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June 15, 2007

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, Maryland 20743

Re: WC Docket No. 96-45
In the Matter of Federal-State Joint Board on Universal Service, American Telecommunications Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, TON Services, Inc., Value-Added Communications, Inc.
Reply Comments of Oblio Telecom, Inc.

Dear Ms. Dortch:

Oblio Telecom, Inc. ("Oblio"), through counsel, hereby submits its Reply Comments in the above-captioned matter. Attached to these Reply Comments is a public copy of Oblio's Petition for Declaratory Ruling that AT&T's Refusal to Honor Oblio's Proof of Exemption from USF Pass-Through Charges and Request for Refund of Collected USF Charges is an Unreasonable Practice and Unjustly Discriminatory in Violation of Sections 201(b) and 202(a) of the Communications Act ("Declaratory Petition").

REPLY COMMENTS OF OBLIO TELECOM, INC.

From 1999 until October 2006, Oblio was a reseller of AT&T Corp.'s ("AT&T") wholesale enhanced prepaid calling cards. During their relationship, AT&T treated Oblio as an "end user" of its telecommunications for purposes of its USF compliance. AT&T manifested this treatment by passing through USF charges [and other Taxes] to Oblio.

As described in its Declaratory Petition, the regulatory classification of AT&T's enhanced prepaid calling cards changed as a result of FCC Decisions. Specifically, in February 2005, the FCC declared AT&T's enhanced prepaid calling cards to be nothing more than traditional telecommunications services, subject to direct USF contributions. As a former reseller of AT&T's

wholesale enhanced prepaid calling cards that is actively litigating issues directly related to the USF filing and refund obligations of its wholesaler, Oblio is directly impacted by the issues presented in the Petitions for Review/Reconsideration of Eureka Broadband Corporation ("Eureka") and Value-Added Communications, Inc. ("Value-Added"). Oblio is particularly affected by some of the issues described in Intercall, Inc.'s ("Intercall") Comments that were filed in support of Eureka and Value-Added Petitions, which Oblio supports as well.

Specifically, with respect to Intercall's Comments, Intercall explains that the Petitions filed by Eureka and Value-Added address an increasingly common situation involving the USF – that is, "[s]orting out which entities have USF contribution obligations and which entities do not...." particularly "where the entities involved in the chain of service proceed under one set of payment arrangements (whereby the wholesale carrier pays USF), but [the FCC] later orders a change in those arrangements (to require a downstream entity to pay USF directly)." Intercall Comments at 2. By its Comments, Intercall seeks to ensure that entities that contribute as end users are protected in the event USAC later changes the rules or requires direct payments instead of indirect payments. *Id.* at 3.

Oblio is experiencing, first hand, what it is like to deal with the myriad of legal issues and contractual defenses raised by a wholesaler when a reseller follows the course of action directed in the Bureau Order[1], i.e., "private litigation in the courts." Intercall Comments at 3-4. Oblio will confirm that the approach directed by USAC is based on "flawed assumptions and unrealistic expectations of how underlying carriers will act in these situations." *Id.* at 4.

Intercall points out that "[a]n underlying carrier may try to defend a breach of contract claim by contending that it complied with the rules of the service that was ordered." *Id.* Oblio confirms this to be true. Intercall explains that a wholesaler may defend its refusal to refund USF charges by claiming its reseller failed to submit USF exemption certifications in a timely manner. *Id.* Oblio's experience confirms that some wholesalers will go even further to avoid issuing refunds to their resellers; indeed, AT&T is refusing to honor its very own USF exemption certification that was thoroughly completed, signed and supplied by Oblio in a timely manner (at AT&T's request, nonetheless).

Intercall describes many of the practical ramifications of the Bureau's decision to essentially "punt" issues related to USF refund recovery to the courts. Oblio is experiencing many of the things described by Intercall firsthand. In addition to the practical reasons that demonstrate an immediate need to address these issues, as Value-Added explains in its Petition, the lack of procedures to avoid double USF collection is unjust and in violation of the Communications Act of 1934, as amended, and federal law, and thus needs to be rectified without delay. Value-Added Petition at 10-18. Indeed, Oblio, Value-Added, and Eureka's Petitions clearly show how important it is for the Commission to quickly address these issues. Moreover, while Oblio supports the grant of Petitions in this proceeding, Oblio submits that the Commission could easily address some of these issues by issuing a favorable ruling on Oblio's Declaratory Petition.[2]

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1 *In re: Federal-State Joint Board on Universal Services*, DA 07-1306 (Mar. 14, 2007)("Bureau Order").

2 Oblio's Declaratory Petition was filed with the Commission on April 16, 2007. On May 15, 2007, on advice of the Wireline Competition Bureau, Oblio placed a copy of its Declaratory Petition in WC Docket No. 06-122. To date, the Bureau has neither separately docketed Oblio's Declaratory Petition nor sought Comment thereon via Public Notice.

Should there be any questions regarding this matter, kindly contact the undersigned.

Respectfully submitted,

Jonathan S. Marashlian

Attachment

ATTACHMENT

13 494 Y 02732 06 Oblio Telecom, Inc. and AT&T Corp.

ORDER REGARDING CLAIMANT'S MOTION TO STAY THE ARBITRATION PENDING FCC RESOLUTION OF PETITION FOR DECLARATORY RULING

Claimant on April 16, 2007 filed a Petition with the FCC for a declaratory ruling ("Petition") that Respondent's refusal to honor proof of exemption of pass-through USF charges and refund requests are unreasonable and discriminatory under the Communications Act. [#s 201(b) & 202(a)]. It contends, inter alia, that its claims invoke "policy" or "technical" issues of applicable communications law as to which the FCC has unique expertise and over which the FCC has primary jurisdiction. Such issues, it alleges, "control rights of the parties" and are the same issues as are in this proceeding and, if determined by the FCC, would inform the Arbitrator in deciding the regulatory and contractual claims asserted by the parties in this arbitration.

The Arbitrator accepts that the FCC has oversight of the Universal Service Fund contributions program. Insofar as the Claimant has raised issues with respect to the administration and implementation of that program among wholesale carriers and resellers, and accepting as true for the purposes of this Motion Claimant's position that the FCC's determination will better inform the Arbitrator in deciding the claims and defenses of the parties and thereby make the process more efficient, Claimant's Motion for a stay pending the FCC's resolution of the Petition is hereby granted to the extent of the claims asserted in its Demand.

[redacted]

[redacted]

The Stay is granted in deference to the FCC for it to decide whether it has the authority or primary jurisdiction to rule and whether its ruling is essential or necessary to resolve, or remove uncertainty from, the instant controversy. No inference is hereby intended beyond the foregoing as to the relevance or materiality to this proceeding of the issues raised in the FCC proceeding.

