

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

May 7, 2009 - 10:06 a.m.  
Concord, New Hampshire

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RE: DT 09-048  
IDT AMERICA, CORP.:  
Petition for Arbitration of Interconnection  
Agreement with Union Telephone Company.

PRESENT: F. Anne Ross, Esq.  
(Presiding as Hearings Examiner)

Sandy Deno, Clerk

APPEARANCES: Reptg. IDT America, Corp.:  
Carl Billek, Esq.  
Thomas Jordan, Esq.

Reptg. Union Telephone Company:  
Brian McDermott, Esq. (Synergies Law Group)  
Darren Winslow

Reptg. MetroCast:  
Robert J. Munnelly, Esq. (Murtha Cullina)  
Josh Barstow

Reptg. Residential Ratepayers:  
Stephen Eckberg  
Office of Consumer Advocate

Reptg. PUC Staff:  
Robert Hunt, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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**P R O C E E D I N G S**

1  
2 MS. ROSS: Good morning. My name is  
3 Anne Ross. I've been appointed by the Commission today to  
4 conduct a prehearing conference in the case of DT 09-048.  
5 On March 11th, 2009, IDT America Corp. filed with the New  
6 Hampshire Public Utilities Commission a petition for  
7 arbitration of rates, terms and conditions of  
8 interconnection with Union Telephone Company pursuant to  
9 47 U.S.C. Sections 251(a) and (b). Based on Union's  
10 alleged refusal to negotiate, IDT has submitted its  
11 proposed interconnection agreement in its entirety as a  
12 set of unresolved issues for arbitration.

13 This morning we will need to cover  
14 several issues. First, I will be taking appearances, and  
15 considering any interventions that have been presented,  
16 and then we will move to address the pending motion by  
17 Union Telephone Company, and any other matters that may  
18 have arisen. Let me begin by explaining the process.  
19 I've been assigned as Hearings Examiner. I will listen to  
20 your arguments. This will be recorded today. And, then,  
21 I will prepare a recommendation to the Commissioners  
22 concerning the rulings on the matters that are going to be  
23 addressed today.

24 Are there any questions before we take

1 appearances?

2 (No verbal response)

3 MS. ROSS: Okay. Let's begin.

4 MR. BILLEK: Carl Billek, appearing on  
5 behalf of IDT America.

6 MR. JORDAN: Thomas Jordan, appearing on  
7 behalf of IDT America.

8 MR. MUNNELLY: Robert Munnelly, of the  
9 law firm Murtha Cullina, LLP, appearing for MetroCast. We  
10 have a pending Motion to Intervene. And, also with me is  
11 Josh Barstow of MetroCast.

12 MS. ROSS: Thank you.

13 MR. McDERMOTT: Brian McDermott, from  
14 Synergies Law Group, PLLC, representing Union.

15 MR. WINSLOW: And, I'm Darren Winslow,  
16 Controller with Union.

17 MR. ECKBERG: Good morning. I'm Stephen  
18 Eckberg, with the Office of Consumer Advocate. We are not  
19 formally participating in this docket. I'm here today  
20 only to monitor activities, as we have a general interest  
21 in matters of competition in the telecommunications  
22 industry.

23 MR. HUNT: Good morning. As you know,  
24 I'm Rob Hunt. I'm Staff Attorney here. And, we me today,

1 on my left directly, is Victor Del Vecchio. It's my  
2 understanding that Mr. Del Vecchio has been selected to be  
3 the Arbitrator in this matter. I'm not sure of the formal  
4 status at this time. And, as you know, Kate Bailey is to  
5 his left, she's Director of Telecommunications, and  
6 Matthew -- excuse me, Michael Ladam is an analyst with the  
7 Division of Telecommunications.

8 MS. ROSS: Thank you. I have one  
9 pending intervention by MetroCast. Are there any  
10 objections to that intervention request?

11 MR. McDERMOTT: No objections.

12 MR. HUNT: No.

13 MS. ROSS: Okay. All right. The  
14 pending motion that I am aware of is the Motion to  
15 Dismiss, or, in the alternative, to stay the proceeding.  
16 Is there any other motion pending?

17 (No verbal response)

18 MS. ROSS: In that case, I would ask  
19 Union to make its arguments under its motion. And, then,  
20 other parties will have an opportunity to respond, with  
21 IDT going last in the responses.

