acting as an intermediary. Finally, the reseller is still responsible for funding the state Lifeline credit amount for its own end users.

In summary, the Arbitration Order carefully and meticulously provides a detailed blueprint for the resale of Lifeline in Tennessee, and by its own terms, the FCC's new Universal Service Order does not intrude upon that blueprint. Both the Resale Agreement and BellSouth's valid and enforceable tariff follow the blueprint established by the Arbitration Order. Discount's claim that the Arbitration Order is "inapplicable to" the resale of Lifeline in Tennessee, therefore, is simply wrong.

B. Discount's "impossibility" argument is flatly contradicted by the undisputed testimony of record in this docket.

Discount is correct when it states that BellSouth's original Lifeline tariff required Lifeline customers to subscribe to Message Rate Service. As explained below, however, Discount is simply wrong when it states that BellSouth's current Lifeline tariff offers customers "flat-rated residential service along with a 'federal credit' of \$7.00 and a 'state credit' of \$3.50." Petition at 2 (emphasis added). Discount is even more wrong when it later states that "it would have been impossible for Discount to comply with footnote 4 [of the Resale Agreement] since, by March, 1998, BellSouth was no longer offering discounted Message Rate Service under its Lifeline tariff." See Petition at 6 (emphasis added). Not only are these statements not supported by the evidence of record, they are flatly contradicted by the undisputed evidence of record.

BellSouth's Lifeline tariff provides "a credit to monthly recurring local service to qualifying residential subscribers." Tariff at A3.31.1.A. According to the plain language of this Tariff, the credit applies to any local service the Lifeline end user orders, including flat rate residential service, Message Rate Service, or any other service. See *also* Tr. Collective Ex. 16, September 2, 1999 letter (explaining that effective January 1, 1998, BellSouth's Lifeline tariff "expanded the availability of the Lifeline credits to 'any local service officering available to other residence customers.'"). Moreover, BellSouth's witness Bonnie O'Bannon presented the following testimony:

Q. And, Ms. O'Bannon, today under the Lifeline tariff, is an end user required to sign up for 1FR [flat-rated residential service] of can he or she chose any of the local services we provide?

A. The end user can subscribe to any of the local services that we offer.

See April 3, 2000 Transcript of Proceedings at 507 (emphasis added).

This evidence is undisputed. Far from "repeal[ing] the old method for providing Lifeline service," see Petition at 2, therefore, BellSouth's current Lifeline tariff enhances the "old" method by allowing Lifeline customers to subscribe to any of BellSouth's local service offerings, including Message Rate Service. Discount's statement that "it would have been impossible for Discount to comply with footnote 4 [of the Resale Agreement] since, by March, 1998, BellSouth was no longer offering discounted Message Rate Service under its Lifeline tariff," therefore, is simply wrong, and Discount's legal arguments based on this erroneous statement are also wrong.

C. Discount is wrong when it suggests that BellSouth has admitted that the FCC's new Universal Service Order alters the requirement that resellers in Tennessee fund the \$3.50 state credit amount for their own end users.

Discount claims that "[b]y March, 1998, however, as BellSouth itself has admitted, that additional language [in the Resale Agreement] had been rendered obsolete and inapplicable by the FCC's 'Universal Service' order and by superseding language in BellSouth's 1997 tariff amendments." Petition at 4-5. This claim is just plain wrong. BellSouth has never "admitted" that the requirement that the reseller fund the \$3.50 state credit amount to its own end users has been

superseded or otherwise affected by anything. As explained above, the new Universal Service Order does nothing to alter this requirement. Moreover, as Ms. O'Bannon explained during her testimony, *see* Tr. at 515-17, and as explained in BellSouth's Post-Hearing Brief, *see* Post-Hearing Brief at 12-15, the 1999 revisions to BellSouth's Lifeline tariff addressed the manner in which the federal credit amount is passed along from NECA to pure resellers who cannot be reimbursed directly from NECA because they are not ETCs. Cooperating with the TRA Staff to accommodate the delivery of the federal Lifeline credit amount from NECA to these non-ETC resellers clearly does nothing to alter the fact that all resellers are responsible for funding the \$3.50 state Lifeline credit amount for their own end users.

