STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 09-048

IDT AMERICA, CORP.

Petition for Arbitration of an Interconnection Agreement with Union Telephone Company

Final Order

O R D E R N O. 25,022

October 7, 2009

APPEARANCES: Carl W. Billek, Esq. for IDT America, Corp; Brian McDermott, Esq. and Edward S. Quill, Jr., Esq. of Synergies Law Group, PLLC for Union Telephone Company; Robert J. Munnelly, Jr., Esq. of Murtha Cullina for MetroCast Cablevision; and Robert Hunt, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

In 1996, Congress passed the Telecommunications Act (the Act or Telecom Act) in an effort to encourage competition in the telecommunications industry, particularly in the local telecommunications market. The Act gives state commissions the responsibility for reviewing interconnection agreements reached between an incumbent local exchange carrier (ILEC) and a competitive local exchange carrier (CLEC). More specifically, Section 252 of the Act gives state commissions the authority and responsibility for mediating and arbitrating interconnection agreements between the ILEC and a CLEC so requested by either party. The New Hampshire Public Utilities Commission (Commission) responded by issuing Order No. 22,177, (June 3, 1996), *Re Implementation of the Telecommunications Act of 1996,* 81 NH PUC 431 (1996), and Order No. 22,236, (July 12, 1996) *Re Implementation of the Telecommunications Act of 1996*, 81 NH PUC 549 (1996). In the July 1996 order, the Commission enumerated its responsibilities

under the Act for mediating and arbitrating interconnection agreements and described the process and the standards it intended to use to fulfill those responsibilities.

Since that order, the Commission has occasionally been asked to mediate or arbitrate interconnection agreements. The Commission has also approved numerous interconnection agreements that have been negotiated with different CLECs and wireless companies.

On March 11, 2009, IDT America, Corp. (IDT) filed with the Commission a petition for arbitration of rates, terms and conditions of interconnection with Union Telephone Company (Union) pursuant to 47 U.S.C. Sections 251(a) and (b). According to the filing, IDT submitted a request to Union for interconnection pursuant to 47 U.S.C. Sections 251(a) and (b) in a letter dated October 8, 2008.

In a letter to IDT dated February 13, 2009, Union raised concerns about IDT's authorization to provide telecommunications service within Union's service area and declined to negotiate an interconnection agreement. Based on Union's alleged refusal to negotiate, IDT submitted its proposed interconnection agreement in its entirety as a set of unresolved issues for arbitration.

On April 7, 2009, Union filed a response to IDT's petition claiming, among other things, that interconnection negotiations could not be initiated before a company has received proper authority from the Commission to begin operations in the territory of the incumbent. Union concluded, therefore, that 47 U.S.C. Section 252(b)(1) is not applicable.

On April 21, 2009, the Commission issued an Order of Notice scheduling a prehearing conference and technical session on May 7, 2009. In its Order of Notice the Commission stated that it had jurisdiction over the petition for arbitration pursuant to Section 252 of the Telecom Act. Section 252, the Commission observed, sets forth specific deadlines for each step in an

arbitration proceeding, including the filing of a petition and conclusion of the arbitration.

In the Order of Notice, the Commission stated that the Telecom Act contains strict time limits on an arbitration process and allows liberal discretion for state commissions to define the process. In Order No. 22,236, *supra*, the Commission delineated a general schedule applying to arbitrations. In the same order, the Commission reserved the right to consolidate proceedings, change the schedule, limit intervention, and take any other steps necessary to ensure that the deadlines of the Telecom Act are met. The Commission also indicated that, to fulfill its obligations, it would hire such consultants as required. In that regard, the Commission appointed Victor D. Del Vecchio, Esq., to arbitrate this proceeding.

On May 1, 2009, Union filed a motion to dismiss or, in the alternative, to stay the proceedings, supplemented by letter of May 12, 2009, to which IDT responded by letters of May 1 and 12, 2009, respectively. By Secretarial Letter dated May 5, 2009, the Commission determined that it would proceed with the prehearing conference and technical session. Pursuant to RSA 363:17, the Commission appointed General Counsel F. Anne Ross to conduct the prehearing conference on May 7, 2009, at which time the parties presented oral argument on the pending motion.

At the technical session of May 7, 2009, the parties agreed to an expedited procedural schedule that, on May 8, 2009, the Arbitrator incorporated in a report to the Commission. The schedule, which was revised at the request of the parties on June 3, June 16 and July 9, 2009, reflected, among other things, the parties' agreement to negotiate an interconnection agreement in good faith, the joint submission of contested issues by June 26, 2009, the filing of direct and reply testimony, a hearing before the Arbitrator,[1] the filing of briefs, the joint submission of

[1] Despite the scheduling of prefiled testimony and a hearing before the Arbitrator, the parties subsequently chose not to avail themselves of those opportunities, relying entirely on briefs.

complete contract language, and a hearing before the Commission on the Arbitrator's report and recommendations.

On May 20, 2009, the Hearing Examiner issued a report that, among other things, addressed Union's May 1 motion. The Hearing Examiner concluded (Report at 2-3) that "Section 251(a) requires all telecommunications carriers to interconnect either directly or indirectly with other telecommunications carriers. Section 251(b) requires all local exchange carriers to: provide for resale of services, port numbers, provide dialing parity, give access to rights of way for poles, ducts and conduits, and establish reciprocal compensation arrangements." She further observed (Report at 3) that Union "has a duty to provide the services required by section 251(a) and (b)" and recommended, in relevant part, that the Commission:

a. find that Union and IDT's dispute is subject to Commission arbitration pursuant to section 252(b)

b. not address potential arguments that IDT's request for interconnection is really a request for interconnection pursuant to section 251(c)(2)(A) until those arguments are raised and a record is developed

c. defer ruling on IDT's status as a common carrier until additional facts are presented on this issue, and

d. deny Union's motion to dismiss or stay the proceeding and find that Commission authorization of a carrier's provision of telecommunications services is not a prerequisite to that carrier's commencing arbitration of an agreement under 47 U.S.C. § 252(b).

