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January 10, 2005

**VIA ELECTRONIC DELIVERY**

*(COURTESY COPIES HAND-DELIVERED)*

**ATTN: Form 499-A Revision Order**

Jeffrey A. Mitchell, Esq.  
Associate General Counsel  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington D.C. 20036

**Re: Form 499-A Revision Order; In the Matter of a Request for Review By  
Eureka Broadband Corporation of A Decision of the Universal Service  
Administrator; CC Docket No. 96-45, CC Docket No. 97-21**

**Request for Further Review, and Submission of Supplemental  
Information**

Dear Mr. Mitchell:

On behalf of Eureka Broadband Corporation ("Eureka" or "the Company") as successor-in-interest to Gillette Global Network, Inc. ("Gillette" or "GGN"), we hereby submit supplemental information to the Universal Service Administrative Company ("USAC") pursuant to an Order of the Federal Communications Commission ("FCC" or "Commission") released on December 9, 2004 (the "499 Revision Order").<sup>1</sup> This submission is made in further support of Eureka's September 30, 2004 Appeal of the decision of USAC regarding two revised 499-A filings ("Appeal").

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, DA 04-3669 (rel. December 9, 2004) ("499 Revision Order").

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**I. THE 499 REVISION ORDER REQUIRES USAC TO REVIEW REQUESTS TO ACCEPT AMENDED FORM 400-As**

The Commission released its *Order* concerning a modification in the deadline for filing revisions to the Telecommunications Worksheet ("Form 499-A") on December 9, 2004 and it becomes effective on January 10, 2005. The *Order* expressly considered the USAC practice of rejecting Form 499-As not submitted within one year of the due date of the original filing, if the revision would decrease regulatory fees or contributions to the Universal Service Fund ("USF").

The Commission decided to uphold the general USAC practice by adopting the one-year filing deadline on a prospective basis, applying a strict filing requirement to all 499 filings made after the effective date of the *Order*. The Commission, nevertheless, acknowledged numerous pending petitions for review of USAC's policy which were filed before the issuance of the *499-A Revision Order*.

With regard to the pending requests, the *Order* instructs USAC to review these pending petitions, and to consider any new information filed up through the effective date of the *Order*. Specifically, the *Order* announces that the Commission will "remand these requests to USAC and direct USAC to revise universal service contribution obligations as appropriate provided that (1) the Petitioner has demonstrated good cause for submitting the revision beyond the one-year revision window; and (2) the Petitioner has provided an explanation of the cause for the change along with complete documentation showing how the revised figures derive from corporate financial records."

Finally, the *Order* requires USAC to give consideration to the pending petitions in strict compliance with the limited remand described by the Commission. The *Order* notes that to the extent a petition raises issues other than the acceptance of the revision of a 499-A, the Commission retains these issues for disposition at another time by the Wireline Competition Bureau or the Commission. In this case, one such is the issue of whether a Eureka must contribute certain funds to the USF if another carrier collected and subsequently remitted those same funds to the USF.

In the *499 Revision Order*, the Commission "grant[ed] the pending requests for review" and directed USAC "to consider if there was good cause to allow revisions" of Eureka's 499 forms beyond the one-year deadline.<sup>2</sup> In so stating, the Commission directed USAC to m

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<sup>2</sup> See *499 Revision Order* at ¶ 13.

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consider fully the substantive arguments and evidence submitted by carriers petitioning for acceptance of their revised forms.

Thus, pursuant to the *499-A Revision Order*, we submit this further request for review by USAC. As is discussed in detail in the following section, on September 30, 2004, Eureka submitted to the Commission and USAC, a request for review of USAC's decision rejecting 499s submitted by Eureka for the reporting years 2000 and 2001 (for revenues generated in 1999 and 2000).<sup>3</sup> By this supplemental submission, Eureka reiterates critical points of information contained in the Company's initial *Appeal*, and appends a copy of the Appeal to this filing as *Attachment A*. The information in the initial petition, standing alone, provides justification for USAC to accept Eureka's revised 499-As. Nonetheless, as the Commission offered in the *499-A Revision Order*, Eureka also submits new information in support of its request to accept the revised 499s-As. Taken together, these submissions present a compelling case for granting Eureka's request to accept the revised filings.

## II. THE ISSUE IN DISPUTE: WHETHER USAC SHOULD ACCEPT EUREKA'S REVISED 499-As FOR 2000 AND 2001

### *Background and Corporate History of Eureka*

The specific circumstances of Eureka's corporate history, and its prior communications with USAC, serve as a substantial basis by which USAC should accept Eureka's revised 499-A forms for the reporting years 2000 and 2001. Eureka is a New York City-based provider of resale and facilities-based telecommunications services to enterprise customers in New York, Maryland, Virginia, and Washington, D.C. Eureka is a company that has grown through acquisitions over the last five years. Due to the nature of these transactions, the Company's current management did not have oversight of the 499-A filing process during the relevant time periods.

### *The Effect of Corporate Acquisitions on Eureka's Form 499-A Filings*

Since Eureka Broadband Corporation's inception, the Company has acquired seven (7) different companies, including Eureka's subsidiaries Gillette Global Network and eLink Communications. Although each subsequent corporate acquisition since 1999 increased revenues and customers, and therefore allowed the company to survive through difficult economic times, each created significant turmoil. At the time of each acquisition, the target

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<sup>3</sup> Appeal of Decision of the Universal Service Administrative Company Concerning Eureka Broadband Corporation's Revision to Form 499-A and Application of Charges, filed September 30, 2004 ("*Eureka Appeal*" or "*Appeal*").

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companies were distressed, plagued with poor record systems, and unstable workforces, which made each merger integration more difficult than normal for competitive telecommunications businesses. In particular, the absence of a unified billing platform among the different entities created significant problems for the Company – not the least of which was tracking and categorization of revenues. By 2004, however, Eureka's management completed an internal evaluation of its records, properly reorganized the Company, and determined revenue histories of the Company's various predecessors.

