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April 5, 2000

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Complaint of Discount Communications against BellSouth Telecommunications
Docket No. 00-00230

Dear David:

Please accept for filing the original and thirteen copies of Discount Communications, Inc.'s pre-hearing brief in the above-captioned proceeding. A copy of the enclosed is being provided to parties of record.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

HW/nl
Attachment

POSTED

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE:	COMPLAINT OF DISCOUNT COMMUNICATIONS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.	))))	Docket No. 00-00230

PRE-HEARING BRIEF OF DISCOUNT COMMUNICATIONS

Discount Communications, Inc. ("Discount") submits the following pre-hearing brief concerning the complaint filed by Discount against BellSouth Telecommunications, Inc. ('BellSouth").

Background

Discount is a reseller of BellSouth's local exchange telephone service. Operating primarily in the Memphis area, Discount provides basic residential service on a pre-paid basis. The customer, in other words, pre-pays for service at the beginning of each month. Like other pre-paid carriers, Discount primarily serves customers who, because of credit problems, cannot obtain local telephone service from BellSouth. Unlike other pre-pay carriers, however, Discount also provides "Lifeline" and "Link Up" services to qualified customers. Discount is apparently the only reseller in Tennessee offering Lifeline and Link Up discounts and may even be the only reseller in the country offering these discounted services.[1]

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[1] Christine Boreyko, manager of Lifeline eligibility administration for the National (continued...)

"Link Up" refers to an FCC program which pays half of the service installation rate --- up to $30 --- for low-income subscribers. It is financed entirely from contributions by interstate carriers.

BellSouth, for example, charges approximately $40 for the installation of local service. If the customer is a low-income subscriber (as determined by the FCC's rules), BellSouth only charges $20 to the customer and receives a $20 subsidy payment from the National Exchange Carrier Association (which manages the Link Up and Lifeline programs on behalf of the FCC).

Discount normally charges an installation fee of $59.99 but only charges $29.99 to Link Up customers. If Discount were a facilities-based carrier, Discount would be eligible to receive a $30 subsidy payment from NECA for each Link Up customer. As a reseller, however, Discount is not an "eligible telecommunications carrier" under 47 U.S.C. § 214 (e) (1) and the FCC's rules and therefore may not apply to NECA for the Link Up subsidy.

One of the issues in this proceeding is whether or not BellSouth, which is an "eligible telecommunications carrier," may apply to NECA for the $30 Link Up subsidy on behalf of Discount Communications. In an effort to resolve this matter, the parties have informally sought the opinion of the FCC staff on this question. At this time, both Discount and BellSouth have agreed to await a ruling from the FCC staff before bringing this issue to the TRA.

If a customer is eligible for Link Up, he or she also qualifies for "Lifeline" service. The Lifeline program offers low income subscribers local telephone service at a discount of up to

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[1](...continued)
Exchange Carriers Association ("NECA"), told counsel for Discount that she was unaware of any reseller who offered Lifeline or Link Up rates.

$10.50 per month. Administered by the FCC, the program is funded, in part, by interstate carriers and, in part, by participating states. In Tennessee, for example, Lifeline customers are eligible for the full $10.50 discount. Of that amount, $7.00 is provided by NECA and $3.50 --- the state's share --- is provided by intrastate carriers.

BellSouth, for example, charges a Lifeline customer a retail rate that is $10.50 per month less than BellSouth would charge for the same service to a non-Lifeline customer. Similarly, Discount charges $22.95 for local service to non-Lifeline customers but only $12.15 a month to Lifeline customers.

The second issue in this case is whether or not BellSouth is required to offer Lifeline service for resale at the same discounted rate (less avoidable costs) that BellSouth charges its own end users. At this time, BellSouth charges Discount $3.50 more, per month, for Lifeline service than BellSouth's retail rate. BellSouth argues, correctly, that this practice is consistent with BellSouth's current intrastate tariff and with language in the resale agreement signed by Discount and BellSouth in March, 1998. Discount submits, however, that BellSouth is required by the FCC's Order and rules on Universal Service, which became effective January 1, 1998, to offer Lifeline service for resale at BellSouth's retail rate, less the avoidable costs. As will be discussed further below, Discount contends that the FCC's rules and orders supersede any language to the contrary in BellSouth's state tariff or in the resale agreement and that BellSouth cannot enforce a state tariff or resale agreement which is clearly illegal under federal law.