On May 29, 2009, Union filed a second motion to dismiss. Union argued that IDT only sought interconnection under Sections 251(a) and (b), which did not afford IDT the right to interconnection for the purposes of exchanging local traffic. Union further argued that it was only obligated to provide such interconnection pursuant to a Section 251(c) interconnection demand and Section 251(c) rights were not available to IDT because Union is a rural carrier and therefore exempt from Section 251(c) due to Section 251(f).

By Secretarial Letter of June 1, 2009, the Commission adopted the Hearing Examiner's report and, among other things, denied Union's May 1 motion to dismiss or stay the proceeding. The Commission deferred consideration of Union's May 27 motion until the parties had a chance to respond to the issues raised. By letter of June 5, 2009, IDT filed a letter in opposition to Union's May 27 motion, to which Union replied by letter of June 8, 2009.

By letter dated June 5, 2009, the Arbitrator filed a report with the Commission, noting approval of the parties' request for an extension of time to file the joint submission of contested issues.

By letter of June 9, 2009, Union filed a second motion to stay the proceeding until the Commission ruled on Union's May 27 motion to dismiss or, in the alternative, to revise the schedule to provide further time for negotiation.

On June 15, 2009, the Commission issued a Secretarial Letter denying Union's June 9 motion to stay. Regarding Union's May 27 motion to dismiss, the Commission stated that, to the extent Union reasserts arguments concerning 47 U.S.C. §§ 251(a) and (b) and § 252(b), the Commission disposed of those arguments when it denied the first motion. To the extent Union's May 27 motion questioned whether IDT is requesting interconnection pursuant to 47 U.S.C. § 251(c) and whether IDT is a common carrier, however, the Commission determined that those issues required development of a factual record. The Commission thus directed the Arbitrator to recommend an appropriate resolution of those issues and deferred a ruling until it received the Arbitrator's findings and recommendations.

By letter dated June 16, 2009, the Arbitrator filed a report of the parties' continuing negotiations and their request for a further extension of the schedule, which the Arbitrator endorsed. In addition, the Arbitrator reported that he had advised the parties that, to the extent

they did not reach a complete agreement on an interconnection agreement, they should address in more detail the factual and legal basis for their respective positions regarding the Section 251(c) and common carrier issues that the Commission referred to the Arbitrator in its June 15, 2009 Secretarial Letter. The Arbitrator also stated that he would, in turn, address those issues in his report and recommendations to the Commission.

By letter of June 22, 2009, Union responded to the Arbitrator's June 16 report by supplementing its earlier filings with additional support, renewing its request that the Commission grant its second motion to dismiss. By Secretarial Letter of June 26, 2009, the Commission considered the arguments set forth in Union's June 22 letter and affirmed the Commission's decision contained in its June 15 Secretarial Letter.

Finally, on August 10, 2009, the Commission held a hearing on the Arbitrator's July 27, 2009 report and recommendations (the Report). During the hearing, the parties were given an opportunity to argue for or against the Arbitrator's recommendation on each issue, the Commissioners asked questions of the parties, and the Arbitrator was available for questioning by the Commission. In response to a request by Staff, Union submitted a letter on August 14, 2009, providing a link to the National Exchange Carrier Association (NECA) Tariff No. 5.

II. POSITIONS OF THE PARTIES, ARBITRATOR'S RECOMMENDATIONS AND COMMISSION ANALYSIS

The positions of the parties and the Arbitrator's recommendations on each of the contested issues are described below, followed by the Commission's analysis and findings. The Arbitrator's Report is incorporated herein by reference.

A. Issue 1: Is IDT a telecommunications carrier eligible for an interconnection agreement with Union under Sections 251(a) and (b) of the Telecom Act?

1. Union's Position

Union contends that interconnection under Section 251 of the Act is available only to common carriers and that, under Section 251, Union is required to interconnect with "telecommunications carriers." Quoting from Section 153(44) of the Act (defining the term "telecommunications carrier" and referencing "telecommunications services"), Union notes that "telecommunications services," in turn, is defined by Section 153(46) of the Act to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Section 251 of the Act, Union continues, only entitles an entity that is acting as a "common carrier" – an entity that holds itself out as offering service indiscriminately to the public on non-discriminatory terms – to demand an interconnection agreement. According to Union, IDT will exclusively serve MetroCast and has no current intention of acting as a common carrier in Union's territory in New Hampshire. Union asserts that IDT does not propose to make its service available on a non-discriminatory basis, to seek to draw its customer base out of the general public or even to service all customers indifferently. At the very least, Union argues, IDT should be required to make public the rates, terms and conditions of its agreement with MetroCast, something that the Vermont Board required of Comcast in the *Vermont Order*.[2] Tr. 8/10/09 at 41.

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[2] *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* (Feb. 2, 2009) (*Vermont Order*).

Further referencing the *Vermont Order,* Union states that Comcast Phone has not fully established that it has met in Vermont the requirement of being a telecommunications carrier offering a common carrier service that is eligible for interconnection. Specifically, Union argues that the Vermont case is "not settled" (Tr. 8/10/09 at 33), is "still open to review" (Tr. 8/10/09 at 41), and has "not gotten to the point where it's ripe for appeal." Tr. 8/10/09 at 40. Union further contends that one of the "conditions precedent," i.e., the public filing of Comcast's agreement with its affiliate, has not been met. Tr. 8/10/09 at 38. Consequently, Union claims, since IDT is a private carrier, IDT is not entitled to demand interconnection under Section 251 of the Act.

2. IDT's Position

IDT asserts that this issue should not be addressed further because it has already been addressed and rejected. Tr. 8/10/09 at 52.[3] Nonetheless, IDT confirms that it will operate as a common carrier in Union's territory. IDT represents that its commercial relationship with MetroCast is not contractually exclusive and that, if presented with a feasible commercial opportunity, IDT will serve additional customers. Moreover, IDT represents that it has virtually identical commercial relationships in fourteen additional states and no other state commission has ever concluded that IDT is a private carrier. Furthermore, IDT asserts that Union has no right to impose, or request that the Commission impose, disclosure obligations on IDT.