[redacted]

[redacted]

Walter G. Garis

Walter G. Garis, Arbitrator

May 4, 2007

REDACTED – PUBLIC COPY

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

In the Matter of	)
	)
Petition for Declaratory Ruling Regarding Wholesale Telecommunications Carriers' Obligation to Honor Reseller Customer's Proof of Exemption from Pass-Through Universal Service Fund Charges	)

PETITION OF OBLIO TELECOM, INC. FOR A DECLARATORY RULING THAT AT&T'S REFUSAL TO HONOR OBLIO TELECOM, INC.'S PROOF OF EXEMPTION FROM PASS-THROUGH USF CHARGES AND REQUEST FOR REFUND OF COLLECTED USF CHARGES ARE UNREASONABLE PRACTICES AND UNJUSTLY DISCRIMINATORY IN VIOLATION OF SECTIONS 201(b) AND 202(a) OF THE COMMUNICATIONS ACT

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April 16, 2007

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

In the Matter of Petition for Declaratory Ruling Regarding Wholesale Telecommunications Carriers' Obligation to Honor Reseller Customer's Proof of Exemption from Pass-Through Universal Service Fund Charges	)

PETITION OF OBLIO TELECOM, INC. FOR A DECLARATORY RULING THAT AT&T'S REFUSAL TO HONOR OBLIO TELECOM, INC.'S PROOF OF EXEMPTION FROM PASS-THROUGH USF CHARGES AND REQUEST FOR REFUND OF COLLECTED USF CHARGES ARE UNREASONABLE PRACTICES AND UNJUSTLY DISCRIMINATORY IN VIOLATION OF SECTIONS 201(b) AND 202(a) OF THE COMMUNICATIONS ACT

Pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, Oblio Telecom, Inc. ("Oblio") hereby petitions the Commission for a declaratory ruling that, in the absence of applicable negotiated contract terms, a wholesale telecommunications carrier's ("carrier's carrier" or "wholesaler") refusal to: (1) honor a telecommunications reseller customer's ("reseller") proof of exemption from Universal Service Fund ("USF") pass-through charges and (2) refund collected USF Charges, are unreasonable practices in violation of Section 201(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). 47 U.S.C. § 201(b).[1] Further, that a wholesaler's selective honoring of valid USF pass-through exemption requests from

[1] 47 U.S.C. § 201(b) states: "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful…" (emphasis added).

some reseller customers, but not other similarly-situated customers, and to selectively refund collected USF Charges to some, but not others, constitute unjust and unreasonable discriminatory practices in violation of Section 202(a) of the Act. 47 U.S.C. § 202(a).[2]

I. INTRODUCTION

Oblio is a prepaid calling card provider engaged in the resale of AT&T's and another Tier One Provider's wholesale prepaid calling card services.[3] From at least January 1, 2005 until October 31, 2006, AT&T passed through USF Charges and other federal regulatory pass-through charges[4] (hereinafter, collectively referred to as "USF Charges") to Oblio as a portion of the wholesale price of the service. From January 1, 2005 through October 31, 2006, Oblio paid an estimated $14 to $21 million in USF Charges to AT&T,[5] which AT&T presumably remitted to the Universal Service Administrative Corporation ("USAC") and other federal program administrators.

Since 2005, Oblio has been a registered Interstate Telecommunications Service Provider ("ITSP") and direct contributor to the USF with respect to telecommunications services other than its resold prepaid calling cards.[6] In light of recent Commission decisions regarding the regulation of

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[2] 47 U.S.C. § 202(a) states: "It shall be <u>unlawful for any common carrier to make any unjust or unreasonable discrimination in</u> charges, <u>practices</u>, classifications, regulations, facilities, or services <u>for or in connection with like communication service, directly or indirectly, by any means or device</u>, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage." (emphasis added).

[3] Oblio started reselling prepaid calling card services of another Tier One Provider in 2006. As explained herein, this Tier One Provider honored Oblio's proof of USF pass-through exemption and agreed to refund all collected charges.

[4] For example, fees associated with the following programs established and overseen by the Commission and a variety of administrators: the Telecommunications Relay Services Fund ("TRS"), North American Numbering Plan Administration ("NANPA"), Local Number Portability Administration ("LNPA") and Interstate Telecommunications Service Provider ("ITSP") annual regulatory fees.

[5] By this Petition, Oblio does not seek a Commission ruling on the issue of damages; damages and the amount thereof are factual matters that will be decided [redacted]

[6] Oblio's USAC Filer ID Number is 825547 and evidence of its direct contributor status may be found on the Commission's website:

prepaid calling cards, Oblio filed a revision to its 2006 FCC Form 499-A ("499-A")(reporting 2005 revenue) and its original 2007 499-A (reporting 2006 revenue), reporting revenue from its prepaid calling card business as retail telecommunications services revenue.[7]

Because Oblio is a direct contributor with respect to the revenue it derived from the resale of AT&T's prepaid calling card services, it sought refunds of USF Charges related to the January 1, 2005 through October 31, 2006 timeframe. Oblio proffered evidence of its direct contributor status to AT&T through its submission of AT&T's very own "Federal Universal Service Fund/Certification of Customer Status Form" (hereafter, both specifically and generally referred to as, "USF Exemption Certification"), which included all information, evidence and certifications required by applicable USAC instructions and Commission regulations.[8] *See* Exhibit 1. Despite

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http://gullfoss2.fcc.gov/cib/form499/499detail.cfm?FilerNum=825547.

[7] Oblio calling card revenue is reported in Line 411 of its revised 2006 and initial 2007 499-As. Oblio's 499-As contain confidential and commercially-sensitive information, but are nonetheless available for Commission inspection through USAC.

[8] *See Telecommunications Reporting Worksheet*, FCC Form 499-A (2007), Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms, at 19 ("*Form 499 Instructions*")("Each filer should Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service. The procedures should include, but not be limited to, maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; phone number of the contact person; and, as described below, the annual certification by the reseller and evidence of the filer's use of the FCC's website to validate the contributor status of the reseller. Filers shall provide this information to the Commission or the Administrator upon request. Each year, the filer must obtain a signed statement from the reseller containing the following language:

> I certify under penalty of perjury that my company is purchasing service for resale in the form of telecommunications or interconnected Voice over Internet Protocol service. I also certify under penalty of perjury that either my company contributes directly to the federal universal support mechanisms, or that each entity to which I provide resold telecommunications is itself an FCC Form 499 worksheet filer and a direct contributor to the federal universal service support mechanisms.

In addition, to facilitate verification of a reseller's certification, current contributors to universal service are identified at http://gullfoss2.fcc.gov/cib/form499/499a.cfm. Filers may use the website overwhelming proof of Oblio's direct contributor status with respect to the same retail revenue, AT&T steadfastly refuses to honor Oblio's USF pass-through exemption and request for refund of USF Charges billed, collected and payable during the relevant timeframe.

In its March 2007 Order, *In the Matter of Federal-State Joint Board on Universal Service, American Telecommunication Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, Ton Services, Inc. Value-added Communications, Inc.*, 2007 WL 784328 (Mar. 14, 2007) (Docket No. CC 96-45, DA 07-1306) ("*USF Refund Order*"), the Commission directed that resellers whose USF contribution payment obligations were made on their behalf by their wholesale carriers must seek refunds of pass-through charges directly from their wholesalers, not from USAC. Oblio unsuccessfully sought refunds from AT&T, which claims no refunds are owed based on application of contract law. However, except for expressly stating that AT&T's wholesale price includes USF Charges, Oblio's Agreement with AT&T is silent with respect to the parties' rights and obligations regarding USF refunds, given the current factual circumstances.

