

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

In the Matter of)	
)	
Request for Review of Decision of the)	CC Docket No. 96-45
Universal Service Administrator by)	
IDT Corporation)	

COMMENTS OF AT&T INC.

AT&T Inc. (AT&T), on behalf of its affiliates, hereby submits the following comments in response to IDT’s request for review of certain Universal Service Administrative Company (USAC) audit findings related to its reporting of prepaid calling card revenue.¹ For reasons explained below, the Commission should deny IDT’s appeal if it determines that IDT had no reasonable basis to conclude that the entities to which IDT sold its prepaid calling cards were contributing to the universal service support mechanisms.

I. Background

A. Wholesale and Resale Revenue Reporting.

Pursuant to the Commission’s revenue reporting requirements, providers of interstate telecommunications are required to report their telecommunications revenues using two broad categories: (1) revenues from other contributors to the federal universal service support mechanisms (i.e., “carrier’s carrier” revenue) and (2) revenues from all other sources (i.e., “end-user” revenue).² Providers of telecommunications – including

¹ Request for Review of Decision of the Universal Service Administrator by IDT Corporation and IDT Telecom, CC Docket No. 96-45 (filed June 30, 2008) (IDT Appeal).

² See, e.g., Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A at 18 (Feb. 2008) (2008 499-A Instructions).

resellers – contribute to the universal service support mechanisms based on their interstate telecommunications end-user revenues.³ Consequently, wholesalers do not contribute to the universal service fund (USF or “fund”) based on their carrier’s carrier revenues *if* their resellers incorporate the purchased interstate telecommunications into the resellers’ own telecommunications offerings and can be reasonably expected to contribute to the USF based on revenues from such offerings.⁴ Otherwise, resellers would be contributing twice to the USF on the same revenue – once through a direct contribution and once through an indirect contribution (made via a payment to its underlying provider). Resellers whose annual USF contribution would be *de minimis* under the Commission’s rules do not contribute directly to the USF and wholesalers are required to treat such resellers as end-user customers.⁵

Wholesalers are required to have documented procedures to ensure that they are reporting as carrier’s carrier revenue only revenues from entities that reasonably would be expected to contribute to the USF.⁶ This requirement has existed since the inception of the post-Telecommunications Act of 1996 USF revenue reporting worksheet.⁷ The

³ See, e.g., 47 C.F.R. § 54.706(a)(16); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, paras. 843-47 (1997) (*Universal Service First Report and Order*).

⁴ 2008 499-A Instructions at 19.

⁵ See, e.g., *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 *et al.*, 13 FCC Rcd 5318, para. 298 (1997) (*Fourth Reconsideration Order*) (finding that *de minimis* resellers “must be considered end users for universal service contribution purposes”).

⁶ 2008 499-A Instructions at 19.

⁷ *Changes to the Board of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, 12 FCC Rcd 18400, Appendix C at 18507-08 (Instructions for Completing the Worksheet for Filing Contributions to the Universal Service Support Mechanisms) (*USAC Order*) (1997).

1997 instructions also state that if the wholesale provider “does not have other reason to know that the entity will, in fact, resell service, then the [wholesale provider] should obtain a signed statement to that effect.”⁸ Subsequent versions of the instructions contained similar language.⁹ In its April 2007 499-A Instructions, the Commission required wholesale providers to obtain a signed statement each year from their resellers containing certain language (i.e., a certification made under penalty of perjury that either the reseller is contributing directly to the USF or each entity to which the reseller provides resold telecommunications is itself a direct contributor to the USF).¹⁰

B. IDT’s Appeal.

According to IDT’s appeal, it reports the “vast majority” of its prepaid calling card revenue as carrier’s carrier revenue,¹¹ which means that it does not include the bulk of its prepaid calling card revenue in its USF contribution base. USAC disagreed with IDT’s treatment of such revenue and found that IDT should have reported its prepaid calling card revenues as end-user revenues, which are included in the USF contribution base. USAC also directed IDT to re-file its 499-A filings for 2006 and 2007 consistent with USAC’s findings. In its appeal, IDT asserts that its “intermediate customers” (i.e.,

⁸ *Id.* at 18508.

⁹ In its 2000 499-A Instructions, the Commission modified this language to state “If the underlying contributor does not have independent reason to know that the entity will, in fact, resell service and contribute to the federal universal service support mechanisms, then the underlying carrier should either obtain a signed statement to that effect or report those revenues as end user revenues.” 2000 499-A Instructions at 13. In its 2002 499-A Instructions, the Commission provided a link to a web page identifying current USF contributors and directed wholesalers to obtain, among other information, Filer 499 IDs from their resellers. 2002 499-A Instructions at 15.

¹⁰ April 2007 499-A Instructions at 19.

