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## 2 PUBLIC UTILITIES COMMISSION

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5 Concord, New Hampshire

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6 RE: DT 09-048  
7 IDT AMERICA, CORP.:  
8 Petition for Arbitration of Interconnection  
9 Agreement with Union Telephone Company.10 PRESENT: Chairman Thomas B. Getz, Presiding  
11 Commissioner Clifton C. Below

12 Sandy Deno, Clerk

13  
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18 Brian McDermott, Esq. (Synergies Law Group)  
19 Darren Winslow  
20 Trent Leveck21 Reptg. MetroCast:  
22 Robert J. Munnelly, Esq. (Murtha Cullina)23 Reptg. PUC Staff:  
24 Robert Hunt, Esq.  
Kathryn Bailey, Director - Telecom Div.  
Michael Ladam, Telecom Division  
Victor Del Vecchio (Arbitrator)

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

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## P R O C E E D I N G

1  
2 CHAIRMAN GETZ: Okay. Good morning,  
3 everyone. We'll open the hearing in docket DT 09-048. On  
4 March 11, 2009, IDT America Corp. filed a petition for  
5 arbitration of rates, terms and conditions of  
6 interconnection with Union Telephone Company pursuant to  
7 47 U.S.C. 251(a) and (b). On April 21, the Commission  
8 issued an order of notice setting a prehearing conference  
9 that was held on May 7. And, a procedural schedule was  
10 issued that included, among other things, a prefiling of  
11 testimony, hearing before the Arbitrator, Mr. Del Vecchio,  
12 and we had briefs filed by the parties on July 14th, and  
13 the Arbitrator's Report and Recommendations filed on  
14 July 27. The purpose of the hearing today is to allow for  
15 oral argument concerning the issues.

16 Let's start with appearances.

17 MR. BILLEK: Carl Billek, IDT.

18 CHAIRMAN GETZ: Good morning.

19 MR. BILLEK: Good morning.

20 MR. JORDAN: Thomas Jordan, IDT.

21 CHAIRMAN GETZ: Good morning.

22 MR. MUNNELLY: Good morning,  
23 Commissioner. Robert Munnelly, from MetroCast.

24 CHAIRMAN GETZ: Good morning.

{DT 09-048} {08-10-09}

1 CMSR. BELOW: Good morning.

2 MR. McDERMOTT: Brian McDermott, for  
3 Union.

4 MR. WINSLOW: Darren Winslow, for Union.

5 CHAIRMAN GETZ: Good morning.

6 MR. LEVECK: Trent Leveck, Union  
7 Telephone.

8 CHAIRMAN GETZ: Good morning.

9 MR. HUNT: Good morning. Rob Hunt here,  
10 representing Staff. To my right, is Victor Del Vecchio,  
11 the Arbitrator, and -- excuse me, to my left. And, to his  
12 left is Kate Bailey, Director of Telecommunications here,  
13 and to her left is Michael Ladam, a Policy Analyst here.

14 CHAIRMAN GETZ: Good morning.

15 CMSR. BELOW: Good morning.

16 CHAIRMAN GETZ: Let's review procedures  
17 for today. Who is going to be doing oral argument for  
18 IDT?

19 MR. BILLEK: Mr. Jordan and I will both  
20 be discussing IDT's positions.

21 CHAIRMAN GETZ: Okay. And, for Union?

22 MR. McDERMOTT: Primarily, I will be  
23 making the oral argument, with them interjecting, if  
24 necessary.

1                   CHAIRMAN GETZ: And, Staff is not  
2 planning to do a presentation. I believe we have a  
3 lengthy report and recommendation from Mr. Del Vecchio  
4 that I don't think there's any need on the record to have  
5 a summary of that. I guess it would be helpful for our  
6 purposes if the parties would try to use the format or the  
7 -- that Mr. Del Vecchio used in addressing the issues.

8                   Is there anything that we need to  
9 discuss? Any questions before we begin?

10                   (No verbal response)

11                   CHAIRMAN GETZ: Okay. So, we'll let IDT  
12 start.

13                   MR. BILLEK: Sure. Thank you for giving  
14 us the opportunity to be here this morning. We hopefully  
15 won't take up too much of your time. We just wanted to  
16 start off by stating that IDT supports Arbitrator Del  
17 Vecchio's recommendations on Part IV.A, where he concluded  
18 that IDT is a telecommunications carrier eligible for an  
19 interconnection agreement under -- with Union under  
20 Section 251(a) and (b) of the Telecom Act. And, IDT also  
21 agrees with Arbitrator Del Vecchio's recommendation under  
22 Section IV.B, where the Arbitrator concluded or  
23 recommended that IDT has a right to an interconnection  
24 agreement under 251(a) and (b), and those rights do not

1 violate 251(f).

2 IDT does not take issue with Arbitrator  
3 Del Vecchio's conclusions in IV.D, where he addressed  
4 certain disputed issues, which IDT felt were previously  
5 closed. So, we don't -- we don't dispute his conclusions  
6 in that section.

7 We're going to focus our comments on  
8 Section IV.C, which is labeled "Pricing Disputes". And,  
9 I'm just going to give a couple of brief principles under  
10 which IDT proposed its prices and rates, and believes  
11 those prices should be determined. And, then, Mr. Jordan  
12 is going to speak more specifically to some of the  
13 specific pricing issues.

14 IDT posed rates that we felt were  
15 pro-competitive. It's market-based as is possible under  
16 the sort of regime that we're talking about here, where  
17 there's not exactly a free market, but it's simply two  
18 carriers seeking an interconnection. We wanted to make  
19 sure that the Commission is aware and that the rates that  
20 have been proposed are reciprocal. So, obviously, any  
21 rate which IDT has proposed is a rate which IDT is willing  
22 to accept payment for, as much as we're willing to pay.  
23 And, we also want to encourage the Commission to not award  
24 inefficiency. And, we also want to encourage the

1 Commission to not let carriers, either Union or IDT, get  
2 one last piece of revenue when losing a customer, which we  
3 felt might be the case in some of Arbitrator Del Vecchio's  
4 rates.

5 CHAIRMAN GETZ: Could you explain that a  
6 little further?

7 MR. BILLEK: I'm sorry?

8 CHAIRMAN GETZ: Could you explain that  
9 more, what you're saying on that?

10 MR. BILLEK: Sure. Mr. Jordan will, I  
11 guess, talk about that point a little bit more. But we  
12 felt that some of the rates that the Arbitrator  
13 recommended, particularly when a customer is going from  
14 Union to IDT or from IDT to Union, allowed the losing  
15 customer to charge the -- I'm sorry, allow the losing  
16 carrier to charge the winning carrier certain fees, which  
17 we feel are unnecessary and reward a losing carrier, which  
18 we don't feel are necessary for either -- for either side.

19 And, our final point that we just want  
20 to make to the Commission is that all rates, all  
21 intercarrier rates do have an impact on consumers, because  
22 carriers have to recover their intercarrier rates through  
23 end-user rates. And, we just want to make sure that the  
24 Commission takes that into consideration when reviewing

1 the Arbitrator's recommended rates.

2 And, now I'm going to turn it over to  
3 Tom Jordan, who is going to speak about some of the  
4 specific rate issues.

5 MR. JORDAN: Thank you. And, good  
6 morning. The specific rates that Mr. Billek was  
7 referencing is specifically the service order rates, which  
8 I want to talk about. These are service orders  
9 predominantly for local number portability, if an end-user  
10 of one carrier wishes to port to another carrier, as  
11 Mr. Billek said, the losing carrier would charge the  
12 winning carrier this service order rate. Union had  
13 recommended in their briefs that this rate be set at \$60.  
14 We were recommending that it be comparable to either  
15 FairPoint, at zero dollars, or some staggered amount, if  
16 the Commission determined that there should be some  
17 monetary amount for this rate.

18 If you take a step back and look at, if  
19 you take all the rural ILECs aside for a second and look  
20 at how most carriers or all other carriers charge each  
21 other for these rates, this would leave the RBOCs, the  
22 CLECs, resellers, ULECs, and wireless carriers. The LSR  
23 fees that these carriers charge each other for local  
24 number portability is zero dollars. This is regardless of

1 their size, their order processing method, whether it's --  
2 they process orders manually or automated, or their order  
3 value. I can make this statement, as IDT, I operate a  
4 facilities based CLEC in 15 states, serving approximately  
5 a quarter of a million end-user lines, and process  
6 approximately 10,000 to 15,000 orders a month. We neither  
7 incur nor charge LSR fees for any of our orders in  
8 non-RLEC territories.