In light of the *USF Refund Order's* directive, Oblio hereby seeks a declaratory ruling to resolve the ripe, on-going controversy regarding AT&T's (a wholesaler's) obligation to honor Oblio's (a reseller's) valid USF Exemption Certification and request for refund of USF Charges. Oblio requests a declaratory ruling that AT&T's refusals are unreasonable practices in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b), and that its selective honoring of valid USF pass-through exemption requests from some reseller customers, but not other similarly-situated reseller customers, and to selectively refund collected USF Charges to some, but not other resellers, are

to verify the continuing validity of a reseller's certification, and may presume that any reseller identified as a contributor in this website in the month prior to an FCC Form 499-Q filing will be a contributor for the coming quarter, and that it was a contributor for all prior quarters during that calendar year."); *see also Form 499 Instructions* (August 2006) at 17.

unjustly and unreasonably discriminatory practices in violation of Section 202(a) of the Act. *Id.* at § 202(a).

II. BACKGROUND

1. Oblio is a Delaware corporation with its principal place of business located at 407 International Parkway, Suite 403, Richardson, Texas, 75081. Oblio is the successor in interest to Oblio Telecom, L.L.P., a Texas limited liability partnership, which had previously merged with Oblio Telecom, Inc., a Texas corporation.

2. AT&T is a New York corporation with its principal place of business located at One AT&T Way, Bedminster, New Jersey 07921.

3. Beginning in 1999, Oblio and its predecessors purchased wholesale "Enhanced Prepaid Card Service" (hereafter, "EPCC Service") from AT&T through a business arrangement.

4. On or about August 16, 2001, Oblio and AT&T entered into a written Purchase Order agreement ("Agreement") that memorialized the terms of their business arrangement.

5. Oblio purchased EPCC Service from AT&T on a discounted, wholesale basis. Oblio proceeded to distribute AT&T's EPCC Service to the public, either directly or through its distribution channels, under its company brand, "Oblio Telecom." At no time throughout its business relationship with AT&T did Oblio sell calling cards which identified AT&T as the service provider.

A. AT&T's Collection of USF Charges

6. Pursuant to Section 3 of the parties' Agreement, Oblio paid AT&T the full dollar value of the EPCC Service, after wholesale discounts. According to the Agreement, the full dollar value of AT&T's EPCC Service is "inclu[sive of] all ***AT&T Taxes*** as defined in Section 5 [sic], ***USF*** ["Universal Service Fund"] ***charges***, and the costs for all elements of [EPCC] Service specified in Section 1." (emphasis added). Section 5 defines AT&T Taxes as "all federal, state or local

telecommunications sales, use, excise or other taxes, or ***any government imposed surcharges, fees or costs*** imposed on the [EPCC] Service." (emphasis added).

7. Under the express terms of the Agreement, the price that Oblio paid AT&T for EPCC Service included USF Charges and other "AT&T Taxes," including surcharges, fees and costs applied to "telecommunications," such as, for example, fees associated with the following programs established and overseen by the Commission and various administrators: the Telecommunications Relay Services Fund ("TRS"), North American Numbering Plan Administration ("NANPA"), Local Number Portability Administration ("LNPA") and Interstate Telecommunications Service Provider ("ITSP") annual regulatory fees (hereafter, all of AT&T's pass-through charges are referred to, collectively, as "USF Charges."

8. Even before entering into their Agreement, AT&T included USF Charges in the rate structure or "rate deck" agreed to between Oblio and AT&T. From 1999 until October 31, 2006, Oblio paid AT&T invoices which, according to the four corners of their Agreement, included USF Charges.

B. Regulatory Framework

9. Pursuant to FCC regulations implementing the Telecommunications Act of 1996 (the "Act"), all providers of retail, interstate "telecommunications services" are required to make contributions to help support and advance universal service. On February 16, 2005, the FCC adopted an Order *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133 ("First Declaratory Order"), declaring AT&T's legal position with respect to its classification of EPCC Service as an "information service" to be incorrect. The First Declaratory Order states that AT&T's EPCC Service is a "telecommunications service" subject to USF Charges and not an "information service" exempt from USF Charges. The First Declaratory Order is retroactive and applies to all prior periods during which AT&T sold

EPCC Services. The retroactive application of the First Declaratory Order was upheld by the U.S. Court of Appeals for the District of Columbia Circuit on July 14, 2006. *See American Telephone and Telegraph Co. v. F.C.C.*, 454 F.3d 329 (C.A.D.C. 2006).

10. In the First Declaratory Order, the FCC directed AT&T to file revised Forms 499-A that properly report EPCC Service revenue consistent with the findings in the First Declaratory Order so that USAC could calculate and assess the USF contributions for the entire period that AT&T provided EPCC Service.

11. Furthermore, the FCC stated it expected "all other companies providing calling card services *similar to* those described [in the First Declaratory Order] to file new or revised Forms 499-A within 30 days of the effective date of [the] Order as needed to properly report revenues from [EPCC Service] consistent with [the First Declaratory] Order." The First Declaratory Order became effective on March 16, 2005.

12. The First Declaratory Order materially altered the regulatory treatment of Oblio's then-existing business relationship with AT&T, particularly with respect to USF obligations. Whereas AT&T once acted as a provider of unregulated services and Oblio acted as a retail customer for purposes of USF, the First Declaratory Order decidedly established AT&T as a telecommunications services wholesaler and Oblio as a telecommunications services reseller.

13. Despite a contractual provision giving it authority to do so, AT&T did not take any actions subsequent to the First Declaratory Order to ensure that its Agreement and/or business relationship with Oblio complied with FCC rules and regulations, as clarified in the First Declaratory Order.

14. AT&T made no changes to the Parties' business arrangement and from March 16, 2005 to October 31, 2006 continued to sell EPCC Service to Oblio, inclusive of USF Charges.

15. On June 30, 2006, the FCC adopted an Order *In the Matter of Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling And Report and Order (rel. June 30, 2006) (Second Declaratory Order) declaring all prepaid calling cards "telecommunications" services.

16. Despite ample grounds and opportunity to comply with the Commission's Orders and cooperate with Oblio to ensure appropriate modification of their regulatory responsibilities, AT&T has chosen to selectively comply with Commission rules, regulations and orders in total disregard of the impact its actions would have Oblio and its regulatory rights and responsibilities.