¹¹ According to IDT, it contributes to the universal service fund based only on its “limited” direct sales of calling cards to customers via the Internet. IDT Appeal at 10 & n.30.

its retailers and distributors) have the USF contribution responsibility, not IDT, and USAC has thus improperly attempted to shift IDT's intermediate customers' USF obligations to IDT.¹² IDT also notes that this appeal is related to one filed with the Commission on April 10, 2006.¹³ Indeed, based on IDT's description, USAC's findings that IDT appealed in 2006 seem to be identical to those contained in the instant appeal. That earlier appeal covered calendar years 2003 through 2005. Thus, since at least 2003, IDT has classified almost all of its prepaid calling card revenue as carrier's carrier revenue and has not contributed to the USF based on those revenues.¹⁴

II. Discussion

IDT devotes most of its appeal to raising procedural complaints about the validity of the 499-A instructions generally and the prepaid calling card language contained in those instructions in particular. AT&T has raised similar concerns. Like IDT, almost two years ago, AT&T appealed findings from a USAC contributor audit concerning how AT&T reported its prepaid calling card revenues.¹⁵ In its appeal, AT&T noted inconsistencies in the prepaid calling card language set forth in the 499-A instructions and the 499-A form itself¹⁶ and recommended that the Wireline Competition Bureau (Bureau) seek comment on the prepaid calling card language to resolve any ambiguity

¹² IDT Appeal at 14.

¹³ *Id.* at 2.

¹⁴ *Id.* at 10 (stating that, since "virtually all of IDT's prepaid calling cards are sold through a distributor rather than directly to the public, IDT's calling card sales are almost exclusively wholesale, not retail revenue").

¹⁵ Request for Review by AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45 (filed October 10, 2006) (AT&T Appeal). To date, the Commission has not acted on this appeal.

¹⁶ *Id.* at 17-19.

and ensure that all prepaid calling card providers report their revenues in the same manner.¹⁷ While AT&T continues to urge the Bureau to put the 499-A instructions out for public comment,¹⁸ AT&T disagrees strongly with IDT's decision to report almost all of its prepaid calling card revenue as carrier's carrier revenue absent some reasonable basis to conclude that its resellers were in fact contributing to the USF. IDT cannot rely on the flaws with the prepaid calling card instructions to justify this decision. Unless IDT obtained reseller certifications from its wholesale customers (or can otherwise demonstrate that these customers contributed directly to the USF during the audit period), it was required to treat these resellers as end users and include revenues from such resellers in its contribution base.

IDT's treatment of revenues derived from resellers of its prepaid calling card services stands in stark contrast to the way in which AT&T has treated such revenues. As AT&T explained in its appeal, although it views its intermediate distributors as resellers of AT&T's prepaid calling cards,¹⁹ because it did not have an independent reason to know that these resellers were contributing to the USF based on their prepaid calling card revenues, AT&T correctly treated these resellers as end users and included the interstate telecommunications revenues from its sales to these resellers in AT&T's contribution base. The disagreement between AT&T and the USAC auditors concerned

¹⁷ *Id.* at 20 (citing IDT's 2006 appeal as an example of at least one of AT&T's prepaid calling card competitors reporting its revenues in a dramatically different manner from AT&T).

¹⁸ *See, e.g.*, Letter from Robert W. Quinn, AT&T, to Dana Shaffer, Federal Communications Commission, CC Docket No. 96-45 (filed Oct. 10, 2007) (recommending, among other things, that the Bureau provide notice and comment on any revisions to the 499-A instructions and redline any proposed changes).

¹⁹ AT&T Appeal at 13-16.

whose revenue AT&T should have reported as “end user” revenue.²⁰ During the period of time at issue in its appeal and until the Commission’s *Second Prepaid Calling Card Order* became effective,²¹ AT&T correctly reported *its* revenue derived from selling prepaid calling cards to resellers in its contribution base. USAC contended that, instead, AT&T should have reported its resellers’ revenue. AT&T appealed this finding, explaining that USAC would have it contribute retroactively to the USF based on revenues from prepaid calling cards that may have no face value and based on prices paid by consumers about which AT&T has no knowledge.²² After the Commission adopted its *Second Prepaid Calling Card Order*, AT&T renegotiated its contracts with its prepaid calling card customers (including retailers) to require them to provide AT&T, upon its request, with their prepaid calling card revenue. For reporting periods from November 2006 forward, AT&T has been contributing to the USF based on its resellers’ end-user revenues, except, of course, where a reseller customer has provided AT&T the requisite reseller certification.

There can be no question that in order for the Commission’s end-user revenues-based contribution methodology to operate successfully (i.e., for the Commission to ensure the sufficiency of its universal service support mechanisms), wholesale providers of interstate telecommunications must have some assurance from their resellers that those resellers actually contribute to the USF. The Commission’s revenue reporting instructions have been unambiguous on this point since their first publication in July

²⁰ *Id.* at 16.

²¹ *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, 21 FCC Rcd 7290 (2006) (*Second Prepaid Calling Card Order*).

²² AT&T Appeal at 16.