9 Specifically, we process approximately  
10 300 or so port outs a month. This is where our end-users  
11 feel that we are being noncompetitive or uncompetitive and  
12 desire to go to another carrier. We freely process these  
13 in a manual format, and we don't charge the winning  
14 carrier for these fees. We presently -- I'm just stating  
15 this because we don't see any economies of scale in  
16 automating this process. We do it manually. We feel that  
17 this is the industry standard among non-RLECs not to  
18 charge service order fees for local number portability  
19 orders. The philosophy here that IDT feels -- that IDT  
20 has and we feel is prevalent across the industry is  
21 carriers should not be rewarded for customer satisfaction,  
22 in terms of these local number portability fees. The  
23 acquisition of that end-user is already behind them. That  
24 cost is there. They have already charged the end-user

1 that. They have the customer. And, if a customer chooses  
2 to leave them from for any reason, whether it's service,  
3 quality, or price, that carrier should do so and not  
4 charge an LSR rate in an attempt to recoup any cost for  
5 being noncompetitive. This is, in our view, allows free  
6 and open competition among carriers. And, the carriers  
7 attempt to make money by satisfying a customer need or  
8 expectation, not by bringing in a buck when a customer is  
9 dissatisfied as they're leaving them.

10 An argument that many rural ILECs will  
11 make defending or saying why they should charge a service  
12 order fee, there's usually three statements, three  
13 categories. One, they are an RLEC, they serve a smaller  
14 rural community. Two, this is needed to recoup the cost  
15 for processing that Local Service Order. Or, three, they  
16 cite LSR fees levied by other RLECs. None of these  
17 provide any basis that we feel to support the incurrence  
18 of LSR fees. The fact that they are an RLEC should not be  
19 a factor in a free and open market. A carrier should not  
20 be discriminated or non-discriminated because of their  
21 type of carrier status, whether they're an RLEC or not.  
22 Some -- many of the RLECs should be agnostic.

23 The argument that they "need to recoup  
24 costs" I also feel is unfounded and irrelevant. All

1 carriers incur the same costs. And, with the exception of  
2 the rural ILECs, they don't charge each other for these  
3 costs.

4 If the Commission feels that they should  
5 be allowed to recoup these costs, one could argue that  
6 there is a type of moral hazard here where inefficiencies  
7 could be rewarded. If it's determined that a rural ILEC,  
8 the cost for processing a local service order is X amount  
9 of dollars, there may be no incentive over time for them  
10 to become more efficient, because they're already making  
11 this money on these fees. And, if they do become more  
12 efficient, let's suppose, for example, a rural ILEC is  
13 allowed to charge \$100 for a local service order, LNP, and  
14 that's their cost at that time. And, they become more  
15 efficient, and their underlying cost for that is cut in  
16 half, I don't see any mechanisms for reducing that LSR  
17 cost among the industry. So, the need to recoup costs,  
18 because it's incurred by all carriers, and because it  
19 introduces a moral hazard, it does not create an impetus  
20 for a carrier to be efficient I think is unwarranted.

21 The third example or statement that many  
22 RLECs will state as to why they should charge an LSR fee,  
23 a service order fee, is that other RLECs presently do  
24 this. I also feel that this is no basis. If, for

1 example, a interconnect agreement is found where a rural  
2 ILEC charges a thousand dollars per service order, I don't  
3 feel that this is any justification for another RLEC to do  
4 the same. I don't see how it would be applicable here.

5 Specifically, to Union, I would like to  
6 point out some other items. For a typical end-user  
7 installation, if a new customer is in a Union territory  
8 and wants to get phone service from them, they are charged  
9 an installation fee. This involves a truck roll or some  
10 type of an on-site install, and what I would consider  
11 other provisioning items, either internal in the network  
12 or --

13 [Court reporter interruption]

14 MR. JORDAN: I'm sorry. It includes  
15 also internal provisioning and other on-line provisioning.  
16 Meaning, a Union representative would process the 911 ALI  
17 record, process a directory listing record, polling name  
18 record that goes out to their different trading partners.  
19 The biggest cost component arguably of this install would  
20 be their labor, their plant labor, and the field work, the  
21 truck roll to the on-site installation. The next largest  
22 component would be this on-line provisioning.

23 If you look at the Union New Hampshire  
24 PUC tariff, specifically Tariff Number 7, Part IV, Section

1 1, Page 4, and Part V, Section 1, Page 3, this install  
2 charge for all these activities is anywhere from \$10 to  
3 \$20. Let's suppose, in this example, that customer  
4 decides they no longer want Union's service. Suppose in  
5 that example they're moving to San Francisco. They're  
6 leaving Union. Whether it's two months or two years  
7 later, Union does not charge that end-user a disconnect  
8 fee. All the on-line services are deprovisioned at that  
9 time at no charge to the end-user. A customer leaves for  
10 San Francisco, and that's the end of it.

11 If, on the other hand, that end-user  
12 wants to stay in Union's territory, and competition is  
13 available, and they wish to go to another carrier, the  
14 end-user again is not charged any disconnect fee for this  
15 processing, but what's being proposed here in the service  
16 order fees is the winning carrier is to be charged a fee,  
17 whether it's \$10, \$20, \$60, or \$100, for virtually the  
18 same activity as if the customer went to San Francisco.  
19 The only difference here is that there's what's called an  
20 "LNP activity", a service order activation. I personally  
21 don't believe that this additional activity is rocket  
22 science or a big cost occurrence for any carrier. I don't  
23 feel that an RLEC should charge a large amount or any  
24 amount for this fee. As I stated before, all non-RLECs,

1 in my experience, charge zero dollars for this activity.

2 CMSR. BELOW: Excuse me. What's the  
3 "LNP" exactly?

4 MR. JORDAN: That's "local number  
5 portability".

6 CMSR. BELOW: Okay.

7 MR. JORDAN: Where you want to take your  
8 number and stay in the same area. Sorry. So, the  
9 Commission now, respectively, has an opportunity to  
10 correct this inequity, where RLECs charge winning carriers  
11 these service order fees, in light of allowing free and  
12 open competition. IDT is not asking to be rewarded with  
13 the ability to charge an LSR fee, a service order fee, for  
14 a port out. In fact, we are against it and always have  
15 been. We are only asking that Union not be rewarded with  
16 this uncompetitive ability to charge a winning carrier  
17 some revenue when a client -- when an end-user desires to  
18 move to another carrier.

19 My statements here have been  
20 predominantly about the service order fee for local number  
21 portability. In the pricing section of our agreement  
22 before you, this is broken out into certain types of  
23 orders, service orders. An initial order, which the  
24 Arbitrator is recommending should be set at \$20; a

1 supplemental order, which is at 50 percent of that, or  
2 \$10; and an expedited order at \$33.40; and a cancelled  
3 order at \$10. It has been our experience, as I've stated  
4 before, that, for non-RLEC carriers that we do business  
5 with across the 15 states that we operate in, we don't get  
6 charged any of these fees. We feel that charging any of  
7 these fees is uncompetitive and allows the RLEC the  
8 ability to get money, as I've stated before, for being  
9 uncompetitive, for when a customer wants to leave them.  
10 We would recommend that these charges all be set to zero.

11           However, if the Commission does not  
12 agree with this analysis 100 percent, we would at least  
13 request that the Commission look at the proposed pricing  
14 that we have placed into our brief, where we have set  
15 these prices at I think it was \$7 for an initial service  
16 order; supplemental being half of that, \$3.50; the  
17 expedited order being, I don't have the price here,  
18 167 percent of the initial order of \$7; and a cancelled  
19 order at \$3.50 also. I feel that any dollar amount that's  
20 set on LSRs does not allow free and open competition among  
21 the markets.

22           One other minor item I'd like to add  
23 here is related to the -- under other service order  
24 charges, there are hourly rates or actually half hour

1 rates related to labor that each carrier would charge each  
2 other for trouble shooting and whatnot. The rates right  
3 now are set at standard time being \$32.50 per half hour.  
4 I would like to point out to the Commission that they take  
5 into consideration the hourly rates that Union charges its  
6 own end-users when making a final decision on the rate  
7 that Union should charge a CLEC in this agreement.