C. Oblio is a Telecommunications Reseller Subject to Regulatory Burdens and Benefits Applicable to Similarly-Situated Resellers

17. As a result of the Commission's First and Second Declaratory Orders and other rulings,[9] Oblio must report EPCC Services revenue as revenue derived from retail telecommunications services, subjecting Oblio to direct liability for the payment of USF Charges associated therewith. Pursuant to the contract between Oblio and AT&T, USF Charges were included in the amounts that Oblio already paid AT&T for the services in question, and AT&T accepted responsibility to pass them through to USAC. Thus, once Oblio complied with its legal obligation to report the revenue as its own, as it has, it became legally obligated to pay certain regulatory fees, including USF Charges, on the very same revenues for which AT&T already billed and/or collected USF Charges from Oblio.

18. Because Oblio is obligated to report and pay USF Charges directly to USAC, it would be unreasonable for AT&T to continue to pass-through and collect USF Charges and

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[9] *See In the Matter of Blackstone Calling Card, Inc.*, Notice of Apparent Liability for Forfeiture and Order, File No. EB-04-IH-0525 (Rel. Dec. 19, 2005)("Blackstone NAL")("Based on information collected in this investigation, we know that Blackstone apparently offers telecommunications service for a fee directly to the public, for example, by offering interstate and international telecommunications service through Blackstone-labeled calling cards marketed on its website. Thus, it appears Blackstone is providing telecommunications services. We therefore find that Blackstone is a carrier providing telecommunications service and subject to the regulations governing all such carriers.").

indirectly remit USF contributions and other payments on the same revenue on Oblio's behalf in the future. Likewise, to the extent Oblio has assumed legal responsibility for making direct contributions on the same retail revenues, Oblio is entitled to refund of USF Charges collected thereon by AT&T.

19. Consistent with the First Declaratory Order, Oblio registered as an ITSP with the FCC and filed 499-As with USAC. Oblio's 2006 499-A reports all retail, interstate and international telecommunications revenue from revenue year 2005 and its 2007 499-A reports the same for the 2006 revenue year, including all revenue derived from its resale of AT&T's prepaid calling cards.

20. By taking these actions, consistent with applicable Commission rules, regulations and orders, Oblio is now a ***direct contributor*** to the USF (and other programs) with respect to all resold AT&T wholesale EPCC Services.[10] Accordingly, Oblio has been and will be required to make direct USF contributions (and pay other regulatory fees) based on its billed and collected revenue from retail interstate and international telecommunications services.

D. AT&T's Refusal to Honor Oblio's Exemption Status and Refund Collected USF Charges

21. Under the existing regulatory framework established and enforced by the FCC, Oblio is and should be treated by AT&T as a "wholesale" customer and "telecommunications reseller." However, throughout 2005 and 2006, AT&T continued to treat Oblio as a retail customer with respect to all regulatory matters and, as such, continued to bill and collect USF Charges from Oblio and remit these collected charges to USAC and other program administrators. This state of affairs persisted despite Oblio's efforts and actions to reform the parties' relationship to be consistent with the Communications laws and Commission orders.

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[10] With respect to the relevant timeframe of January 1, 2005 through December 31, 2006.

22. Sometime in August 2006, Oblio contacted AT&T and requested AT&T to: (1) cease billing and collecting USF Charges, (2) refund/credit all USF Charges previously collected, and (3) prospectively treat Oblio as a telecommunications reseller, consistent with its status under applicable Communications laws and Commission orders.

23. AT&T responded to Oblio's requests and supplied a USF Exemption Certificate[11] to complete. The USF Exemption Certificate is a form document drafted by AT&T and provided by AT&T to all of its customers that are not, on their face, retail end-users.

24. On or around September 18, 2006, Oblio provided AT&T with a completed USF Exemption Certificate. *See* Exhibit 1. Therein, Oblio supplied AT&T with its "Filer 499 ID; legal name; address; name of a contact person; phone number of the contact person; and [an] annual certification" wherein an officer of Oblio certified as follows:

> C. For U.S. Telecommunications Carriers Purchasing Telecommunications Services from AT&T:
>
> 1. Customer is entitled to an exemption from AT&T billing its CUSC ("Carrier Universal Service Charge") and related charges for AT&T that it purchases ("Exempt Services") because:
>
> a. Customer contributes directly to the Universal Service Administrator pursuant to FCC rules on its end-user revenues derived from such Exempt Services. Customer (or its affiliates identified below) has filed an FCC Form 499-A and continues to file FCC Form 499-Q reports with the Universal Service Administrator, and reports revenue from the Exempt Services on the FCC Form 499-A using the following Filer ID number:
>
> Form 499 Filer ID (6 digits): 82557
>
> Name of entity that filed Form 499: Oblio Telecom, Inc.

11 A USF Exemption Certificate enables businesses in the service provider chain to clearly sort out which among them is responsible for payment of USF; it serves a function similar to a tax exemption certificate. A Certificate enables an underlying wholesale provider to comply with FCC requirements and avoid FCC penalties (since wholesalers are required to confirm prepaid/reseller compliance). Similarly, by completing the Form, prepaids/resellers can control whether they pay USF to the USAC or their underlying provider, thus avoiding potential double-billing.

25. Additional evidence sufficient for AT&T to verify Oblio's status as a direct contributor was also available through the FCC's website: http://gullfoss2.fcc.gov/cib/form499/499detail.cfm?FilerNum=825547.

26. In conjunction with its submission of evidence that it was a direct contributor to the USF, Oblio requested refunds or credits of all USF Charges previously paid to AT&T.

27. AT&T steadfastly refused to honor Oblio's USF Exemption Certificate and request for refund/credit of USF Charges.

28. Accordingly, on October 30, 2006, Oblio provided AT&T with a written demand seeking refund of the amount of USF Charges paid by Oblio to AT&T for 2005 and 2006, while reserving all right to seek refund of USF Charges paid from 1999 through October 2006. AT&T rejected Oblio's demand that same day.

III. PROCEDURAL HISTORY

[redacted]

[redacted]

33. [redacted] First and Second Declaratory Orders concerning how underlying wholesale carriers and resellers should structure their business with each other concerning the collection and payment of USF Charges, the Commission issued its *USF Refund Order*, a decision directly addressing such issues.

34. The petitioners in that case were several resellers of telecommunications services. They had received bills from USAC for USF Charges for the years 1999-2003. The petitioners defended on the ground that the USF fees for which they were responsible had already been included, as pass-through charges, in the rates that they had themselves paid to their wholesale telecommunications suppliers.

35. The Commission ruled that, "even though the various underlying carriers may have contracted to pay Petitioners' universal service obligations," (*id.* at 5) the resellers had the legal obligation to contribute the required USF Charges to USAC. In so ruling, the Commission stated that, "to the extent Petitioners allege a double payment of USF obligations, it is a result of fees assessed by their underlying carriers, not incorrect billing by USAC. As such, Petitioners' relief, to the extent appropriate, lies with the underlying carriers, not a refund or credit from the USF." *Id.* at 4.

36. The Commission has made it clear, most recently in its *USF Refund Order*, that resellers of telecommunications services cannot "contract away" their responsibility to report retail revenue and pay USF Charges. As such, despite their Agreement whereby AT&T included USF Charges in the wholesale price charged to Oblio, Oblio remains liable to directly report and

contribute on the same revenue. However, Oblio has already paid USF Charges to AT&T. In the *USF Refund Order*, the Commission made it abundantly clear that the remedy for a reseller presented with Oblio's circumstances is to seek a refund from its wholesale telecommunications provider; in this case, AT&T.