The full integration of the varied operational components of each of the seven acquired businesses was a difficult process that has taken a total of three years. In fact, not until late in the third quarter of 2003 did Eureka establish a single, fully integrated, billing system to enable accurate tracking and identification of USF-eligible revenues.<sup>4</sup> This created two problems central to the issues in the *Appeal* currently before USAC:

- First, at the time Eureka approached USAC and the FCC in May 2004, the Company did not believe, nor did it have any knowledge, that GGN had previously filed any Form 499-As. In particular, Eureka was unaware that GGN filed a Form 499-A in 2000.
- Second, GGN never filed a 499-A in 2001 (for year 2000 revenues). Rather, USAC created a 499-A reflecting "projected" revenues, derived from the incorrect GGN-filed form.

Only after Eureka voluntarily approached the Commission and USAC to disclose its outstanding debt, did the Company discover that the previous 499-As had been submitted and those filings were incorrect.<sup>5</sup>

*Eureka's Voluntary Payment Plan and "Revised" Filing Efforts*

Eureka created the 499-As, including those for the reporting years 2000 and 2001, based upon financial and accounting records remaining with the Company after the disruption of September 11, 2001 and subsequent merger reorganizations. To calculate its USF obligations, Eureka utilizes computer software which applies appropriate factors to gross revenues and derives those amounts subject to contribution to the USF.

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<sup>4</sup> See *Eureka Appeal* at Exhibit 4, citing May 5, 2004 Letter to Timothy Peterson, Federal Communications Commission from Jeffrey Ginsberg, Chairman, Eureka Networks.

<sup>5</sup> See *Eureka Appeal* at Exhibit 4, citing May 10, 2004 Letter re: Proposed Payment Plan Arrangements to Timothy Peterson, Federal Communications Commission from Jonathan E. Canis and Darius B. Withers, Kelley Drye & Warren LLP.

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On May 10, 2004, after conducting an internal review of its records and completing calculations, Eureka submitted (on behalf of the predecessor companies and surviving USF Filer entity, GGN) a retroactive filing of Form 499-As for a range of years, from 1999 and continuing through 2004 (representing revenues from 1998 through 2003) as well providing the Commission and USAC with a Voluntary Payment Plan proposal.

In June of 2004, however, Eureka received an automatically generated letter from USAC advising Eureka that the new, "revised" FCC Form 499-A forms for the reporting years 2000 and 2001 (1999 and 2000 revenues) were being rejected ("2000/2001 Revised Filing").<sup>6</sup> Only then did Eureka learn, for the first time, that an older, GGN-authored form was "on-file" with USAC. This occurred, after the Company voluntarily and without any contact from USAC, approached it and the FCC to resolve its USF obligations.

Thus, at the time Eureka made its filing, it was unaware that with respect to two forms, the submissions would be considered "revised" filings. Eureka submitted its Voluntary Payment Plan, complete with 499-As for prior years, with the understanding that its filings were new, original, filings.

*The 2000 GGN Form 499-A and the USAC-Generated 2001 Filing Were Erroneous and Grossly Overstated the Amount of USF Contributions Owed By Eureka*

After receiving information from USAC regarding the prior filings, Eureka conducted an internal investigation of its available records. The Company identified critical mistakes in the earlier filings. First, GGN's 2000 filings mistakenly included gross revenues as the eligible USF-revenue base. In particular, GGN included Internet Service Provider (ISP) and other non-USF eligible revenues in its calculations. Eureka easily identified these mistakes by taking the same revenue information and completing the 499-A properly, per the 499-A Worksheet Instructions, and excluding the non-USF eligible revenues from the reported revenue base. By deducting revenues attributable to Internet service, local service, and other non-telecommunications revenues, Eureka determined that GGN overstated the predecessor company's USF obligation in the 2000 499-A filing by \$205,887.14.

Second, GGN never made a 2001 filing. As the Company discovered, because of USAC's standard practice of using a carrier's prior filing to "project" the revenues of a USF filer in the following year (if the carrier fails to file), the same calculation mistakes from the 2000 filing were reflected in the USAC-generated 2001 499-A. The 2001 499-A was based on the

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<sup>6</sup> Copies of relevant correspondence between Eureka's counsel and the Commission and USAC are enclosed herein as exhibits to *Eureka Appeal*.

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flawed 2000 GGN filing. In a manner identical to the calculations performed for the GGN 2000 filing, the Company concluded that the USAC-generated 2001 499-A overstated the USF obligation for Eureka by \$44,483.09.

Finally, the Company determined that both filings failed to account for payments made by GGN to MCI, Inc., which MCI, in turn, remitted directly to the USF. Eureka acknowledges this latter issue is still pending before the FCC, and is not ripe for resolution by USAC at this time. Eureka notes it, however, to illustrate a further flaw inherent in the GGN filing, thereby rendering the alleged accuracy of these earlier filings even more suspect.

**III. EUREKA'S PETITION FOR REVIEW PROVIDES ADEQUATE INFORMATION TO COMPEL THE ACCEPTANCE OF THE REVISED 2000 AND 2001 499-A FILINGS**

Eureka's *Appeal* describes in detail the process by which the Company approached the FCC and USAC voluntarily to present a payment plan and submit new 499-A filings to USAC to resolve any outstanding regulatory obligations. In addition to outlining the legal shortcomings inherent in USAC's practices, the *Appeal* chronicles the Payment Plan process initiated by USAC in May of 2004. The very process required for Eureka to submit information to USAC, and therefore comply with the Payment Plan obligations, also required Eureka to certify to the accuracy of its submissions, including all financial information relied upon or submitted by the Company. It also required Eureka to identify any issues for appeal to the FCC.

Furthermore, adequate information is contained in Eureka's appeal to justify acceptance of the revised 499-A filings. As described in the *Appeal* in greater detail, the "original" 499-A filing in 2000 represents erroneous data mistakenly calculated by GGN. In the specific instance of the "original" 2001 Form 499-A, the submission did not reflect an actual filing by GGN or by Eureka. Instead, it reflects only an assessment, or a projection of revenues created by USAC, based upon erroneous data from the GGN filing submitted in 2000. As noted herein, we have appended the *Eureka Appeal* to this supplemental submission, and reiterate that the information originally filed in the *Appeal* fully supports acceptance of the revised 2000 and 2001 499-A filings.