Citing the 2007 *Time Warner Order,*[4] IDT argues that the Wireline Competition Bureau of the FCC issued a declaratory ruling that wholesale providers of telecommunications services are telecommunications carriers for purposes of Section 251(a) and (b) and that they are entitled

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[3] Most of the parties' arguments are contained in their briefs and are cited in the Arbitrator's Report, while the Arbitrator's recommendations are presented in his Report. Specific arguments voiced by the parties at the August 10 hearing are referenced herein by transcript citations.

[4] *Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, 22 FCC Rcd 3513 (2007) (*Time Warner Order*).

to interconnect and exchange traffic with incumbent LECs pursuant to Section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services. Wholesale telecommunications carriers are entitled to interconnect with incumbent local exchange carriers under Sections 251(a) and (b) of the Act, IDT further agues, when providing services to Voice over Internet Protocol (VoIP) service providers.

Finally, discussing *Iowa Telecom v. Iowa Utilities Board* and *Verizon California v. F.C.C.*,[5] IDT claims that the key factor in finding common carriage is the offering of indiscriminate service to whatever segment of the public the carrier's service may be of use, and Union has never presented any facts to suggest that IDT fails to meet this factor.

3. Arbitrator's Recommendation

The Arbitrator explains that under Section 251(a) of the Act, a telecommunications carrier has a duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Each local exchange carrier has additional duties as detailed in Section 251(b) of the Act. 47 U.S.C. § 251. Under the Act, a "telecommunications carrier" generally means any provider of telecommunications services. In turn, such services are defined as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. §§ 153(44) and (46). The Act further defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

[5] *Iowa Telecommunications Services, Inc. v. Iowa Utilities Board*, 563 F.3d 743 (Eighth Cir. 2009) (*Iowa Utilities*) and *Verizon California, Inc. v. F.C.C.*, 555 F3d 270 (D.C. Cir. 2009) (*Verizon California*).

Relying on the *NARUC I* and *NARUC II* decisions,[6] the Arbitrator observes that under the "common carrier" standard applicable to determining whether a service provider is a telecommunications carrier for purposes of the Act, a service provider must hold itself out indiscriminately or indifferently to the public. Citing the *Iowa Utilities* and *Verizon California* cases, *supra*, the Arbitrator further concludes that a carrier whose service is of possible use to only a small percentage of the general public may nonetheless be a common carrier if it holds itself out to serve indifferently all potential users. Nor does the Arbitrator find it necessary for the Commission to order IDT to publish the rates, terms and conditions of its agreement with its joint partner, MetroCast. This is because, the Arbitrator observes, unlike Comcast and its affiliates in Vermont, IDT has an arms length relationship with MetroCast and the other cable companies throughout the country with which it already has similar agreements. Accordingly, the Arbitrator finds that IDT is a telecommunications carrier eligible for an interconnection agreement with Union under Sections 251(a) and (b) of the Telecom Act.

4. Commission Analysis

The FCC has held that wholesale competitive local exchange carriers that provide services only to their affiliates may be "telecommunication carriers" offering "telecommunications services" for purposes of Section 222(b) of the Act. *Bright House Networks, LLC v Verizon California, Inc., Memorandum Opinion and Order,* 23 FCC Rcd 10704, ¶¶ 37-41(2008) *(Bright House).* In its determination, the FCC gave significant weight to self-certifications of common carrier status and to the carrier's willingness to serve similarly situated customers equally. The possession of a certificate of public convenience or comparable approval from the state in which the company operated also was cited approvingly. *Id.* at ¶ 38.

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[6] *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976) (*NARUC I*) and *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976) (*NARUC II*).

While the *Bright House* decision interpreted Section 222 of the Act rather than Section 251, the FCC's logic applies equally to IDT's provision of service. *See also Time Warner Order*, 22 FCC Rcd 3513 ¶¶ 1, 8, 9 and 15 (2007) (where the FCC Wireline Competition Bureau issued a declaratory ruling that wholesale providers of telecommunications services are telecommunications carriers for the purposes of Section 251(a) and (b) and that they "are entitled to interconnect and exchange traffic with incumbent LECs pursuant to Section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services"). As noted by the Arbitrator, federal appeals courts in *Iowa Utilities* and *Verizon California* have arrived at the same outcome.

Prior Commission decisions, discussed in the Arbitrator's report, further support the finding that IDT is a telecommunications carrier for purposes of Section 251(a) and (b). This conclusion is bolstered by the Commission's recent order in Comcast Phone of New Hampshire, Petition for Arbitration of Rates, Terms and Conditions of Interconnection with TDS, *Final Order*, Order No. 25,005 (Aug. 13, 2009) (determining that Comcast Phone is a telecommunications carrier offering and legally compelled to offer services indifferently to the public).[7]

Moreover, IDT has declared its willingness to serve as a common carrier. While IDT's service may not be useable by most service providers, that fact alone does not alter its status as a telecommunications provider for the reasons articulated in the Arbitrator's report. Finally, a review of the IDT/MetroCast Platform diagram (demonstrating the joint provision of service to end-user customers in New Hampshire) and the IDT/MetroCast/Union Network diagram (demonstrating the contemplated end-to-end interconnection arrangement among the end-user

[7] As the Commission there stated (Order at 19, n.6): "Whether a telecommunications service is offered on a retail or wholesale basis is not determinative as to whether it is offered on a common carrier basis. *Time Warner Cable Request for Declaratory Ruling*, Memorandum Opinion and Order, 22 FCC Rcd 35 13 (2007)."

customers and the carriers) – attached to IDT's Brief – further establishes the reasonableness of the finding that IDT is a telecommunications carrier within the meaning of the Telecom Act and, specifically, for purposes of Section 251(a) and (b).

Finally, Union's arguments regarding the status of the *Vermont Order* are unavailing. First, the Vermont Board made two threshold findings in its order, namely that: (1) Comcast Phone is a telecommunications carrier eligible for an interconnection agreement under Section 251(a) and (b); and (2) notwithstanding the rural exemption under Section 251(f), VTel is required to enter an interconnection agreement under Sections 251(a) and (b) for the purpose of Comcast's providing local service. Union's claim that the case is "not settled" appears to relate solely to the first finding, i.e., to the issue of common carriage.