The third issue in this case concerns whether or not BellSouth may charge Discount for intrastate directory assistance.

In March, 1998, when BellSouth and Discount signed their resale agreement, BellSouth did not charge end users for intrastate directory assistance. At that time --- indeed, since the beginning of telephone regulation in Tennessee --- BellSouth offered unlimited access to directory assistance as part of the company's basic local exchange service. Although the TRA had approved a directory assistance charge for Sprint/United in May, 1997, the TRA's decision had been appealed to the Court of Appeals, and BellSouth had not even filed a tariff to charge customers for directory assistance.

The resale agreement signed by the parties does not contain any rate for directory assistance charges. It does, however, contain the following language concerning the wholesale discount rate to be paid by Discount for BellSouth's services:

"The Wholesale Discount [16%] is set as a percentage of the tariffed rates. If OLEC [other local exchange carriers, *i.e.* Discount Communications] provides its own operator services and directory services, the discount shall be 21.56%. These rates are effective as of the Tennessee Regulatory Authority's Order in Tennessee Docket No. 90-01331 dated January 17, 1987."

As discussed further below, Discount interpreted that language in the agreement to mean that Discount may either (1) provide its own directory assistance and operator services and pay a cheaper rate for other telephone services or (2) obtain directory assistance and access to operators services from BellSouth and thereby pay a higher rate for other telephone services. In other words, Discount understood that the 16% discount rate <u>included</u> BellSouth's directory assistance services and that the 22.56% rate <u>excluded</u> BellSouth's directory assistance. The

difference between 16% and 22.56% represented the "price" of directory assistance and access to operator services.

Three months later, BellSouth filed a tariff to begin, for the first time, charging customers for directory assistance. The TRA approved the tariff in July and the tariff became effective in September, 1999. The issue of whether directory assistance is a "basic service" under state law and whether BellSouth may legally impose a charge for that service is pending before the Court of Appeals.

Because of Discount's interpretation of the resale agreement and Discount's good faith belief at the time the agreement was signed, that BellSouth's directory assistance was a "basic service" included as part of BellSouth's local exchange service, Discount objected to paying BellSouth for directory assistance calls made by Discount's customers. Based on the language in the agreement, interpreted in light of "the state of the law as it existed at the time the [Agreement] was entered into," [2] Discount may not be required to pay BellSouth for directory assistance. In the alternative, Discount has requested that BellSouth block access to directory assistance after six calls per customer. BellSouth has declined to provide that blocking option.

The fourth issue concerns whether BellSouth has engaged in a pattern of anti-competitive activity as evidenced by BellSouth's conduct in regard to the Lifeline and directory assistance issues and other similar actions which have impeded Discount's ability to compete against

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[2] *Petition of Brooks Fiber*, TRA Docket 98-00118, Initial Order of Hearing Officer, issued April 21, 1998 (affirmed on August 17, 1998), at page 11.

BellSouth. Evidence concerning these incidents will be presented by Discount's witnesses at the hearing on this matter.

Argument

I. BellSouth is required by the FCC to sell Lifeline service to Discount at a rate that is "equal to the incumbent LEC's existing retail rate" for that service "less avoided retail costs." 47 C.F.R. §51.607. That requirement explicitly includes BellSouth's "below cost and residential services." "Local Competition Order," Docket 96-325, issued August, 1996, paragraphs 956 and 957 ("[S]imply because a service may be priced at below-cost levels does not justify denying customers of such service the benefits of resale competition.") A copy of those paragraphs is attached.

Although the FCC's "Local Competition Order" did not specifically address the resale of Lifeline services, the FCC's "Universal Service Order," Docket 97-157, issued in May, 1997 made it clear that the resale requirement applies to Lifeline service:

> The 'Local Competition Order' provides that all retail services, including below-cost and residential services, are subject to the wholesale rate obligations under section 251 (c) (4) [of the federal Telecommunications Act]. Resellers therefore could obtain Lifeline service at wholesale rates that include the Lifeline support amounts and can pass these discounts through to qualifying low-income consumers.

Paragraph 370 (emphasis added). A copy of the paragraph is attached. The FCC's revised Universal Service rules, which reflect the findings in the Order, became effective January 1, 1998. Certainly, by the time Discount and BellSouth entered into their resale agreement --- and well before BellSouth filed its current tariff provision on Lifeline service --- federal law required that

BellSouth offer Lifeline service for resale at the retail rate, which includes a $10.50 discount, less 16% in avoided costs.

