



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

May 1, 2009

**VIA ELECTRONIC DELIVERY**

Debra A. Howland, Executive Director  
New Hampshire Public Utility Commission  
21 South Fruit Street, Suite 10  
Concord, NG 03301-2429

**Re: Docket No. 09-048**

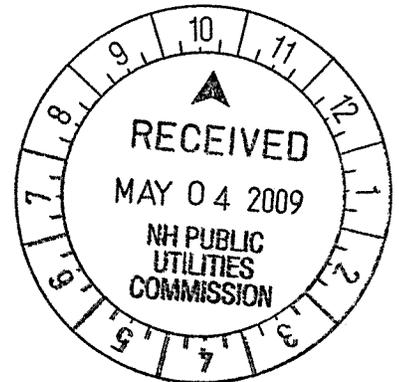
Dear Director Howland:

On behalf of IDT America, Corp. ("IDT"), please accept this brief reply to the "Motion to Dismiss or, in the Alternate Motion to Stay the Proceeding," filed by Union Telephone Company ("Union") on April 30, 2009.

IDT opposes both the Motion to Dismiss and the Motion to Stay. Both Motions are little more than an effort to stall and/or prohibit competition within Union's incumbent territory. The Commission should recognize this and refuse to support Union's preference of monopoly over competition, self-help over rule of law and obstruction over cooperation.

Union claims that because IDT was not, at the time of its initial request for negotiation of an interconnection agreement, certified in Union's territory, Union therefore had no obligation to enter into negotiations with IDT. This position is wrong. The process of interconnection is a time consuming one – from negotiation to implementation to the actual provisioning of services to customers can take many, many months – particularly when an incumbent chooses to use the negotiation timeline to its advantage. Accordingly, it is not mandatory that a requesting carrier have taken the step of securing a grant of certification prior to the beginning of the negotiation process. Indeed, IDT has entered into negotiations with several incumbent carriers prior to having certification in place and, to the best of IDT's recollection, no carrier has demanded certification prior to the initiation of negotiations for an interconnection agreement.

But the point of Union's position is not to have the Commission enforce the law: it is to delay IDT's entrance into Union's territory and prevent IDT from reducing Union's customer base. Indeed, this is most assuredly why Union did not respond to IDT's initial request and any of the countless follow-up efforts made to contact Union for



over four months. IDT would have had greater success had we chosen to speak with the spirits of the departed than we had in communicating with the management and counsel of Union. Clearly, Union's primary tactic – delay – has been in place since the moment of IDT's request: the Commission should not support this anti-competitive tactic.

Union also suggests that the current proceeding is unnecessary because IDT has filed an additional request for interconnection. Apparently, having shame is not a precondition to providing telecommunications service in New Hampshire. In IDT's request, the company stated:

IDT disagrees with Union Tel's previously-stated position and our disagreement is before the New Hampshire Public Utilities Commission where it shall be resolved. Nothing in this letter should be construed to mean that IDT's initial request was invalid and/or that Union Tel's initial position is lawful or to prejudice the outcome of our dispute before the Commission.

Yet Union now tries to use IDT's filing as a shield and sword against IDT. As far as IDT is concerned, Union has made it clear throughout its dealings with IDT that IDT must take the most aggressive legal positions possible and prepare for all sorts of out-of-the-ordinary exigencies in order to protect our interests and to promote competition. Therefore, we chose to submit an additional request for interconnection because the reason given by Union for their refusal to enter into negotiations with IDT – that IDT was not certificated to provide service in Union's incumbent territory – was no longer relevant (or so IDT thought) and that if the initial dispute lingered at the Commission (or if Union found a way to *make* it linger at the Commission or elsewhere), IDT would be in a position to have an alternate timetable in place, rather than have to start from the beginning.

And now we also see that Union – which previously placed certification as a precondition for negotiation rights – has now decided that the validity of IDT's certification is in question and until such questions are resolved, Union should be permitted to refuse to negotiate and prevent competitors from entering Union's incumbent territory. One can only wonder what Union's next challenge will be. IDT has been granted the right to provide local exchange service in Union's incumbent territory. IDT disagrees with Union's claim that our certification was inappropriately granted and we disagree that our certification will somehow be rescinded. We also disagree with the premise that entering into negotiations while our certification is being challenged will result in any wasted time or effort on either side's part because even if our certification were to be rescinded and/or the Commission or other triers of fact imposed delays on IDT's certification, IDT would still: (1) take the steps necessary to secure certification in Union's territory; (2) request an interconnection agreement; and (3) provide a competitive alternative to consumers in Union's incumbent territory. However, regardless of the "status" of IDT's certification, because we find unsupported by law Union's premise that IDT must have a certification which can absolutely, positively not be challenged by any god or man before Union has an obligation to enter negotiations

with IDT, we urge the Commission to deny Union's Motions and to direct Union to implement an interconnection agreement with IDT.

Pursuant to Commission rules, this letter is being electronically filed at [Executive.Director@puc.nh.gov](mailto:Executive.Director@puc.nh.gov). In addition, an original and seven (7) copies of this letter are also being filed via overnight mail. Please date stamp and return the enclosed extra copy of this filing. Please contact me at (973) 438-4854 or [Carl.Billek@corp.idt.net](mailto:Carl.Billek@corp.idt.net) if you have any questions.

Sincerely,

**/s/ Carl Billek**

Carl Billek  
IDT America, Corp.

cc: Brian McDermott, Synergies Law Group, PLLC (via email)  
Edward S. Quill, Jr., Synergies Law Group, PLLC (via email)  
Thomas Jordan, IDT  
Natasha Stone, IDT  
Robert J. Munnely, Jr., Murtha Cullina, LLP (via email)  
Joshua Barstow, Metrocast Cablevision of New Hampshire (via email)  
Legal Department, NHPUC  
Kate Bailey, NHPUC  
Pradip Chattopadhyay, NHPUC  
Josie Gage, NHPUC  
Robert Hunt, NHPUC  
Fanne Ross, NHPUC  
Amanda Noonan, Consumer Affairs Director, NHPUC  
Librarian – Discovery, NHPUC