8 Specifically, if you look at New  
9 Hampshire PUC Number 7 Tariff, Part VI, Section 1, Page 5  
10 and on this page it outlines the charges Union charges its  
11 end-users when a trouble is found to be caused by the  
12 subscriber end-user's terminal equipment, communication  
13 system, or premise wire. And, that charge per half hour  
14 is \$8.75, with the minimum charge to be \$17.30. As I  
15 stated, this rate includes a potential field dispatch by  
16 Union to the customer site. In the testing and labor  
17 charges that we have in our agreement here, keep in mind  
18 that a field dispatch normally would not happen, since the  
19 only place that the Union technician will go is to the  
20 point of interconnection, which is arguably in their  
21 central office. So, looking at what they charge to  
22 end-users is 8.75 per half hour, including a field  
23 dispatch potentially, and 32.50 that they would charge us  
24 does not include a field dispatch. I feel it's

1 disproportionate. And, I'd just like to point that out.  
2 That's all of my comments.

3 MR. BILLEK: That's concludes IDT.

4 CHAIRMAN GETZ: Okay. Thank you.

5 CMSR. BELOW: Could you just explain a  
6 bit more about the basis, if any, for your reluctantly  
7 proposed alternative rates? I'm a little confused. It's  
8 referenced as \$14 for the local service order rate in the  
9 Arbitrator's Report, and also on Page 37 of your brief, it  
10 seems to be shown as both \$7 and \$14.

11 MR. JORDAN: Yes. What we were -- What  
12 I was initially proposing, and during the arbitration, I  
13 was operating under the guidelines that this would be  
14 baseball arbitration. Where the Arbitrator would look at  
15 the briefs from both parties and make a decision on one or  
16 the other. I was very cognizant in negotiations that  
17 Union was sticking to the request that, in this instance,  
18 the service order charge should be \$60. During  
19 negotiations, my initial proposal to them was it should be  
20 zero dollars, similar to what I see everywhere else in  
21 most other carrier areas, and also what FairPoint charges  
22 me. During negotiations, as the negotiation goes, I said  
23 "Okay, you're not willing to accept that. Well, how about  
24 X dollars? X dollars?" I kept going up. They never came

1 down. So, this is a reflection of what I proposed,  
2 understanding that I want to be able to compete open,  
3 honestly -- openly and honestly in this area to provide  
4 choice to the end-users.

5 I am willing -- I personally feel that  
6 zero dollars is an amount that this rate should be in a  
7 free and openly competitive market. I know that that's  
8 not always possible or is not always the case in many of  
9 the markets that I'm in. So, I'm willing to operate  
10 competitively, an analogy is "with one arm tied behind my  
11 back", and grudgingly pay a local service order charge,  
12 even though I personally feel it's anti-competitive. So,  
13 these rates are reflecting that willingness to do this to  
14 provide competition in the area. It also reflects the  
15 fact that I had already -- I had offered these rates in  
16 the past to Union and they rejected them. So, the rates  
17 that are in here are -- my initial proposal was zero  
18 dollars for this. In light of the fact that the  
19 Arbitrator may have come back and said "Okay, Union said  
20 X; IDT said zero." I didn't want it to be an instance  
21 where the Arbitrator felt that Union was entitled to some  
22 amounts, that, because I put zero, they would give the  
23 exorbitantly large amount that Union was saying, \$60. So,  
24 I put a staggered thing in there saying, if the Arbitrator

1 and the Commission feel that Union is justified and should  
2 get an amount for service orders, which I personally don't  
3 believe should be the case, as I've stated, then it should  
4 be \$7, \$7.50, which I stated here. And, I also added --  
5 the additional caveat is I don't think it should ever be  
6 above \$14. Any amount I think is uncompetitive, but  
7 that's what I put in there, trying to work in this  
8 framework to get this done to be able to provide  
9 competition into this area.

10 CMSR. BELOW: Okay.

11 CHAIRMAN GETZ: Well, let me ask this  
12 question. On Page 45 of the Arbitrator's Report, and when  
13 it comes to Union I'm probably going to ask the same  
14 question, first full paragraph, Mr. Del Vecchio says  
15 "Consequently, without sufficient evidence to show  
16 otherwise, I am concerned that the IDT proposals sometimes  
17 appear too low, given Union's continuing rights under the  
18 rural exemption, while Union's proposals sometimes appear  
19 too high. I have, therefore, in some cases concluding  
20 that taking a simple average of the two proposals is an  
21 appropriate way to balance the interests, given the state  
22 of the record. In the face of a limited record for  
23 proposed rates that may not entirely or even largely be  
24 based on relevant and timely costs, this approach seems

1 reasonable."

2           You mentioned that you were under the  
3 impression that it was baseball-type arbitration, and is  
4 your position that the Arbitrator was required to pick one  
5 or the other or should have picked one or the other, as  
6 opposed to picking a third option?

7           MR. BILLEK: I don't know if I would use  
8 the word "required". So, I'm not using the word  
9 "required". When we had had discussions, I think this  
10 subject of baseball arbitration came up really when we  
11 were talking about proposed language, and I think we just  
12 assumed that that was going to apply across the board.  
13 And, so, I don't think -- I don't know if it was something  
14 that was ever explicitly stated regarding rates.

15           MR. JORDAN: Let me clarify my  
16 statements before. I didn't necessarily want to, even  
17 though I personally feel that this rate should be zero  
18 dollars, I didn't want to state only that, and leave the  
19 Arbitrator no alternative but to take the Union's brief,  
20 position in their brief, for whatever rate they put, which  
21 I had a pretty good indicator was the \$60, because I was  
22 saying zero. I didn't want it to be where the Arbitrator  
23 came back and said, "You know, if you put \$1.25, I would  
24 have accepted that. But, because you didn't, I didn't

1 take it."

2 CHAIRMAN GETZ: So, basically, it was a  
3 strategic decision as part of arbitration?

4 MR. JORDAN: Sure.

5 CHAIRMAN GETZ: Anything further,  
6 gentlemen?

7 MR. BILLEK: No. No thank you.

8 CHAIRMAN GETZ: All right. Thank you.  
9 Then, let's hear from Union.

10 MR. McDERMOTT: I just want to thank the  
11 Commission for the opportunity to take the time out of  
12 your busy schedule to discuss these issues. I am going to  
13 begin the discussion with just a follow up on IDT's  
14 discussion of pricing. Subsequently, I will also talk  
15 about the interpretation of Section 251 that will also be  
16 included in our pricing discussion. Followed with a short  
17 discussion of the issue of what is "common carrier" and  
18 what common carriers are entitled to. And, then, finally,  
19 discuss one of the two issues that was decided in the  
20 non-pricing portion, this being the issue of wording in  
21 the recip. comp. section.

22 To start out on pricing -- well, and  
23 before I dive into sort of my arguments, I just want to  
24 note a procedural -- I guess it would be considered a

1 procedural objection. And, I'm not sure how best, you  
2 know, to remedy this. In our discussions with IDT, we had  
3 identified open issues that needed to be briefed. We had  
4 thought we had come to an agreement on the language of the  
5 pricing section. But there was, in IDT's brief, there was  
6 a section containing arguments that, in terms of the  
7 overtime labor numbers, that that should only be  
8 applicable when IDT agrees to those charges. IDT, in  
9 subsequent conversations, have admitted that they failed  
10 to identify that as an open issue. We had no opportunity  
11 to brief that, because the first time we -- it was  
12 mentioned in our negotiations, but never went to the level  
13 of becoming an open issue. So, we were not given the  
14 opportunity to brief that issue, because it was not an  
15 open issue.

16 CHAIRMAN GETZ: Can you point me  
17 specifically to where that is in the IDT brief?

18 MR. McDERMOTT: This is in the "Pricing"  
19 subsection, on -- under "other service charges".

20 CHAIRMAN GETZ: Okay. Do you have a  
21 page reference or --

22 MR. McDERMOTT: This is the appendix  
23 "Pricing", Attachment A.

24 CHAIRMAN GETZ: Okay.

1 MR. McDERMOTT: At the very end of  
2 "other service charges", it says "only chargeable upon  
3 prior pre-approval by the charged party." That language  
4 was -- the first time we saw it was in their brief, and it  
5 was not identified as an open issue. So, we would ask the  
6 Commission to strike that language, since it was not an  
7 issue to be arbitrated. But that, again, is just a  
8 procedural -- a procedural note.