Second, contrary to Union's suggestion, the *Vermont Order* is final and has not been reconsidered. In its *Order in Response to Motion for Clarification* dated May 15, 2009, Docket No. 7469, the Board clarified (at 2-3) its earlier February 2009 *Vermont Order*:

> To clarify, we found in the February Order that Comcast Phone had presented sufficient evidence for us to determine that it is a telecommunications carrier for purposes of the Act, with all the rights and responsibilities that entails, including interconnection rights. We did not intend this finding to be conditioned on a subsequent determination as to Comcast Phone's compliance with Condition 2. In our February Order, we directed the parties to enter into an interconnection agreement consistent with that order and approved that agreement in March. Accordingly, VTel and Comcast Phone are each subject to all the rights and obligations of the interconnection agreement.

The purpose of its present inquiry, the Board further elaborated, is to determine whether Comcast Phone continues to comply with its responsibilities as a telecommunications carrier, i.e., given its affiliate relationships in Vermont – and unlike IDT's joint partnerships in New Hampshire and elsewhere – whether Comcast Phone is appropriately offering its services to potential non-

affiliated users.[8]

Third, as noted above, an interconnection agreement between Comcast Phone and VTel has in fact been executed and approved by the Vermont Board.

Fourth, further underscoring the finality of the *Vermont Order* under state law, we understand that on or about August 24, 2009, VTel filed an appeal of the decision with a federal district court.

Finally, unlike the circumstances in Vermont, we see no need to require that IDT publicly file the terms and conditions of its agreement with MetroCast. In contrast with Comcast's affiliate relationships in Vermont,[9] there is no dispute that IDT and MetroCast are unaffiliated and have entered into an arms length transaction, much as IDT has done throughout the country. Moreover, IDT represents that its commercial relationship with MetroCast is not contractually exclusive and that, if presented with a feasible commercial opportunity, IDT will serve additional customers in New Hampshire. Should circumstances change or we determine that IDT no longer meets the requirements of a telecommunications carrier under the Act, however, we can take action as appropriate.

For all of the above reasons, we agree with the Arbitrator's recommendations on this

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[8] As the Board further stated: "To avoid further uncertainty, the Board also wishes to clarify further the scope of the Hearing Officer's inquiry. The inquiry should address both whether Comcast Phone has met its obligations under Condition 2 and whether its satisfaction of those obligations provides adequate confidence as to the availability of its services to non-affiliated third parties and the absence of undue discrimination.... If the Hearing Officer concludes that Comcast Phone has not met the requirements of Condition 2 or its continuing obligations as a common carrier, the Hearing Officer shall identify appropriate actions that might be needed to correct any deficiencies. If corrective action is inadequate or is unlikely to succeed, the Board could ultimately conclude that Comcast Phone no longer meets the requirements of a telecommunications carrier under the Act." *Vermont Clarification Order* at 3.

[9] As explained in the *Vermont Order* (at 4, n.1): "Comcast Phone, Comcast IP phone II, LLC (referred to herein as either 'Comcast Digital Voice,' 'CDV,' or 'Comcast Phone's VoIP affiliate'), and Comcast Cable Communications ('Comcast Cable) are all subsidiaries of Comcast Corporation. Comcast Cable is the entity that provides cable service and owns the cable system over which the other affiliates provide service. Comcast Phone is the entity that, it asserts, provides wholesale telecommunications services; it is also the Comcast Corporation subsidiary that requested VTel, the incumbent local exchange carrier, to enter into negotiations for an interconnection agreement under Section 252. CDV is a provider of Voice over Internet Protocol ('VoIP') phone services on a retail basis to members of the public."

issue.

B. Issue 2: Is IDT entitled to and seeking an interconnection agreement with Union under sections 251(a) and (b), including interconnection for the purpose of providing competitive local service, and, if so, does that violate Union's rights under section 251(f)?

1. Union's Position

Union reiterates a position that it articulated throughout this proceeding: namely, that Union has an exemption from the duties of 251(c) unless and until its rural exemption is terminated. Tr. 8/10/09 at 23, 34, 37-38. Union asserts that it is well established that such interconnection can only be demanded through Section 251(c) and cannot be obtained through Section 251(a), by virtue of Section 251(f). As a rural carrier, Union again points out that Union is exempt from the requirements of Section 251(c). IDT therefore has no legal basis to require Union to enter into a binding interconnection agreement pertaining to local exchange traffic. Union's rural exemption under 251(f)(1) cannot be terminated until the state commission finds that such interconnection is not unduly economically burdensome, is technically feasible, and is consistent with Section 254. Because, Union argues, IDT has not requested the Commission to make such a finding, Union has no obligation to negotiate under the terms of 251(c)(1).

In support of the position that other states have found that interpreting Section 251(a) to require such negotiation would substantially undermine the Act's interconnection regime, Union

discusses in detail the *Maine.*[10] *Texas*[11] and *North Dakota Orders.*[12] Tr. 8/10/09 at 34, 37-38. Union also distinguishes the *Vermont Order*, *supra*. Union asserts that the Vermont Board found that Comcast was not entitled to relief pursuant to Section 251(c) because VTel was exempt from Section 251(c) obligations under Section 251(f) of the Act, and the Board never addressed whether a new entrant can demand interconnection because VTel was one of the carriers requesting arbitration. Union further asserts that the Vermont Board has not yet finally approved Comcast's entitlement to an interconnection agreement. Union also reiterates its argument that the *Vermont Order* is still "very much open." Tr. 8/10/09 at 40.

2. IDT's Position

IDT asserts that it does not seek terms or services that otherwise would only be available under 251(c). IDT states that the Commission previously recognized that 47 U.S.C. § 251(a) and (b) establish that all local exchange carriers, regardless of size, must interconnect with other carriers operating in their service territory citing *IDT America Corp.,* Docket No. 09-065, Order 24,970 (May 22, 2009), at 4. IDT claims that Union already exchanges telecommunications traffic – including local exchange traffic – with IDT and other local exchange and interexchange carriers.

IDT represents that the draft interconnection agreement used as the template during negotiations is actually the basis of a variety of agreements entered into under Section 251(a) and

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[10] *CRC Communications of Maine, Inc. Petition for Consolidated Arbitration with Independent Telephone Companies Towards an Interconnection Agreement Pursuant to 47 U.S.C. 151, 252*, Docket No. 2007-611 (May 5, 2008) (*Maine Order*).

