

STATE OF NEW HAMPSHIRE

BEFORE THE PUBLIC UTILITIES COMMISSION

DT-09-048

**MOTION TO STAY THE PROCEEDING UNTIL
SEVERAL RELATED ISSUES ARE SETTLED AND/OR IN THE ALTERNATIVE
REVISE THE PROCEDURAL SCHEDULE**

Pursuant to Section 203 of the New Hampshire Code of Administrative Rules, Union Telephone Company (“Union”) files this Motion and respectfully requests that the Commission stay the above captioned proceeding until the Commission rules on the Motion to Dismiss (“Motion”) filed by Union on May 27, 2009.

For the reasons more fully set forth in the Motion, Union believes that IDT America, Corp. (“IDT”) has asserted rights in this proceeding to which it is not entitled. Specifically, in its Motion, Union argued, based on precedent and the plain meaning of the statute, that Section 251(a) and (b) of the Communications Act, as Amended,¹ do not provide an independent basis upon which IDT can demand interconnection. Union further argued that the rights IDT seeks through the captioned proceeding are available only under Section 251(c) interconnection but that as a rural carrier, Union is exempt from interconnection under Section 251(c) by Section 251(f) of the Act. Union believes that these arguments are well settled and that therefore the Commission should rule in Union’s favor.

Given the expedited procedural schedule in place under this proceeding, both Parties, as well as the Commission, are required to expend substantial resources. While both Parties have

¹ 47 U.S.C. §251.

employed significant efforts to date and some progress has been made, Union believes substantial differences remain and that as a result, additional significant efforts will be required to bring this matter to resolution. As a result, reaching final resolution of this proceeding will likely require substantial resources to achieve and the continuing proceeding will require the Parties to engage in a costly arbitration proceeding.

Ultimately, however, the continued expenditure of the scarce resources of the Commission and the Parties only makes sense if the Commission does not grant Union's Motion. If the Commission does decide to grant Union's Motion, then the expenditures made to date may well be wasted. Staying this proceeding only until the Commission has ruled on Union's Motion would prevent the amelioration of substantial additional resources.

Expeditious consideration of the Motion would also provide greater certainty to the Parties. Based on a plain reading of the pleadings, and perhaps to state the obvious, it is apparent that the views of the Parties differ widely with respect to Union's current interconnection obligations. Commission action on the Motion would serve to clarify the Commission's position with respect to those obligations.

In the alternative, Union requests the Commission to immediately revise the procedural schedule to extend out all dates for at least thirty (30) days.. This is more closely aligned with interconnection negotiation timelines in the Act which allow Parties approximately four (4) months to work jointly prior to arbitration, while the procedural schedule in this docket only allowed the Parties approximately one month, during which Union's resources were limited and constrained. The procedural schedule adopted in this docket has proven to be too aggressive, which was an initial concern of Union. Progress has been made, yet the flow of work has been challenging to say the least and Union can no longer work under these conditions. The remaining

schedule remains overly burdensome especially for a company the size of Union which is being forced to negotiate its first interconnection agreement within a severely limited time frame. This abbreviated schedule puts Union at a significant disadvantage compared to a company the size of IDT, which has far more experience and resources in this area. Union believes an immediate extension is crucial in order for the Parties to produce an equitable agreement in an efficient and civil manner. Union is optimistic that given additional time, the Parties can reduce the number of disputed issues that would require resolution via the costly the arbitration process. In the alternative, the Parties will expend valuable resources developing testimony, briefs and other filings, for which the arbitrator and the Commission will need to devote significant time and resources to resolve. Union does not feel an extension will cause harm to either Party or the customers of Union.

Conclusion

In light of the foregoing, Union respectfully moves the Commission to stay this proceeding until it rules on Union's May 27, 2009 Motion to Dismiss or in the alternative Union requests the Commission immediately revise the procedural schedule in accordance with the foregoing.

Respectively submitted,



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Dated: June 9, 2009