BellSouth, however, has consistently charged Discount $3.50 more, per month, for Lifeline service than BellSouth charges its own end users for Lifeline service. Those excess charges are illegal and Discount Communications has properly refused to pay them.

BellSouth's argument hinges on language in the resale agreement and in BellSouth's current tariff (as amended in November, 1999). That language states, in essence, that BellSouth is not required to pass through to resellers the state's share ($3.50) of the Lifeline subsidy. According to BellSouth's tariff and the resale agreement, that $3.50 subsidy must be provided by the reseller itself.

The requirement that the reseller itself provide the $3.50 subsidy to Lifeline customers is, of course, inconsistent with the FCC's rules and Orders described above. The requirement springs from the TRA's rulings in February, 1997, (which preceded the FCC's Universal Service Order) concerning the wholesale rates to be charged to AT&T and MCI by BellSouth. Since no reseller, other than Discount, has ever offered Lifeline service in Tennessee, the TRA has had no occasion, until now, to consider the impact of the FCC's Universal Service Order and rules on the resale of Lifeline service.

BellSouth's current tariff and the language of the resale agreement are both inconsistent with controlling federal law as it exists now and as it has existed at least since January 1, 1998. BellSouth may not enforce a state tariff or a provision in the resale agreement that is illegal on its face.

2.As previously discussed, Discount objects to paying for directory assistance during the term of the existing resale agreement. From the nature of the pre-pay telephone business, it is self evident that Discount Communications would not have agreed to a resale contract which allowed BellSouth to charge Discount for directory assistance calls made by Discount's customers. Because Discount's customers generally have poor credit and, for that reason, are unable to obtain service from BellSouth, Discount collects payment prior to providing each month's service. The payment of course, must be equal to the cost of providing service. If BellSouth is subsequently allowed to amend the resale agreement and to begin charging Discount for directory assistance calls without any limitation, Discount obviously cannot continue providing service.

Based on the language of the resale agreement concerning directory assistance and the state of the law at that time regarding BellSouth's directory assistance services, Discount believes that the resale agreement prohibits BellSouth from charging for directory assistance during the term of the agreement. Once the current agreement expires, the parties are free to re-negotiate or, if necessary, arbitrate a new contract which will presumably address the directory assistance issues.

Here, as in each of the "reciprocal compensation" disputes which the agency has considered, the issue hinges on the proper interpretation of the parties' resale agreement. Discount believes that the language of the agreement plainly states that, if Discount elects a 16% wholesale rate, that rate entitles Discount to obtain BellSouth's directory assistance services and to access BellSouth's operator services., To the extent the contract language is ambiguous, Discount will present testimony concerning Discount's understanding of the agreement. Based on that

testimony, considered in light of the state of the law at the time of the agreement, Discount submits that the agreement precludes charges for directory assistance. BellSouth may not unilaterally amend the agreement simply by filing a revised tariff.

Resale agreements, like any other interconnection agreement, must be submitted to, and approved by the TRA pursuant to the federal Telecommunications Act. Such an agreement fixes the terms and conditions of interconnection for the duration of the agreement and cannot be amended except by agreement of the parties or, presumably, by the TRA following an arbitration proceeding under the Act.

If, for example, an interconnection agreement provides for the payment of reciprocal compensation for local calls at a rate fixed in the agreement, BellSouth may not amend that agreement by filing an intrastate tariff which provides for a different rate. Otherwise, the arbitration process would be largely meaningless.

In approving the resale agreement between Discount and BellSouth, the TRA Directors have exercised the federal authority delegated to them under the Telecommunications Act. Backed by the preemptive authority of federal law, the provisions of an agreement approved pursuant to the Act necessarily override any conflicting language in BellSouth's intrastate tariffs. Therefore, if the TRA concurs with Discount's interpretation of the parties existing agreement, nothing in BellSouth's subsequently approved directory assistance tariff applies to Discount for the duration of the agreement.