[11] Public Utility Commission of Texas, *Order Denying Sprint's Appeal of Order No. 1*, PUC Docket No. 31038 (December 2, 2005) (*Texas Order*). The Texas Commission was upheld in *Sprint Communications Company v. Public Utilities Commission of Texas and Brazos Telephone Cooperative*, A-06-CA-065-SS, 2006 U.S. Dist. LEXIS 96569 (W.D. Tex. Aug. 14, 2006). The court there held that, because a rural ILEC has no duty to negotiate or arbitrate under Section 251(c) unless the rural exemption has been lifted, it had no duty to enter an interconnection agreement under Section 251(a) and (b).

[12] *North Dakota Public Service Commission Order*, Case No. PU-2065-02-465 (May 30, 2003) (*North Dakota Order*).

(b) and not Section 251(c), citing similar agreements with rural ILECs in Vermont and South Carolina. Indeed, IDT argues, the *Vermont Order* is particularly relevant, with no meaningful difference in the services offered by the Vermont and proposed New Hampshire agreements, both having involved the same template. IDT also argues that the *Vermont Order* concluded that Section 251(f)(1) does not exempt a rural ILEC from its duties under Sections 251(a) and (b). IDT further claims the application of prior PUC decisions (including Secretarial Letters) in this proceeding is controlling. To the extent that Union reasserts arguments concerning 47 U.S.C. §§ 251(a) and (b) and §252(b), the Commission disposed of those arguments when it denied the first motion, IDT proffers.

The only open question, according to IDT, is whether any services IDT seeks under Section 251(a) and (b) are, in fact, only available under Section 251(c), which IDT denies. Unlike Sections 251(a) and (b), IDT argues, Section 251(c) mandates critical components of the interconnection process and these critical components must be read as being in addition to the less burdensome obligations that exist under Section 251(a). IDT then provides details, including diagrams, about its joint arrangement with MetroCast, its retail service partner, explaining that prior to the arrangement MetroCast provided no telephone service to end users in New Hampshire. IDT claims that this arrangement leverages the core competencies of both MetroCast and IDT.

3. Arbitrator's Recommendation

The Arbitrator observes that the Commission has held in prior orders, including orders that apply specifically to Union, that Section 251(f)(1) does not exempt a rural carrier from its duties under Sections 251(a) and (b), citing Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 7236, ¶ 121 n.401 (1997) ("Rural LECs

are not exempt from Sections 251(a) or (b) requirements under Section 251(f)(1)")). While the Arbitrator finds merit in Union's argument that it is exempt from the duties of an incumbent local exchange carrier under Section 251(c) unless and until the Commission terminates the exemption, as provided in Sections 251(f)(1)(A) and (B), he determines that rural LECs are not exempt from Sections 251(a) or (b) requirements under Section 251(f)(1).

Moreover, the Arbitrator finds that the *Texas*, *Maine* (which relied in part on the Texas court decision affirming the Texas Commission) and *North Dakota Orders*, *supra*, do not compel a conclusion different than what the Commission has reached in this arbitration. Nor, he concludes, are the circumstances that resulted in the *Vermont Order* materially different from those in New Hampshire.

The Arbitrator represents that Union's argument, in part, stems from the belief that local exchange and exchange access traffic can only be exchanged under Section 251(c). But, the Arbitrator concludes, Section 251(c)(2) does not simply control a carrier's rights and obligations regarding the transmission and routing of telephone exchange service and exchange access. Read in context, he points out, Section 251(c)(2) requires that non-exempt ILECs provide certain features or components in addition to the less-burdensome obligations contained in Section 251(a) and (b).

Moreover, the Arbitrator notes, IDT's representations are relevant to the type of interconnection it seeks, and the interconnection provisions IDT and Union negotiated in this arbitration are not materially different than those addressed in the *Vermont Order*, in which the Vermont Board ordered an interconnection agreement under Section 251(a) and (b).

Finally, the Arbitrator references the Commission's Administrative Rules, Puc Chapter 400 and the duties applicable to all ILECs, whether or not rural, noting further that Union failed

to identify with particularity the sections of the proposed interconnection agreement that it claimed fell squarely within the scope of Section 251(c), other than to continue to argue that IDT has no basis to demand an arbitration for an interconnection agreement for the exchange of local access by virtue of Section 251(a) or (b) of the Act.

4. Commission Analysis

This issue, like the earlier common carriage issue, was the subject of comments at the August 10 hearing. After considering these comments and reviewing the Arbitrator's report, we agree with his conclusion that IDT is entitled to an interconnection agreement with Union for purposes of Sections 251(a) and (b) of the Telecom Act, including interconnection for the purpose of providing competitive local service, and that the terms and conditions of the agreement that the parties have negotiated fall within the scope of Sections 251(a) and (b). As the Arbitrator observed and the Commission previously found, Union has responsibility to provide interconnection under Sections 251(a) and (b) of the Act – which is what IDT represents it is seeking – including the exchange of local traffic. This duty, which is not affected by the rural exemption, includes the responsibility for providing interconnection, resale, number portability, dialing parity, access to rights of way and reciprocal compensation.

The language of the Act further supports the position that, contrary to the findings of the decisions cited by Union, the right to conduct an arbitration for the purpose of enforcing obligations under Sections 251(a) and (b) is not barred by Section 251(f), as the Vermont Board so held ("Section 251(f)(1) does not exempt VTel from its duties under Sections 251(a) and (b)"). *Vermont Order* at 21. By its terms, for example, Section 251(f)(1)'s exemption only applies to "Subsection (c)." 47 U.S.C. Section 251(f)(1) ("EXEMPTION. – Subsection (c) of this section shall not apply to a rural telephone company until . . . .") *See also*, Section 251(f)(2)

("A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) . . . ." Emphasis added). This result is reasonable since, in the absence of an ability to seek such relief, a carrier such as IDT may be unable to obtain interconnection under Sections 251(a) and (b) for the purpose of providing local service, notwithstanding its right to such interconnection.

