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April 7, 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 reply 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

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

'00 APR 7 AM 8 56

EXECUTIVE SECRETARY

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

REPLY BRIEF OF DISCOUNT COMMUNICATIONS

I. The parties have agreed that the disputed amounts at issue in this proceeding are:

a. Lifeline Service $31,745.00

b. Link-Up Service . . . . . . $11,485.50[1]

c. Directory Assistance . . . $23,086.65

II. Lifeline Service

Though the largest item in dispute, the Lifeline issue merits only three paragraphs in BellSouth's brief (at pp. 6-7, 15-16). Those paragraphs merely reiterate that BellSouth's position in this litigation is consistent with the company's Lifeline tariff, which became effective on November 9, 1999. BellSouth does not address the fact that the tariff, on its face, violates the FCC's rules and evidently assumes that an intrastate tariff can override federal law.

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[1] As discussed in Discount's earlier brief, the parties have agreed to lay the Link-Up issue aside for the time being, pending a ruling from the FCC staff.

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The company states that BellSouth will provide Lifeline service to qualified customers at a discounted price of $10.50 less than the company's regular rate. Tariff Section A 3.31.1. On the same page, the tariff states that BellSouth will provide Lifeline service for resale at only $7.00 less than the normal rate.

Such discriminatory pricing is illegal. The FCC's rule on resale pricing states (47 C.F.R. § 51.607(a)):

> The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers <u>shall equal the incumbent LEC's existing retail rate</u> for the telecommunication service, less avoided retail costs. [Emphasis added; copy attached.]

As described in Discount's earlier brief, the FCC has made it clear that this rule on resale applies specifically to "below cost and residential services," including Lifeline service, which must be sold "at wholesale rates that include the Lifeline support amounts." See Discount's Pre-Hearing Brief, p. 6, and excerpts from the FCC's "Local Competition" and "Universal Service" orders.

Although informed by counsel for Discount that BellSouth's tariff is inconsistent with the FCC's rules and orders, BellSouth has not addressed the issue. Moreover, the company's continued efforts to force Discount to pay a higher rate for Lifeline service than BellSouth charges its own customers may well constitute a separate violation of the FCC's rules. At the least, the company's conduct is discriminatory and anti-competitive.

Though unmentioned in BellSouth's first brief, it may be anticipated that the company will contend sooner or later, that it is unfair to require BellSouth to offer to sell Lifeline service to resellers at the same, discounted rate BellSouth charges its own customers. The company's argument, which has been made in correspondence to the TRA staff, is that the reseller, not BellSouth, should contribute the intrastate portion ($3.50) of the Lifeline subsidy to the reseller's customer. In other words, BellSouth argues that it is willing to subsidize the $3.50 discount for its own customers but is not willing to subsidize the customers of other carriers.

Notwithstanding that BellSouth's position violates the plain language of the FCC's resale rule, BellSouth's "equitable" argument is also wrong. First, it should not matter to BellSouth whether the company sells Lifeline service to an end user for, say, $7.00 a month or to a reseller for the same amount (less avoided costs). The purpose of the FCC's resale rule is to make the incumbent economically indifferent to whether the incumbent sells service at a retail or wholesale rate. But according to BellSouth's logic, the company would pocket a $3.50 per month windfall every time a Lifeline customer decided to leave BellSouth for a reseller. BellSouth's proposal is neither equitable nor competitively neutral.

Second, BellSouth's position implicitly assumes that resellers must contribute $3.50 a month, per customer to the Lifeline program. That is a change to be made, if at all, by the TRA, not BellSouth.

Since Tennessee first joined the Lifeline program in 1991 (Docket 91-08797, Order issued December 20, 1991), the state has financed the intrastate portion of the program through contributions from incumbent, local exchange carriers. The value of that contribution has, in fact, remained at $3.50 per month, per customer, since 1991. Moreover, the local exchange carriers were allowed from the beginning to recover that contribution through increased rates charged to other subscribers. *See* Docket 91-08797. Like directory assistance or the telecommunications relay center for the hearing impaired, the costs of those services has always been included in regulated rates of contributing carriers.