[redacted]

38. [redacted] copies of its revised 2006 499-A and original 2007 499-A, clearly showing that Oblio reported revenue from its resale of prepaid calling cards purchased from both AT&T and another Tier One Provider.

39. While Oblio's other wholesale supplier, a Tier One Provider similar to AT&T, agreed to refund USF Charges based on Oblio's certification and other proof of pass-through exemption,[12] AT&T continues to steadfastly refuse. Oblio believes AT&T's refusals are unreasonable practices that violate Section 201(b) of the Act.

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12 *See* http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20070323005504&newsLang=en ("Oblio Telecom, Inc. … reached a settlement and release agreement on March 18, 2007 with one of its Tier One wholesale telecommunications providers relating to its payment of Universal Service Fund ("USF") fees… Under the Settlement Agreement, Oblio received an immediate credit of $1.9 million and expects to receive quarterly in arrears an additional $1.6 million accrued for recovery of additional USF fees paid to this Tier One Provider.").

40. In addition, it is without question that AT&T honors the USF exemptions and refund requests proffered by hundreds of other resellers of telecommunications services each and every year. In light of its treatment of similarly situated reseller customers, Oblio believes AT&T's refusal to honor Oblio's USF exemption and request for refund is unjustly and unreasonably discriminatory, in violation of Section 202(a) of the Act.

IV. OBLIO'S PETITION FOR DECLARATORY RULING IS PROPER AND A COMMISSION RULING WILL HELP RESOLVE A RIPE CONTROVERSY

A Commission ruling on Oblio's Petition is essential to the resolution of the controversy between Oblio and AT&T, [redacted]. In [redacted], as here, Oblio alleges that AT&T's refusals to honor Oblio's certification and other proof of USF exemption and issue refunds of collected USF Charges, and the discriminatory manner by which AT&T goes about treating such requests from similarly situated customers, constitute violations of Sections 201(b) and 202(a) of the Act, respectively. A Commission ruling on these disputed issues, which arise under the Communications laws and Commission rules, regulations and decisions, will bear greatly on and, indeed, are necessary to ensure the outcome [redacted] is consistent with the Commission's policies and objectives given its unique USF oversight responsibilities.

[redacted]

[redacted]

Under sections 4(i) and 4(j) of the Act and sections 1.1 and 1.2 of the rules, the Commission has wide authority to issue declaratory rulings to serve the public interest by resolving a controversy and eliminating uncertainty. *See In the Matter of Petition of Home Owners Long Distance, Inc. for a Declaratory Ruling that WorldCom Cannot Limit Its Liability for Gross Negligence or Other Willful Misconduct Through its Interstate Tariffs*, 14 FCC Rcd 17,139 (1999) ("*HOLD Order*") at ¶ 12 ("The Commission has broad discretion under the Administrative Procedure Act and Commission rules to determine whether deciding a petition for declaratory ruling on the merits is necessary to 'terminate a controversy or remove uncertainty.'"). The Commission's discretion to issue declaratory rulings can particularly serve these purposes when parties are in the midst of an ongoing dispute in another forum that can be moved ahead by a clarification of Commission rules, regulations or orders that have become the subject of a controversy.

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13 [redacted]

In the *Hold Order*, Home Owners Long Distance ("HOLD") was involved in an ongoing court proceeding with WorldCom, Inc. ("WorldCom") concerning, among other things, liability limitations contained in WorldCom's tariff. HOLD filed a Petition for Declaratory Ruling with the Commission and at about the same time filed a motion to stay or abate the ongoing court proceeding until the Commission had an opportunity to resolve the questions concerning the lawfulness of tariff provisions raised by the petition. The court granted the stay and referred the issue of the lawfulness of liability limitations in WorldCom's tariff to the Commission under the doctrine of primary jurisdiction. *Id.* at ¶ 6. The Commission issued a Public Notice seeking comment on HOLD's petition, and specifically, among other issues, whether the tariff provision in question "constituted an unjust and unreasonable practice under section 201(b) of the Act." *Id.* at ¶ 7.[14]

In deciding whether to exercise its discretion to rule on HOLD's petition, the Commission set forth two relevant questions: "whether reaching the merits of HOLD's petition is necessary to assist the Court in resolving the referred issue; and if not, whether reaching the merits of HOLD's petition nevertheless is appropriate to terminate a controversy or remove uncertainty." *Id.* at ¶ 12. A Commission decision on the questions presented in Oblio's petition will assist [redacted] by resolving the controversy between the parties as to whether AT&T's refusals to: (1) recognize Oblio's status as a direct contributor on the same retail revenue reported by AT&T, (2) honor Oblio's status as exempt from pass-through USF Charges for the period January 1, 2005 through December 31, 2006, (3) calculate and refund collected USF Charges, and (4) treat Oblio the

[14] In the *HOLD* case, before the Commission ruled on the petition, WorldCom filed a "proposed settlement for dismissal" of HOLD's petition for declaratory ruling stating that WorldCom would not rely on the liability limitations in its tariff as a defense in that or future proceedings, *id.* at ¶ 10, and WorldCom amended the tariff provision in question. Because WorldCom's proposed settlement "provide[d] HOLD with virtually all of the relief it sought in its petition" (*id.* at ¶ 18) and to the extent that the issue referred by the court was no longer "live," (*id.* at ¶ 13), the Commission did not reach the merits of HOLD's petition.

same as it treats its other reseller customers for purposes of honoring USF exemption and refund requests violate the Act. A ruling in Oblio's favor will direct [redacted] the proper application of Commission precedent and Communications laws to the facts developed [redacted] and will further assist [redacted] determination of damages. Furthermore, as a more general matter, a Commission ruling on Oblio's Petition will clarify the duties and responsibilities of wholesalers and resellers regarding USF pass-through charge exemptions and refunds and will help carriers avoid similar disputes in the future.

Oblio's Petition is timely and procedurally appropriate given the circumstances described above. Wherefore, the Commission should exercise its discretion and, as requested, issue a ruling on Oblio's Petition.

V. ARGUMENT

AT&T's steadfast refusals to: (1) honor Oblio's proof of exemption from USF pass-through charges and (2) refund collected USF Charges, are unreasonable practices in violation of Section 201(b) of the Act. Additionally, AT&T's elective honoring of valid USF pass-through exemption requests from some resellers, but not other similarly-situated customers, and to selectively refund collected USF Charges to some, but not all, constitute unjust and unreasonable discriminatory practices in violation of Section 202(a) of the Act.

A. AT&T'S REFUSALS TO HONOR OBLIO'S PROOF OF EXEMPTION FROM USF PASS-THROUGH CHARGES AND REFUND COLLECTED USF CHARGES ARE UNREASONABLE PRACTICES

AT&T and Oblio, as regulated carriers in a wholesale/resale relationship, bring to their business relationship certain regulatory responsibilities that cannot be contracted away or unilaterally ignored. The regulatory responsibilities at issue in the instant dispute pertain to the respective obligations of the two carriers to collect, report and pay USF contributions and other regulatory fees.