For these and other reasons presented in the Arbitrator's report, we agree with his interpretation of federal law and our recent orders, and adopt his recommendation on this issue.

C. Issue 3: Pricing Disputes

1. IDT's Position

At the August 10 hearing, IDT challenged the Arbitrator's recommendation regarding local service request (LSR)[13] and labor rates. Tr. 8/10/09 at 6-17, 49, 53-54. In general, IDT claims that Union based its prices on certain NECA tariff rates as well as "cherry-picked" rates from IDT interconnection agreements. The approach should be rejected, IDT posits, because Union has not presented any cost basis for its proposed rates. Most notably, IDT states, rates in an interconnection agreement are part of the give and take of the negotiation process, while NECA rates have nothing to do with negotiation. Moreover, IDT claims, paying NECA rates in the tariff contemplates access to all the services available under the tariff, which is not the present case.

Likewise, to the extent Union relies on rates to which IDT has previously agreed with other carriers, IDT argues, this reliance should be rejected. Negotiated rates, IDT continues, are

[13] Given the percentage relationships between the LSR rate and the associated customer service record, supplemental order and cancelled order rates (50% of the LSR) and expedited charge rate (167% of the LSR) – which percentage relationships the parties did not dispute – resolution of the parties' LSR disagreement applies equally to the other rate elements. *See, e.g.*, Tr. 8/10/09 at 14-15.

part of a *quid pro quo* and Union should not be allowed to take advantage of the concessions IDT has made in other agreements absent the benefits IDT received in return.

Union's rates, if implemented, could have a chilling effect on the introduction of competition in Union's incumbent territory, IDT further asserts. Tr. 8/10/09 at 14-15. By way of illustration, IDT argues, Union's hourly rates are "disproportionate." Tr. 8/10/09 at 16-17. Finally, IDT argues that it has proposed rates that better reflect the "real world" and reciprocally apply to both parties. IDT represents that its proposed charges are consistent with the rates IDT pays (and receives) from other carriers.

2. Union's Position

Union argues that there is no specific pricing standard designated under Sections 251(a) and (b). Tr. 8/10/09 at 25, 32-33. Since Union will be required to offer the same rates to other carriers, Union asserts that the rates proposed by an incumbent carrier should be weighed more heavily. Union proposes charges that are the same as or similar to rates offered under its tariffs to other carriers. These rates, Union claims, are just and reasonable and non-discriminatory. The rates proposed by IDT, according to Union, have no relation to the rates other Union customers pay and would be discriminatory. Applying these general principles, Union thus challenges the Arbitrator's recommendations regarding LSR (and related rate element) charges, and DS1 and DS3 direct-trunk transport termination rates, instances where Union asserts the Arbitrator "went out of his way to try and reach a balance." Tr. 8/10/09 at 35.

Absent rates available under Section 251(c), which do not apply because of the rural exemption, Union claims that NECA rates should apply. Tr. 8/10/09 at 33. Union's NECA tariff rates, Union continues, have been fully vetted, are subject to oversight by the FCC, and are "per se" reasonable. Tr. 8/10/09 at 28. As such, according to Union, they should be "controlling."

Tr. 8/10/09 at 27. For certain services, NECA classifies carriers (rate banding) according to the carrier's operations and costs, and according to Union, its rates therefore take into consideration Union's relative size and operations. The applicable NECA rates were effective on July 1, 2009, Union additionally represents, but it is not sure whether those rates have changed from 2008 or how long they have been in place. Tr. 8/10/09 at 31. Finally, Union claims that IDT's reliance on the rates of other incumbents is unsupported and, even if supported, misplaced. This is because IDT should not expect Union's rates to be comparable to those of the RBOCs and large incumbents that have economies of scale and mechanized structures in place devoted to interconnection and the responsibilities contained in the agreements. *See* Tr. 8/10/09 at 46.

3. Arbitrator's Recommendation

The Arbitrator observes that Union is a rural carrier and, under Section 251(f) of the Act, is presently exempt from the interconnection obligations set forth in Section 251(c). This would extend, the Arbitrator reasons, to any of the pricing provisions specified in that section and in most of Section 252(d) of the Act (with the exception of the pricing provisions of subsection 252(d)(2) for termination of traffic that would apply to Union). At the same time, a price advocated by either party, without presentation of support in the form of a market-based price or an alternative cost basis (i.e., other than the Section 252(d)) standard), the Arbitrator states, may not constitute an appropriate basis for establishing a rate. Some of the parties' pricing proposals, the Arbitrator concludes, raise concerns over the dated nature of the information or relevance to the rate element at issue. The Arbitrator explains that, in some instances, he was left with either recommending rates from other agreements, based on some indication of a prevailing rate agreed to by negotiating parties, recommending NECA access rates, or some combination of the above.

Moreover, the Arbitrator found that the relationship between NECA[14] and other proposed rates – and the cost standards of Section 252(d)(1), from which Union is exempt – is not entirely clear.

Regarding the specifics of the rate elements at issue, the Arbitrator recommends an LSR rate of $20.00, concluding that Union should be reasonably compensated for its efforts, while at the same time provided an incentive to reduce its reliance on manual processes to the extent practicable. The Arbitrator finds that Union's proposed $60.00 rate, when added to its proposed CSR rate of $30.00, would be very high and could well chill competitive migration.

The Arbitrator further recommends that the Commission adopt Union's proposed labor rates. While Union may not have counter-offered during negotiations, as IDT claims, the Arbitrator states that it is not established in the record why a counter-offer was appropriate. According to the Arbitrator, Union's proposed NECA labor rates do not on their face appear to be unreasonable and provide an acceptable benchmark for establishing the labor rates that should apply here. Without a better understanding of why IDT believes materially lower rates are suitable, the Arbitrator expresses concern that the record does not establish that IDT's rates are appropriate, particularly in light of Union's rural exemption.