9 When talking about pricing, we were  
10 asked in this case, as you're aware, we had maintained  
11 that there is no intended right to arbitrate under  
12 Sections 251(a) and (b). That the case law that we have  
13 cited has stated that such a right does not exist, and  
14 that you cannot separate out 251(a) and (b) from 251(c)  
15 and 251(f); 251(f) is the rural exemption, 251(c) is the  
16 obligations of carriers that are not applicable to rural  
17 carriers.

18 Assuming for just the moment that,  
19 putting aside our argument that there is no intended right  
20 to arbitration under 251(a) and 251(b). So, assuming  
21 arguendo that there is -- such rights do exist, it would  
22 only follow reasonably that the only things that could be  
23 arbitrated would be sections that appear under 251(a) and  
24 251(b) of the Act. On Page 53 of the Arbitrator's Report

1 -- excuse me, on Page 43 of the Arbitrator's Report, the  
2 Arbitrator states "Union is a rural carrier and, under  
3 Section 251(f) of the Act, is presently exempt from the  
4 interconnection obligations set forth in Section 251(c).  
5 This would extend to any of the pricing provisions  
6 specified in that section, and in most of  
7 Section 251(2)(d) of the Act" --

8 CHAIRMAN GETZ: You mean "252"?

9 CMSR. BELOW: Yes, you mean "252(d)"?

10 MR. McDERMOTT: 2(d), I'm sorry, if I  
11 misstated that. "Although the pricing provisions of  
12 subsection 251(d)(2) [252(d)(2)?] for termination of  
13 traffic do apply to Union. IDT has not requested that the  
14 Commission remove Union's rural exemption, rather  
15 petitioning for arbitration of this agreement pursuant to  
16 251(a) and (b). Accordingly, the cost-based standards of  
17 251(2)(d)(1) [252(d)(1)?] and (3) do not apply" here.

18 So, what the Arbitrator has stated quite  
19 simply is that cost-based pricing in this case is not in  
20 play, unless they go and they attempt to terminate our  
21 rural exemption.

22 To go on further, in Footnote 25 of the  
23 Arbitrator's decision, it cites IDT's own brief. It cites  
24 IDT's brief at Page 32. And, that quote states "IDT does

1 not take the position that it has the right to rates that  
2 are just, reasonable and non-discriminatory, as such a  
3 right falls under 251(c)(2)(d), and IDT does not assert  
4 the right to 251(c) rights." So, IDT itself is stating  
5 "because we are not seeking Section 251(c) arbitration, we  
6 are not entitled to rates that are just, reasonable and  
7 non-discriminatory."

8 The Arbitrator goes on to say, on Page  
9 45, that "Similarly, if IDT wishes to establish pricing  
10 that applies the standards of Section 251(c), IDT can  
11 petition the Commission to remove the rural exemption and  
12 provide the necessary support." The fact of the matter  
13 is, is that there is no statutory basis under 251(a) or  
14 (b) to argue about rates and whether IDT considers those  
15 rates to be reasonable. He sites the LSR rate. But, over  
16 and over again, says "in non-RLEC situations", in non  
17 situations -- situations that don't involve the rural  
18 exemption. Well, of course, because you're playing under  
19 a different playing field.

20 When the rural exemption is lifted, then  
21 Sections 251(c) and 251(d), the pricing standards of those  
22 sections come into play. The fact of the matter is that  
23 an LSR rate is applied by rural incumbents. And, the  
24 reason being is that rural incumbents do not, and he

1 annunciated sort of some of the arguments, but we don't  
2 have the infrastructure in place to do these LSRs. We've  
3 never had to do them before. This is the first -- our  
4 first venture into number portability. And, the reason  
5 that these are set is to allow us to cover some of those  
6 rates.

7 I would question the overall statutory  
8 basis for the Arbitrator setting -- taking any of the  
9 rates of -- that IDT recommended. One, on Page 41 of the  
10 Arbitrator's Report, he sites to the fact that "IDT claims  
11 that Union has based its prices on NECA tariff rates as  
12 well as cherry-picked rates from IDT interconnection  
13 agreements." That is absolutely not true. We did not  
14 take any rates from any IDT agreements. Because, by doing  
15 that, we would be sort of self-admitting that you can  
16 compare us to FairPoint or compare us -- I mean, the only  
17 relevant comparison would be of another RLEC. And, RLECs  
18 are in, you know, different situations. So, --

19 CHAIRMAN GETZ: But, in light of your  
20 position, are there any bounds on what Union would charge  
21 then?

22 MR. McDERMOTT: Absolutely. Absolutely.  
23 NECA rates are the prices that -- they're set by NECA.  
24 NECA is a federal tariff that takes into consideration the

1 relative size and operations of a company. And, takes  
2 those considerations and puts the company into certain  
3 pricing bands. When we put rates into this tariff,  
4 essentially what we did is we took the rates contained in  
5 our current NECA tariff, and --

6 CHAIRMAN GETZ: But is it --

7 MR. McDERMOTT: -- and these are offered  
8 --

9 CHAIRMAN GETZ: But are those rates  
10 controlling or is your argument that --

11 MR. McDERMOTT: Our argument is that  
12 those rates should be controlling. They are --

13 CHAIRMAN GETZ: It's not just an issue  
14 of you selected that particular approach?

15 MR. McDERMOTT: Well, in lieu of another  
16 approach. I mean, the approach -- our approach was based  
17 in fact, in rates that were reviewed and approved by a  
18 federal entity. IDT's rates were based, in large part, on  
19 their feeling and their experiences in dealing with other  
20 non-RLECs. The fact -- The reason why we thought these  
21 rates were appropriate is because these rates are already  
22 available to other carriers. There is nothing anybody  
23 needs to do, you don't need an interconnection agreement  
24 with Union to purchase services out of our NECA tariff.

1 If another carrier in the state decided that they wanted  
2 to purchase services from Union, without going through the  
3 interconnection process, they could go to our NECA tariff  
4 and purchase those services at those rates. And, the fact  
5 that we had pre-existing rates prior to this  
6 interconnection agreement, we thought those pre-existing  
7 rates should be the rates that are accepted.

8 The fact of the matter is, as I cited,  
9 251(c) is not in play here. We're not talking about an  
10 analysis of, you know, reasonableness or cost-based rates.  
11 The fact -- you know, we have rates in place already.  
12 And, absent them attempting to terminate our rural  
13 exemption, we feel that the Arbitrator was obligated --  
14 should have been obligated to either accept our rates  
15 wholesale or, in the case of the LSR, we didn't have an  
16 exact rate on LSR, we attempted to pick a rate that was as  
17 close as possible to it.

18 CHAIRMAN GETZ: But let me make sure I  
19 understand. So, you're basically arguing that there's a  
20 *per se* reasonableness in this other rate that you've  
21 selected.

22 MR. McDERMOTT: Correct.

23 CHAIRMAN GETZ: You've also said that,  
24 you know, the Arbitrator can't pick something else. So,

1 it seems like you're agreeing that there is some factor of  
2 reasonableness that's in play here. But I think he then  
3 goes further to question the staleness of the numbers,  
4 whether they still are reasonable. So, how do we account  
5 for that issue?

6 MR. McDERMOTT: Right. And, I'll go  
7 through each of the rates and how they were decided. And,  
8 --

9 CMSR. BELOW: But, before you get to  
10 that, when were the NECA rates that you're referencing  
11 set?

12 MR. WINSLOW: July 1st of '09.

13 MR. McDERMOTT: July 1st, 2009. Those  
14 rates are re-examined and reset I think it's every --  
15 annually. So, they're reset annually.

16 CMSR. BELOW: They're reset annually by  
17 the FCC?

18 MR. McDERMOTT: By the -- NECA is  
19 National Exchange Carrier Association.

20 CMSR. BELOW: Okay. And, do you know  
21 when they were first set at the rates that you proposed?

22 MR. McDERMOTT: I don't know how long  
23 those rates have been in place, in terms of when they were  
24 changed last. I don't know if they were changed in 2008

1 or 2007.

