

DT 06-169

**IDT AMERICA, CORP. AND
METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC**

Joint Petition for Expedited Relief in the Granting of Numbering Resources

Order Approving Settlement Agreement

ORDER NO. 24,727

January 26, 2007

APPEARANCES: Orr & Reno, P.A. by Douglas L. Patch, Esq. for IDT America, Corp.; Murtha Cullina, LLP by Robert J. Munnely, Jr., Esq. for MetroCast Cablevision of New Hampshire, LLC; Rich May, P.C. by Eric J. Krathwohl, Esq. for the New England Cable & Telecommunications Association; Devine Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. for New Hampshire Telephone Association; Gregory M. Kennan, Esq. for One Communications Corp.; Shawn Nestor, Esq. for Verizon New Hampshire; Darren Winslow for BayRing Communications, Inc.; Jeremy L. Katz for segTEL, Inc.; Office of the Consumer Advocate by Stephen L. Merrill on behalf of New Hampshire residential ratepayers; and Lynn Fabrizio, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

RSA 374:59 requires the New Hampshire Public Utilities Commission (Commission) to “promote and adopt telephone number conservation measures to the maximum extent allowed by federal law” while providing telephone customers “equitable access” to unassigned numbers. Invoking this authority, IDT America, Corp. (IDT) and MetroCast Cablevision of New Hampshire, LLC (MetroCast) filed a joint petition on December 14, 2006, seeking expedited relief with regard to IDT’s request for initial numbering resources, i.e., thousands-block assignments, in nine New Hampshire exchanges. IDT is a certified competitive local exchange carrier (CLEC) and toll service provider in New Hampshire. MetroCast, the principal subsidiary of Harron Communications L.P., is a relatively small cable television company serving cable television customers in 28 communities in central and eastern New Hampshire. The two

companies have entered into an arrangement whereby they would, in effect, jointly provide local exchange service to end-users.

Specifically, IDT would use its resources as a CLEC to connect MetroCast to the Public Switched Telephone Network (PSTN), also providing the cable company with local number port-in and port-out, enhanced 911 interconnection, operator/directory assistance, directory listings, and numbering resources necessary to serve MetroCast customers in the cable company's New Hampshire service area. MetroCast would use its cable facilities to provision Internet Protocol (IP)-based telephony and would be the entity that maintains a customer-provider relationship with end-users, offering customer support and rendering bills for telephone service. Together, IDT and MetroCast would provide an end-to-end solution by integrating the IP platform to deliver a fully automated digital phone and high-speed data provisioning solution including PSTN service activation and interconnection.

Letters of support for the business plan proposed by IDT and MetroCast were filed on December 18, 2006, by the Office of the Consumer Advocate (OCA), on January 8, 2007, by Cedar Point Communications, Inc., on January 18, 2007, by Senator Kathleen Sgambati, and on January 22, 2007, by Executive Councilor Raymond S. Burton.

On January 5, 2007, the Commission issued an order of notice scheduling an expedited hearing for January 19, 2007. The commission received petitions for intervention on January 16, 2007 from One Communications Corp., the New England Cable & Telecommunications Association, Inc. (NECTA), AT&T Communications of New England, Inc., Verizon New Hampshire, BayRing Communications, segTEL, Inc., and the New Hampshire Telephone Association (NHTA). The Office of the Consumer Advocate filed a letter of intent to participate

on January 16, 2007. On January 17, 2007, IDT and MetroCast filed testimony of Thomas Jordan for IDT and Josh Barstow for MetroCast.

On January 18, 2007, Staff notified the Commission that it had reached an agreement in principle with IDT and MetroCast on a settlement that would establish certain conditions for implementation of the proposed business arrangement. On Friday, January 19, 2007, a technical session was held with IDT, MetroCast, Staff, and intervenors. Following the technical session, the Commission conducted a hearing at which IDT, MetroCast and Staff presented the agreement through a panel of witnesses, outlining the conditions under which IDT would be able to obtain numbering resources for the purpose of being able to provide service with Metrocast to end-users located in areas where MetroCast provides cable television service in New Hampshire. All petitions to intervene were granted at the hearing.

The Office of Consumer Advocate and segTEL supported the settlement agreement. None of the other intervenors present at the hearing objected to the agreement.

II. SUMMARY OF THE SETTLEMENT AGREEMENT

The settlement agreement consists of a description of the joint business arrangement proposed by IDT and MetroCast in their petition, with certain registration and reporting requirements, certain commitments regarding the use of numbering resources obtained under the agreement, and recognition of certain consequences for violation of the agreement.