Similarly, the language BellSouth proposed in its October 5, 1999 letter does nothing to change the manner in which the state Lifeline credit is funded. That letter simply proposes a new Comment 4 which states that "Lifeline/LinkUp services may be offered only to those subscribers who meet the criteria that BellSouth currently applies to subscribers of those services as set forth in sections A3 and A4 of the BellSouth General Subscriber Services Tariff." Discount, however, by its own admission, never agreed to this proposed amendment. The Resale Agreement, therefore, continues to explicitly require Discount to fund the \$3.50 state Lifeline credit amount for its own end users.

Moreover, BellSouth's approved tariff also explicitly states that the reseller is responsible for funding the state Lifeline credit amount for its own end users. Tariff

§ A3.31.2.A.9. Discount, therefore, cannot seriously contend that BellSouth has ever admitted that the requirement that the reseller fund the \$3.50 state Lifeline credit amount for its own end users -- which was imposed by the TRA in the Arbitration Order, expressly referenced in the Resale Agreement, and explicitly stated in the tariff -- is somehow "obsolete and inapplicable."

Finally, it is true that BellSouth deleted the specific reference to the Arbitration Order from its Lifeline tariff.⁶ BellSouth did not, however, delete the substance of the Order from its tariff. As noted above, the tariff clearly provides that resellers who are ETCs "are required to establish their own Lifeline programs." Tariff at A3.31.2.A.9. Resellers who are ETCs, therefore, obtain the federal credit amount from NECA, and they fund the state Lifeline credit amount to their own end users -- just as provided in the Arbitration Order. Non-ETC resellers receive the undiscounted federal credit amount (which BellSouth obtains from NECA on behalf of the non-ETC reseller and passes along to the non-ETC reseller) and funds the state Lifeline credit amount to their own end users. Again, this is exactly as provided by the Arbitration Order with the one modification -- made in response to a request by the TRA Staff -- to address the fact that the new FCC Universal Service Order does not permit non-ETC resellers to obtain the federal credit amount

⁶ Significantly, Discount did not delete this allegedly inapplicable language from its tariff. Discount's tariff continues to explicitly state 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. 96-01152 and 96-01271)." See Attachment 1 at § 1.1.A.8. Once again, Discount's action are at odds with its words.

directly from NECA. Discount, therefore, is simply wrong when it alleges that anything the FCC or BellSouth has done alters the requirement that resellers fund the state Lifeline credit amount to their own end users.

II. THE EVIDENCE CLEARLY DOES NOT SUPPORT DISCOUNT'S FACTUAL ALLEGATION THAT THERE IS AN IMPLICIT SUBSIDY IN BELL SOUTH'S CURRENT RATE STRUCTURE WHICH COMPENSATES BELL SOUTH FOR THE COST OF PROVIDING LIFELINE SERVICE TO EVERY ELIGIBLE CUSTOMER IN BELL SOUTH'S TERRITORY.

Discount's argument regarding the alleged "implicit subsidy" is rather convoluted at best. First, Discount claims that "there is an 'implicit subsidy' in BellSouth's current rate structure which compensates the carrier for the cost of providing Lifeline to every eligible customer in BellSouth's territory." Petition at 8 (emphasis added). Discount then contends that requiring resellers to fund the \$3.50 state Lifeline credit amount to their own end users allows BellSouth to collect the alleged "implicit subsidy" twice. See, e.g., Petition at 8. This purported "double recovery," in turn, forms the basis for Discount's allegation that the manner in which the \$3.50 state Lifeline credit amount is generated in Tennessee is not competitively neutral. As explained below, however, the TRA correctly determined that the evidence of record does not support this convoluted theory propounded by Discount.