III. Based on (1) BellSouth's refusal to abide by federal law regarding the wholesale price of Lifeline services, (2) BellSouth's attempt to charge for directory assistance in violation

of the resale agreement and (3) evidence of other similar, anti-competitive acts that will be presented at the hearing, Discount submits that BellSouth has engaged in a pattern of anti-competitive activities of the type described in T.C.A. § 65-5-208(c). Assuming that Discount establishes such a pattern, Discount will prepare appropriate remedies consistent with Section 208(c).

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

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providing Lifeline. We therefore reject BellSouth's argument that the Lifeline program should continue to operate exclusively as a SLC waiver.(924)

368. The precise mechanisms for distributing and collecting Lifeline funds will be determined by the universal service administrator in direct consultation with the Commission. In general, however, any carrier seeking to receive Lifeline support will be required to demonstrate to the public utility commission of the state in which it operates that it offers Lifeline service in compliance with the rules we adopt today. These rules require that carriers offer qualified low-income consumers the services that must be included within Lifeline service, as discussed more fully below, including toll-limitation service. ILECs providing Lifeline service will be required to waive Lifeline customers' federal SLCs and, conditioned on state approval, to pass through to Lifeline consumers an additional $1.75 in federal support. ILECs will then receive a corresponding amount of support from the new support mechanisms. Other eligible telecommunications carriers will receive, for each qualifying low-income consumer served, support equal to the federal SLC cap for primary residential and single-line business connections, plus $1.75 in additional federal support conditioned on state approval. The federal support amount must be passed through to the consumer in its entirety. In addition, all carriers providing Lifeline service will be reimbursed from the new universal service support mechanisms for their incremental cost of providing toll-limitation services to Lifeline customers who elect to receive them. The remaining services included in Lifeline(925) must be provided to qualifying low-income consumers at the carrier's lowest tariffed (or otherwise generally available) rate for those services, or at the state's mandated Lifeline rate, if the state mandates such a rate for low-income consumers.(926)

369. California PUC argues that all carriers, not just eligible telecommunications carriers, should be able to participate in Lifeline.(927) We believe that we have the authority under sections 1, 4(i), 201, 205, and 254 to extend Lifeline to include carriers other than eligible telecommunications carriers. We agree with the Joint Board, however, and decline to do so at the present time. Elsewhere in this Order, we express our intention to incorporate Lifeline into our broader universal service mechanisms adopted in this proceeding. We believe that a single support mechanism with a single administrator following similar rules will have significant advantages in terms of administrative convenience and efficiency. Furthermore, in deciding which carriers may participate in Lifeline, we note that section 254(e) allows universal service support to be provided only to carriers deemed eligible pursuant to section 214(e).

370. We further observe that, contrary to the fears of some commenters,(928) a large class of carriers that will not be eligible to receive universal service support -- those providing service purely by reselling another carrier's services purchased on a wholesale basis pursuant to section 251(c)(4) -- will nevertheless be able to offer Lifeline service. The *Local Competition Order* provides that all retail services, including below-cost and residential services, are subject to wholesale rate obligations under section 251(c)(4).(929) Resellers therefore could obtain Lifeline service at wholesale rates that include the Lifeline support amounts and can pass these discounts through to qualifying low-income consumers.(930) We are hopeful that states will take the steps required to ensure that low-income consumers can receive Lifeline service from resellers. Further, we find that we can rely on the states to ensure that at least one eligible telecommunications carrier is certified in all areas.(931) As a result, low-income consumers always will have access to a Lifeline program from at least one carrier. We will reassess this approach in the future if it appears that the revised Lifeline program is not being made available to low-income consumers nationwide.

whether a service is offered below, at, or above cost will invite lengthy regulatory disputes.[2259] Additionally, TCC points out that incumbent LECs will continue to receive access revenue even from resold service and such revenue will continue to subsidize such services.[2260]

b. Discussion

956. Subject to the cross-class restrictions discussed below, we believe that below-cost services are subject to the wholesale rate obligation under section 251(c)(4). First, the 1996 Act applies to "any telecommunications service" and thus, by its terms, does not exclude these types of services. Given the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain services where the 1996 Act does not specifically do so. Second, simply because a service may be priced at below-cost levels does not justify denying customers of such a service the benefits of resale competition. We note that, unlike the pricing standard for unbundled elements, the resale pricing standard is not based on cost plus a reasonable profit. The resale pricing standard gives the end user the benefit of an implicit subsidy in the case of below-cost service, whether the end user is served by the incumbent or by a reseller, just as it continues to take the contribution if the service is priced above cost. So long as resale of the service is generally restricted to those customers eligible to receive such service from the incumbent LEC, as discussed below, demand is unlikely to be significantly increased by resale competition. Thus, differences in incumbent LEC revenue resulting from the resale of below-cost services should be accompanied by proportionate decreases in expenditures that are avoided because the service is being offered at wholesale.

957. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, MECA argues that services incumbent LECs offer at below cost rates should not be subject to resale under section 251(c)(4). We do not adopt MECA's proposal. As explained above, we conclude that the 1996 Act provides that below-cost services are subject to the section 251(c)(4) resale obligation and that differences in incumbent LEC revenue resulting from the resale of below-cost services should be accompanied by decreases in expenditures that are avoided because the service is being offered at wholesale. Therefore, resale of below-cost services at wholesale rates should not adversely impact small incumbent LECs.[2261] We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

[2259] Telecommunications Resellers Ass'n reply at 15.

[2260] TCC comments at 44 n.44.

[2261] *See* Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

or through some other facility that is not a "physical component" of the network, as defined in this Order.[383] We find that our determination to define "facilities" in this manner is consistent with congressional intent to require that at least some portion of the supported services offered by an eligible carrier be services that are not offered through "resale of another carrier's services."[384] For these reasons, we reject EXCEL's suggestion that a carrier that establishes a billing office would meet the definition of "facilities" for purposes of section 214(e).[385]

153. We also decline to adopt a more restrictive definition of the term "facilities," as some commenters suggest.[386] For example, we reject the suggestion that we define "facilities" as both loop *and* switching facilities based on our concern that such a restrictive definition would erect substantial entry barriers for potential competitors seeking to enter local markets and, therefore, would unduly restrict the class of carriers that may be designated as eligible telecommunications carriers.[387] Rather, we conclude that the definition of "facilities" that we adopt will serve the goals of universal service and competitive neutrality to the extent that it does not dictate the specific facilities that a carrier must provide or, by implication, the entry strategy a carrier must use and, therefore, will not unduly restrict the class of carriers that may be designated as eligible.

154. Whether the Use of Unbundled Network Elements Qualifies as a Carrier's "Own Facilities". We conclude that a carrier that offers any of the services designated for universal service support, either in whole or in part, over facilities that are obtained as unbundled network elements pursuant to section 251(c)(3) and that meet the definition of facilities set forth above,[388] satisfies the facilities requirement of section 214(e)(1)(A).[389]

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[383] *See, e.g.*, EXCEL comments at 9 (asserting that billing offices should qualify as "facilities").

[384] 47 U.S.C. § 214(e)(1)(A).

[385] *See* EXCEL comments at 9.

[386] *See, e.g.*, Cathey, Hutton comments at 7 (asserting that "facilities" should be defined as loop *and* switching facilities only).

[387] *See, e.g.*, Cathey, Hutton comments at 7.

[388] We note that, because the definition of "facilities" we adopt above differs from the statutory definition of "network element," not all unbundled network elements will meet the facilities requirement of section 214(e). *See* 47 U.S.C. § 153(29). Thus, for example, operations support systems functions (OSS) as defined in the *Local Competition Order*, would not meet the definition of "facilities" that we adopt herein. *See Local Competition Order*, 11 FCC Rcd at 15,763-68. *See also* 47 C.F.R. § 51.319(f).

[389] *Accord, e.g.*, Comptel comments at 13-14 (urging Commission to find that carriers that purchase access to unbundled network elements are eligible for universal service support). Section 251(c)(3) requires ILECs "to provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an

conclude that our determination not to impose restrictions based solely on the location of facilities used to provide the supported services is competitively neutral in that it will accommodate the various technologies and entry strategies that carriers may employ as they seek to compete in high cost areas.

