

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

In the Matter of	)	
	)	
Petition of Oblio Telecom, Inc. For	)	CC Docket No. 06-122
Declaratory Ruling Concerning Wholesale	)	
And Resale Telecommunications Carriers	)	
Universal Service Fund Contribution	)	
Obligations	)	

**COMMENTS OF VERIZON<sup>1</sup>**

**Introduction and Summary**

The opportunity to review the relationship between wholesale carriers and resellers is timely and appropriate. Comprehensive reform of universal service should not be limited to the distribution of universal service funds. Contributor issues are also important. Wholesale carriers are forced under the current contribution system to serve as collection and enforcement agents on payments due the fund by reseller customers – a system that is not practical and should not continue.

These comments address only Oblio Telecom's claim that it is entitled to a refund from AT&T of USF surcharges paid by Oblio prior to providing AT&T with a USF "exemption certificate," and not other aspects of Oblio's petition. Oblio's request for a refund of USF surcharges from AT&T, if granted, would exacerbate USF contribution inequities experienced by wholesale carriers. Oblio, AT&T's wholesale prepaid calling card customer, asks that the Commission make wholesale carriers liable for refunds to resellers in cases where resellers make

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<sup>1</sup> The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

their own contributions to the fund and also pay USF surcharges on services purchased from wholesalers. Oblio asks that wholesalers be forced to issue USF surcharge refunds even when redundant contributions to the fund (*i.e.*, contributions by both the reseller and the wholesaler on the same services) are the fault of the reseller and including situations where the wholesaler has no ability to seek a corresponding reimbursement from the fund. Oblio's petition lacks both legal and equitable merit and should be denied. In the long-term, the Commission should adopt a contribution system based on working telephone numbers, which, if properly designed, would help eliminate many of the practical difficulties surrounding reseller contributions to the fund.

**I. Wholesale Carriers Should Not Be Obligated To Issue Refunds Of USF Surcharges To Resellers.**

Oblio requests that the Commission issue a declaratory ruling that AT&T's alleged failure to refund prior USF surcharges upon receipt of Oblio's exemption certificate is unreasonable and discriminatory.<sup>2</sup> According to Oblio, at some point, apparently in the fall of 2006, Oblio filed a revised FCC Form 499-A<sup>3</sup> for its 2005 revenues, reporting its prepaid calling card revenues as "retail telecommunications services revenues." *Id.* at 3. Oblio also apparently filed an original Form 499 (in 2007) for its 2006 revenues, reporting additional retail prepaid calling card revenues. *Id.* In September of 2006, Oblio alleges that it provided AT&T with an exemption certificate for purposes of USF surcharges. *Id.* ¶ 24. Oblio now seeks a refund from

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<sup>2</sup> 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, WC Docket No. 06-122, filed April 17, 2007 ("Oblio Petition").

<sup>3</sup> A provider's obligations to the fund are calculated by the Universal Service Administrative Company ("USAC") based on revenues reported on Form 499.

AT&T for up to \$21 million in USF surcharges that AT&T allegedly collected from Oblio – and presumably in turn paid into the fund – during 2005 and 2006. *Id.* ¶¶ 26, 28.

Oblio’s petition illustrates the difficult situation wholesale carriers find themselves in with respect to USF contributions of reseller customers. Generally, providers of telecommunications are required to contribute a percentage of their end-user interstate and international revenues to the USF.<sup>4</sup> Carriers typically recover their USF contributions through surcharges on customers’ bills. Revenues from sales of services to other carriers – so called “carrier’s carrier” revenues or revenues from sales to “resellers” – are generally exempt from assessable contributions.

Determining what revenues on which sales and which customers should be exempt from USF surcharges is complicated. The recently revised Worksheet Instructions that accompany Form 499-A envision a layered process. In order for a wholesaler to exempt certain interstate revenue from its USF contribution base, the revised Worksheet Instructions require that the wholesaler have Form 499 filer identification information and an annual exemption certificate – like Oblio claims to have provided AT&T – from resellers. Worksheet Instructions at 19. In addition, the Worksheet Instructions reference use of a list of Form 499 filers on a website maintained by the Commission<sup>5</sup> to “verify the continuing validity of a reseller’s certification”

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<sup>4</sup> 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, <http://www.fcc.gov/Forms/Form499-A/499a.pdf> at 1, 4 (“Worksheet Instructions”).