**IV. THE ADDITIONAL INFORMATION PROVIDED IN THIS FILING FURTHER SUPPORTS ACCEPTANCE OF THE REVISED 2000 AND 2001 499-A FILINGS**

The documentation attached hereto at *Attachments A and B* shows that USAC's rejection of Eureka's revised 2000 and 2001 submissions are not supported on the record. As is addressed in detail in the attached *Appeal*, the difference between the USF obligations based

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upon the predecessor company GGN's submissions and the successor-in-interest Eureka's revised submissions, total \$250,370.23.<sup>7</sup> This difference is due to GGN's inclusion of non-USF eligible revenues in their previously submitted 499-A forms. This error caused a significant overstatement of GGN's USF obligations in its 2000 filing.

As noted earlier, the "original" 2001 499-A assessment, which was created by USAC because GGN never submitted a filing for 2001, is inherently flawed because it is based upon the erroneous data submitted by GGN in its 2000 Form 499-A submission. But, as discussed here and in the *Appeal*, documentation provided by Eureka demonstrates that the revenues reported by GGN to compute its USF obligation in 2000 included non-USF eligible revenues. This demonstrable error in GGN's 2000 form constitutes *prima facie* evidence that supports acceptance of the revised 499-A forms. Moreover, the newly submitted documentation at *Attachment B* illustrates that Eureka's 2000 and 2001 revised submissions were developed consistent with the methodology applied to Eureka's subsequent filings for 2002, 2003, and 2004. Notably, USAC accepted the underlying information contained in these later filings.

As a final point of support for revision of its 499-A forms, Eureka submits, as it has on multiple occasions in the past before USAC, a certification from a corporate officer that the financial information submitted to USAC – in this proceeding and the payment plan negotiations - is true and accurate. The certification is attached hereto as *Attachment C*.

The Information provided in Eureka's earlier *Appeal*, and the supplemental information provided herein, show conclusively that failure to accept Eureka's revised filings for 2000 and 2001 would lead to a gross overstatement of Eureka's USF obligations. USAC's failure to accept Eureka's May 2004 filings would result in a considerable overpayment to the USF. We also note that such action represents an unconstitutional taking under the 5<sup>th</sup> Amendment of the Constitution.

At bottom, USAC cannot justifiably deny Eureka's request for acceptance of its revised filings. Eureka has provided a logical "explanation of the cause for the change" in its predecessor GGN's 499-As, and supporting documentation to show how it arrived at its revised filing, per the directives in the FCC's Order. The *Order* further instructs USAC to "consider any new information filed up through the effective date of the *Order*." As requested, Eureka has provided this additional information and clarified the facts contained in its pending *Appeal* to support a decision to accept the Company's revised 499-A submissions.

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<sup>7</sup> See *Eureka Appeal* at 3, 7-14.

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V. CONCLUSION

In closing, Eureka has demonstrated good cause for its filing of revised 499-A forms for 2000 and 2001. We respectfully request that USAC consider all the information submitted by Eureka, including information submitted to it during Eureka's voluntary offering of a payment plan proposal to USAC in May of 2004; conclude that this information provides adequate grounds for revising the GGN filing of 2000, and the USAC-calculated filing of 2001; and accept the revised filings that Eureka has submitted for those years.

Respectfully submitted,

/s/ Jonathan E. Canis /s/

Jonathan E. Canis  
Darius B. Withers  
*Counsel to Eureka Broadband Corporation*

Attachments (as noted)

cc: Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission (*courtesy-copy hand-delivered*)  
Narda Jones, Esq., Chief, Telecommunications Access Policy Division (*courtesy copy hand-delivered*)  
Anita Cheng, Esq., Assistant Chief, Telecommunications Access Policy Division, Federal Communications Commission (*courtesy-copies hand and electronically delivered*)  
Paul K. Cascio, Esq., Assistant General Counsel, Office of the General Counsel, Federal Communications Commission (*courtesy-copies hand and electronically delivered*)  
Mr. Mark A. Carmichael, Vice-President, Finance, Universal Service Administrative Company (*courtesy copy hand delivered*)  
Mr. Michael Lawrence, Universal Service Administrative Company (*courtesy-copies hand and electronically delivered*)

**Eureka Broadband Corporation**  
**successor-in-interest to**  
**Gillette Global Network, Inc.**  
 Form 499-A  
 Year 2000

**Reconciliation of Gross Sales to Federal Tax Return**

1999 Gross Sales	6,419,542	Per Form 1120 Provided as Exhibit A
Adjustment for Accrued Revenue	(422,480)	
Gross Billed Revenue	5,997,062	Per Form 499A Amended Filing in May-2004

**Reconciliation to Amended Form 499-A**

	<u>Total</u>	<u>% Interstate*</u>	<u>% International*</u>	<u>\$ Interstate</u>	<u>\$ International</u>
USF Billed	59,228	80.0%	20.0%	47,382	11,846
Local Services	1,851,375	0.0%	0.0%	-	-
Long Distance Services	492,613	60.0%	20.0%	295,568	98,523
Internet Services	3,593,846	0.0%	0.0%	-	-
	<u>5,997,062</u>			<u>342,950</u>	<u>110,368</u>

\*Allocation Based on 2001 - 2003 Billings (provided as Exhibit B)

**Original Form 499-A Filed Sept-2000**

	<u>Total</u>	<u>% Interstate*</u>	<u>% International*</u>	<u>\$ Interstate</u>	<u>\$ International</u>
USF Billed	58,500	94.9%	0.0%	55,500	-
Local Services	280,000	0.0%	0.0%	-	-
Subscriber Line Charge	6,000	100.0%	0.0%	6,000	-
Local Private Lines	1,800	0.0%	0.0%	-	-
Long Distance Services	4,989,000	79.0%	0.0%	3,941,000	-
Long Distance Private Line Services	34,500	100.0%	0.0%	34,500	-
Other Long Distance Services	100,000	88.5%	2.8%	88,500	2,800
Internet Services	446,000	0.0%	0.0%	-	-
	<u>5,915,800</u>			<u>4,125,500</u>	<u>2,800</u>

## EXHIBIT A

Form **1120** Department of the Treasury Internal Revenue Service **U.S. Corporation Income Tax Return 1999**

Instructions are separate. See instructions for Paperwork Reduction Act Notice.

