



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

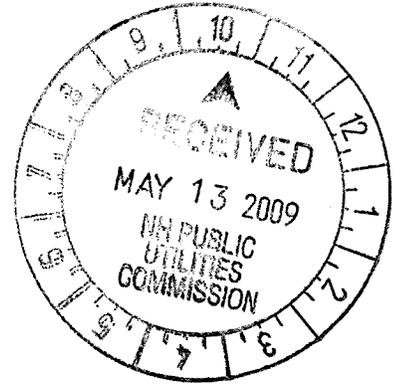
May 12, 2009

**VIA ELECTRONIC DELIVERY**

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

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

Dear Director Howland:



On behalf of IDT America, Corp. (“IDT”), please accept this letter as a follow-up to issues raised before the Commission at a Public Hearing on May 7, 2009. In its filings and at the Public Hearing, Union Telephone Company (“Union”) took the position that it did not have an obligation to negotiate an interconnection agreement with IDT because IDT was not certificated in Union’s ILEC territory at the time of its initial request. IDT disagreed with Union, noting that no rule or regulation supported Union’s position, public policy argued against building delays into the negotiation and arbitration process and that, as a practical matter, IDT was not certificated before it initiated interconnection proceedings with Verizon. However, IDT neglected to include additional authority which we find supportive of our position and we would like to take the opportunity to bring that additional authority to your attention.

Specifically, 47 C.F.R. § 51.301 (Duty to negotiate) states:

(a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) \*\*\*

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

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(4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications [.]

Yet it is *exactly* the requirement of state certification in Union territory upon which Union preconditioned IDT's rights. For this reason, as well as those of public policy and practicality which IDT has already presented before the Commission, IDT respectfully requests that the Commission conclude that IDT's certification in Union's ILEC territory was not a precondition to a lawful request to negotiate an interconnection agreement.

Additional subsections of 47 C.F.R. § 51.301 are also supportive of IDT's position. The regulation also cites as violating the duty to negotiate in good faith: "(6) Intentionally obstructing or delaying negotiations or resolutions of disputes" and "(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues[.]" IDT asserts that Union's refusal to respond to written requests, emails and phone calls rose to the level of intentional obstruction or delay because Union's inaction has led to an arbitration schedule that delays by thirty (30) days IDT's right<sup>1</sup> to conclude the arbitration. IDT also asserts that by Union and its counsel's failure to respond to IDT's repeated efforts to contact the company, Union effectively refused to designate an authority to make binding representations. This failure, like the others mentioned above and in previous filings, has effectively mandated that the arbitration timeline rightfully available to IDT cannot be met. This extension of the arbitration timeline will not only lead to IDT's delay to enter the marketplace, it will lead to the delay of competition in the Union ILEC territory.

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.

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<sup>1</sup> Subject to the Commission denying Union's motion to Dismiss and/or Stay.

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