178. Eligibility of Resellers. We adopt the Joint Board's analysis and conclusion that section 214(e)(1) precludes a carrier that offers the supported services solely through resale from being designated eligible in light of the statutory requirement that a carrier provide universal service, at least in part, over its own facilities.[445] EXCEL contends that the Joint Board's recommendation to exclude resellers is based on the flawed assumption that the meaning of the term "facilities" is commonly understood, and thus asserts that we should not adopt the Joint Board's recommendation.[446] We reject this assertion because, under any reasonable interpretation of the term "facilities," a "pure" reseller uses none of its own facilities to serve a customer. Rather, a reseller purchases *service* from a facilities owner and resells that *service* to a customer. We also are not persuaded by commenters' arguments that, unless a reseller receives support directly from federal universal service mechanisms, it will be forced to absorb higher costs incurred in providing services in high cost areas and, ultimately, to increase prices charged to customers in those areas.[447] As explained above, resellers should not be entitled to receive universal service support directly from federal universal service mechanisms because the universal service support payment received by the underlying provider of resold services is reflected in the price paid by the reseller to the underlying provider.[448]

179. We conclude that no party has demonstrated that the statutory criteria for forbearance have been met[449] and therefore we agree with the Joint Board that we cannot exercise our forbearance authority to permit "pure" resellers to become eligible for universal service support, as some commenters have proposed.[450] In order to exercise our authority under section 10(a) of the Act to forbear from applying a provision of the Act, we must

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[445] Recommended Decision, 12 FCC Rcd at 172-73.

[446] See EXCEL comments at 7-8 (*citing* Infrastructure Sharing Provisions in the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, CC Docket 96-237, FCC 96-456 (rel. Nov. 22, 1996) which sought comment on meaning of "telecommunications facilities").

[447] EXCEL comments at 5-6, 14-15; TRA reply comments at 11.

[448] *See infra* section VII.

[449] 47 U.S.C. § 160.

[450] Recommended Decision, 12 FCC Rcd at 173. *See, e.g.*, EXCEL comments at 11-13; Telco comments at 8-10; TRA comments at 15-16. *See also* 47 U.S.C. § 160.

determine that: (1) enforcement of the provision "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;" (2) enforcement of such provision "is not necessary for the protection of consumers;" and (3) "forbearance from applying such provision . . . is consistent with the public interest."[451] In addition, we must consider "whether forbearance . . . will promote competitive market conditions."[452] As previously discussed, if pure resellers could be designated eligible carriers and were entitled to receive support for providing resold services, they, in essence, would receive a double recovery of universal service support because they would recover the support incorporated into the wholesale price of the resold services in addition to receiving universal service support directly from federal universal service support mechanisms. Making no finding with respect to the first two criteria, we conclude that it is neither in the public interest nor would it promote competitive market conditions to allow resellers to receive a double recovery. Indeed, allowing such a double recovery would appear to favor resellers over other carriers, which would not promote competitive market conditions. Allowing resellers a double recovery also would be inconsistent with the principle of competitive neutrality because it would provide inefficient economic signals to resellers.

180. TRA cites the Commission's decision not to impose a facilities requirement with respect to section 251(c)(3) in the *Local Competition Order* to support its contention that the Commission should forbear from the facilities requirement in section 214(e).[453] TRA specifically cites the Commission's finding that any facilities requirement the Commission could construct "would likely be so easy to meet it would ultimately be meaningless."[454] In addition to our finding that the statutory forbearance criteria have not been met, we also reject this assertion because, unlike section 251(c)(3), which does not explicitly require a carrier to own facilities in order to obtain access to unbundled network elements, section 214(e)(1)(A) expressly mandates the use of a carrier's "own facilities" in the provision of the services designated for universal service support.[455]

c. Requirements of Section 254(e) Pertaining to Intended Uses of Universal Service Funds

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[451] 47 U.S.C. § 160(a).

[452] 47 U.S.C. § 160(b).

[453] TRA comments at 12 (*citing Local Competition Order*, 11 FCC Rcd at 15,670).

[454] TRA comments at 12 (*citing Local Competition Order*, 11 FCC Rcd at 15,670).

[455] *Compare Local Competition Order*, 11 FCC Rcd at 15,670 (interpreting section 251(c)(3)) *with* 47 U.S.C. § 214(e) and interpretation herein.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U. S. First Class Mail, facsimile, and/or hand delivery, to the following on this the 5th day of April, 2000.

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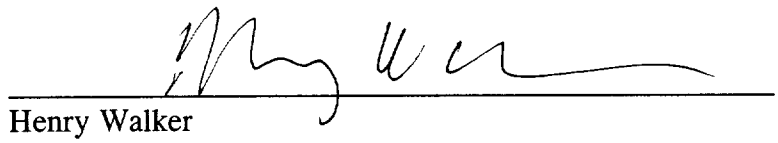

Henry Walker