2 CMSR. BELOW: But, to your knowledge,  
3 they weren't changed on July 1st of this year, compared to  
4 the prior year?

5 MR. WINSLOW: Yes, they were.

6 MR. McDERMOTT: No, --

7 CHAIRMAN GETZ: Well, let's hold on one  
8 second. Excuse me, just for the purposes of the court  
9 stenographer, if there's going to be -- if there's other  
10 people speaking, you have to speak up loudly, or, if  
11 there's cross-talk, just have one person speaking so  
12 Mr. Patnaude can develop the record.

13 MR. McDERMOTT: Okay. Apparently, those  
14 rates were changed as of July 1st, 2009. And, as such, we  
15 would be willing to amend our -- I mean, we -- excuse me  
16 for a second.

17 (Short pause.)

18 MR. McDERMOTT: Okay. I can't speak  
19 definitively about whether the rates changed July 1st,  
20 2009 at this point. But they were -- they are updated  
21 annually.

22 CMSR. BELOW: So, the numbers in your  
23 proposed rates are based on what was set --

24 MR. McDERMOTT: For 2008.

1 CMSR. BELOW: -- set for July 1, 2008.

2 MR. WINSLOW: No, just to clarify. The  
3 rates that we based our rates on are effective 07/01/09,  
4 and those are the rates that were in the NECA tariff and  
5 approved by the FCC at the current time.

6 CMSR. BELOW: Okay.

7 MR. WINSLOW: Whether or not those rates  
8 changed from '08 to '09, we're not really sure right now.  
9 So, when they approved the tariff on 07/01/09, I'm not  
10 sure if the rates changed. But the effective rates are  
11 what we based our rates on at this point in time.

12 CMSR. BELOW: Okay.

13 MR. WINSLOW: Okay.

14 CHAIRMAN GETZ: Do you know historically  
15 how long that particular rate has been in place? I mean,  
16 when it was made effective in July of 2007, I mean, was  
17 that a reaffirmation of an earlier rate or you don't know  
18 the history?

19 MR. WINSLOW: No.

20 CHAIRMAN GETZ: Okay.

21 MR. WINSLOW: We could get it, if  
22 needed.

23 MR. McDERMOTT: The point is, though,  
24 that it is a rate that is examined annually. And, there

1 is a set formula and a regulatory review. And, we are  
2 placed in a regulated rate band, essentially, given our  
3 size and structure and customer base.

4 In terms of the LSR, --

5 CMSR. BELOW: Before you get into the  
6 specifics, I don't think you really responded to the  
7 Chairman's question, but maybe I could refine it a  
8 different way. You're arguing that under Sections 251(a)  
9 and (b) there is no standard for pricing approval or  
10 rejection, there's no reasonableness standard, there's no  
11 justice or cost-based standard, correct?

12 MR. McDERMOTT: Correct.

13 CMSR. BELOW: In the absence of a  
14 federal standard under federal law, is it your argument  
15 that there's no -- does New Hampshire law have any role in  
16 this? Would you argue that New Hampshire law does or does  
17 not have any role in the absence of a federal standard for  
18 tariffs or pricing, because it's not a tariff, but  
19 pricing?

20 MR. McDERMOTT: Yes. Considering that  
21 this arbitration is under federal regulations, under  
22 251(a) and (b), and, as such, the limitations on what  
23 things can be arbitrated, such as, you know, UNEs, which  
24 appear under 251(c), you know, we would argue that this is

1 governed by the federal statute, and, therefore, the idea  
2 of cost-based and rate base standards -- cost-based  
3 standards and rate reasonableness, as stated by the  
4 Arbitrator himself in his report, need to be addressed  
5 through a 251(c), and that would be done through  
6 terminating the rural exemption.

7 CMSR. BELOW: So, absent that, though,  
8 you're suggesting that these NECA rates provide some  
9 standard --

10 MR. McDERMOTT: Correct.

11 CMSR. BELOW: -- from which to work  
12 from, but that's not a reasonableness standard. It's just  
13 because it is something that exists in a tariff?

14 MR. McDERMOTT: Well, it has a ring of  
15 reasonableness to it because, in considering where to  
16 place the company, NECA examines the size and customer  
17 base and operations of the company. So, there's an  
18 analysis and a reasonableness inherent to that. But,  
19 absent another -- absent another approach, we felt that  
20 this was something that was already in place and,  
21 therefore, the best alternative in terms of what the rates  
22 should be.

23 So, in going through each of the rates,  
24 or each of the things that had been cited. And, also, in

1 terms of the general idea of fairness, these rates are  
2 available to all carriers. Whereas, an arbitrated rate  
3 set forth by Mr. Del Vecchio will only be available to  
4 IDT. So, there would be -- unless, of course, someone  
5 opted into the interconnection agreement. But, initially,  
6 they would only be available to IDT. Whereas, these NECA  
7 rates are generally available to any carriers.

8 The LSR rates, as we sort of went  
9 through a little bit, is a rate that we had -- we had  
10 suggested a rate of \$60, based on our NECA service date  
11 change charge. The Arbitrator determined the rate to be  
12 \$20. We think that that rate is too low.

13 As I will get into momentarily, there  
14 are essentially four cases that were discussed in our 251  
15 Section arguments. Three cases we had cited positively in  
16 terms of the argument that there -- they cannot arbitrate  
17 an interconnection agreement without invoking 251(c) for a  
18 rural carrier. There were cases in Texas, Maine, and  
19 North Dakota. The one case used by IDT to support their  
20 position is a case involving VTel and Comcast. That was  
21 cited by the Arbitrator numerous times in favor of the  
22 idea of having a 251 and -- 251(a) and (b) arbitration.  
23 In that Arbitrator decision, the rate was set at \$30. So,  
24 to give you just a general idea, when IDT claims that

1 this, you know, \$20 charge is above and beyond, the only  
2 precedent that is known right now that would support their  
3 argument that they have an independent right to  
4 arbitration under (a) and (b) used the rate of \$30. And,  
5 by the way, that case is not settled. I will get into  
6 that in a moment.

7 The overtime numbers that were used were  
8 our NECA rates. The Arbitrator decided in our favor that  
9 our rates were reasonable. Although, we do object to the  
10 inclusion of the language that they would need -- we would  
11 need their argument before we would charge -- that we  
12 would need their prior approval before charging that rate.  
13 The rate for a direct interconnection facility, the  
14 Arbitrator averaged our NECA rates to the rate of Verizon  
15 New Hampshire's, and just split it down the middle. And,  
16 for DS1 mileage, the Arbitrator took FairPoint's rate. On  
17 Page 52 he states that "both FairPoint and Union will be  
18 charging IDT for their respective mileage portions of the  
19 same circuit." "IDT's logic is persuasive, and I find  
20 that its proposed direct trunk transport DS1 and DS3  
21 facility rates are reasonable."

22 We find that the Arbitrator, I think,  
23 went out of his way to try and reach a balance, and what  
24 he stated in there, in general, was "to find a balance of

1 interests and reasonableness." And, that was the approved  
2 approach, given a limited record. So, the proposed rates  
3 may not entirely or even largely be based on the relevant  
4 costs involved.

5 Our argument is that the analysis should  
6 not have been cost-based at all or even an analysis of  
7 what the market-based rates should be. That was, in his  
8 opening -- in Tom's opening statement, he went to great  
9 lengths to talk about, you know, market-based rates, and  
10 that you, as a Commission, should not reward inefficiency,  
11 and, therefore, you should push the LSR rate to, you know,  
12 zero, because that would make the company -- that would  
13 teach the company to be more streamlined. That is, in  
14 principle, arguing that 251(c) would apply here.

15 We think that the approach taken by the  
16 Arbitrator should have been more focused and should have  
17 given deference to the rates that were already on file  
18 with NECA at that time and were already available at that  
19 time. We don't think it's fair to equate us to FairPoint.  
20 Given that we're -- we have a rural exemption, and the  
21 Arbitrator mentioned several times that the rural  
22 exemption needed to be taken into account. So, while he  
23 had stated that that should be taken into account, we find  
24 it -- we disagree that he should have compared us to

1 FairPoint. And, again, the analysis of the direct  
2 interconnection facilities rate, we also disagree that  
3 Verizon New Hampshire's rates should have been a factor in  
4 sort of determining what the rates should be there.

