

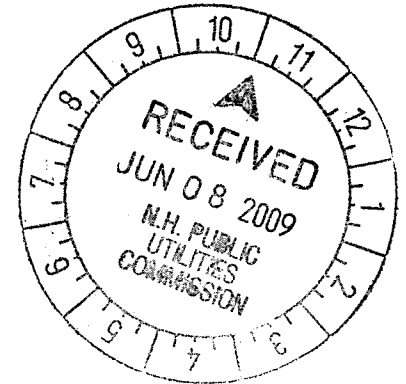


IDT America, Corp.
520 Broad Street
Newark, New Jersey 07102-3111

June 5, 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: Docket No. 09-048
IDT America, Corp. Response to the
Motion to Dismiss of Union Telephone Company**

Dear Director Howland:

On behalf of IDT America, Corp. ("IDT"), please accept this letter in response to the Union Telephone Company's ("Union") May 27, 2009 Motion to Dismiss ("Motion") in the above-listed docket. For the reasons stated below, IDT requests that the Commission deny Union's Motion.

In its Motion, Union states "IDT simply does not have the right to demand arbitration for the purposes of forcing interconnection for local exchange traffic under Section 251(a). Therefore the Commission must dismiss this proceeding."¹ This is consistent with the position Union previously took in its previous Motion to Dismiss presented to the Commission. The previous Motion to Dismiss was addressed and rejected in the May 20, 2009 Hearing Examiner Report ("Report") that was affirmed by the Commission in the June 1, 2009 Secretarial Letter.² Specifically, the Report stated that "[b]ased upon a plain reading of the statute, Union and IDT's dispute over an ICA based on sections 251(a) and (b) is subject to this Commission's arbitration pursuant to 252(b)"³ and "I recommend that the Commission find that Union and IDT's dispute over an ICA is subject to the Commission's arbitration pursuant to section 252(b)."⁴ Since the Commission has already considered and rejected Union's claim, IDT requests that the Commission reaffirm its June 1, 2009 denial.

¹ Motion, Docket No. 09-048 at p. 4.

² Letter from Executive Director Howland, Docket No. 09-048 (June 1, 2009)

³ Report, Docket No. 09-048 (May 20, 2009) at p.3.

⁴ Report, Docket No. 09-048 (May 20, 2009) at p.4.

In its Motion, Union similarly argues that Union has no obligation to negotiate in good faith. It is unfortunate that the Commission must be called upon by a party to address whether it has an obligation to act in good faith toward another in a matter before the Commission. But rather than engage in a civics tutorial, IDT will simply state that, as above, since the Commission adopted the Hearing Examiner's recommendation that the dispute falls under 252(b), the Commission has already concluded that under 252(b)(5), Union must act in good faith. Therefore, since the Commission has considered and rejected Union's claim, IDT requests that the Commission reaffirm its June 1, 2009 denial.

Finally, Union states that IDT does not have a right to interconnection because interconnection under 251(c) is not available to IDT because Union is a rural carrier. This is a red herring. IDT seeks interconnection pursuant to 251(a) and 251(b). This Commission and others⁵ have found that "We find no indication in the 1996 Telecom Act that ILECs subject to the rural exemption are protected from competitive entry. In fact, 47 U.S.C. § 251(b) makes clear that all LECs must interconnect with other carriers operating in their service territory."⁶ Because Union's claim is not germane to IDT's request for interconnection, it should be denied.

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 me at (973) 438-4854 or Carl.Billek@corp.idt.net if you have any questions.

Sincerely,

/s/ **Carl Billek**

Carl Billek
IDT America, Corp.

⁵ ("Section 251(f)(1) does not exempt [the RLEC] from its duties under Sections 251(A) and (B).") *Order*, Petitions of Vermont Telephone Company, Inc. ("VTEL"), and Comcast Phone of Vermont, LLC, d/b/a Comcast Digital Phone ("Comcast"), for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecommunications Act of 1996, and Applicable State Laws," Docket No. 7469 (February 2, 2009) available at: <http://www.state.vt.us/psb/orders/2009/files/7469final.pdf>.

⁶ *Order Granting Authority*, "Comcast Phone of New Hampshire Application for Authority to Serve Customers in the TDS Service Territories," Order No. 24,938 (February 6, 2009) at p. 20.

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