AT&T passed through USF Charges to Oblio from at least January 1, 2005 until October 31, 2006. AT&T did so even though Oblio had submitted to it all of the evidence required by Commission rules to satisfy AT&T that Oblio was itself a direct contributor to the Fund and therefore exempt from AT&T's pass-through charges. As a direct contributor with respect to the revenue derived from its resale of AT&T's prepaid calling card services, Oblio sought refunds from AT&T of USF Charges collected during the January 1, 2005 through October 31, 2006 timeframe. AT&T has steadfastly refused these requests, even in light of the Commission's *USF Refund Order* directing resellers to seek refunds from their wholesalers, not USAC, in cases where payments were made to both USAC and the wholesaler for the same revenues.[15]

Based on its 499-A filings, it is without question the contributions Oblio owes for all of 2005 and all of 2006 will be determined by USAC, not AT&T. Therefore, *any amount* that AT&T collected as a USF Charge from Oblio for those years should be refunded, in full. For AT&T to do otherwise – to either collect and remit or collect and retain USF Charges from a reseller customer that also must directly pay into the Fund on the same revenue – is unquestionably an unreasonable practice.

AT&T has all the evidence and assurances the Commission's rules require in order for it to exempt Oblio from pass-through USF Charges and refund collected charges for the 2005 and 2006 period.[16] Yet it refuses to do so.

Oblio submitted to AT&T a completed USF Exemption Certificate; a document that was drafted and provided to Oblio by AT&T. In the USF Exemption Certificate, Oblio included its

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15 *USF Refund Order* at ¶ 9 ("[T]o the extent Petitioners allege a double payment of USF obligations, it is a result of fees assessed by their underlying carriers, not incorrect billing by USAC. As such, Petitioners' relief, to the extent appropriate, lies with the underlying carriers, not a refund or credit from the USF.").

16 *See Telecommunications Reporting Worksheet*, FCC Form 499-A; see also *Form 499 Instructions* at 17.

Filer 499 ID, legal name and address, name and phone number of a contact person, and the certification by Oblio that it is a reseller and a direct contributor to the Fund. AT&T also had at its disposal the Commission's website, through which AT&T could independently validate Oblio's contributor status.[17] *See* Exhibit 1. AT&T, therefore, had all the evidence of Oblio's direct contributor status it was required to secure pursuant to applicable Commission rules. Indeed, as early as September 2006, AT&T had all the information it needed to report Oblio revenue as "revenue from a reseller" for purposes of reporting its own revenue in its 499-Qs and As.[18] Yet AT&T refused to honor the irrefutable evidence; instead choosing to continue charging pass-throughs while simultaneously refusing to refund collected USF Charges.

Commission rules require 499 Filers, such as AT&T, to have documented procedures to ensure they report as "revenues from resellers" only revenues from entities that "reasonably would be expected to contribute to support universal service." 2007 499-A at 19. In the First Declaratory Order, the Commission unequivocally declared AT&T's EPCC Service was a "telecommunications service" subject to USF Charges and not an "information service" exempt from USF Charges. The Commission went on to state it expected "all other companies providing calling card services *similar to* those described [in the First Declaratory Order] to file new or revised Forms 499-A...as needed to properly report revenues from [EPCC Service] consistent with [the First Declaratory] Order." The First Declaratory Order became effective on March 16, 2005. Therefore, since early 2005, AT&T should have reasonably known that Oblio, as a reseller of its EPCC Services, was a "reseller of telecommunications" under the Communications laws and Commission regulations.

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17 *See Form 499 Instructions* at 19 ("Filers . . . may presume that any reseller identified as a contributor in this website in the month prior to an FCC Form 499-Q filing will be a contributor for the coming quarter, and that it was a contributor for all prior quarters during that calendar year.").

18 *See id.* at 19 ("Each filer should have documented procedures to ensure that it reports as 'revenues from resellers' only revenues from entities that reasonably would be expected to contribute to support universal service.").

Whereas the Commission's rules on 499 Filers who report "revenues from resellers" are clear and unambiguous as applied to the wholesaler's responsibilities to itself, to USAC and the FCC, the Commission's rules are silent with regard to that wholesaler's responsibilities to its "reseller" customers when presented with the proof required by these rules. AT&T apparently believes it is within its sole and exclusive authority to decide what proof of exemption is sufficient, even when the proof is exactly what AT&T has asked for. Oblio believes this is not what the Commission intended when it promulgated rules governing the wholesaler/reseller relationship and their USF responsibilities to one another.

AT&T had no legitimate or lawful reasons to refuse acknowledging Oblio's status as a direct contributor, to stop passing through USF Charges, and to calculate and issue refunds of collected USF Charges from at least January 1, 2005 through December 31, 2006. Yet, this is precisely what AT&T has done. AT&T's actions described in this petition, and therefore its practices, are unreasonable and violate Section 201(b) of the Act.

B. AT&T'S REFUSAL TO HONOR OBLIO'S PROOF OF EXEMPTION FROM USF PASS-THROUGH CHARGES AND REFUND COLLECTED USF CHARGES, BUT WILLINGNESS TO DO SO FOR OTHER TELECOMMUNICATIONS RESELLERS IS UNJUSTLY AND UNREASONABLY DISCRIMINATORY

Oblio seeks a declaration that AT&T's refusal to honor some, but not all, reseller customers' certifications that they are exempt from USF pass-through charges and other regulatory fees is an unjustly discriminatory practice in violation of Section 202(a) of the Act.

Section 202(a) of the Act prohibits AT&T, a common carrier, from discriminating unjustly or unreasonably among customers in its provision of communication services. 47 U.S.C. § 202(a).[19] A section 202(a) claim entails three elements: (1) whether the services are "like"; (2) if so, whether

[19] *See National Communications Association, Inc, v AT&T Corp.,* Docket Nos. 98-9673, 99-7023 (2d Cir. 2000).

the services were provided under different terms or conditions; and (3) whether the difference is reasonable.[20]

In the instant case, AT&T issues the same certification form to all of its reseller customers purchasing wholesale telecommunications services from AT&T. Those who can certify that they are direct contributors to the Fund are, according to AT&T's own USF Exemption Certificate, "entitled to an exemption from AT&T billing its CUSC [Carrier Universal Service Charge] and related charges." *See* Exhibit 1 at 4. Despite Oblio's proffer of a completed USF Exemption Certificate and other evidence of exemption from pass-throughs, AT&T has refused to honor Oblio's exemption and issue appropriate refunds.