Today, the TRA is in the process of crafting an intrastate universal service fund to which all carriers will presumably contribute some amount. That fund will presumably replace the current fund. It may or may not include resellers.[2]

The point is, however, that the state's share of the Lifeline program is today collected and distributed by incumbent LECs just as the relay center is funded by incumbent LECs and facilities-based IXCs. But these subsidized services should be-- and are-- equally available to all customers, regardless of which carrier serves them. No ILEC may refuse to provide Lifeline or relay services to a reseller's customer nor should an ILEC be able force a reseller to contribute to funding those services unless the TRA has made that decision.

In the "Universal Service" Order, paragraph 361, the FCC noted that "many states" subsidize Lifeline service, just as Tennessee does, solely from contributions by incumbent local exchange carriers. But, the FCC held, it is up to each state to decide whether to switch to another method of raising the state's contribution. Those considerations are irrelevant to the FCC and its

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[2] Congress and the FCC determined that pure resellers, like Discount, are ineligible to receive federal subsidies. Nevertheless the FCC explained, such a subsidy would still be "competitively neutral" as long as a reseller could purchase wholesale service at the subsidized rate charged by a facilities-based carrier. See, "Universal Service" order, FCC docket 97-156, paragraph 161 ("[I]t is appropriate for Congress to deny pure resellers universal service support because pure resellers receive the benefit of universal service support by purchasing wholesale services at a price based on the retail price of a service --- a price that already includes the universal support payment received by the incumbent provider."

requirement that Lifeline service be available for resale at the discounted retail rate. [A copy of paragraph 361 is attached.]

For these reasons, BellSouth's equitable arguments about Tennessee's current method of providing Lifeline service have no merit. Even if BellSouth's tariff were not illegal under federal law, the company's position is economically illogical and inconsistent with Tennessee's decade-old Lifeline program.

II. Directory Assistance. Here again, BellSouth's brief relies entirely on the company's tariff, which was approved months after the parties' resale agreement was signed, and ignores Discount's contention that the agreement itself fixes the price of directory assistance for the duration of the agreement.

As discussed in Discount's earlier brief, the resale agreement explicitly provides that, if Discount is willing to accept a 16% wholesale discount, rather than a 21.5% discount, Discount is entitled to use BellSouth's operator assistance and to obtain access to BellSouth's operator service. Given the state of the law at that time, *ie.*, BellSouth included directory assistance in the price of local exchange service and had always done so, it is unreasonable to interpret the terms of the resale agreement in any other manner. Certainly, even BellSouth must acknowledge that Discount would not have offered a pre-pay service to its customers unless Discount believed that the directory assistance rate was fixed in the resale agreement.

When the TRA later approved BellSouth's tariff to charge for directory assistance, there was no public discussion of the impact of the tariff on Lifeline customers or the customers of a pre-paid service. Unless the TRA can resolve this issue, no pre-paid carrier will be able to offer

Lifeline service which, according to the FCC's rules, must include access to directory assistance. The only way that a pre-paid carrier can offer Lifeline service will be if the TRA either directs BellSouth to offer directory assistance to all Lifeline users at no charge or to block directory assistance after six calls. Otherwise, low income customers with poor credit will be unable to obtain Lifeline service from any carrier.

These issues were not discussed when the TRA approved BellSouth's directory assistance tariff. Until the TRA is willing to address these concerns, the universal service goals which the Lifeline program is intended to promote will remain out of reach.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: ______________________

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A3. BASIC LOCAL EXCHANGE SERVICE

A3.31 Lifeline

A3.31.1 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, ***which includes the access line, Touch-Tone, the Subscriber Line Charge and local usage.*** (C)

A3.31.2 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 *B.* following. (T)
3. A Lifeline customer may subscribe to the current capped message rate Lifeline plan (USOC LM8) 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 presubscribe 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 *service* 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. (T)
8. ***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.*** (C)

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.