IRS use only - Do not write or staple in this space.

For calendar year 1999 or tax year beginning 1999, ending 1999, ending OMB No. 1545-0123

<b>A Check if a:</b> 1 Consolidated return (attach Form 851) <input type="checkbox"/> 2 Personal holding company (attach Schedule PH) <input type="checkbox"/> 3 Personal service corp (as defined in Temp Regs Section 1.441-4T - see instructions) <input type="checkbox"/>		Use IRS label. Otherwise, please print or type.	Name <b>GILLETTE GLOBAL NETWORK INC</b>	B Employer Identification Number <b>13-3793720</b>
			Number, Street, and Room or Suite Number (if a P.O. box, see instructions.) <b>39 BROADWAY 19TH FLOOR</b>	C Date Incorporated <b>10/27/94</b>
			City or Town State ZIP Code <b>NEW YORK NY 10006</b>	D Total Assets (see instructions)

E Check applicable boxes: (1) Initial return (2) Final return (3) Change of address \$ 5,244,317.

INCOME	1 a Gross receipts or sales	6,419,542	b Less returns & allowances		c Balance	1c	6,419,542
	2 Cost of goods sold (Schedule A, line 8)					2	4,338,358
	3 Gross profit. Subtract line 2 from line 1c					3	2,081,184
	4 Dividends (Schedule C, line 19)					4	
	5 Interest					5	8,812
	6 Gross rents					6	
	7 Gross royalties					7	
	8 Capital gain net income (attach Schedule D (Form 1120))					8	
	9 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)					9	
	10 Other income (see instructions - attach schedule)					10	
	11 Total income. Add lines 3 through 10					11	2,089,996
DEDUCTIONS	12 Compensation of officers (Schedule E, line 4)					12	269,230
	13 Salaries and wages (less employment credits)					13	1,517,872
	14 Repairs and maintenance					14	13,698
	15 Bad debts					15	
	16 Rents					16	141,428
	17 Taxes and licenses					17	149,432
	18 Interest					18	29,620
	19 Charitable contributions (see instructions for 10% limitation)					19	
	20 Depreciation (attach Form 4562)	20	42,353				
	21 Less depreciation claimed on Schedule A and elsewhere on return	21a				21b	42,353
	22 Depletion					22	
	23 Advertising					23	80,724
	24 Pension, profit-sharing, etc, plans					24	46,366
	25 Employee benefit programs					25	
26 Other deductions (attach schedule) See Other Deductions Statement					26	1,319,063	
27 Total deductions. Add lines 12 through 26					27	3,609,786	
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11					28	-1,519,790	
29 Less: a Net operating loss (NOL) deduction (see instructions)	29a						
b Special deductions (Schedule C, line 20)	29b				29c		
30 Taxable income. Subtract line 29c from line 28					30	-1,519,790	
31 Total tax (Schedule J, line 12)					31		
32 Payments: a 1998 overpayment credited to 1999	32a	28					
b 1999 estimated tax payments	32b						
c Less 1999 refund applied for on Form 4466	32c						
d Bal			32d	28			
e Tax deposited with Form 7004			32e				
f Credit for tax paid on undistributed capital gains (attach Form 2439)			32f				
g Credit for federal tax on fuels (attach Form 4136). See instructions			32g		32h	28	
33 Estimated tax penalty (see instructions). Check if Form 2220 is attached					33		
34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed					34		
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid					35	28	
36 Enter amount of line 35 you want Credited to 2000 estimated tax				Refunded	36	28	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here: Signature of Officer **COPY** Date \_\_\_\_\_ Title \_\_\_\_\_

Paid Preparer's Use Only: Preparer's Signature \_\_\_\_\_ Date \_\_\_\_\_ Check if self-employed  Preparer's SSN or PTIN **059-60-7790**

Firm's Name (or yours if self-employed) and Address: **NEUSCHATZ & NEUSCHATZ, LLP** EIN **22-3393330**  
**20-24 FAIR LAWN AVENUE**  
**FAIR LAWN NJ** ZIP Code **07410**

**Schedule A Cost of Goods Sold** (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4	Additional Section 263A costs (attach schedule)	4	
5	Other costs (attach schedule) See Other Costs Statement	5	4,338,358.
6	<b>Total.</b> Add lines 1 through 5	6	4,338,358.
7	Inventory at end of year	7	
8	<b>Cost of goods sold.</b> Subtract line 7 from line 6. Enter here and on line 2, page 1	8	4,338,358.

9a Check all methods used for valuing closing inventory:

- (i)  Cost as described in Regulations Section 1.471-3
- (ii)  Lower of cost or market as described in Regulations Section 1.471-4
- (iii)  Other (specify method used and attach explanation)

b Check if there was a writedown of subnormal goods as described in Regulations Section 1.471-2(c)

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970)

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO **9d**

e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation?  Yes  No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If 'Yes,' attach explanation  Yes  No

**Schedule C Dividends and Special Deductions** (see instructions)

	(a) Dividends received	(b) Percentage	(c) Special deductions (a) x (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)	70	
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)	80	
3	Dividends on debt-financed stock of domestic and foreign corporations (Section 246A)		
4	Dividends on certain preferred stock of less-than-20%-owned public utilities	42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities	48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction	70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction	80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (Section 245(b))	100	
9	<b>Total.</b> Add lines 1 through 8. See instructions for limitation		
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958	100	
11	Dividends from certain FSCs that are subject to the 100% deduction (Sec 245(c)(1))	100	
12	Dividends from affiliated group members subject to the 100% ded (Section 243(a)(3))	100	
13	Other dividends from foreign corporations not included on lines 3, 6, 7, 8, or 11		
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)		
15	Foreign dividend gross-up (Section 78)		
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (Section 246(d))		
17	Other dividends		
18	Deduction for dividends paid on certain preferred stock of public utilities		
19	<b>Total dividends.</b> Add lines 1 through 17. Enter here and on line 4, page 1		
20	<b>Total special deductions.</b> Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1		