During the relevant timeframe of 2005 and 2006, and in earlier periods, AT&T has provided a clear avenue for other reseller customers to achieve the same result sought by Oblio. AT&T created a USF Exemption Certificate that is routinely provided to its customers for the purpose of making "determination[s] regarding application of its Carrier Universal Service Charge ('CUSC') and other applicable taxes and surcharges…." *Id.* According to the express terms of its USF Exemption Certificate, AT&T honors the representations of its reseller customers that they are "entitled to an exemption from AT&T billing its CUSC and related charges for AT&T that [they] purchase[ ] because…customer contributes directly to [USAC]." *Id.* at 4. In addition, in its form AT&T clearly contemplates making *retroactive* adjustments to the amounts of USF Charges due and payable from its reseller customers. *Id.* at 7 (AT&T reserves the right to impose "any CUSC charges . . .late payment interest and/or penalties" in the case information supplied by its customer is incorrect.). Thus, AT&T maintains a long-standing, standard practice of making determinations of its customers' USF

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20 *See MCI Telecommunications Corp. v FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990); *See also Competitive Telecommunications Ass'n v FCC*, 998 F.2d 1058, 1061 (D.C. Cir. 1993) (*CompTel*).

exemption status and, where appropriate, making corrections to USF pass-throughs charged to its reseller customers, yet it refuses to treat Oblio similarly.

This petition does not raise a question of individually negotiated *rates* for the telecommunications services provided. Rather this petition involves a question of whether AT&T's practice of imposing *USF Charges* on some resellers who are direct contributors, but not to others, and its practice of doing so despite evidence which satisfies the Commission's requirements, results in unjust and unreasonable discrimination against resellers in Oblio's shoes.

Here AT&T's unreasonable discrimination comes in the form of providing all similarly-situated customers the opportunity to complete an identical USF Exemption Certificate, but treating some customers differently even though they supply AT&T with identical evidence of their direct contributor status. Because the charges in question are USF Charges and not privately negotiated rates for telecommunications services, AT&T's retention of Oblio's payments of USF Charges, where none are owed, but refund of USF Charges paid by other resellers who provided AT&T identical evidence of exemption, is unjustly discriminatory against Oblio.

Further, AT&T's refusal to refund collected USF Charges for which Oblio is also responsible for paying directly to USAC on the same revenues adds a cost to Oblio's provision of telecommunications services that must be recovered from its retail customers of prepaid calling cards. The net effect of AT&T's actions – picking and choosing which of its reseller customers will have to add "duplicative USF costs" to their bottom line – is that some reseller customers must pass along the cost of the redundant USF charges to their end user customers and others do not. [21]

[21] *See CompTel*, 998 F.2d at 1062. In *CompTel*, the court explained that discrimination for purposes of Section 202(a) applies to discrimination in charges as well as "practices" and "classifications," (quoting Section 202(a), and that price discrimination can be defined as "'charging different purchasers prices that differ by varying proportions from the respective marginal costs of serving them,'" (quoting I Alfred E. Kahn, THE ECONOMICS OF REGULATION: PRINCIPLES AND

AT&T's practice can have no reasonable basis, and Oblio hereby seeks a Commission declaration that AT&T's refusal to honor Oblio's request for a refund of collected USF charges is unreasonably discriminatory.

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INSTITUTIONS 63 (1970)). Thus, the charge at issue here, AT&T's duplicative charge for USF fees, certainly falls within the prohibitions against discrimination contained in Section 202(a).

CONCLUSION

For the foregoing reasons, Oblio requests the Commission issue a declaratory ruling that AT&T's refusal to honor Oblio's proof of exemption from USF pass-through charges and refund collected USF Charges are unreasonable practices in violation of Section 201(b). Further, that AT&T's selective honoring of valid USF pass-through exemption requests from some reseller customers, but not other similarly situated customers, and to selectively refund collected USF Charges to some, but not others, constitute unjustly discriminatory practices that violate Section 202(a) of the Act.

Respectfully submitted,

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EXHIBIT 1

USF EXEMPTION CERTIFICATE

AT&T
FEDERAL UNIVERSAL SERVICE FUND / CERTIFICATION OF CUSTOMER STATUS FORM
("Certification Form")

Full legal name of Customer: Oblio Telecom, Inc.

AT&T's determination regarding application of its Carrier Universal Service Charge ("CUSC") and other applicable taxes and surcharges related to telecommunications services provided by AT&T will be based upon the representations and information provided by the AT&T customer identified above ("Customer") in all portions of this Certification Form.

The FCC's rules, 47 C.F.R. 64.1195(a)-(h), require telecommunications carriers to register using the FCC Form 499-A. For your information, a current copy of the Form 499-A worksheet can be found at http://www.fcc.gov/Forms/Form499-A/499a.pdf. Customer must confirm on this Certification Form that (i) it has filed a Telecommunications Reporting Worksheet (Form 499-A) with the Universal Service Administration Company, or (ii) it is not subject to that registration requirement.

Please place an "X" in the box beside ALL statements on this Certification Form that apply. Also, please identify on the separate **AT&T Account Number Worksheet** provided any AT&T billing accounts by account number pursuant to which the Customer purchases AT&T but does not meet the criteria in Section C (1)(a), (b), or (c) below. If you have any questions related to this correspondence, please contact your Customer Lifecycle Consultant. This fully completed and signed Certification Form must be returned to AT&T.

The undersigned authorized officer of Customer hereby certifies that all statements marked below are true and accurate with respect to AT&T and information services that Customer purchases.

A. For Companies Purchasing ONLY Information Services from AT&T:

1. ☐ Customer is not required to complete this Certification Form for AT&T because Customer purchases only information services from AT&T (e.g, Dedicated Internet Access, Dial-Up Internet Access). Customer agrees to provide AT&T with an updated Certification Form with the appropriate box(es) in sections B, C or D below checked prior to purchasing any AT&T. CUSC charges do not apply to information services provided by AT&T.

B. For Non-U.S. Telecommunications Carriers Purchasing Telecommunications Services From AT&T:

Customer is a non-U.S. telecommunications carrier and:

1. ☐ Customer is not required by FCC rules to file FCC Form 499-A because it uses the AT&T only to provide telecommunications services that traverse the U.S.[1] (*i.e.*, services that both originate and terminate outside of the U.S. but are routed through the U.S.).

2. ☐ Customer is not required by FCC rules to file FCC Form 499-A because it uses the AT&T only to provide non-domestic telecommunications services (*i.e.*, international services that either originate or terminate in the U.S.) for which all revenues are from (i) non-domestic (*i.e.*, non-U.S.) end users or (ii) U.S. resellers that have certified to Customer that they contribute directly to the Universal Service Administrator on the resold AT&T, if applicable.

[1] "U.S." means the United States of America, its possessions, territories, states, districts and commonwealths, including, without limitation, Guam, Puerto Rico and the U.S. Virgin Islands.

C. For U.S. Telecommunications Carriers Purchasing Telecommunications Services from AT&T:

1. Customer is entitled to an exemption from AT&T billing its CUSC and related charges for AT&T that it purchases ("Exempt Services") because:

☐ a. Customer contributes directly to the Universal Service Administrator pursuant to FCC rules on its end-user revenues derived from such Exempt Services. Customer (or its affiliate identified below) has filed an FCC Form 499-A and continues to file FCC Form 499-Q reports with the Universal Service Administrator, and reports revenue from the Exempt Services on the FCC Form 499-A using the following Filer ID number:
Form 499 Filer ID (6 digits): 825547
Name of entity that filed Form 499: Oblio Telecom, Inc.