Regarding DS1 and DS3 direct-trunk transport termination rates, the Arbitrator recommends that the Commission adopt rates at a premium to FairPoint's rates but lower than Union's proposed rates, adjusted to reflect a "per termination" (rather than "per circuit") rate structure and an arithmetic average between the NECA and FairPoint extremes. While the nonrecurring rate is higher than the adjusted "high premium" figure IDT indicated a reluctant willingness to accept, the Arbitrator concludes that the recurring rate is not significantly different

[14] *See* NECA Access Service Tariff F.C.C. No. 5. NECA administers the FCC's interstate access charge plan. Access charges are the fees long distance companies pay to access the local phone network to complete calls.

than IDT's "high premium" recurring rate.[15]

4. Commission Analysis

Section 252(c)(1) of the Telecom Act requires a state commission, when arbitrating an interconnection agreement, to resolve open issues by imposing conditions that meet the requirements of Section 251. In addition, the Act establishes the standards for arbitration and specifically instructs the state commission to "establish any rates for interconnection, services, or network elements." Section 252(c). Moreover, pursuant to Section 251(d)(3) of the Act, any requirements that the Commission imposes must be consistent with the requirements of Section 251 and cannot substantially prevent implementation of the purposes of the Act. *See* Section 252(e)(2)(B).

In this instance, the parties have identified no FCC rule or regulation that prescribes specific pricing standards for Section 251(a) and (b) interconnection, as the FCC has adopted in connection with unbundled network elements under Section 251(c). Union, for example, represents that no particular federal pricing standard applies to interconnection under Section 251(a) and (b). *See* Tr. 8/10/09 at 32-33. We recognize, however, that the pricing standards of Section 252(d) do not apply to interconnection under Section 251(a) and (b), except as to the transport and termination of traffic exchanged pursuant to Section 251(b)(5).

In another instance where the FCC found that the pricing methodology of Section 251(c) did not apply to certain network elements, namely, those available under Section 271 of the Act, the FCC determined that the prices must be based on the just, reasonable and nondiscriminatory standard codified in Sections 201 and 202 of the Communications Act of 1934. *See* Triennial Review Order, 18 F.C.C.R. 16978 (2003) (*TRO*), ¶ 662 ("If a checklist network element does not

[15] Specifically, the Arbitrator recommends recurring and non-recurring charges that result by averaging (i) the FairPoint and NECA recurring rates and (ii) the FairPoint and NECA non-recurring rates (contained in the chart on page 49 of the Arbitrator's Report), each reduced by 50% to reflect a "per termination" rate structure.

satisfy the unbundling standards in section 251(d)(2), the applicable prices, terms and conditions for that element are determined in accordance with sections 201(b) and 202(a).").[16] *See also*, 47 U.S.C. §§ 201(b), 202(a); *Verizon New England, Inc. v. Maine Public Utilities Com'n*, 509 F.3d 1, 7 (1st Cir. 2007) (stating that where section 271 still requires network elements by RBOCs that provide long distance service, the "FCC has said that TELRIC pricing would be inappropriate and that the traditional 'just and reasonable' standard would apply, likely generating higher prices to be paid by the competitors."). We find the FCC's statements to be helpful guidance in meeting our obligation under the Act to "establish any rates for interconnection." Section 252(c).

As the FCC observed in the *TRO* (¶ 663), the "just and reasonable" standard under Sections 201 and 202 is also consistent with the state law of many jurisdictions, including New Hampshire. *See, e.g.*, RSA 374:2. ("All charges made or demanded by any public utility for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable . . . .") This is significant because Section 252(e)(3) preserves a state commission's authority to require compliance with state law as well. As the U.S. District Court for the District of New Hampshire observed: "The state commission may also review interconnection agreements for

[16] Elaborating further, the FCC observed (*TRO* ¶ 663): "The Supreme Court has held that the last sentence of section 201(b), which authorizes the Commission 'to prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act,' empowers the Commission to adopt rules that implement the new provisions of the Communications Act that were added by the Telecommunications Act of 1996. Section 271 is such a provision. Thus, the pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act." Citations omitted.

compliance with state law, as long as it does not have the effect of 'prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'"[17]

Applying in this case the "just and reasonable" pricing standard that "has historically been applied under most federal and state statutes" (*TRO* ¶ 663), we find that the Arbitrator's recommended prices and associated terms and conditions meet that test. The proposed rates are designed to further the expeditious introduction of competition in the local exchange market, while at the same time protecting the rights of a rural ILEC that currently enjoys the benefits of Section 251(f)'s rural exemption. We agree with the Arbitrator's attempts to balance the interests and recommend rates that are just and reasonable to both parties, consistent with the Commission's pro-competitive policies and RSA 374:22-g, and thus adopt his specific pricing recommendations.

This result seems especially appropriate since, as the Arbitrator represents, the parties only first presented specific pricing proposals on brief, having waived the filing of prefiled direct and reply testimony or the holding of an evidentiary hearing before the Arbitrator. Throughout his report, and the pricing section in particular, the Arbitrator attempts to provide conclusions that are as reasonable as possible, within the limitations of the record. In some instances, he recommends specific rates or proposals offered by one of the parties, while in other instances he concludes that taking a simple average of the two proposals is an appropriate way to balance the interests, given the state of the record.

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[17] *Verizon New England, Inc. v. New Hampshire Public Utilities Com'n,* Case No. 05-cv-94-PB, Opinion No.2006 DNH 094 (D.N.H.2006), slip op. at 5, n.6, www.nhd.uscourts.gov/ISYS/isysquery/5d88e378-75c9-4f7e-801a-288313623bbe/11/doc/06NH094.PDF. Similarly, by analogy, a state commission may also review an SGAT for compliance with state law, as long as it does not have the effect of prohibiting the carrier's ability to provide telecommunications services. 47 U.S.C. §§ 252(f)(2), 253(a).

Based on the record, some of IDT's proposals appear to provide Union inadequate compensation, given Union's continuing rights under the rural exemption, while some of Union's proposals appear to overcompensate. By way of illustration, Union fails to establish the relevance of its NECA access-carrier order charges, such as the service date change rate (that applies when an access service request is pending and the carrier wants to change the service date) – the basis of its proposed LSR rate – to local service orders for residence customers. Given the record developed by the parties and the interests we must balance in establishing rates as requested, we find the Arbitrator's pricing recommendations to be sound. If the parties desire to negotiate different or revised charges when the term of the present agreement expires, they are free to do so. Similarly, if IDT wishes to establish pricing that applies the standards of Section 251(c), IDT can petition the Commission to remove the rural exemption and provide the necessary support.