5 As I stated before, on Page 45, the  
6 Arbitrator states that "if IDT wishes to establish prices  
7 -- pricing that applies the standards of 251(c), IDT can  
8 petition the Commission to remove the rural exemption and  
9 provide the necessary support." We feel that, in large  
10 part, the Arbitrator has taken a step in that direction  
11 already, and would urge that no -- because the statutory  
12 provisions within 251(c) and 252 sort of exhort  
13 reasonableness, we don't think that this comparison to  
14 market-based rates or rates of FairPoint or Verizon New  
15 Hampshire be applied. We urge, therefore, that the  
16 Commission enforce the proposed rates that already exist  
17 in our NECA tariff.

18 Going back to the discussion of 251, and  
19 whether a independent right exists to arbitrate under  
20 251(a) and (b), we had cited a Texas case that actually  
21 had been challenged and upheld by the Texas Supreme Court  
22 that states that there is no independent right to  
23 arbitrate under 251(a) and (b). That case was cited  
24 affirmatively and was at the basis of the Maine decision

1 that said essentially the same thing. The North Dakota  
2 case essentially stated that these subsections in 251 are  
3 too intertwined to attempt to separate without the company  
4 terminating the rural exemption. These cases were largely  
5 ignored by the Arbitrator, who found the Vermont case to  
6 be more persuasive.

7 In the Vermont case, the Commission  
8 determined that a company could seek 251(a) and (b)  
9 arbitration. But we wish to stress that the Vermont case  
10 has not been challenged. It, actually, at this point,  
11 there is -- one of the condition precedents in that case  
12 has not been met, and I'll discuss that right now. The  
13 second issue that we had brought up, besides 251, is the  
14 issue as to whether IDT was operating as a common carrier,  
15 given that they were providing services exclusively to  
16 MetroCast. What we asked in our brief was that the  
17 Commission require them to file their agreement and their  
18 rates and the description of services with the Commission  
19 and to make those public, so that they would be made  
20 publicly available. The definition of "common carrier"  
21 says that you will "provide the service on a  
22 non-discriminatory basis and will be generally made  
23 available to the public."

24 The State of Vermont, when they made

1 their decision, in Condition Number 2, they stated that  
2 Comcast, in a very similar set of circumstances, where  
3 Comcast is partnering with one of its affiliates to  
4 provide a similar arrangement and, actually, in their  
5 brief they cite to that arrangement as being almost  
6 identical. IDT, itself, classifies it as an almost  
7 identical situation. The Public Service Board, under  
8 Condition Number 2, states that "Comcast shall file with  
9 the Board the terms and conditions of its service  
10 arrangements with its affiliate and then make them  
11 publicly available on the website." Comcast, as of May  
12 15th, had not done so. And, in a order in response to a  
13 Motion for Clarification in that docket, the Commission  
14 states that "the Hearing Officer should assess whether  
15 Comcast Phone is offering services on a non-discriminatory  
16 basis that potential non-affiliated customers could  
17 reasonably purchase." "The Hearing Officer should ensure  
18 that the terms and conditions of service do not limit the  
19 pool of potential customers to so narrowly a defined niche  
20 that only Comcast's affiliate likely falls into the  
21 potential customer pool. If the Hearing Officer concludes  
22 that Comcast Phone has not met the requirements of  
23 Condition 2 or its continuing obligations as a common  
24 carrier, the Hearing Officer shall identify appropriate

1 actions that might be needed to correct any deficiencies.  
2 If corrective action is inadequate or is unlikely to  
3 succeed, the Board could ultimately conclude that Comcast  
4 Phone no longer meets the requirements of a  
5 telecommunications carrier under this Act."

6 In short, the one case that is cited in  
7 their favor to support a 251(a) and 251(b) arbitration  
8 right is still very much open to the issue of whether  
9 Comcast is a common carrier.

10 CHAIRMAN GETZ: So, you're saying that  
11 it essentially hasn't gotten to the point where it's ripe  
12 for appeal?

13 MR. McDERMOTT: Yes. It has not gotten  
14 to the point where it's ripe for appeal. And, also, I  
15 would point out that, in the Arbitrator's decision, he  
16 relies almost solely on the concept of the common carrier  
17 can self-certify that they're a common carrier, by stating  
18 "we're a common carrier", and there's case law to support  
19 that. We argue that that's not all they have to do. They  
20 don't just need to state they're a common carrier. They  
21 need to make the terms available to the Commission and to  
22 the public. If they're offering these services as a  
23 common carrier on a non-discriminatory basis, they should  
24 be generally available and made generally available to the

1 public, to determine, by other companies, whether they  
2 want to enter into those terms.

3 We also point out that this -- the  
4 Arbitrator has relied, in large part, on this decision,  
5 but then, in his analysis of common -- whether IDT is a  
6 common carrier did not grant us our request that those  
7 terms and conditions be made publicly available. Which  
8 seems to be taking part of what Vermont is saying and  
9 ignoring another portion. And, this also is the case that  
10 used a \$30 LSR rate.

11 So, while we think that our cases --  
12 that our cases cited to the proposition that there is no  
13 independent right to arbitrate under 251(a) and (b), and  
14 that 251(c) is intertwined, that you can't pick and choose  
15 subsections of 251, we would argue that, if the Commission  
16 determines that, in the Vermont case, which is still open  
17 to review, is the superior case, we would argue that they  
18 need -- we would argue that you take other portions of the  
19 Vermont case, such as requiring IDT to file the agreement  
20 publicly, and also using the higher prices established by  
21 the Arbitrator in that decision.

22 And, then, finally, that leads me to the  
23 issue of -- we have one sub-issue in the arbitration.  
24 And, this goes to the idea that, and I think IDT is in

1 agreement to the concepts involved here, the general  
2 concept is that, regardless of how far traffic is  
3 delivered, regardless of the protocol involved, that that  
4 will not determine the jurisdictional nature of the  
5 service. In other words, as part of their agreement with  
6 the Commission, for numbering, when they attempted to get  
7 a numbering block, the parties agreed that they would  
8 treat VoIP services as they would any other regulated  
9 services. We had asked for the inclusion of certain  
10 language in the reciprocal compensation portion that would  
11 define "VoIP". And, the reason we wanted that in there  
12 was essentially to backstop in case the state of the law  
13 had changed, such that, regardless of any changes, if the  
14 Commission -- that we would still treat, for the purposes  
15 of this interconnection agreement, that we still treat  
16 VoIP the same as we would any other traffic.

17 We are suggesting that if, and you can  
18 read further detail in the Arbitrator's report, Mr. Del  
19 Vecchio I don't think objected to the general principles  
20 involved there, he just found the language was  
21 unnecessary, because he felt it was redundant. As an  
22 alternate to adopting these -- those definitions, which we  
23 don't think harm anything, we only think it makes it more  
24 explicit and sets out the playing field a little bit more

1 clearly, we offer that, in Section 2.1, the "Reciprocal  
2 Compensation" section, that we could add language to that  
3 effect that states, you know, that "the traffic exchanged  
4 between CLEC and Union will be classified as local  
5 traffic, intraLATA toll traffic, and interLATA toll  
6 traffic." And, we are offering the language, regardless  
7 of protocol or transmission method, as an alternative to  
8 -- we think that the adoption of our definitions would  
9 clarify it sufficiently. But, if it's found to be  
10 redundant, we offer that as an alternative solution.

11 Darren, do you have anything?

12 MR. WINSLOW: Yes, just wanted to add on  
13 to this reciprocal compensation wording that Brian is  
14 talking about is sort of another offering between our  
15 additional adding the VoIP definitions. We had added  
16 several VoIP definitions, as Brian stated. Currently,  
17 there is a section in 2.1.1 of the recip. comp., I don't  
18 know if you want to take a quick look at that.

19 Under 2.1.1, it's talking about local  
20 traffic, and the definition of "local traffic" actually.  
21 So, under 2.1.1, the last sentence says that "local  
22 traffic is determined to be local under this definition  
23 regardless of protocol or transmission method." Our  
24 language that we propose added "VoIP" as a specific

1 definition, and it moved this language here, talking about  
2 traffic regardless of protocol, it moved that language up  
3 to Section 2.1, which is really the header of this  
4 section.