**Schedule E Compensation of Officers** (see instructions for line 12, page 1)

Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

1	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
				(d) Common	(e) Preferred	
	JOSEPH GILLETTE	191-60-5409	100.0%	%	%	151,538.
	RAUL MARTYNEK	085-64-4093	100.0%	%	%	117,692.
			%	%	%	
			%	%	%	
			%	%	%	
2	<b>Total compensation of officers</b>					269,230.
3	Compensation of officers claimed on Schedule A and elsewhere on return					
4	<b>Subtract line 3 from line 2. Enter the result here and on line 12, page 1</b>					269,230.

**Schedule J Tax Computation** (see instructions)

1 Check if the corporation is a member of a controlled group (see Sections 1561 and 1563)  **3**

**Important:** Members of a controlled group, see instructions.

2a If the box on line 1 is checked, enter the corporation's share of the \$50,000, \$25,000, & \$9,925,000 taxable income brackets (in that order):

(1) \$ \_\_\_\_\_ (2) \$ \_\_\_\_\_ (3) \$ \_\_\_\_\_

b Enter the corporation's share of:

(1) Additional 5% tax (not more than \$11,750) ..... \$ \_\_\_\_\_

(2) Additional 3% tax (not more than \$100,000) ..... \$ \_\_\_\_\_

3 Income tax. Check if a qualified personal service corporation under Section 448(d)(2) (see instructions)  **3**

4a Foreign tax credit (attach Form 1118) **4 a**

b Possessions tax credit (attach Form 5735) **4 b**

c Check:  Nonconventional source fuel credit  QEV credit (attach Form 8834) **4 c**

d General business credit. Enter here and check which forms are attached:

<input type="checkbox"/> 3468	<input type="checkbox"/> 5884	<input type="checkbox"/> 6478	<input type="checkbox"/> 6765	<input type="checkbox"/> 8586	<input type="checkbox"/> 8830	<input type="checkbox"/> 3800
<input type="checkbox"/> 8835	<input type="checkbox"/> 8844	<input type="checkbox"/> 8845	<input type="checkbox"/> 8846	<input type="checkbox"/> 8820	<input type="checkbox"/> 8847	<input type="checkbox"/> 8826
						<input type="checkbox"/> 8861

**4 d**

e Credit for prior year minimum tax (attach Form 8827) **4 e**

5 **Total credits.** Add lines 4a through 4e **5**

6 Subtract line 5 from line 3 **6**

7 Personal holding company tax (attach Schedule PH (Form 1120)) **7**

8 Recapture taxes. Check if from:  Form 4255  Form 8611 **8**

9 Alternative minimum tax (attach Form 4626) **9**

10 Add lines 6 through 9 **10**

11 Qualified zone academy bond credit (attach Form 8860) **11**

12 **Total tax.** Subtract line 11 from line 10. Enter here and on line 31, page 1 **12**

**Schedule K Other Information** (see instructions)

	Yes	No		Yes	No
1 Check method of accounting: a <input type="checkbox"/> Cash			7 Was the corporation a U.S. shareholder of any controlled foreign corporation? (See Sections 951 and 957.)		X
b <input checked="" type="checkbox"/> Accrual c <input type="checkbox"/> Other (specify) ▶			If 'Yes,' attach Form 5471 for each such corporation. Enter no. of Forms 5471 attached ▶		
2 See the instructions and enter the:			8 At any time during the 1999 calendar year, did the corporation have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country?		X
a Business activity code no. ▶			If 'Yes,' the corporation may have to file Form TD F 90-22.1. If 'Yes,' enter name of foreign country ▶		
b Business activity ▶ <u>TELEPHONE DIALTONE</u>			9 During the tax year, did the corporation receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If 'Yes,' the corporation may have to file Form 3520		X
c Product or service ▶ <u>RESELLER SERVICES</u>			10 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of: (a) the total voting power of all classes of stock of the corporation entitled to vote, or (b) the total value of all classes of stock of the corporation?		X
3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see Section 267(c).)		X	If 'Yes,'		
If 'Yes,' attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year.			a Enter percentage owned ▶		
4 Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?		X	b Enter owner's country ▶		
If 'Yes,' enter name and EIN of the parent corporation ▶			c The corporation may have to file Form 5472. Enter number of Forms 5472 attached ▶		
5 At the end of the tax year, did any individual, partnership, corporation, estate or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see Section 267(c).)	X		11 Check this box if the corporation issued publicly offered debt instruments with original issue discount		<input type="checkbox"/>
If 'Yes,' attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.)			If checked, the corporation may have to file Form 8281.		
Enter % owned ▶ _____ See Ques 5 Stmt			12 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ \$ _____		
6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See Sections 301 and 316.)		X	13 If there were 75 or fewer shareholders at the end of the tax year, enter the number ▶ _____		
If 'Yes,' file Form 5452. If this is a consolidated return, answer here for the parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.			14 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here <input type="checkbox"/>		
			15 Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 29a.)		
			▶ \$ _____		

Schedule L Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		178,972.		2,687,734.
2a	Trade notes and accounts receivable	1,467,028.		1,626,479.	
b	Less allowance for bad debts		1,467,028.	179,000.	1,447,479.
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule) Ln. 6 Stmt				43,458.
7	Loans to shareholders		58,912.		
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	68,799.		866,403.	
b	Less accumulated depreciation	49,302.	19,497.	91,655.	774,748.
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)	20,323.		20,323.	
b	Less accumulated amortization	11,365.	8,958.	15,395.	4,928.
14	Other assets (attach schedule) Ln. 14 Stmt		108,049.		285,970.
15	Total assets		1,841,416.		5,244,317.
<b>Liabilities and Shareholders' Equity</b>					
16	Accounts payable		1,586,268.		2,255,018.
17	Mortgages, notes, bonds payable in less than 1 year				180,265.
18	Other current liabilities (attach sch) Ln. 18 Stmt		157,750.		965,712.
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more		60,008.		353,990.
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock			3,290,000.	
b	Common stock	210.	210.	25,210.	3,315,210.
23	Additional paid-in capital		40,206.		109,164.
24	Retained earnings - Approp				
25	Retained earnings - Unappropriated		-3,026.		-1,935,042.
26	Adjustments to shareholders' equity				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		1,841,416.		5,244,317.