22 MR. McDERMOTT: Our Motion to Dismiss,  
23 and, in the alternative, stay this proceeding, is based in  
24 large part on the uncertainties that are surrounding both

1 the certificates of IDT and, more directly, the  
2 interconnection process that was followed by IDT. We are  
3 aware that IDT is now a certificated entity in the  
4 territory of Union. We have -- The Company also has a  
5 pending motion before the Commission that has not been  
6 considered concerning a rehearing or, in the alternative,  
7 reconsideration of IDT's certificate. That has not been  
8 ruled on. We're asking essentially that the Commission  
9 resolve those issues. And, we are not disputing their  
10 ability to interconnect, now that they have a valid  
11 certificate. What we are disputing is the fact that they  
12 issued a letter to Union that was not in the proper  
13 format. Sorry about that. And, as of the date --

14 [Static interference coming over the  
15 microphone speakers]

16 MS. ROSS: Hold on a minute. Let me see  
17 if we can get the sound --

18 MR. McDERMOTT: Sure.

19 [Off the record]

20 MR. McDERMOTT: When IDT initially sent  
21 a letter to Union, they were not certificated, nor had  
22 filed an application for a certificate. In subsequent --  
23 In their eventual filing before the Commission asking for  
24 arbitration, they mentioned that they were filing on

1 behalf of MetroCast. That filing was the first time in  
2 any of the correspondence to Union that MetroCast had been  
3 mentioned. And, as, under Section 251(a), only a  
4 telecommunications carrier is entitled to interconnection.  
5 A telecommunications carrier doesn't mean that they have a  
6 certificate within the state. It's been interpreted and  
7 precedent has been always that that applies to having  
8 authority in the region where you're requesting  
9 interconnection. If I'm a telephone carrier in  
10 Massachusetts, it doesn't give me the right to demand  
11 interconnection in New Hampshire, until I've gone through  
12 the process of getting a state authorization to provide  
13 that service. Basically, what we're asking was -- is for  
14 IDT to follow the process.

15 We are now in possession of a  
16 interconnection demand letter that meets the standards.  
17 And, while we still dispute the way in which the  
18 certificate was granted, we recognize in the interim that  
19 the interconnection process has started.

20 We also find fault in the argument that  
21 seeking interconnection under 251(a) and (b) starts the  
22 clock that is outlined in Section 252 of the  
23 Telecommunications Act. Specifically, in 251(c), which  
24 was -- which IDT painstakingly stated that they were not

1 seeking an interconnection agreement, that contains a duty  
2 to negotiate under 252 of this title. Basically, 252  
3 contains the time frames for arbitration. So, not only do  
4 we not think that the initial interconnection demand  
5 letter or, actually, the "initial correspondence", I guess  
6 I would call it, would trigger that 252 time frame. We  
7 don't think the 252 time frame is applicable unless you  
8 invoke 251(c).

9 MS. ROSS: Could I ask you a question on  
10 that point?

11 MR. McDERMOTT: Sure.

12 MS. ROSS: Assuming that you're correct  
13 as a matter of law that the 252 time frame does not apply  
14 to interconnection under 251(a) and (b), would it be your  
15 position that the Commission does not have authority to  
16 impose a similar time frame on an arbitration?

17 MR. McDERMOTT: We would -- Our position  
18 is that we would ask for the Commission to be -- we're not  
19 questioning the Commission's authority under their  
20 statutory authority to put together a procedural schedule.  
21 What we are asking is the Commission do that in a manner  
22 that would be a reasonable sort of time frame, given that,  
23 you know, at the very least IDT wasn't certificated until  
24 March. In the initial letter, or in the -- in the

1 secretarial letter that stated that we were going to hold  
2 this proceeding, the Commission states that they want to  
3 get this done by July, the date that was requested by IDT.  
4 We think that that timeframe is unreasonably short, given  
5 that we haven't negotiated, and we are willing to look at  
6 the agreement, now that we're in possession of a valid  
7 interconnection demand letter. We just don't think it  
8 makes sense to waste resources to arbitrate the entire  
9 agreement, when we think that we could, while the  
10 certificate issue is pending, we can use that time to see  
11 if we can come to resolutions on some issues.

12 Now, all this is contingent -- Union's  
13 position has been, and always will be, that any  
14 interconnection agreement negotiated or entered into would  
15 always be contingent on Union having a valid certificate  
16 to provide services in Union's territory. So, if the  
17 Commission -- if our motion to reconsider their  
18 certificate is -- the Commission decides to reexamine that  
19 issue, and the Commission subsequently determines to  
20 withdraw the certificate, at that time any negotiated  
21 agreement that we have would be off the table, until such  
22 time as Union acquired a proper certificate. But we just  
23 don't think that we're sort of ready to dive into  
24 arbitration at this moment, when there's so many issues

1 that sort of have yet to be resolved.

2 One issue that is connected to IDT, but  
3 also to the intervenors, MetroCast, is, when MetroCast  
4 filed for a certificate, we filed -- Union filed a motion  
5 to reconsider or reexamine the certificate of MetroCast,  
6 which was denied by the Commission. Union has  
7 subsequently appealed to the Supreme Court, and Supreme  
8 Court has determined to hear that case. And, as part of  
9 that case, one of the questions that exists is whether the  
10 Commission violated their rules in Section 400 of the New  
11 Hampshire Commission's rules in granting MetroCast a  
12 certificate. That issue would exist with IDT as well.