☐ b. Customer provides the Exempt Services only to reseller carriers. Customer has obtained certifications that the reseller carriers will either contribute directly to the Universal Service Administrator on the revenues derived from the resold Exempt Services or require its carrier customers, if any, to do so. Customer (or its affiliate identified below) has filed an FCC Form 499-A and continues to file FCC Form 499-Q with the Universal Service Administrator using the following Filer ID number:
Form 499 Filer ID (6 digits) : ___________
Name of entity that filed Form 499: ____________________

☐ c. Customer is not required by FCC rules to file FCC Form 499-A because it uses AT&T only to provide telecommunications that traverse the U.S. (*i.e.*, services that both originate and terminate outside the U.S. but are routed through the U.S.).

NOTE: If Customer uses any AT&T that are purchased for any one of the purposes identified below (C.2, C.3, C.4) customer must also submit account number(s) on the AT&T Account Number Form provided. Also, if Customer fails at any time to satisfy the conditions identified in the appropriate box(es) checked in Section C.1 above with respect to any AT&T Exempt Services, Customer has an affirmative obligation to file an updated Certification Form and AT&T Account Number Form within the timeframes set forth below.

2. ☐ Customer is not entitled to an exemption from AT&T billing its CUSC and applicable taxes or surcharges for AT&T that it purchases for its own administrative or end-user use and not for resale as a telecommunications service ("Non-Exempt Services"). Customer has identified all AT&T Account Numbers under which Customer purchases Non-Exempt Services on the attached AT&T Account Number Form.

3. ☐ Customer is not required to contribute directly to the universal service support mechanisms because Customer's contribution would be *de minimis* (less than $10,000 annually). Customer has identified all AT&T Account Numbers pursuant to which Customer purchases AT&T on the attached AT&T Account Number Form. Please note that in addition to checking this box, C.3, all *de minimis* carriers must also check one of the two boxes below regarding its Form 499-A filing status:

☐ i. Customer offers telecommunications services for a fee exclusively on a non-common carrier basis and need not file an FCC Form 499-A; or

☐ ii. Customer provides telecommunications service on a common-carriage basis and has filed an FCC Form 499-A using the following Filer ID Number:

Form 499-A Filer ID: ___________

Name of entity that filed Form 499-A: ___________________

4 ☐ Customer is not required to contribute directly to the Universal Service Administrator because it is using AT&T only to terminate calls in the U.S. originated by non-U.S. end users. Customer has identified all AT&T Account Numbers under which Customer purchases AT&T on the attached worksheet. Customer (or its affiliate identified below) has filed an FCC Form 499-A and contributes to the applicable universal support mechanisms (NANPA, LNPA, TRS, etc.) using the following Filer ID number:

Form 499-A Filer ID: _______________

Name of entity that filed Form 499-A: ____________________

D. For Non-Telecommunications Carriers Purchasing Telecommunications Services From AT&T:

For the reason(s) identified below, Customer is NOT a telecommunications carrier and (i) is not required to file an FCC Form 499-A or to contribute directly to the universal support mechanisms, and (ii) is not entitled to an exemption from AT&T billing Customer the CUSC and applicable taxes or surcharges for Non-Exempt Services. Customer has identified all AT&T Account Numbers pursuant to which the Customer purchases AT&T Telecommunications Services pursuant to one of the statements below on the attached AT&T Account Number Form.

1. ☐ Customer is a systems integrator that derives less than five percent (5%) of its systems integration revenues from the resale of telecommunications services.

2. ☐ Customer qualifies for one of the other exemptions explicitly specified in the FCC Form 499-A filing instructions (e.g., self-providers, governmental entities purchasing on behalf of themselves, broadcasters, non-profit schools, etc.) Customer is exempt from filing a FCC Form 499-A report because:
____

3. ☐ Customer is an information services provider (ISP), enhanced services provider (ESP), or voice over Internet protocol (VOIP) provider that purchases AT&T Telecommunications Services for incorporation into Customer's service product and not for resale as a telecommunications service.

4. ☐ Customer is purchasing AT&T for its own administrative or end-user use and not for resale as a telecommunications service.

AT&T is relying upon the representations and information provided by Customer in this Certification Form, any updated Certification Forms (including any related documentation, such as the AT&T Account Number Form) and any subsequent amendments to determine whether, among other things: (i) Customer is qualified to purchase wholesale Telecommunications services from AT&T; (ii) Customer has filed its FCC Form 499-A; and (iii) Customer's purchase of Telecommunications Services from AT&T is subject to CUSC and related taxes and surcharges. To the extent Customer has certified that it is entitled to an exemption pursuant to Section C.1, Customer certifies that all wholesale accounts established for Customer after the date of this Certification Form are for Exempt Services and that Customer will pay all CUSC charges directly to the Universal Service Administrator (as applicable) unless Customer notifies AT&T via an updated Certification Form and/or AT&T Account Number Form that Customer is purchasing Non-Exempt Services under such account(s). Customer has an affirmative obligation to promptly update the information provided in this Certification Form. If at any time Customer's certifications as contained herein are no longer accurate, Customer shall, no later than 20 calendar days after the change, complete and submit to AT&T an updated Certification Form and any other required documentation. AT&T will provide Customer upon request a new Certification Form or related documentation, such as the AT&T Account Number Form.

If the information provided by the Customer in this Certification Form, or any updated Certification Form or AT&T Account Number Form, is at any time determined to be incorrect or if it changes and Customer does not notify AT&T as required herein, AT&T reserves the right to pursue all available remedies, including but not limited to imposing any CUSC charges and other taxes and surcharges applicable to the AT&T Telecommunications Services, late payment interest and/or penalties.

CERTIFICATION

I certify that I am an officer of the Customer; that I am duly authorized by Customer to make representations, attestations and certifications contained herein on behalf of Customer; that I have examined the foregoing information; that to the best of my knowledge, information and belief, all statements of fact contained herein are true; and that said information is an accurate statement of the affairs of the above-named Customer.

CUSTOMER NAME: Oblio Telecom, Inc.

PRINTED NAME: Bryan Chance

POSITION: President & CEO, Titan Global Holdings, Inc.

ADDRESS: 407 International Parkway, Suite 403
Richardson, TX 75081

TELEPHONE: 972-470-9100

SIGNATURE: ____Bryan M Chance____ DATE: __9-18-06__

PRINTED NAME OF CONTACT PERSON: Bryan Chance/Kurt Jensen

TELEPHONE NUMBER OF CONTACT PERSON: (972) 470-9100

EMAIL ADDRESS OF CONTACT PERSON: bchance@titanpcb.com; kjensen@obliotel.com

Attach Page 1 of Customer's FCC Form 499-A hereto.