Note: The corporation is not required to complete Schedules M-1 and M-2 if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return (see instructions)					
1	Net income (loss) per books	-1,932,016.	7	Income recorded on books this year not included on this return (itemize):	
2	Federal income tax	3,000.		Tax-exempt interest \$	
3	Excess of capital losses over capital gains	167,661.			
4	Income subject to tax not recorded on books this year (itemize):				
5	Expenses recorded on books this year not deducted on this return (itemize):		8	Deductions on this return not charged against book income this year (itemize):	
a	Depreciation \$		a	Depreciation .. \$	
b	Contributions carryover .. \$	7,437.	b	Contribn carryover \$	
c	Travel & entertainment .. \$	54,586.			
	See Ln 5 Stmt	179,542.			
		241,565.	9	Add lines 7 and 8	
6	Add lines 1 through 5	-1,519,790.	10	Income (line 28, page 1) - line 6 less line 9	-1,519,790.

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)					
1	Balance at beginning of year	-3,026.	5	Distributions	a Cash
2	Net income (loss) per books	-1,932,016.		b Stock	c Property
3	Other increases (itemize):		6	Other decreases (itemize):	
			7	Add lines 5 and 6	
4	Add lines 1, 2, and 3	-1,935,042.	8	Balance at end of year (line 4 less line 7)	-1,935,042.

**Schedule D**  
**(Form 1120)**

Department of the Treasury  
Internal Revenue Service

**Capital Gains and Losses**

▶ Attach to Form 1120, 1120-A, 1120-F, 1120-FSC, 1120-H,  
1120-IC-DISC, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT,  
1120-RIC, 1120-SF, 990-C, or certain Forms 990-T.

OMB No. 1545-0123

**1999**

Name

GILLETTE GLOBAL NETWORK INC

Employer Identification Number

13-3793720

**Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less**

(a) Description of property (Example, 100 shares of Z Co)	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) (Subtract (e) from (d))
1					
2	Short-term capital gain from installment sales from Form 6252, line 26 or 37				2
3	Short-term gain or (loss) from like-kind exchanges from Form 8824				3
4	Unused capital loss carryover (attach computation)				4
5	Net short-term capital gain or (loss). Combine lines 1 through 4				5

**Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year**

6	STOCK LIII	Various	12/31/99	0.	167,661.	-167,661.	
7	Enter gain from Form 4797, column (g), line 7 or 9					7	
8	Long-term capital gain from installment sales from Form 6252, line 26 or 37					8	
9	Long-term gain or (loss) from like-kind exchanges from Form 8824					9	
10	Net long-term capital gain or (loss). Combine lines 6 through 9					10	-167,661.

**Part III Summary of Parts I and II**

11	Enter excess of net short-term capital gain (line 5) over net long-term capital loss (line 10)	11	
12	Net capital gain. Enter excess of net long-term capital gain (line 10) over net short-term capital loss (line 5)	12	
13	Add lines 11 and 12. Enter here and on Form 1120, page 1, line 8, or the proper line on other returns	13	

**Note:** If losses exceed gains, see **Capital losses** in the instructions.

BAA For Paperwork Reduction Act Notice, see the instructions for Forms 1120 and 1120-A.

Schedule D (Form 1120) 1999

**Depreciation and Amortization**  
(Including Information on Listed Property)

**1999**

67

Department of the Treasury  
Internal Revenue Service (99)

▶ See instructions.  
▶ Attach this form to your return.

Name(s) Shown on Return <b>GILLETTE GLOBAL NETWORK INC</b>	Business or Activity to Which This Form Relates Form 1120 Line 20	Identifying Number 13-3793720
---	--	----------------------------------

**Part I Election to Expense Certain Tangible Property (Section 179)**  
(Note: If you have any 'listed property,' complete Part V before you complete Part I.)

1 Maximum dollar limitation. If an enterprise zone business, see instructions	1	\$19,000.
2 Total cost of Section 179 property placed in service. See instructions	2	
3 Threshold cost of Section 179 property before reduction in limitation	3	\$200,000.
4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
<b>6</b>		
(a) Description of property	(b) Cost (business use only)	(c) Elected cost
<b>7</b>		
7 Listed property. Enter amount from line 27	7	
8 Total elected cost of Section 179 property. Add amounts in column (c), lines 6 and 7	8	
9 Tentative deduction. Enter the smaller of line 5 or line 8	9	
10 Carryover of disallowed deduction from 1998. See instructions	10	
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13 Carryover of disallowed deduction to 2000. Add lines 9 and 10, less line 12	13	

**Note:** Do not use Part II or Part III below for listed property (automobiles, certain other vehicles, cellular telephones, certain computers, or property used for entertainment, recreation, or amusement). Instead, use Part V for listed property.

**Part II MACRS Depreciation for Assets Placed in Service Only During Your 1999 Tax Year**  
(Do Not Include Listed Property)

**Section A -- General Asset Account Election**

**14** If you are making the election under Section 168(j)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check this box.

