

Synergies Law Group, PLLC

April 6, 2009

VIA ELECTRONIC DELIVERY

Debra A. Howland, Executive Director
New Hampshire Public Utility Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



Re: Response to IDT's Petition; Docket 09-048

Dear Director Howland:

Union Telephone Company ("Union) hereby responds to the above-captioned Petition filed on March 12, 2009 by, IDT America, Corp. ("IDT") in order to address the allegations made by IDT and clarify some of the inaccurate statements made in IDT's Petition.

In its Petition, IDT requests Commission action to ensure "pursuant to the act, that this arbitration should be concluded on or before July 8, 2009, nine (9) months after the date Union received IDT's request to negotiate *on behalf of MetroCast*."¹ In making this statement, IDT is referring to the correspondence dated October 8, 2009 (attached as Exhibit A to its Petition) as the basis starting the nine month time period. IDT utterly fails to explain how its letter can be construed to be a request by MetroCast. The correspondence provided by IDT itself makes no mention of MetroCast whatsoever. Rather it plainly states that the request is from IDT – an entity that had no authority to operate in Union's territory.

It is well established that interconnection negotiations will not be initiated (even by the RBOCs) before a company has received proper authority from the State Public Utility Commission ("State PUC") to begin operations in the territory of the incumbent. Such a precedent would waste the resources of the companies involved and the State PUC that ultimately needs to approve it. In short, IDT has simply provided no evidence that an entity authorized to operate in Union's territory has requested interconnection from Union.

Union affirmatively advised IDT of this deficiency by letter dated February 13, 2009, in which Union indicated that IDT did not have authority to operate in Union's territory. After receiving Union's letter, IDT seemed to recognize the deficiency and "IDT filed for and received

¹ IDT's Petition at ¶ 22 (Emphasis added). At the outset, the premise that the Section 252(b)(1) timeframes apply here is inaccurate, but Union will address other deficiencies for the sake of argument.

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authorization to provide local exchange service in Union's territory."² However, even today, IDT's authority is clouded as IDT's authorization has been challenged by Union with a filing on April 2, 2009 for a motion to rescind authority issuance and a motion for rehearing. Union believes that it is important to resolve the authority issue before moving on to anything else.

IDT's Petition incorrectly refers to the Commission's compulsory arbitration processes under 47 U.S.C. §252(b)(1) in order to attempt to pressure the Commission to force Union into a Commission mandated agreement by July 8, 2009. However, Section 252(b)(1) is not applicable. Section 252(b)(1) is designed to apply when negotiations between parties have reached a standstill and there are unsolved issues that need Commission mediation. In this case, for the reasons set forth above, no negotiations have been initiated. Indeed, the first proposal that Union has seen is an agreement attachment to IDT's Petition. IDT has painstakingly made clear that they are not seeking interconnection under Section 251(c). Interestingly, Section 251(c) includes the language that requires a carrier to act in accordance with Section 252. Thereby, the timeframes outlined in Section 252(b) are not applied to interconnection demands not requested under Section 251(c). In short, IDT's request for interconnection with Union is not administered under the provisions of Section 252.

IDT's Petition is misguided. It attempts to involve the Commission in an effort to set an interconnection deadline for a negotiation that has not been initiated and to force Union and the Commission to waste scarce resources to conduct a negotiation for a company that may have its certification rescinded. In light of the foregoing, Union urges the Commission to deny IDT's Petition or, in the alternative, to hold consideration of the Petition in abeyance pending resolution of Union's motion to rescind authority issuance.

Pursuant to Commission rules, this letter is being electronically filed at executive.director@puc.nh.gov. In addition, an original and seven (7) copies of this letter are also being filed via overnight mail. Please date stamp and return the enclosed extra copy of this filing. Please contact the undersigned if you have any questions.

Sincerely,



Brian McDermott
Edward S. Quill, Jr.

Counsel for Union Telephone Company

CC: Carl Billek (via e-mail)

² IDT's Petition at FN 12.