

Synergies Law Group, PLLC

June 9, 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
Union Telephone Company Reply to IDT America, Corp.,
Response to Motion to Dismiss**

Dear Director Howland:

Union Telephone Company (“Union”), by and through undersigned counsel, hereby files this response to the reply filed by IDT America, Corp. (“IDT”) to Union’s May 27, 2009 Motion to Dismiss (“Motion”). In its Motion, Union argued, based on precedent and the plain meaning of the statute, that Section 251(a) and (b) of the Communications Act, as Amended, do not provide an independent basis upon which IDT can demand interconnection. Union further argued that the rights IDT seeks through the captioned proceeding are available only under Section 251(c) interconnection but that Union is exempt from interconnection under Section 251(c) by Section 251(f) of the Act.

In its Reply, IDT responds with two non-responsive answers. First, IDT argues that because the Commission did not grant Union’s previous Motion to Dismiss, the Hearing Examiner and the Commission have already considered the arguments Union makes in its May 27, 2009 Motion. That position is flatly contradicted by the June 1, 2009 Secretarial Letter which states “With respect to Union’s May 27th motion, once parties have had a chance to respond the Commission will consider any additional issues that are raised”¹ Thus, contrary to IDT’s central point, the Commission expressly decided not to consider the Section 251(c) arguments.

Second, to respond to the precedents provided by Union, IDT relies heavily on a recent docket for Vermont Telephone Company, Inc.² Ironically, however, in that case, the Board explicitly and repeatedly states that Comcast, the new entrant was not entitled to obtain relief pursuant to Section 251(c)(2) because VTEL, was exempt from Section 251(c) obligations due to

¹ Secretarial Letter at 2.

² *Petitions of Vermont Telephone Company, Inc. (“VTel”), and Comcast Phone of Vermont, LLC, d/b/a Comcast Digital Phone (“Comcast”), for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecommunications Act of 1996, and Applicable State Laws, Docket No. 7469 (Feb 2, 2009) (“VTEL Case”).*

Section 251(f) of the Act.³ As set out in greater detail in Union's Motion, Section 251(c) rights ("telephone exchange service and exchange access") are exactly what IDT seeks to obtain through this docket even though IDT clearly has not made a bona fide request for such services. Furthermore, the VTEL case is readily distinguishable because in the VTEL Case, in addition to Comcast, VTEL itself sought arbitration from the Board. In this matter, Union has not sought arbitration and, has consistently opposed this proceeding.

Furthermore, while certain exempt carriers may elect to voluntarily interconnect under Sections 251 (a) & (b), such action is clearly voluntary. The voluntary nature of the interconnection is demonstrated by the two cases cited in Union's Motion, neither of which IDT addressed in their response. The two cases cited by Union, clearly state carriers cannot receive interconnection to offer and provide telephone exchange service through 251(a). As stated in the North Dakota case, "Such an interpretation would seriously undermine the protections afforded rural carriers by Congress in section 251(f)".

The only other case cited by IDT is the Commission's Order in the TDS/Comcast case. As with the VTEL case, that case is also easily distinguished from the facts at hand because the ILEC in this case did not choose to raise its rural exemption rights. As a result, the Commission did not address the point that interconnection for the purpose of "telephone exchange service and exchange access" is a 251(c) requirement and that therefore a rural ILEC is exempt from providing such interconnection. Furthermore, the TDS/Comcast case did not even directly address interconnection requirements.

Interestingly, in the VTEL case (as with this case), significant questions exist as to whether the new entrant will operate as a common carrier. Among other things, the Board required Comcast to make public the terms and conditions of service Comcast had agreed to with its sole customer, CDV.⁴ IDT also has but a single customer. Union therefore respectfully submits that similar disclosures should be required of IDT and that the Commission should require IDT to disclose the terms and conditions of its relationship with Metrocast.

³ *VTEL Case* at 11 & 23.

⁴ *VTEL Case* at 18.

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Pursuant to Commission rules, this letter is being electronically filed at 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 do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brian McDermott", with a long horizontal flourish extending to the right.

Brian McDermott
Edward S. Quill, Jr.

Counsel Union Telephone Company

cc: Service List