**Section B -- General Depreciation System (GDS) (See instructions)**

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
<b>15a</b> 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
<b>g</b> 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
i Nonresidential real property			27.5 yrs	MM	S/L	
			39 yrs	MM	S/L	
				MM	S/L	

**Section C -- Alternative Depreciation System (ADS) (See instructions)**

<b>16a</b> Class life					
b 12-year			12 yrs		S/L
c 40-year			40 yrs	MM	S/L

**Part III Other Depreciation (Do Not Include Listed Property) (See instructions)**

17 GDS and ADS deductions for assets placed in service in tax years beginning before 1999	17	7,774.
18 Property subject to Section 168(f)(1) election	18	34,579.
19 ACRS and other depreciation	19	

**Part IV Summary (See instructions)**

20 Listed property. Enter amount from line 26	20	
21 Total. Add deductions on line 12, lines 15 and 16 in column (g), and lines 17 through 20. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	21	42,353.
22 For assets shown above and placed in service during the current year, enter the portion of the basis attributable to Section 263A costs	22	

**Part V Listed Property — Automobiles, Certain Other Vehicles, Cellular Telephones, Certain Computers, and Property Used for Entertainment, Recreation, or Amusement**

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 23a, 23b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

**Section A — Depreciation and Other Information (Caution: See instructions for limits for passenger automobiles.)**

23a Do you have evidence to support the business/investment use claimed? .....										Yes		No		23b If 'Yes,' is the evidence written? .....		Yes		No	
(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/Convention	(h) Depreciation deduction	(i) Elected Section 179 cost											
24 Property used more than 50% in a qualified business use (see instructions):																			
25 Property used 50% or less in a qualified business use (see instructions):																			
26 Add amounts in column (h). Enter the total here and on line 20, page 1 .....															26				
27 Add amounts in column (i). Enter the total here and on line 7, page 1 .....															27				

**Section B — Information on Use of Vehicles**

Complete this section for vehicles used by a sole proprietor, partner, or other 'more than 5% owner,' or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
	Yes	No										
28 Total business/investment miles driven during the year (Do not include commuting miles — see instructions) .....												
29 Total commuting miles driven during the year .....												
30 Total other personal (noncommuting) miles driven .....												
31 Total miles driven during the year. Add lines 28 through 30 .....												
32 Was the vehicle available for personal use during off-duty hours? .....												
33 Was the vehicle used primarily by a more than 5% owner or related person? .....												
34 Is another vehicle available for personal use? .....												

**Section C — Questions for Employers Who Provide Vehicles for Use by Their Employees**

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

	Yes	No
35 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? .....		
36 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See instructions for vehicles used by corporate officers, directors, or 1% or more owners .....		
37 Do you treat all use of vehicles by employees as personal use? .....		
38 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received? .....		
39 Do you meet the requirements concerning qualified automobile demonstration use? See instructions .....		

Note: If your answer to 35, 36, 37, 38, or 39 is 'Yes,' you need not complete Section B for the covered vehicles.

**Part VI Amortization**

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code Section	(e) Amortization period or percentage	(f) Amortization for this year	
40 Amortization of costs that begins during your 1999 tax year:						
41 Amortization of costs that began before 1999 .....						
					41	4,030.
42 Total. Enter here and on 'Other Deductions' or 'Other Expenses' line of your return .....					42	4,030.

Form 1120, Page 1, Line 26  
**Other Deductions Statement**

DUES & SUBSCRIPTIONS	8,081.
BROCHURES & PRINTING	28,272.
AUTO EXPENSES	18,205.
BAD DEBTS	92,564.
BANK CHARGES/ CREDIT CARD CHARGES	4,317.
ADP SERVICE CHARGE	2,865.
COMPUTER SUPPLIES	2,009.
EDUCATION & TRAINING	18,213.
EMPLOYEE BENEFITS PROGRAM	24,670.
EQUIPMENT OPERATING LEASES	159,075.
CONSULTING EXPENSE	135,548.
INSURANCE	95,169.
PROFESSIONAL FEES	232,815.
OUTSIDE SERVICES	38,369.
OFFICE EXPENSE	85,206.
POSTAGE	17,207.
SUPPLIES	27,713.
LOCAL TRAVEL	5,452.
TELEPHONE	190,228.
TRAVEL	34,609.
UTILITIES	5,917.
Amortization	4,030.
LICENSES	3,207.
Meals and entertainment (50%)	54,587.
TRADE SHOW COSTS	29,400.
USE TAX	1,335.
Total	<u>1,319,063.</u>

Form 1120, Page 2, Sch A, Line 5  
**Other Costs Statement**

TELEPHONE SERVICE CARRIER COSTS	2,697,641.
COMMISSIONS	503,390.
INSTALLATION FEES/COSTS	18,099.
BILLING SERVICE COSTS	77,049.
CUSTOMER EQUIPMENT COSTS	346,540.
INTERNET SERVICE & DATA COSTS	695,639.
Total	<u>4,338,358.</u>

Form 1120, Page 4, Schedule L, Line 6  
**Ln 6 Stmt**

Other Current Assets:	Beginning of tax year	End of tax year
PREPAID INTEREST		43,458.
Total		<u>43,458.</u>

Form 1120, Page 4, Schedule L, Line 14  
Ln 14 Stmt

Other Assets:	Beginning of tax year	End of tax year
SECURITY DEPOSITS	108,049.	192,703.
PREPAID INTEREST		43,867.
OTHER RECEIVABLE		49,400.
Total	<u>108,049.</u>	<u>285,970.</u>

Form 1120, Page 4, Schedule L, Line 18  
Ln 18 Stmt

Other Current Liabilities:	Beginning of tax year	End of tax year
SALES TAX/ EXCISE TAX PAYABLE	148,059.	144,050.
PAYROLL TAXES PAYABLE	3,548.	47,542.
ACCRUED STATE TAXES	6,143.	0.
DEFERED REVENUE	0.	235,000.
CONVERTIBLE DEBT		539,120.
Total	<u>157,750.</u>	<u>965,712.</u>

Form 1120, Sch K, Corporation Ownership Information  
Ques 5 Stmt

Name	ID No.
JOSEPH GILLETTE	191-60-5409

Form 1120, Page 4, Schedule M-1, Line 5  
Ln 5 Stmt

PENALTIES	542.
ALLOWANCE FOR BAD DEBT	179,000.
Total	<u>179,542.</u>

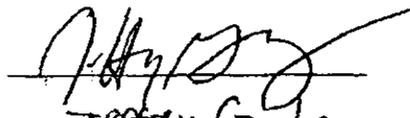


**Eureka Broadband Corporation: Request for Review of the Universal Service Administrator**

***Officer's Certification of Financial Documentation Provided to the Universal Service Administrative Company***

I, Jeffrey Ginsberg, being the duly elected Chairman of the Eureka Broadband Corporation d/b/a Eureka Networks, successor-in-interest to Gillette Global Network, Inc. (the "Company" or "Eureka") (Filer ID # 820387), do hereby certify, under penalty of perjury, that all information provided to the Universal Service Administrative Company ("USAC"), including all financial documents, FCC Form 499s, or other information reflecting the historical or current financial condition of Eureka are true and correct in all material respects on and as of the date hereof.