13 And, in the response sent by Mr. Billek  
14 yesterday, under numbered Paragraph 4, he seems to agree  
15 that it's reasonable at this point for the Commission to  
16 place on hold, and the language is a little bit -- I  
17 think, basically, the language is a little bit hard to  
18 understand, but I think the gist of this is that,  
19 essentially, that it's reasonable to try and figure out  
20 exactly what is going to be the resolution of this, the  
21 rules, the New Hampshire Section 400 rules. To give a  
22 little bit of context, the rules under 400, one of the  
23 rules applies to the certification of carriers. The  
24 Commission had proposed to the Legislature that certain

1 language in that be dropped out, the way that the -- the  
2 way that that rule reads right now, it says "certification  
3 of -- in nondominant incumbents", there was a push to  
4 remove the word "nondominant" from that rule, which would  
5 have essentially given the Commission the authority under  
6 that rule to grant certificates in nondominant incumbents'  
7 territories. That has subsequently been dropped. The  
8 Commission is no longer attempting to change that  
9 language, which gives rise to the question as to whether  
10 they can, under this procedure, validly grant a  
11 certificate in a exempt rural incumbent area.

12 So, we are requesting that the  
13 Commission stays this proceeding or, in the alternate,  
14 dismisses this proceeding, until those issues are  
15 resolved. Our request to dismiss is based on the fact  
16 that we now have a valid interconnection demand letter.  
17 IDT has a certificate that's in good standing at this  
18 moment. So, we are -- we have a process set up, in which  
19 we would negotiate an agreement. So, this proceeding  
20 would seem to be unnecessary. In the alternate, since it  
21 looks like the Commission has already appointed an  
22 arbitrator, and has already invested some time in this, if  
23 they want to keep this proceeding open to ensure that --  
24 to sort of protect their interests and making sure that an

1 agreement is reached, we think that it reasonable to stay  
2 this proceeding and stay the arbitration until such time  
3 as these issues are resolved.

4 MS. ROSS: Could I ask you to clarify.  
5 Did I just understand you to be saying that you're  
6 withdrawing your motion to dismiss --

7 MR. McDERMOTT: No.

8 MS. ROSS: -- and relying on your motion  
9 to stay?

10 MR. McDERMOTT: No. I'm simply stating  
11 that our motion to dismiss is based on the argument that  
12 we -- that this proceeding is redundant, because we have,  
13 in our estimation, we have -- our refusal to negotiate was  
14 based on the fact that IDT did not have a certificate.  
15 IDT now has a valid certificate, and has sent a letter  
16 requesting interconnection negotiations, in a proper  
17 format. That letter was sent I think it was last week.  
18 And, so, in our minds, we have now a negotiation open with  
19 IDT.

20 (Atty. McDermott conferring with Mr.  
21 Winslow.)

22 MR. McDERMOTT: Yes. That's going to  
23 also be based on, of course, the resolution of sort of the  
24 issues that I've previously mentioned, in terms of the

1 certificate and the validity of the Section 400 rules. We  
2 also, in our motion to dismiss or in our motion -- in our  
3 motion to reconsider IDT's certificate, which is still at  
4 -- still before the Commission, there are other issues  
5 outside of the issues raised. One issue that needs to be  
6 resolved is the status of IDT. In their request, they  
7 have basically stated that they're going to be serving one  
8 customer, which is MetroCast. That, by definition, would  
9 seem to indicate that they're a private carrier, as  
10 opposed to a common carrier. That is one issue that would  
11 need to be resolved as well.

12 So, the motion to dismiss is based on  
13 the redundancy of this proceeding and what we consider a  
14 open negotiation. That negotiation, of course, will be  
15 subject to all these other issues sort of swirling around,  
16 and, in the interim, those issues will resolve itself. In  
17 the alternate, if the Commission determines to proceed  
18 with this, with this docket, we ask at the very least that  
19 we -- these issues are resolved prior to going into an  
20 arbitration that we frankly think is kind of rushing the  
21 issue.

22 MS. ROSS: I'm trying to understand the  
23 last argument. Are you arguing that, because IDT has only  
24 one customer, it is not a telecommunications carrier as

1 defined by the '96 Telecom Act?

2 MR. McDERMOTT: One of the arguments  
3 contained in the motion, and to sort of go into further  
4 detail, there is further detail in that motion, part of  
5 the Telecom Act under 251, the duty to interconnect has  
6 always been based on the fact that a telecommunications  
7 carrier is a common carrier, as opposed to a private  
8 carrier. In that, the motion, by the way, that I'm  
9 mentioning was dated April 2nd. IDT has, to my knowledge,  
10 not stated that their services will be generally available  
11 to the public. To my knowledge, they are going to be  
12 providing service to one customer, and not marketing to  
13 any other customers, which would fit the definition of a  
14 "private carrier". And, therefore, under 251, private  
15 carriers are not entitled to interconnection.

16 Now, again, that's another issue that's  
17 up in the air, that kind of needs to be resolved. You  
18 know, if IDT can make a showing that their services are  
19 generally available. That, if I'm another customer, and  
20 came to them, and, you know, they would provide that  
21 service to me, but that showing has not been made to date.  
22 So, that's yet another area that hasn't been resolved.

23 MS. ROSS: Do you have any legal  
24 authority for that proposition? That a telecommunications

1 carrier, for purposes of 251(a) and (b), needs to be a  
2 common carrier?