[Code of Federal Regulations]
[Title 47, Volume 3, Parts 40 to 69]
[Revised as of October 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR51.603]

[Page 45]

TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION--(CONTINUED)

PART 51--INTERCONNECTION--Table of Contents

Subpart G--**Resale**

Sec. 51.603 **Resale obligation** of all local exchange carriers.

(a) A LEC shall make its telecommunications services available for **resale** to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(b) A LEC must provide services to requesting telecommunications carriers for **resale** that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.

[Code of Federal Regulations]
[Title 47, Volume 3, Parts 40 to 69]
[Revised as of October 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 47CFR51.607]

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TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION--(CONTINUED)

PART 51--INTERCONNECTION--Table of Contents

Subpart G--Resale

Sec. 51.607 Wholesale pricing standard.

(a) The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs, as described in Sec. 51.609.

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

today actually results in a combination of state and federal funding of $10.50 per consumer, if the state provides funding sufficient to generate the maximum amount of federal support, rather than the $9.00 in support that CPI suggests. Further, we decline to adopt a proposal in which the federal support amount would vary by state, because this variation could make the size of the universal service support mechanisms unpredictable and the program difficult to administer.[(909)] Additionally, CPI's proposal would not entail significant state involvement in determining and achieving affordable rates for low-income consumers. As for commenters concerned about the amount of support for low-income individuals living in high cost areas,[(910)] we are confident that the support mechanisms we adopt today for high cost, rural, and insular areas, combined with Lifeline, will achieve sufficient assistance for low-income consumers in high cost areas.

361. The Joint Board observed that many states currently generate their matching funds through the state rate-regulation process.[(911)] These states allow incumbent LECs to recover the revenue the carriers lose from charging Lifeline customers less by charging other subscribers more. Florida PSC points out that this method of generating Lifeline support from the intrastate jurisdiction could result in some carriers (i.e., ILECs) bearing an unreasonable share of the program's costs.[(912)] We see no reason at this time to intrude in the first instance on states' decisions about how to generate intrastate support for Lifeline. 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. We note, however, that states must meet the requirements of section 254(e) in providing equitable and non-discriminatory support for state universal service support mechanisms.

362. We also conclude that we must seek further guidance from the Joint Board on how to ensure the integrity of the Lifeline program in light of changes we make today to our access charge rules. In the *Access Charge Reform Order* , as part of our effort to implement the Joint Board's suggestion that the current per-minute CCL charge be modified to reflect the non-traffic sensitive nature of loop costs, we implement a flat charge per primary residential line that is to be assessed against the PIC. If the customer does not select a PIC, however, the presubscribed interexchange carrier charge (PICC) will be assessed against the end user.[(913)]

363. We wish to ensure that these changes to our Part 69 rules, which were not contemplated when the Joint Board made its recommendations,[(914)] will not have an adverse impact on Lifeline customers. Specifically, we are concerned that the PICC may be assessed against Lifeline customers who elect to receive toll blocking (for which federal support will now be provided) because they will have no PIC associated with their lines. Accordingly, we seek further guidance from the Joint Board on how to maintain the integrity of the Lifeline program and ensure competitive neutrality in light of these changes to our Part 69 rules.

b. Making Lifeline Competitively Neutral

364. Section 254(b)(7) gives the Joint Board and Commission the authority to adopt additional principles upon which to base the preservation and advancement of universal service. In this Order, we endorse the Joint Board's recommendation that we adopt the principle of "competitive neutrality" and conclude that universal service support mechanisms and rules should not unfairly advantage one provider, nor favor one technology.[(915)] Consistent with this principle, we agree with the Joint Board [(916)] that the funding mechanisms for Lifeline should be made more competitively neutral. Like the

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 7th day of April, 2000.

Patrick Turner, Esq.
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