5                   So, what we'd like to propose, if you  
6 disagree with adding our detailed definition of "VoIP",  
7 what we would like to propose is, at the end of Section  
8 2.1, the header, we would say "The traffic exchanged  
9 between CLEC and Union will be classified as local  
10 traffic, intraLATA toll traffic, or interLATA toll  
11 traffic, regardless of protocol or transmission method."  
12 And, what that does is that makes sure that all traffic is  
13 covered under this agreement, regardless of protocol.

14                   You know, we are concerned with, you  
15 know, the status of VoIP traffic. There is an existing  
16 docket open in New Hampshire to look at VoIP traffic. We  
17 believe that IDT is going to treat all traffic as traffic,  
18 regardless of protocol. However, we do think it's  
19 important to have this clarifying language in there that  
20 discusses that all traffic is traffic, regardless of the  
21 actual protocol.

22                   MR. McDERMOTT: So in conclusion, we  
23 would argue -- we would urge the Commission to take the  
24 approach set forth in the Texas line of cases. In the

1 alternate, if the Commission is set on determining that  
2 there's an independent right to arbitration under 251(a)  
3 and (b), we cite again to IDT's own brief that states that  
4 "IDT does not take the position that it has the right to  
5 rates that are just, reasonable and non-discriminatory."  
6 And, if they want those rates, the Arbitrator determined  
7 that they should seek a termination of our rural  
8 exemption.

9           As such, we proffered rates that were  
10 pre-existing prior to this interconnection agreement and  
11 rates that will continue to be reviewed going forward by  
12 NECA. We think this is a more appropriate means of  
13 determining a rate under these given circumstances. And,  
14 we expressly -- we expressly reject any claims by IDT that  
15 this somehow should be market-based, that you should look  
16 at other -- you should not award inefficiency, that you  
17 should attempt to streamline the Company by, you know,  
18 instituting, you know, LSR rates at zero, which would be  
19 completely different from other RLECs in the country.

20           And, we also would like to remind the  
21 Commission that, in orders relating to their certification  
22 docket and relating to this interconnection case, the  
23 Commission has stated that Union will be given the  
24 opportunity to recover costs through interconnection

1 negotiations. We feel the proper way for us to recover  
2 those costs is with the pre-existing, pre-approved NECA  
3 tariff rates, as opposed to some form of market-based  
4 analysis that is largely based on carriers that, such as  
5 Verizon New Hampshire and FairPoint, that don't look at  
6 anything at all and our operation is completely different  
7 from.

8 And, we urge that, if the Commission is  
9 going to look at Vermont favorably, that they require IDT  
10 to make their terms with MetroCast generally available to  
11 the public, such as that Commission in New Hampshire did  
12 -- I mean, in Vermont did. And, I thank you for your  
13 time.

14 CHAIRMAN GETZ: Thank you. Is there  
15 anything from Staff?

16 MR. HUNT: Just briefly, Mr. Chairman.  
17 Staff recommends that the Commission take administrative  
18 notice of the NECA tariff, and that Union be asked to  
19 provide a copy of that tariff.

20 CHAIRMAN GETZ: Any other issues,  
21 gentlemen?

22 MR. MUNNELLY: Yes, Mr. Chairman. I'd  
23 like to speak briefly, if I could?

24 CHAIRMAN GETZ: Well, our rules

1 generally contemplate the moving party can open and close  
2 a section of a proceeding. So, we'll give an opportunity  
3 for a -- is this a brief rebuttal?

4 MR. MUNNELLY: No. I'm a party to the  
5 case. I didn't have a chance to give a position  
6 statement. I'll keep it very brief, though, if you would  
7 like that?

8 CHAIRMAN GETZ: That would be useful.

9 MR. MUNNELLY: I just want to say, on  
10 behalf of MetroCast, this is an important case for us,  
11 obviously, because the rates, terms and conditions will  
12 allow us to enter the Union territory using the services  
13 of our CLEC partner, IDT. I should note that this is an  
14 unusual case for us, because we have not been involved in  
15 the arbitration at all. IDT has run the show. They have  
16 made the decisions. We haven't tried to shape the  
17 arbitration in MetroCast's directions. The Arbitrator  
18 points out that they are a common carrier. There is  
19 nothing here that is necessarily linked to us. It's their  
20 case. They potentially could use this agreement for other  
21 parties, other customers of theirs.

22 MR. BILLEK: And, there were just a few  
23 brief things that I wanted to either respond to or  
24 clarify, if you think that would be helpful?

1 CHAIRMAN GETZ: Please.

2 MR. BILLEK: Tom, do you want to first  
3 address --

4 MR. JORDAN: Yes.

5 MR. BILLEK: I'll let Tom handle one  
6 issue, and then I'll speak briefly.

7 MR. JORDAN: One of the items that  
8 Mr. McDermott, from Union, pointed out was the language in  
9 the pricing attachments related to hourly rates, that  
10 these are only chargeable upon pre-approval by the charged  
11 party. I just want to state that this was discussed in  
12 some conversations that we had with Union previous to  
13 this. It wasn't in any of the draft pricing attachments.  
14 However, the entire pricing attachment was an open item up  
15 until the time we filed our briefs. The draft that we had  
16 been passing back and forth was used as a placeholder, in  
17 my view, for the items that we were discussing.

18 Specifically, this language that we put  
19 -- that IDT had asked and then put in there is reciprocal.  
20 And, what we had requested was that, if either party was  
21 to charge another party an hourly rate for maintenance,  
22 that the other party be given the opportunity to be made  
23 of aware it at the onset. So that one party doesn't  
24 submit a trouble ticket on a Friday, at 12 noon, and then

1 next month they get a bill and aren't even aware that the  
2 other party had been working on it all weekend, and they  
3 got \$2,000 in a trouble charge for a single POTS line or  
4 something like that. This is standard. And, like I said,  
5 it's reciprocal.

6 Union had -- they didn't discuss it in  
7 their brief. They have an opportunity to state their case  
8 here of why they feel that our position isn't appropriate.  
9 I don't think it is. So, I just wanted to point that out.

10 One other item that they discussed is  
11 their statement that the service order rates should be  
12 based on NECA tariffs. I do want to point out, NECA  
13 tariffs exist for all carriers. And, as I've stated, all  
14 carriers, with the exception of RLECs, that I deal with,  
15 and I think other carriers deal with, don't use these  
16 tariffs for local service order charges, which are zero.  
17 So, using those rates for generic service order charges  
18 relative to LNP order charges, as I've stated previously,  
19 I think is uncompetitive. It does not allow free and open  
20 competition among carriers.

21 They also reference the detailed Comcast  
22 agreements, where the LSR rate there is \$30. As I've  
23 stated before, finding another agreement that has a rate  
24 of \$30, \$60, \$1,000, I don't think gives any justification

1 that that is correct. There are other pricing items in  
2 that agreement which are -- which are more favorable to  
3 Comcast than we have here. So, comparing it, one line  
4 item, as was said before, apples-to-apples, is not  
5 appropriate, because it's not the same agreement. The  
6 biggest thing being, we're required to do direct trunking,  
7 Comcast is not.

8           The last item I want to bring out is  
9 Union had discussed the trunking, the transport mileage  
10 for interconnection facilities pricing here, which  
11 Arbitrator Del Vecchio took as the average between what we  
12 had provided as between FairPoint and what Union was  
13 proposing. I just want to make -- I just want to clarify  
14 for the Commission that, when IDT is ordering an  
15 interconnection facility between our switch in Rochester,  
16 New Hampshire, to a Union central office in New Durham,  
17 New Hampshire, let's say, we're going to order that T1 or  
18 DS3 from FairPoint. And, we're going to use the NECA  
19 tariff, specifically, the NECA 4 tariff, to get that  
20 facility, and that tariff determines what percentage of  
21 that facility between those two points is FairPoint's and  
22 which facility is Union's; 35/65 percent, whatever. And,  
23 then, the pricing that IDT incurs is the pricing of both  
24 those carriers relative to the percentage of the overall

1 circuit. So, the argument in my brief, I just want to  
2 make sure the Commission understands this, it's the same  
3 T1 facility that goes from our switch to Union. And, what  
4 we were saying is, if I'm ordering it from FairPoint, and  
5 it goes all the way to New Durham, and from that the NECA  
6 tariff says this percentage Union charges me and FairPoint  
7 charges me, my argument is "why would FairPoint charge me  
8 one rate for their portion of it, the same T1, and Union  
9 charge me a much, much different rate? It's the same T1,  
10 it's just slicing it in half. That was one comment I  
11 wanted to add with that.