3 MR. McDERMOTT: Yes. And, it would be  
4 contained in their April 2nd motion, which I can look for.

5 MS. ROSS: The other point I was looking  
6 for some legal authority on is the requirement that the  
7 carrier be certificated in order to be interconnected  
8 under 251(a) and (b). Do you have any legal authority for  
9 that?

10 MR. McDERMOTT: The legal authority for  
11 that is based on the language of 251(a).

12 MS. ROSS: You indicated, though, that  
13 it had been interpreted. Did you have an FCC or court  
14 ruling interpreting 251(b)?

15 MR. McDERMOTT: I don't at -- I don't  
16 here. But it's been -- if necessary, we can provide court  
17 precedent, at least three state courts' precedent on the  
18 idea that 251(c) applies to your duty to interconnect  
19 under 252. I don't have those --

20 MS. ROSS: That's not the question that  
21 I was asking you. I was asking you for your legal support  
22 for the statement that, "in order to negotiate under 251"  
23 -- "in order to interconnect under 251(a) and (b), the  
24 carrier requesting interconnection needs to be

1       certificated in a state?"

2                   MR. McDERMOTT:  It has been based --  
3       It's based -- I don't have any legal cases on that at  
4       present.

5                   MS. ROSS:  Okay.  If you do locate any  
6       cases, could you make them available to the parties and to  
7       the Commission?

8                   MR. McDERMOTT:  Sure.  Absolutely.

9                   MS. ROSS:  Thank you.

10                  MR. McDERMOTT:  We set forth our  
11       argument within our -- within our response dated  
12       April 30th.  The plain reading of Section 251, and the  
13       definition of "telecommunications carrier" contained  
14       therein, would, on its face.  But if -- I will provide the  
15       court with additional resources, as requested.  So, I will  
16       get something available to you guys.

17                  MS. ROSS:  Thank you.  I apologize.  I  
18       interpreted you.  Did you want to conclude your --

19                  MR. McDERMOTT:  And, I will -- again, I  
20       will provide additional support on that point.  To  
21       summarize and conclude here, what we're asking is that the  
22       Commission resolve the issues before it, concerning IDT's  
23       certificates and the issues that have been brought up  
24       concerning interconnection, and proceed in a manner that

1 wouldn't sort of waste everyone's time by forcing us into  
2 an interconnection in a short period of time, which would  
3 require everything to be arbitrated. We ask for,  
4 essentially, a ruling on the issue surrounding this case  
5 before we sort of proceed into an arbitration.

6 In that interim time, there is the --  
7 the Company considers they're a valid request for  
8 negotiations, which will, obviously, proceed while these  
9 other issues are resolved. So, that's our position.

10 MS. ROSS: Thank you.

11 MR. BILLEK: Is Staff going now or are  
12 we going?

13 MS. ROSS: It's up to you. I had told  
14 IDT that you could go last in the responses. But I  
15 probably should have also added that typically the moving  
16 party does have an opportunity, after all other parties  
17 have gone, to address issues that weren't covered in his  
18 initial presentation. So, it's up to the parties how you  
19 want to proceed. I just thought you might want to go --

20 MR. MUNNELLY: Sure. Let me -- I'll go,  
21 then you can. I'll be short anyway.

22 MR. BILLEK: Sure. If you want to, go  
23 right ahead.

24 MR. MUNNELLY: Thank you, Madam Hearing

1 Officer. Robert Munnely, from MetroCast. First point is  
2 just to keep in mind that MetroCast is a certificated  
3 carrier. It had its certificate back in September. The  
4 certificate was reaffirmed by the Commission in the early  
5 part of this year. The certification hasn't been stayed,  
6 even though Union has appealed it. And, so, it's -- the  
7 issue here is, as long as they -- once they can work out  
8 interconnection terms, so that, because IDT is its  
9 interconnection partner, MetroCast stands ready, willing  
10 and able to serve customers in Union's territory. So,  
11 there is an issue of speed and urgency here, which we  
12 support that this should be wrapped up.

13 I disagree strongly with counsel that  
14 there's any uncertainties here. Again, the certifications  
15 are done. The October 8 letter actually is copied to  
16 Mr. Barstow, which reflects the arrangements that this  
17 Commission approved back several years ago, whereas  
18 MetroCast and IDT are partnering to provide service to New  
19 Hampshire customers. So, it's clear that they, again,  
20 that that's -- that this is an arrangement that certainly  
21 at least benefits MetroCast, and again would like to move  
22 forward into the territory.

23 The crux of Union's almost entire  
24 argument as its principle is they're arguing that you have

1 to be a certified carrier in a particular territory in  
2 order to even start negotiations. There is no basis for  
3 that anywhere. There's nothing -- no authority cited in  
4 their brief, and it's not correct. It doesn't make any  
5 sense as a matter of law, it doesn't make any sense as a  
6 matter of policy. You know, you certainly would want to  
7 have parties be able to talk and get arrangements worked  
8 out, so that you don't have to waste time by getting the  
9 certificates, getting certified, and then starting the  
10 process.