D. Issue 4: Disputes regarding "previously closed" items that one party argues the other party has sought to re-open.

1. Reciprocal Compensation ("RC") Appendix Section 2.1

a. Union's Position

Union contends that both parties agree to the principle that traffic should be rated according to the end users' physical locations and not the protocol used. Tr. 8/10/09 at 41-42. Union contends that it wants to avoid any conflict in interpretation by clearly identifying VoIP traffic as traffic that is exchanged and subject to the terms of the agreement. To clarify this point, Union has requested the inclusion of two definitions in the RC Appendix directed at VoIP and IP-Enabled Traffic, serving as a "backstop" in case the state of the law changes. Tr. 8/10/09 at 42. At the August 10 hearing, Union proposed an alternative solution, in which clarifying language the parties had already negotiated is moved to an earlier section of the RC Appendix.

Tr. 8/10/09 at 42-44. Specifically, Union proposes that a sentence in RC Section 2.1.1 be moved to the header in Section 2.1.[18]

b. IDT's Position

During negotiations between June 18 and 23, 2009, IDT argues, both parties agreed to Section 2.1 of the RC Appendix, filed with the Commission on August 3, 2009. According to IDT, this section was heavily negotiated, with IDT providing concessions in other areas of the agreement to attain agreement of the relevant language. Because Union did not claim that the issue was an "open item" until July 1 – after the June 26 deadline for submitting disputed issues to the Arbitrator – IDT asserts that the language should not now be subject to revision as Union seeks.

c. Arbitrator's Recommendation

The Arbitrator concludes that Union's request in its brief to add additional paragraphs is untimely, the period for identifying disputed issues having passed when first raised by Union. Moreover, he observes, there does not appear to be any critical need to add the language that Union requests, as the terms of RC Sections 2.1.1 and 2.1.2 already expressly provide, among other things, that "Local Traffic is determined to be local under this definition regardless of protocol or transmission method." Finally, while clarifying language is not necessary, the Arbitrator agrees with Union's general view that all traffic exchanged with Union is subject to the terms of the agreement, including the terms that require the jurisdiction of the traffic to be based on the physical location of the customer. Under the circumstances, and in light of his

[18] As revised, the sentence in Section 2.1 would read: "The traffic exchanged between CLEC and UNION will be classified as Local Traffic, intraLATA Toll Traffic, or interLATA Toll Traffic, regardless of protocol or transmission method." Tr. 8/10/09 at 44.

understanding of the terms of the relevant RC provisions, the Arbitrator concludes that no revisions to the negotiated language of the RC Appendix are necessary or appropriate.

d. Commission Analysis

We agree with the Arbitrator's recommendation that no newly added language is necessary or appropriate under the circumstances outlined in his Report. However, we find Union's suggested alternative, voiced at the hearing, to be consistent with the intent of the parties and reasonably calculated to avoid confusion in the future. All traffic exchanged between IDT and Union is subject to the terms of the agreement, including the terms that require the jurisdiction of the traffic to be based on the physical location of the customer. We therefore agree with the Arbitrator's recommendation and further approve the rearrangement of Union's alternative language, proposed at the hearing, directing the parties to file a revised RC Appendix reflecting the rearrangement within 10 days of the date of this order.

2. Pre-Approval of Labor Charges

a. Union's Position

At hearing, Union challenged for the first time IDT's identification of the matter of pre-approval of labor rates as an issue subject to resolution. Tr. 8/10/09 at 22-23. Union argues that IDT failed to identify it as an open issue prior to the deadline established during the proceeding, namely, June 26, 2009, the final date for advising the Arbitrator of open issues subject to arbitration.

b. IDT's Position

At the hearing, IDT objected to Union's position, arguing that the language "wasn't in any of the draft pricing attachments [because] ... the entire pricing attachment was an open item up until the time we filed our briefs." Tr. 8/10/09 at 48. In its brief, moreover, IDT argues that

pre-approval is needed to remove the "moral hazard" for both parties to invoice labor charges where the charged party is unaware they are to be charged.

c. Arbitrator's Recommendation

In his report, the Arbitrator briefly discusses the issue of pre-approval of labor rates during his resolution of the labor rate levels. Specifically, the Arbitrator notes that IDT raised the pre-approval issue and requested that a statement ("only chargeable upon prior pre-approval by the charged Party") and asterisks be added next to each labor type. The Arbitrator further explains that Union did not identify the issue in its brief. Consequently, the Arbitrator recommends, to the extent that the IDT proposal is in dispute, adoption of IDT's suggestion is reasonable, particularly in light of the proposed adoption of Union's higher labor rates.

d. Commission Analysis

As noted earlier, the parties' pricing proposals were first presented to the Arbitrator on briefs. No details on rate levels or associated terms and conditions were provided prior to that time. Moreover, in some instances in their briefs, one party comments on a particular price or associated term and the other party is silent, such as N-1 routing service (where Union is silent) and multiplexing per arrangement DS3 to DS1 (where only Union includes a specific monthly rate and neither party identifies the rate element as in dispute). In both instances, for example, neither party claims that the pricing reference was inappropriate or beyond the scope of the issues to be arbitrated. Since it appears that all pricing proposals, including associated rates, terms and conditions, were in dispute as of the time briefs were filed, we conclude that arbitration of the pre-approved labor issue was appropriate. In the absence of any evidence having been presented to the contrary, we find the Arbitrator's treatment of this issue reasonable, and we adopt his recommendation.

Based upon the foregoing, it is hereby

ORDERED, that the Arbitrator's recommendations on each of the issues described above are approved, subject to any further conditions articulated in this order; and it is

FURTHER ORDERED, that Union and IDT shall jointly submit within 10 days of the date of this order language to incorporate into the Agreement the Commission's determination on the issue of the Reciprocal Compensation Appendix.

By order of the Public Utilities Commission of New Hampshire this seventh day of October 2009.

Thomas B. Getz Chairman	Clifton C. Below Commissioner	Amy L. Ignatius Commissioner

Attested by:

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Docket #: 09-048 Printed: October 07, 2009

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