<sup>5</sup> The website is not always up to date, and there are times when the customer name provided to the wholesale carrier does not exactly match the name of the filing entity, making an accurate search problematic.

and certain assumptions that carriers may make from the listings on this website. *Id.* This process can be burdensome and difficult to administer.

Under this system, the wholesaler must have a process to receive, maintain, and update exemption certificates by customer account. With literally thousands of annual sales to reseller customers for large wholesalers like AT&T and Verizon, such processes are costly and time-consuming. Even with the best intentions, sales to reseller customers are often not discrete transactions that can be easily isolated. Quantities vary, and purchases are made for many different purposes – all of which can change over time. Moreover, reseller customers frequently fail to return exemption certificates and/or fail to fill them out correctly. Personnel changes, mergers and acquisitions, gaps in time between purchases, name changes, and complexities with different purchasing divisions and subsidiaries of large and small customers all compound the difficulties.

Despite the complexity of the reseller/end-user distinction, there is an expectation that wholesale carriers will get this exactly right, every time. When resellers do not make USF contributions by filing their own Form 499s – or when resellers essentially pay twice as Oblio asserts – wholesalers frequently find themselves in the middle. In the context of a USAC audit or other enforcement activity, wholesalers are often ultimately required to make contributions to the fund when resellers do not contribute directly on their own end-user revenues. Worksheet Instructions at 19.

Oblio now suggests that wholesalers should be liable to resellers themselves in situations where a reseller, erroneously or otherwise, purportedly makes “double” contributions to the fund (indirectly through payment of USF surcharges to its wholesaler and directly through its own filings). Oblio’s refund claim is fundamentally flawed. Until a wholesale carrier has a sufficient

basis for excluding revenues from its contribution base, it must contribute to the fund on those revenues. The fact that a reseller may, subsequent to purchase, establish itself as a contributor to the fund, and thus exempt from the wholesale carrier's USF surcharge, does not change the wholesaler's previous independent obligation to contribute on revenues from the time of the initial sales.

A pre-certification refund requirement would simply shift the consequences flowing from the reseller's failure to timely establish its contributor status from the reseller to the wholesale carrier. There is nothing either in law or equity that requires such a shift. Indeed, to the extent there is an inequity in the current system it occurs when the wholesaler is required to make contributions to the fund because the reseller did not contribute directly on its own end-user revenues and the wholesaler lacks a mechanism to recover those contributions from the reseller.

Moreover, in many circumstances, such as the Oblio-AT&T situation, wholesalers would be precluded from recovering from USAC the full amount of any refunds they may have to pay a reseller. In December 2004, the Wireline Competition Bureau adopted a one-year statute of limitations on revisions to Form 499-A that have the effect of reducing a carrier's USF payment obligation.<sup>6</sup> Although various parties have petitioned for reconsideration of the *Form 499-A Order*, the current rules would prevent AT&T from filing a revised Form 499-A going back more than one year. *Id.* Thus, if Oblio were awarded refunds for the period from January 1, 2005 through October 31, 2006, AT&T would not be able to recategorize any 2005 revenues

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<sup>6</sup> *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, Order, CC Docket Nos. 96-45, 98-171, 97-21, DA 04-3669 (rel. Dec. 9, 2004) (“*Form 499-A Order*”).

with USAC. The same would be true of any other wholesale carrier if forced to pay refunds to a reseller beyond one year since filing its applicable Form 499-A.<sup>7</sup>

Further, even in those situations where a reseller seeks a USF surcharge refund from its wholesaler within the one-year statute of limitations, large wholesale carriers such as Verizon would, as a practical matter, still be out of pocket for the refund. Including its domestic telecom and enterprise services, Verizon files approximately 20 Form 499s every April, reporting billions of dollars in revenues. Within these many filings Verizon reports revenues on literally thousands of sales to reseller customers. It is not practical or appropriate to expect large wholesale carriers to restate proportionally very small amounts of revenue and re-file billion-dollar reports with the Commission every time a reseller desires to submit an exemption certificate applicable to prior periods. This is especially true since the timing of the submission of an exemption certificate is singularly within the reseller's control.

## **II. Oblio's Reliance Upon The ATS Bureau Order Is Misplaced.**

In seeking refunds from AT&T, Oblio relies upon the decision of the Wireline Competition Bureau in the *Federal-State Joint Board on Universal Service, American Telecommunication Systems, Inc., Equivoice, Inc., Eureka Broadband Corporation, TON Services, Inc., Value-Added Communications, Inc.*, Order, CC Docket No. 96-45, DA 07-1306 (rel. Mar. 14, 2007) ("*ATS Order*"). Such reliance is misplaced.