11 So, again, they should have been, you  
12 know, the request came in in October, it should have been  
13 responded to, it should have been -- there should have  
14 been good faith negotiations, and then we wouldn't even  
15 have had to have this arbitration to begin with.

16 In terms of the legal arguments, and  
17 just keep in the mind, by the way, again, IDT will say  
18 this in their presentation, no doubt, but IDT is a  
19 certified telecommunications carrier in New Hampshire.  
20 The only issue is, the question for them is that they just  
21 hadn't -- they elected to go through and get their  
22 certification in the Union territory as well. So, it's  
23 certainly not -- you can't make the argument of "well,  
24 they're a telecommunications carrier only in

1 Massachusetts, therefore they don't have authority to  
2 start the process in New Hampshire." They're already  
3 certified here.

4 In terms of the issue of whether the  
5 nine month time frames apply, it clearly does. 47 U.S.C.  
6 252, by its terms, applies to all requests to negotiate  
7 that reach an impasse. It's not limited to 251(c). And,  
8 Madam Hearing Officer, you hit the nail right on the head,  
9 their argument, if you accept, is that 251 -- if 251(c) is  
10 the only one that 252 applies to, then what are the time  
11 frames? That's exactly the point. The point is is that  
12 252 applies to all interconnection requests that hit  
13 impasse, and governs the process for working out all the  
14 different arrangements on that. The fact that there's a  
15 specific reference in 251(c) doesn't preempt everything  
16 else on that.

17 And, from the timing standpoint, we  
18 don't -- certainly MetroCast doesn't see that there's any  
19 reason this can't be wrapped up by July 8th. Again, we  
20 have to wait to see what Union is actually going to say  
21 with respect to the interconnection agreement that's on  
22 the table. For all we know, 99 percent of it may be  
23 acceptable. We don't even know, because they have refused  
24 to tell us what their positions are. Again, we need to --

1 it's something where, when we get to the procedural  
2 portion of the case, if Union is able to go first and lay  
3 what their issues are, this may very well be a very short  
4 arbitration.

5 I think that's it for now. I think I'll  
6 leave the rest of it to IDT.

7 MS. ROSS: Thank you.

8 MR. MUNNELLY: Thank you.

9 MR. BILLEK: Thanks for giving us the  
10 opportunity to be here today. I just wanted to add to a  
11 few of the points that Rob mentioned. First of all,  
12 again, IDT, at the time that it sent its initial letter to  
13 Union, was certified by the Public Utilities Commission;  
14 not in Union territory, but in the Verizon territory.  
15 And, we disagree strongly that we needed to be certified  
16 in the Union territory before we sent our letter to Union.  
17 Again, the issue has been raised that what we did was  
18 impermissible, but there's been nothing that's been cited  
19 to. And, we don't think there is necessarily anything  
20 that can be cited to certainly in New Hampshire. And, I  
21 think it's worth noting that, back in 2002, December 17th,  
22 2002, when IDT initiated its negotiations to opt into or  
23 to interconnect with Verizon, IDT was not certified at  
24 that point. And, actually, on the Verizon form, they

1 provided three options for the requesting carrier's  
2 status: "Certified", "Pending Certification", and "Not  
3 Filed". So, I think it was pretty clear that Verizon  
4 certainly did not take the position that the carrier  
5 needed to be certified, and they did not act that way  
6 during the interconnection process with Verizon. So, I  
7 think that's fairly relevant to how the process has worked  
8 in New Hampshire. I'm sure we are not alone in New  
9 Hampshire.

10 And, it's been our -- it's been our  
11 experience in other states as well that you do not need to  
12 be certified in a particular territory before you can  
13 request an interconnection agreement. Right now, we have  
14 three -- here we have three states right now, of  
15 Pennsylvania, South Carolina, and Wyoming, where we are  
16 currently in the negotiation process for interconnection  
17 agreements, where we have not received our final  
18 certification yet. So, really, I think this argument,  
19 which is really the basis from which everything else  
20 flows, is incorrect.

21 Moving on. There was a question about  
22 the timeline that would apply to the interconnection  
23 agreement, and you raised the question, if the timeline,  
24 which we've suggested does apply, does not, in fact,

1 apply, what to do? And, we would certainly support the  
2 Commission's decision, even if it were to find -- well, we  
3 would disagree if it found that the timeline didn't apply,  
4 but we would support the Commission, if it chose to impose  
5 the same timeline on its own. So, I just wanted to make  
6 that clear.

7 In terms of Union's thoughts on the  
8 agreement, whether, again, whether they would agree with  
9 99 percent of the agreement or some lower percentage, we  
10 do think it's worth noting that they have had the  
11 agreement for quite some time. This is -- The agreement  
12 that we've sent to them is an agreement that we've used  
13 with other, arguably, similar -- similarly situated  
14 carriers to Union, and we think it's a pretty fair  
15 agreement. And, we don't anticipate there would be an  
16 overwhelming amount of issues that would need to be  
17 arbitrated. We think that the issues would be very minor  
18 actually.