12 And, the last item --

13 CHAIRMAN GETZ: Well, you said you had  
14 "one item", now we're up to four.

15 MR. JORDAN: Okay. I'm sorry. Is Union  
16 has continually talked about the ability or the right to  
17 -- the entitlement to recover costs for service order  
18 charges. IDT's view is that, in free and open  
19 competition, carriers make their money on providing a  
20 competitive product that satisfies a customer needs. That  
21 a carrier isn't enabled or being given the ability to  
22 recoup costs because they're providing a product that  
23 customers no longer want and they want to go elsewhere.  
24 That's all I wanted to say.

1 MR. BILLEK: Okay. And, I just had a  
2 brief points. I wanted to briefly discuss the common  
3 carrier issue, which has come up. As we've stated in our  
4 brief, and as we've stated throughout this proceeding, the  
5 fact that this is really even an issue is of considerable  
6 concern to IDT. Because what this issue is is basically  
7 Union, a soon-to-be competitor of ours, coming to the  
8 Board with really no factual basis and making a claim  
9 about what IDT's business plan is, whom they are as a  
10 company, and what they intend to be doing, in order to  
11 prevent IDT from getting into business and competing  
12 against them. The Commission has been well aware of who  
13 IDT is and what we do with MetroCast. And, the Commission  
14 has never challenged our status as a common carrier. And,  
15 it really concerns me that IDT has to expend its time and  
16 its effort and incredible costs and delay its  
17 implementation of services, simply because another carrier  
18 has chosen to make an unfounded accusation about our  
19 status. I think that IDT's status as a common carrier  
20 should be something that should only be examined on the  
21 Commission's own motion or when the Commission has a  
22 genuine reason to believe that the issue is in question.

23 I would also like to add that, if you  
24 have not had the opportunity to read our brief on this

1 issue, that begins on Page 26 of our brief, we cite  
2 several cases, other than the Vermont case, which make it,  
3 in my opinion, really quite clear that we are a common  
4 carrier. And, there's no basis for challenging that.  
5 Union didn't mention any of those cases in their oral  
6 presentation before. And, I think it's -- I think it's  
7 pretty -- it will be worthwhile for the Commission to take  
8 a look at those sections and look at those cases, which  
9 are part of the record, and get a more broad and perhaps  
10 enlightened view of the issue.

11 And, just finally, to talk very briefly  
12 about pricing in the theoretical sense. Sort of all sides  
13 kind of came into this proceeding not having a specific  
14 way of looking at pricing. We all had certain theories,  
15 if you will. And, what IDT's theory has been is we  
16 understand and we've never argued that we have a right to  
17 pricing under 251(c)(3). But we do not think that,  
18 because that standard is not available to us, at least  
19 unless we pursue eliminating Union's rural exemption, that  
20 we are sort of subject to Union's conclusions about what  
21 pricing should be.

22 This was a negotiation and an  
23 arbitration. And, this was an issue that Union chose not  
24 to really negotiate or arbitrate. They're entitled to do

1 that, I suppose, as a matter of law. But I think it's  
2 clear that what IDT was trying to do was to come up with  
3 rates that were -- that would allow for competition. We  
4 think that the Commission does have the authority, under  
5 federal law and under state law, to implement a  
6 pro-competitive telecommunications policy. And, part of a  
7 pro-competitive policy are rates that allow for  
8 competition. If uncompetitive rates or intercarrier rates  
9 are created, it has an impact on IDT's ability to compete  
10 in the market, and to make believe that that doesn't exist  
11 is folly. And, I just -- I want to make sure that the  
12 Commission understands that, because these NECA rates that  
13 Union presented are really, really out of character with  
14 what IDT pays or receives or doesn't pay or doesn't  
15 receive in the market. And, the simple fact that Union is  
16 an RLEC, and that certain RLECs do charge these rates,  
17 should not be the sole reason that they're approved.

18 And, those are -- that's the limitation  
19 of my comments. And, again, I appreciate everyone's time.  
20 And, I appreciate the work of the Arbitrator in this  
21 process. I know that he's sitting here sort of being told  
22 all the things he did wrong. And, though, actually, I  
23 think he did a lot of things which were very right. And,  
24 he was very helpful throughout this process. He got us

1 together when we were not making the sort of progress that  
2 we all wanted. And, I just want to make sure that the  
3 Commission is aware of what a fine job he has done, all of  
4 his errors aside.

5 [Laughter]

6 CHAIRMAN GETZ: Okay. Then, well,  
7 actually, Mr. McDermott, one thing I would permit you is,  
8 I probably should have expressly turned to Mr. Munnelly, I  
9 guess I wrongly assumed that if he had something to say in  
10 the first instance, he would have said it. But is there  
11 anything that you want to respond to with respect to  
12 MetroCast or Mr. Munnelly's comments?

13 MR. McDERMOTT: No. There's nothing  
14 that I think needs to be responded to. I think the fact  
15 that he was just involved, I'm not sure that has any  
16 bearing, because he would not have had a right to be  
17 involved if he wanted to. So, the fact that he said "we  
18 were hands off", well, he had to be hands off.

19 So, just two points, and I'll try and  
20 keep it to two. Well, actually one additional. I do want  
21 to echo Carl's comments. You know, being an Arbitrator is  
22 sometimes a lonely job. And, Mr. Del Vecchio has done a  
23 very good job. And, I just wanted to echo the fact that  
24 he has done an exceptional job as well. And, don't -- if

1 we disagree with it and some of his conclusions, don't  
2 take that as any sort of slight towards him.

3 Just two clarifying points.

4 CHAIRMAN GETZ: Well, actually, you  
5 know, the rules provide for opening and closing by the  
6 moving party. So, unless you've got something to bring up  
7 that it was new in their rebuttal --

8 MR. McDERMOTT: Just two points that  
9 were -- I just want to, one, because he brought up the  
10 fact that this -- that there was the \$30 LSR charge in the  
11 Vermont case was negotiated, and there was other, you  
12 know, pieces that were more favorable. That was the first  
13 time it was brought up was in his rebuttal. So, I would  
14 like to respond to that.

15 CHAIRMAN GETZ: Okay, let's hear it.

16 MR. McDERMOTT: In Mr. Del Vecchio's  
17 report, he -- the justification given for not using the  
18 \$30 rate was that, in the Vermont case, they were allowed  
19 to connect both indirectly and directly. That was a  
20 negotiated point on our end. The fact that the network  
21 structure was set up the way it was for us, we had to give  
22 in on certain items that we would not have given upon.  
23 That was a negotiated item for us. So, to be penalized  
24 for it, in the analysis of what that rate should be, that

1 was something that we made sacrifices on in the  
2 negotiation, and that was not something before Mr. Del  
3 Vecchio as an issue. So, I just want to point out the  
4 fact that his point was that, while other rates were  
5 negotiated, well, that indirect/direct situation was a  
6 negotiated item. I just wanted to make that aware.

7 And, then, finally, the fact that you're  
8 allowing competition is fine, but I don't think that would  
9 require us to allow IDT to have rates that are more  
10 favorable than other carriers. So, that's all I have to  
11 say. I thank the Commission for its time.

12 CHAIRMAN GETZ: Okay. Thank you. And,  
13 one last chance on those last two items?

14 MR. BILLEK: No. I'm sure we all have  
15 better things to do today. So, I'll let it go.

16 CHAIRMAN GETZ: All right. Anything  
17 else this morning?

18 (No verbal response)

19 CHAIRMAN GETZ: Hearing nothing, then  
20 we'll close the hearing and take the matter under  
21 advisement. Thank you, everyone. Thank you, Mr. Del  
22 Vecchio.

23 MR. BILLEK: Thanks very much.

24 (Whereupon the hearing ended at 11:42 a.m.)