A. The evidence of record shows that there is no "implicit subsidy" in BellSouth's current rates.

During the hearings in this docket, Discount's witness Mr. Hickerson claimed that requiring Discount to fund the \$3.50 state credit amount for its own end users

is not "competitively neutral." Mr. Hickerson, however, conceded that his claim is based entirely on his position that a subsidy for the state Lifeline credit amount for every Lifeline customer in BellSouth's territory amount is somehow built into BellSouth's rates. (Tr. Vol. I at 169). The undisputed facts of record show that this simply is not the case.

As thoroughly explained in BellSouth's Post-Hearing Brief, *see* Post-Hearing Brief at 23-27, even to the extent that a purported subsidy for the \$3.50 state Lifeline credit amount may have existed as of June 6, 1995 (which it did not), that subsidy had a negative balance. As such, this purported "implicit subsidy" could not possibly have provided funds to offset the state Lifeline credit amount. Moreover, no such subsidy exists today because the source of the alleged subsidy -- the deferred revenue account -- no longer exists. The evidence of record, therefore, shows that no "implicit subsidy" exists.⁷

- B. Even if an "implicit subsidy" ever had existed (which it did not), it clearly did not compensate BellSouth for the cost of providing Lifeline to the 25,782 Lifeline accounts BellSouth had as of March 2000 -- let alone the cost of providing the service to Discount's Lifeline end users.**

The record contains absolutely nothing to suggest how many Lifeline customers were anticipated when the former Tennessee Public Service Commission

⁷ As Discount notes, Mr. Hickerson testified, "I thought we all agreed that Bell is currently collecting that subsidy through its rates," but BellSouth quickly noted its disagreement with what Mr. Hickerson thought. (See Tr. Vol. I at 173-74). Additionally, Mr. Hickerson never stated his thoughts on the value of this purported subsidy, and as noted below, he acknowledged that the PSC's Order implementing the Lifeline program does not even attempt to calculate the value of the purported

("PSC") entered its 1991 Order establishing BellSouth's Lifeline program. Accordingly, the record contains absolutely nothing to suggest the actual value of the "implicit subsidy" Discount erroneously claims is in BellSouth's rates. In fact, Discount's counsel and Mr. Hickerson both acknowledge that the PSC's order implementing the Lifeline program does not even attempt to calculate the actual negative revenue impact the program would have on BellSouth. (Tr. Vol. I at 89; Vol. 1 at 137-38).

Similarly, the record contains absolutely nothing to suggest how many Lifeline customers were anticipated when the PSC completed its 1993 earnings investigation. The record does reflect that 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 date the PSC ordered BellSouth to reduce its rates at the conclusion of the 1993 earnings investigation. (BellSouth's Late-Filed Ex. 7). Moreover, as of June 6, 1995, BellSouth had only 12,903 Lifeline customers. These figures are undisputed.

Accordingly, regardless of the date as of which the value of the alleged "implicit subsidy" is calculated, that alleged "implicit subsidy" would fund the provision of a \$3.50 state Lifeline credit to no more than 15,641 Lifeline customers. As of March 2000, however, BellSouth had 25,782 of its own Lifeline end-user customers. Clearly, even if it had ever existed, the alleged "implicit subsidy" in BellSouth's rates would have been depleted long before BellSouth

subsidy. (Tr. Vol. I at 89; Vol. I at 137-38).

provided the \$3.50 state Lifeline credit amount to each one of its own Lifeline end users. Moreover, BellSouth recently has implemented major rate reductions, (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. Moreover, the deferred revenue account -- the source of this alleged subsidy -- no longer exists. Any Lifeline subsidy that may have been in South Central Bell's rates under rate-of-return regulation, therefore, simply is not available to BellSouth under price regulation.

Discount's own witness acknowledges that Discount's attacks on the TRA's Arbitration Order -- and, necessarily, its attacks on the TRA's decision on the Lifeline issue in this docket -- are based on its factual allegation that BellSouth is recovering an alleged "implicit subsidy" twice. Nothing in the record, however, supports Discount's factual allegation that BellSouth is recovering this alleged "implicit subsidy" once, much less twice. In fact, under Discount's own analysis, BellSouth is losing money providing its own subscribers this credit. Requiring BellSouth to fund the \$3.50 for these customers on its own just like each reseller is required to fund its own \$3.50 for its Lifeline customers, therefore, clearly is competitively neutral.