19 Going onto the issue of whether IDT's  
20 certificate is valid, Mr. Munnelly mentioned our  
21 certificate is valid. It hasn't been stayed. There's  
22 been nothing that would suggest that it is anything other  
23 than valid. So, we simply -- we just want to make that  
24 point again and make sure that it's perfectly clear. IDT

1 has a valid certificate in the Union territory.

2 Also, an issue was raised about the  
3 second request that we made for interconnection. Clearly,  
4 after we made the first request and didn't receive a  
5 response for, well, a little more than four months, we  
6 realized that this process was not going to be as simple  
7 as -- and non-contentious as perhaps it could be. And,  
8 so, therefore, when Union initially stated that they  
9 weren't going to engage IDT in negotiations because we  
10 didn't have a valid certificate for their territory, once  
11 we had that valid certificate, we felt that, sort of under  
12 the "belt and suspenders" type approach, we felt it would  
13 be in our best interest to request -- to make another  
14 request for interconnection, in case the dispute over the  
15 initial request dragged out and out and out, we want to,  
16 basically, we want to be in business. And, the second  
17 request was made absolutely clear that, in making it, we  
18 were not foregoing any of the rights which we felt we had  
19 under the first request. We simply felt that it was  
20 necessary to do, given Union's prior position that we did  
21 not have a valid certificate. Perhaps it was foolish of  
22 us, but we did not necessarily anticipate that Union would  
23 then come back and question the validity of our  
24 certificate and try to use that as an attempt to further

1 delay the interconnection process.

2 Another issue that has been raised is  
3 whether IDT is a private carrier or is a common carrier.  
4 I'd just like to point out that this particular business  
5 model that IDT would be engaging in in the Union  
6 territory, is one that we engage in in 15 states. No  
7 state utility commission has found us to be a private  
8 carrier. And, I think that that speaks pretty clearly as  
9 to the fact that we are a common carrier. IDT does intend  
10 to work with MetroCast to provide them certain services  
11 that they will then use to provide end-user services. It  
12 is not necessarily the traditional model that people think  
13 of of what a telecommunications carrier does and how they  
14 provide it, but it has proven successful to us. And, just  
15 because we have a particular customer lined up, once we  
16 have our certification and our interconnection agreement,  
17 does not in some way, shape or form turn us into a private  
18 carrier. Many, many companies get interconnection  
19 agreements without having any carriers lined up  
20 whatsoever. I don't know why we should be punished,  
21 essentially, for having one lined up. And, it is -- I  
22 think it's fair to say that IDT will offer certain  
23 services under its business model, and those services and  
24 that business model are going to be attractive to some

1 people and they're not going to be attractive to other  
2 people. But that's the case for any telecommunications  
3 carrier.

4 The only other point I would like to  
5 make, which Mr. Munnelly also made, is that, as soon as  
6 this process is resolved, IDT will be in the business of  
7 helping to provide a competitive service to people living  
8 in the Union incumbent territory. And, for that reason,  
9 we would appreciate any efforts to move the process along  
10 as quickly as possible, and just let us get in the market.  
11 That's my comments.

12 Is there anything you would like to add,  
13 Tom?

14 MR. JORDAN: If I could. Thank you for  
15 having us here. I just want to make a few additional  
16 comments that Mr. Billek made. One is related to the  
17 questions of IDT being a common carrier. I want to also  
18 state that, in New Hampshire, we operate in partnership  
19 with MetroCast, in a novel arrangement, so to speak, under  
20 Order 24,727, which has allowed us to operate jointly, in  
21 a joint fashion. That order was issued January 17th, '07,  
22 under DT 06-169. In that arrangement, the Commission  
23 views the telecommunications service that we provide not  
24 just by IDT, but as a joint partnership with MetroCast.

1 And, it was approved. And, we have been operating in that  
2 mode since that time. And, at present, we are currently  
3 serving 10,000 plus end-users jointly.

4 In reference to that partnership in that  
5 order, I feel that that would indicate that IDT is not a  
6 common carrier where we only have one customer, MetroCast,  
7 but we're actually serving jointly over 10,000 end-users.  
8 And, I wanted to point that out as some added information.

9 One other last comment that I would like  
10 to make is in Union's testimony they referenced  
11 Mr. Billek's letter, in regard to the pending case appeal  
12 in the U.S. -- New Hampshire Supreme Court against  
13 MetroCast. I think it was a typo in Mr. Billek's letter,  
14 where he stated "it is reasonable for the Commission to  
15 place on hold our proceedings here until that's resolved".  
16 I think what Mr. Billek meant to say was "it is  
17 unreasonable". So, that it's IDT's position that we don't  
18 want anything here to be put on hold pending that case.

19 As to reiterate, our position is we have  
20 a valid CPCN. We have a process that we followed to  
21 request interconnect through Union on -- it was  
22 October 8th, last year, was valid, and we want the  
23 arbitration hearings to hold to the timelines relative to  
24 those dates. Those are my comments.