Signature:



Date:

1/10/05

Printed Name:

Jeffrey Ginsberg

Title:

Chairman

# EXHIBIT C

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**DUPLICATE**

**RECEIVED**

SEP 30 2004

Federal Communications Commission  
Office of Secretary

In the Matter of a Request for Review  
By Eureka Broadband Corporation of Decision  
of Universal Service Administrator

Federal-State Joint Board on  
Universal Service

Changes to the Board of Directors of the  
National Exchange Carrier Association, Inc.

CC Docket No. 96-45

CC Docket No. 97-21

**APPEAL OF DECISIONS OF THE UNIVERSAL SERVICE ADMINISTRATIVE  
COMPANY CONCERNING EUREKA BROADBAND CORPORATION'S REVISION  
TO FCC FORM 499-A AND APPLICATION OF CHARGES**

Pursuant to Section 54.713 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 54.713, Eureka Broadband Corporation ("Eureka" or the "Company") as successor-in-interest to Gillette Global Network, Inc. ("Gillette" or "GGN") hereby respectfully requests that the Commission grant this request for an appeal of two decisions of the Universal Service Administrative Company ("USAC"). Specifically, Eureka is disputing a series of decisions by USAC, which would result in the application of a total of \$606,982.22 in Universal Service Fund ("USF") fees against Eureka. As explained herein in greater details, Eureka voluntarily approached USAC and the FCC to discuss the establishment of a payment plan (the "Voluntary Payment Plan") and to become fully compliant with its USF obligations pursuant to Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. Nevertheless, USAC has chosen to, during the payment plan discussions, reject the filing of revised 499A Forms and to impose fees on Eureka, which would result in a double recovery to the USF.

## INTRODUCTION AND EXECUTIVE SUMMARY

Eureka is a New York City-based resale and facilities provider of telecommunications and internet services to enterprise customers in New York, New Jersey, Maryland, Virginia, and Washington, D.C. Eureka offers businesses a single source for voice communications services, high-speed Internet, managed security services and data networking solutions. Eureka Broadband Corporation was established in 1998 and since that year has acquired seven (7) companies including GGN in December 2000.

On May 10, 2004<sup>1</sup>, Eureka submitted a retroactive filing of (on behalf of GGN) Form 499-As from 1999 through 2004 (representing revenues from 1998 through 2003) as well as the Voluntary Payment Plan proposal thereby initiating formal negotiations with USAC and beginning the process of working with USAC to identify its USF-based obligations. At the time Eureka submitted its Voluntary Payment Plan, the Company did not believe that GGN had previously filed any Form 499-As concerning revenue generated during the relevant time frame between 1998 and 2003. Therefore, in May of 2004, Eureka believed it necessary to submit the 499A Forms to come into compliance and commence the Payment Plan negotiation and acceptance process with USAC and the FCC.

During the payment plan negotiation process, however, Eureka received an automatically generated letter from USAC advising Eureka that the new, "revised" FCC Form 499-As for the reporting years 2000 and 2001 (1999 and 2000 revenues) were being rejected ("2000/2001 Revised Filing"). The stated basis for rejection of the "new", revised form was the fact that, unbeknownst to any participants in the discussions at the time, GGN had, in fact, filed a FCC Form 499-A in 2000. Eureka only had the opportunity to review the aforementioned 499-A

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<sup>1</sup> Copies of relevant correspondence between Eureka's counsel and the Commission and USAC are attached hereto at Exhibit 4.

after the Company's initial document submission to USAC in May 2004. Upon review of the filing, Eureka deemed the revenue accounting calculations, utilized as the basis for the 499-A, to be completely erroneous. Unfortunately, the "refiling" of a "new" 499 Form, according to USAC, violated USAC's policy that a carrier has no more than one year after filing a 499A Form to submit any adjustments to its reported revenues. Furthermore, USAC rejected Eureka's new, revised 2001 Form 499-A based on the identical policy. In fact, GGN never filed a Form 499-A for 2001. USAC, nevertheless, chose to estimate an amount due from GGN based upon its 2000 Form 499-A filing. At the time of the automated rejection by USAC, counsel for Eureka was actively discussing and negotiating, in good faith, with USAC and the FCC, the terms and possible conditions associated with Eureka's Voluntary Payment Plan. Eureka operated during the negotiations under the belief that, as part of the ongoing negotiations, USF-eligible revenues reported in the rejected 2000 and 2001 Form 499-As, rather than the revenues reported by GGN, would form the basis for any final USF assessment calculations. Eureka and its counsel therefore believed that USAC's rejection of its 2000 and 2001 Form 499-As did not prejudice its proposed Voluntary Payment Plan, and that an appeal of these rejections was not necessary. This understanding changed on September 9, 2004, at a meeting between Eureka, its attorneys, and representatives of the Commission and USAC, in which Eureka was told that the USF-eligible revenues GGN reported, and USAC assessed for 2000 and 2001, respectively were considered by USAC to be part of the total USF liability calculations. This amount, \$250,373.23, which is the difference in USF-obligations Eureka may owe based on application of different revenue reporting is disputed by Eureka.

Second, Eureka also is seeking an appeal regarding an additional USAC decision concerning a disputed amount in the sum of \$296,200.10. This amount represents USF