C. Discount's arguments ignore the fact that the Telecommunications Reform Act of 1995 requires that any modifications to current sources of universal service support be addressed in a single generic contested case proceeding.

Discount's subsidy argument -- which is embroiled in rate of return ideology which it is high time to abandon -- ignores the plain language of the Telecommunications Reform Act of 1995. Discount is asking the TRA to modify the manner in which the state Lifeline credits -- which are simply one method of providing universal service support -- are generated in Tennessee. The Telecommunications Reform Act of 1995, however, prohibits Discount from seeking that type of relief in this docket. Instead, to the extent that Discount wishes to seek such relief, it must do so in the context of the ongoing Universal Service Proceedings.

The Telecommunications Reform Act of 1995 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" 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.

III. IF THE TRA DECIDES TO RECONSIDER ITS RULING ON THE LIFELINE ISSUE (WHICH IT SHOULD NOT) IT SHOULD HOLD ITS DECISION ON RECONSIDERATION IN ABEYANCE UNTIL DISCOUNT PAYS IT BILLS.

As detailed in BellSouth's Petition for Reconsideration, Discount owes BellSouth in excess of \$200,000 even after Discount is given the benefit of the amount of its escrow payments and even after its account is credited for all directory assistance charges that have ever appeared on its bill. This is not surprising -- during the hearing, 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).

Since the hearing began, however, Discount has not paid BellSouth one penny of these undisputed past-due amounts. Moreover, while it has paid \$1,500 per day into escrow, it has used an average of more than \$2,000 per day of BellSouth services over the same time frame. Far from reducing Discount's debt,

therefore, the escrow arrangement has resulted in Discount's debt continuously growing since the time of the hearing.

Discount, however, has done nothing whatsoever to address this debt. Nor has it provided BellSouth -- or the TRA -- with one shred of documentation supporting any purported disputes regarding this debt. What it has done is what it did during the hearings --- attempt to evade the fact that it is not paying its bills.

During the hearings, for example, Discount refused to stipulate to the amount of undisputed sums it owes BellSouth. Instead, Discount would only stipulate to the "value" of the disputes it originally presented to the TRA. *See* Discount's Pre-Hearing Reply Brief. Moreover, during the hearing itself, Discount's President acknowledged that Discount owes BellSouth money, but he testified that he could not tell the TRA how much Discount owes BellSouth. (Tr. Vol. II at 280). After claiming that Discount had submitted itemized billing disputes to BellSouth, (Tr. Vol. II at 280), the same 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).

Thus, Discount has been paying less than it owes for services it has received for the past six months while continuing to ignore its large and growing debt. As such, Discount comes before the TRA seeking relief with unclean hands. The TRA, therefore, should hold Discount's Petition for Reconsideration in abeyance until Discount pays its bills. *See Brandon v. Wright*, 838 S.W.2d 532, 534 (Tenn. Ct.

App. 1992) ("He who comes into a court of equity asking its aid, must come with clean hands.").

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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CERTIFICATE OF SERVICE

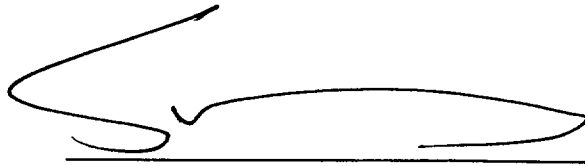
I hereby certify that on October 20, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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ATTACHMENT 1

LOCAL EXCHANGE SERVICES

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 RegulationsA. 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).

DISCOUNT COMMUNICATIONS

TENNESSEE TARIFF NO. 1
REVISED PAGE 2

LOCAL EXCHANGE SERVICES

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.

LOCAL EXCHANGE SERVICES

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 ChargesA. 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
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LOCAL EXCHANGE SERVICES

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 RegulationsA. 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.