1 MS. ROSS: Thank you. Could you tell me  
2 what "CPCN" stands for?

3 MR. JORDAN: I'm sorry.

4 MR. McDERMOTT: "Certificate of Public  
5 Convenience".

6 MS. ROSS: Thank you.

7 MR. JORDAN: Yes. It's another way to  
8 say we have authority in that area. Sorry about that.

9 MR. McDERMOTT: People love acronyms.

10 MR. JORDAN: Yes.

11 MR. HUNT: Thank you. Staff's position  
12 is that the motion to dismiss should be denied, and that  
13 the proceeding for arbitration under Section 251 -- excuse  
14 me, 252 of the Act is appropriate. Hearing Union's  
15 position on why this proceeding should be delayed, the  
16 argument that it could amount to a waste of time, given  
17 other proceedings, both the Supreme Court and the rules  
18 proceeding, Staff's skeptical of that argument, given that  
19 IDT's attempts to communicate with Union began on  
20 October 8th of 2008, with no response, despite multiple  
21 attempts to communicate with Union, until February 13th,  
22 2009. It would appear that, if Union was concerned about  
23 a delay and wasting time, that they would have responded  
24 more quickly to the initial request sent by IDT, and the

1 process could have begun sooner.

2 As to the underlying argument in the  
3 motion to dismiss, it's our position that Union is  
4 incorrect in asserting that IDT must be authorized to  
5 provide telecommunications service in Union territory  
6 before Union is obligated to negotiate an interconnection  
7 agreement. As the Commission has heard today, there is no  
8 legal citation supporting that position, and we would be  
9 very surprised to see any coming forth. Nothing in the  
10 Telecommunications Act requires IDT to be authorized to  
11 provide service in Union's territory prior to seeking  
12 interconnection. Section 251(a)(1) of the Act establishes  
13 Union's duty to interconnect with "other  
14 telecommunications carriers". IDT was a  
15 telecommunications carrier on October 9th, the date of the  
16 receipt by Union of IDT's letter requesting  
17 interconnection. We see no reason not to proceed and,  
18 obviously, we believe that that would be the best way to  
19 proceed under the arbitration provision.

20 And, with regard to the issue of wasting  
21 time, if that's a concern, then certainly Union should be  
22 prepared to agree to extend the deadline for this  
23 Commission to make a determination under Section 252. If  
24 that agreement can be established today, then there would

1 be less of a need to rush or expedite the matter. Thank  
2 you.

3 MS. ROSS: Do I take that to mean that  
4 Staff would support an extension of the statutory  
5 deadline, assuming it's applicable?

6 MR. HUNT: Your Honor, it would have to  
7 be somewhat brief, but we could probably support some  
8 extension.

9 MS. ROSS: Thank you. Would the Company  
10 like to close?

11 MR. McDERMOTT: Just wanted to make a  
12 couple clarifications and comments. Just the -- I want to  
13 make the point that the fact that somebody was cc'd on the  
14 letter does not sort of give us the knowledge that this is  
15 an interconnection agreement for MetroCast. MetroCast was  
16 never mentioned until the petition for arbitration. If  
17 the negotiations was on behalf of MetroCast, you know, we  
18 were aware that MetroCast had a certificate. If the  
19 interconnection demand letter had been from MetroCast,  
20 that would have been a different story. But, as it is,  
21 just cc'ing someone on a letter does not imply that  
22 somehow MetroCast was involved.

23 The point about the ability to -- that  
24 they have had success in terms of negotiating agreements

1 before they obtain a certificate, of course, all customers  
2 carriers have the ability to negotiate agreements, whether  
3 or not they're required to. CLECs negotiate agreements  
4 with each other all the time, even though they're not  
5 required to. They negotiate traffic exchange agreements,  
6 incumbent -- large incumbent carriers, such as Verizon,  
7 they have template agreements that they have entered into  
8 with, you know, hundreds of -- potentially hundreds of  
9 people. They may or may not choose to negotiate. I've  
10 had experience dealing -- requesting negotiations on  
11 behalf of competitive carriers, and some will negotiate  
12 ahead of time and some will not. In certain AT&T  
13 territories, sort of legacy SBC, won't -- their response  
14 is essentially "present us with your certificate before we  
15 begin negotiations." Their sort of, you know, their  
16 experiences with other incumbents, it's for a matter of  
17 convenience sake, it doesn't -- it doesn't diminish the  
18 fact that it's a requirement. And, I think the fact that  
19 they're a telecommunications carrier in other parts of the  
20 state does not diminish the fact that they are, under the  
21 definition of "telecommunications carrier", they were not  
22 a telecommunications carrier in the territory of Union as  
23 of that October letter.