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<sup>7</sup> This situation would be avoided if resellers were permitted to recover USF overpayments directly from USAC. Since USAC is the beneficiary of double payments by resellers and their wholesale carriers, it would be considerably more efficient if USAC made appropriate refunds or credits directly to the reseller. Having the reseller seek to recover funds from the wholesale carrier and in turn having the wholesale carrier seek to recover refunds or credits from USAC is an unnecessarily circuitous process.

First, the *ATS Order* was decided by the Bureau acting under delegated authority, and a petition seeking review of that decision is currently pending before the Commission.<sup>8</sup> Until the Commission completes its review, the *ATS Order* has no precedential effect.<sup>9</sup>

Second, Oblio misreads the *ATS Order*, in which the Bureau held that the resellers in that case were not entitled to a refund from USAC for USF contributions allegedly made on their behalf by their wholesale carriers. *ATS Order* ¶ 6. Notwithstanding Oblio's suggestion, the Bureau made no determination whether those resellers were entitled to a refund from their wholesale carriers, noting only that "Petitioners' relief, *to the extent appropriate*, lies with the underlying carriers, not a refund or credit from the USF." *Id.* ¶ 9 (emphasis added). Thus, nothing in the *ATS Order* can reasonably be read to suggest that a wholesale carrier is legally required to refund USF contributions to a reseller or that AT&T's failure to do so constitutes a violation of the Communications Act. *See* Oblio Petition ¶ 18 (asserting that "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").

Third, the *ATS Order* is factually distinguishable. In that case, there was no dispute that while the resellers had an independent obligation to contribute directly to the USF based on their revenues, they did do so by relying upon their wholesaler carriers to contribute on the resellers' behalf "as provided for in their individual resale agreements as resellers." *ATS Order* ¶ 6. Here, unlike in the *ATS Order*, Oblio sought to contribute directly to the USF for revenues on prepaid

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<sup>8</sup> *See* Eureka Broadband Corporation's Petition for Reconsideration of Order Compelling Overpayment of USF Funding Obligation, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed April 23, 2007).

<sup>9</sup> *Cf. Falcon Cablevision; Appeals of Local Rate Orders of the City of Cedartown, Georgia*, 16 FCC Rcd. 4633 (2001).

calling card services in late 2006, after not doing so for nearly five years after entering into its contract with AT&T in 2001. Oblio Petition at 3-4.<sup>10</sup> Such a “material[] alter[ation]” in the relationship between Oblio and AT&T requires consideration of its effect on the parties’ contract, which was not an issue the Bureau confronted in the *ATS Order*. Oblio Petition ¶ 12.

### **III. This Situation Highlights The Need To Move To A Numbers-Based USF Contribution System That Will Ease Administrative Burdens.**

There is much inequity in the current revenue-based USF contribution system. Vague distinctions between a carrier’s revenues from sales to resellers versus sales to end-users are only part of the problem. It is, for example, often similarly difficult for carriers to distinguish between interstate and intrastate service revenues, as well as between telecommunications and information service revenues. And overall, a declining base of interstate and international telecommunications revenues coupled with accelerating demand for universal service support makes the current revenue-based contribution system unsustainable. The Commission should take this opportunity to transition toward a contribution system based on in-use, working telephone numbers. Such a system, if designed properly, would be far more equitable for consumers and easier for carriers and USAC to administer. A system in which carriers generally contribute to the USF based on a flat assessment against the carrier’s working telephone numbers would minimize or eliminate the potential for the contributions disputes at issue here.

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<sup>10</sup> It is unclear when Oblio began directly reporting revenues from prepaid calling card services for USF purposes. However, Oblio alleges that it entered into a contract with AT&T in 2001 under which Oblio purchased prepaid calling services. Oblio Petition ¶¶ 4-5. Apparently, Oblio did not contribute directly to the USF based on revenues from prepaid calling cards from 2001 until some time in the fall of 2006. According to its Petition, Oblio did not provide AT&T with an exemption certificate until September 2006 and did not make a written demand for refunds of USF charges until October 30, 2006. *Id.* ¶¶ 24, 28.

**Conclusion**

Oblio's petition should be denied, and the Commission should move expeditiously toward a numbers-based universal service contribution system.

Respectfully submitted,

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