1997.²³ Such a requirement is plainly consistent with the Commission’s orders. In the *Universal Service First Report and Order*, for example, the Commission stated that, in establishing a contribution methodology based on end-user revenues, wholesale contributors will be required to distinguish sales to end users from sales to resellers, however, the Commission did not “foresee that this will be difficult because resellers will have an incentive to notify wholesalers that they are purchasing services for resale *in order to get a lower price that does not reflect universal service contribution requirements.*”²⁴ If the Commission did not intend for wholesale providers to treat non-contributing resellers as end users, it clearly would not have referred to the price that a *contributing* reseller (i.e., one that notifies its wholesale provider that it contributes to the fund) would have otherwise received as one “reflect[ing] [the wholesale provider’s] universal service contribution *requirements.*” Moreover, such treatment is consistent with the Commission’s requirement that wholesale providers treat *de minimis* resellers as end-user customers: if a reseller is not contributing to the USF, the wholesale provider must treat that reseller as an end user in order to ensure the sufficiency of the fund.²⁵

As one of the largest wholesale providers of interstate telecommunications in the industry, AT&T is certainly not advocating that wholesale providers be required to police

²³ *USAC Order* at 18507-08 (“An underlying contributor 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. . . . If the underlying contributor does not have other reason to know that the entity will, in fact, resell service, then the contributor should obtain a signed statement to that effect.”).

²⁴ *Universal Service First Report and Order* at para. 848 (emphasis added).

²⁵ See *Fourth Reconsideration Order* at para. 298; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 19 FCC Rcd 23824, paras. 51-52 (2004) (upholding its *de minimis* reseller finding made in the *Fourth Reconsideration Order*).

resellers to ensure that they contribute. Rather, wholesale providers must perform “due diligence,”²⁶ which is accomplished by having procedures in place to ensure that they are reporting as carrier’s carrier revenue only revenues from entities that reasonably would be expected to contribute to the USF. Obtaining reseller certifications is an obvious way for a wholesale provider to receive this assurance, as is periodically reviewing the Commission’s web site²⁷ to review whether the reseller is listed as a current contributor. If IDT took these reasonable steps, thereby fulfilling its obligations as a wholesale provider of interstate telecommunications, there can be no question that it correctly classified its resold prepaid calling card revenue as carrier’s carrier revenue.

Based on experience and IDT’s silence in this regard, however, AT&T doubts that *any* of IDT’s retailers have provided it with reseller certifications and/or are listed as current contributors on the Commission’s web site, and AT&T suspects that many, if not most, of IDT’s distributors are considered *de minimis* for contribution purposes. This of course is a factual matter that can be addressed easily by USAC and the Commission. If AT&T’s suspicions are correct, IDT erred in reporting almost all of its prepaid calling card revenue as carrier’s carrier revenue and the Commission should deny IDT’s appeal. If true, the result of IDT’s actions were not only to have shifted contribution costs to other providers of interstate telecommunications but to have placed prepaid calling card

²⁶ See, e.g., *Federal-State Joint Board on Universal Service, Petition for Review American Cyber Corp. et al.*, CC Docket No. 96-45, 22 FCC Rcd 4925, para. 15 (2007).

²⁷ See <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>.

competitors like AT&T, which did contribute to the fund based on its resold prepaid calling card revenues, at a significant competitive disadvantage.²⁸

Finally, IDT's classification of these revenues may call into the question the accuracy of reseller certifications that it provided to wholesale providers. If IDT purchases interstate telecommunications services from an underlying provider, and then incorporates such services into its prepaid calling card service, the underlying provider was required to report its revenues from such services as reseller revenues if IDT provided a reseller certification that it was either contributing directly to the fund or, in turn, reselling those underlying services to entities that were, themselves, contributing directly to the fund. Based on IDT's appeal, it is clear that IDT is not contributing directly to the fund based on the majority of its prepaid calling card revenue. If (as appears likely) IDT has not obtained reseller certifications from its wholesale customers and has no other basis to conclude that its resellers are contributing to the fund, then any reseller certification that IDT may have provided to an underlying carrier for services that IDT incorporates in its prepaid calling card service was at best inaccurate, and likely fraudulent.²⁹

III. Conclusion

²⁸ AT&T notes in this regard that the contribution factor has been approximately 10 percent for the past several years.

²⁹ As noted above, since April 2007, the Commission's 499-A instructions have required resellers to certify under penalty of perjury either that they are contributing directly to the fund based on those resold services or that each entity to which the reseller provides resold service is itself a direct contributor to the USF. *See, e.g.*, 2008 499-A Instructions at 19.

While AT&T has certainly had its share of issues with the 499-A instructions and USAC's interpretation of these instructions in the contributor audit context,³⁰ the Commission's precedent is clear that if a wholesale provider of interstate telecommunications has no reasonable basis to conclude that its resellers are in fact contributing directly to the USF, the wholesale provider must treat its resellers as end users. Rather than reporting its revenue from such resellers as carrier's carrier revenue, the wholesale provider is thus required to report this revenue as end-user revenue (which is, of course, included in the wholesale provider's contribution base). If the Commission concludes that IDT had no basis to know that its resellers were contributing to the USF, because, for example, it failed to obtain reseller certifications and its resellers were not listed as contributors on the Commission's web site, it should deny IDT's appeal and direct IDT to re-file its 499-A filings going back to 2003 in accordance with its findings.

Respectfully Submitted,

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³⁰ See generally AT&T Appeal.