24 It comes down to the language in 251, we

1 agree with Staff, but we think that that -- that the real  
2 question here is the definition of a "telecommunications  
3 carrier". That is applicable to the territory at hand  
4 here. My analogy that, you know, in Massachusetts, you  
5 know, could equally apply to different service territories  
6 in the same state. I'm aware, for example, in  
7 Pennsylvania, Pennsylvania generally gives you authority  
8 in three different territories of Verizon, but does not  
9 give you, by a matter of right, the ability to go into  
10 Commonwealth territory. You're not considered a  
11 telecommunications carrier for purposes of an  
12 interconnection to go to the Commonwealth and say "I want  
13 an interconnection agreement", until you go to the state  
14 and ask for a certificate. They will not negotiate with  
15 you. And, the reason being is because, in their area, you  
16 are not a telecommunications carrier.

17 I want to also stress that we have a  
18 motion before this Commission concerning reconsideration  
19 of IDT's certificate. Until that's ruled on, we have a  
20 Supreme Court proceeding against MetroCast, but until that  
21 motion is resolved, I mean, there's nothing we can do.  
22 And, we think that, before anything happens, we need to  
23 have that resolved, to be sure that IDT's certificate is  
24 valid for the time being.

1                   And, in terms of their statement on  
2                   "common carrier" versus "private carrier", what we're  
3                   essentially asking for is the statement that they would  
4                   provide services to customers in similarly situated, that  
5                   comes to them and asks for that type of service. "Private  
6                   carriers" are defined as "people that do not offer service  
7                   to the general public." The fact that they have, you  
8                   know, a customer in place, and that, you know, a lot of  
9                   times other carriers just will ask for interconnection  
10                  where they don't have any customers, that's because they  
11                  have a generally available product that they're going to  
12                  all customers within the state and offering it to. I  
13                  don't know that they're a private carrier. We're just  
14                  asking for a clarification from them. If they make the  
15                  statement that "hey, you know, we're going after different  
16                  customers", but, from what has been said, it sounds like  
17                  they have an arrangement with MetroCast, and that's the  
18                  only customer that they're really interested in providing  
19                  service to. If that's the case, then we have an issue in  
20                  terms of whether they would be eligible for  
21                  interconnection. But we're not -- we don't know what the  
22                  answer to that is. That just shows one of the areas that  
23                  need to be resolved by our April 2nd, you know, motion  
24                  before this Commission that has yet to be resolved.

1                   And, so, just to sum up, I think that we  
2                   -- we just want answers to some of the unresolved  
3                   questions before we move forward. That's essentially what  
4                   we're asking for.

5                   MS. ROSS: Thank you. Normally,  
6                   following a prehearing conference, we invite the parties  
7                   to try to reach an agreement with regard to a procedural  
8                   schedule. This docket is somewhat problematic, in that we  
9                   would be asking you to come up with a procedural schedule  
10                  before you knew whether and how the pending motion to  
11                  dismiss and the motion to stay are going to be disposed  
12                  of. On the other hand, I assume parties have traveled  
13                  here today, and since you are all in one room, what I  
14                  would ask you to do is, for purposes of reaching an  
15                  agreement on a procedural schedule, assume for now that  
16                  the motion to dismiss will be denied and that the motion  
17                  to stay will be denied, only -- not to signal any result  
18                  to you, but I think, if you make those assumptions for  
19                  purposes of coming up with a procedural schedule, it will  
20                  at least allow the parties to try to come up with  
21                  something reasonable that you all can agree to. And,  
22                  then, if, for some reason, this gets dismissed, obviously,  
23                  the procedural schedule will be moot or, if it gets  
24                  stayed, we'll have to ask you to come back and revisit the

1 procedural schedule. But I think it would still be useful  
2 for you to spend that time, and to the extent that you can  
3 dispose of any of the disputed issues that you have argued  
4 and raised today, if you do dispose of them, please advise  
5 me, so that I can include that in the recommendation to  
6 the Commission.

7 And, with that, thank you for your  
8 attendance, and I'll take this under advisement. Yes.

9 MR. JORDAN: Just a point, are we able  
10 to make a response to their closing statement, allowing  
11 them to --

12 MS. ROSS: Typically, we don't keep it  
13 going back and forth. It could be a long morning.

14 MR. JORDAN: I understand.

15 MR. BILLEK: May I just -- Pardon me.  
16 But may I just ask one question about our discussions  
17 about the schedule. Is it your wish that we try to come  
18 up with a schedule that's consistent with the July 8th  
19 deadline or is that something between the parties to  
20 decide or --

21 MS. ROSS: I think I'll leave that to  
22 the parties. And, I apologize, I just can't prejudge  
23 these issues right now.

24 MR. BILLEK: Okay. Understood.

1 MS. ROSS: And, I don't want to prejudge  
2 them. So, I'm going to ask you to do the best you can  
3 with your differing positions and try to come up with a  
4 procedural schedule that works from a business point of  
5 view, as opposed to a purely legal point of view right  
6 now.

7 MR. BILLEK: Understood. Thank you.

8 MS. ROSS: Because we have unresolved  
9 legal issues, as you all know. Thank you.

10 MR. BILLEK: Thank you.

11 **(Whereupon the prehearing conference**  
12 **ended at 11:03 a.m., and the Staff and**  
13 **the Parties convened a technical**  
14 **conference thereafter.)**