A. MetroCast Commitments

Under the agreement, Metrocast agreed to register for CLEC status in New Hampshire, file a telephony rate schedule with the Commission, and comply with certain numbering resource obligations. MetroCast also agreed to obtain Commission approval in the event it seeks to request numbering resources independently of IDT.

B. IDT Commitments

IDT agreed that the numbering resources obtained under the agreement would be used only for IP-based cable telephony end-users of Metrocast and would only be assigned to end-users physically located in the New Hampshire exchange associated with the telephone number. IDT further agreed not to assign numbers obtained under the agreement to any Net2Phone customers. IDT committed to obtaining Commission approval in the event it seeks numbering resources in New Hampshire to implement a partnership other than with MetroCast. IDT committed to following all published requirements for the conservation of numbers, including the reclamation of unused numbers, consistent with the requirements imposed on IDT when its CLEC authority was granted in Commission Order No. 24,124. IDT agreed to file with Staff copies of all number utilization forms submitted to NeuStar, or its successor, in a timely manner as determined by Staff with regard to numbers obtained under the agreement. The agreement calls for any such data that is proprietary to be treated as confidential, pursuant to RSA 378:43, II. IDT further agreed to follow all published requirements for the obtaining of numbering resources.

C. Enforcement

Both IDT and MetroCast committed to honoring the terms of the agreement with respect to any numbers obtained pursuant to the settlement even if the FCC, the Commission, or a court of competent jurisdiction determines the service described in the agreement is not subject to state commission jurisdiction. In the event of such a determination, the companies agreed they would obtain any future numbering resources according to the dictates of the determination. Both companies further agreed that any violation of the commitments contained in the agreement would constitute “good cause” under N.H. Code Admin. Rules Puc 431.19 (governing sanctions

for CLEC rules violations) that would subject the party committing the violation to the provisions and consequences contained therein.

D. Implementation

Staff agreed to review MetroCast's CLEC application expeditiously and approve IDT's request for numbering resources for the purpose outlined in the agreement. IDT, MetroCast and Staff agreed to recommend that the Commission approve the agreement on an expedited basis. Finally, the signatories to the agreement conditioned the commitments made therein to the Commission's acceptance of all its provisions, without change or condition, subject to agreement of any changes or conditions proposed.

III. COMMISSION ANALYSIS

Pursuant to the FCC's delegation to the Commission of the authority to administer telephone number usage in the state of New Hampshire¹ and the Legislature's directive in RSA 374:59 to conserve telephone numbers, the Commission has previously determined that, to receive numbering resources, a local exchange carrier (LEC) must provide local exchange telephone service to customers physically located in the exchange associated with the numbers assigned. N.H. Code Admin. Rules Puc 402.28 defines a "local exchange carrier" as "the company that provides local telephone exchange service, whether directly or indirectly, and renders the telephone bill to the customer."

As explained at hearing, the petitioners have established a novel business arrangement unlike those for which numbering resources have been previously approved. The typical application for numbering resources involves a direct relationship between the official recipient

¹ *In the Matter of New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures in the 603 Area Code*, 15 F.C.C.R. 1252 (Nov. 30, 1999) (FCC Delegation Order).

of the numbering resources from the Pooling Administrator² and the ultimate end-user of the assigned numbers. Typically, an ILEC or CLEC offering basic local exchange service obtains the number blocks from the Pooling Administrator, upon Commission Staff approval, and assigns those numbers to its end-user customers. In the IDT/MetroCast proposal, IDT would receive blocks of numbering resources and then assign individual numbers from those blocks to MetroCast end-user customers. IDT, in effect, proposes to administer and manage the numbering resources on behalf of MetroCast.

By establishing certain commitments that are company- and fact-specific to the business plan proposed by IDT and MetroCast, the agreement ensures that numbering usage will comply with the statutory mandate to conserve New Hampshire telephone numbers. At the same time, the agreement permits the implementation of a business arrangement that offers a new competitive alternative in the local telecommunications market. The settlement agreement appropriately balances concerns over the efficient use of scarce numbering resources, designed to preserve the 603 area code as the single area code for New Hampshire, with the interests of end-users to have greater competitive choice. We therefore find the agreement to be reasonable and in the public interest, and we approve the agreement as submitted.

Based upon the foregoing, it is hereby

ORDERED, that the settlement agreement entered into by IDT, MetroCast and Commission Staff is APPROVED.

² NeuStar was awarded the FCC's National Pooling contract in June 2001.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of
January, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary