

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-07-IH-5149
IDT Corporation)	
)	NAL/Acct. No. 200832080092
)	
)	FRN No. 0003-7900-37
)	

ORDER

Adopted: October 29, 2008

Released: October 29, 2008

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (the “Bureau”) and IDT Corporation (the “Company”). The Consent Decree terminates the enforcement proceeding initiated by the Bureau against the Company for possible violation of section 220 of the Communications Act of 1934, as amended (the “Act”), and sections 43.51 and 64.1001 of the Commission’s rules relating to the failure to file with the Commission an agreement with Telecommunications D’Haiti S.A.M. (“Teleco Haiti”) and amendments thereto; failing to file a modification request for each of the amendments to rate schedules; and failing to obtain Commission approval prior to implementing modifications to rate schedules under the terms of the agreement.¹

2. The Bureau and the Company have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. In the absence of material new evidence relating to this matter, we conclude that the Bureau’s investigation raises no substantial or material questions of fact as to whether the Company possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 220; 47 C.F.R. §§ 43.51(a)(1) and (e)(2), 64.1001(b) and (e) (2003).

² 47 U.S.C. § 154(i).

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Elliot Rothstein, Chief Legal Officer, IDT Corporation, 520 Broad Street, Newark, NJ 07102.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (the “Commission” or “FCC”) and IDT Corporation (the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Commission’s investigation into whether IDT violated section 220 of the Communications Act of 1934, as amended (the “Act”), and sections 43.51 and 64.1001 of the Commission’s Rules relating to the failure to file with the Commission an agreement with Telecommunications D’Haiti S.A.M. (“Teleco Haiti”) and amendments thereto; the failure to file a modification request for each of the amendments to rate schedules; and the failure to obtain Commission approval prior to implementing modifications to rate schedules under the terms of the agreement.³

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Foreign Carrier Service Agreements” means contracts, amendments, or modification requests related to the exchange of services, routing of traffic, accounting rates and division of tolls.
 - (h) “IDT” or “Company” means IDT Corporation, its affiliates and subsidiaries, and its predecessors-in-interest and successors-in-interest.

³ 47 U.S.C. § 220; 47 C.F.R. §§ 43.51(a)(1) and (e)(2), 64.1001(b) and (e) (2003).

- (i) “Investigation” means the investigation commenced by the Commission’s requests in February 2007 for copies of any contracts between the Company and any Haitian telecommunications companies to determine whether the Company violated section 220 of the Communications Act of 1934, as amended (the “Act”), and sections 43.51 and 64.1001 of the Commission’s Rules relating to the failure to file with the Commission an agreement with Telecommunications D’Haiti S.A.M. (“Teleco Haiti”) and amendments thereto; the failure to file a modification request for each of the amendments to rate schedules; and the failure to obtain Commission approval prior to implementing modifications to rate schedules under the terms of the agreement, which resulted in the Commission’s *Notice of Apparent Liability for Forfeiture* issued on July 10, 2008.⁴
- (j) “Parties” means the Company and the Bureau.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “Teleco Haiti” means Telecommunications D’Haiti S.A.M. and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. The Commission’s Rules implementing its International Settlements Policy (“ISP”) facilitate detection of arrangements between U.S. and foreign carriers with market power that have the potential to result in anticompetitive actions against competing U.S. carriers to the detriment of U.S. consumers. In particular, U.S. carriers must comply with specific filing obligations relating to contracts and other arrangements between U.S. and foreign carriers concerning the exchange of international telecommunications traffic, routing of traffic, rates and other matters.

4. Specifically, section 43.51 of the Rules requires U.S. carriers who execute such agreements to file them with the Commission within thirty (30) days of execution, and to file a “modification request” prior to implementing any arrangement that offers terms different from those made available to any other carrier serving the same U.S.-international route.⁵ Section 64.1001 of the Rules bars subject carriers from implementing any such arrangement absent prior Commission approval, and further requires that such carriers notify all other carriers providing service on the same international route of a modification request, concurrently with the filing of such request with the Commission.⁶

5. IDT is a publicly-traded, New Jersey-based company that provides a range of telecommunications services domestically and internationally, and is subject to the requirements discussed in paragraphs 3 through 4, above. On October 22, 2003, an IDT subsidiary entered into a Carrier Service Agreement with Teleco Haiti that established the terms and conditions for the provision and purchase of wholesale telecommunications services on the U.S.-Haiti route, including the initial rate

⁴ 47 U.S.C. § 220; 47 C.F.R. §§ 43.51(a)(1) and (e)(2), 64.1001(b) and (e) (2003); *IDT Corporation*, Notice of Apparent Liability for Forfeiture, FCC 08-165, 2008 WL 2714526 (rel. July 10, 2008), *response pending*.

⁵ 47 C.F.R. § 43.51(a)(1)(i), (ii) (2003).

⁶ 47 C.F.R. § 64.1001(b) and (e) (2003).

for such services.⁷ Between February 5, 2004 and November 4, 2004, when the ISP was lifted from the U.S.-Haiti route,⁸ IDT and Teleco Haiti amended the agreement three times by establishing or amending the rates that would apply to Teleco Haiti's termination of U.S.-originated traffic.⁹ The three amended rates became effective on February 23, May 12, and August 1, 2004.¹⁰ At no point did IDT file the agreement or any of its amendments with the Commission, nor did the Company seek Commission approval or notify other carriers serving the U.S.-Haiti route before modifying or implementing the agreement and its amendments. On March 1, 2007, IDT submitted its Carrier Service Agreement with the Commission at the request of Commission staff,¹¹ and, on May 23, 2007, IDT identified the rates established under the agreement, again at the request of Commission staff.¹² On July 10, 2008, the Commission issued to IDT a *Notice of Apparent Liability for Forfeiture*, finding the company apparently liable for a forfeiture of \$1.3 million.¹³

III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** IDT agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.

9. **Compliance Plan.** IDT agrees that it will develop (or further develop), within sixty (60) calendar days from the Effective Date, an internal Compliance Plan to ensure IDT's future compliance with the Act, the Commission's Rules, and the Commission's orders governing the execution of agreements with foreign carriers for the exchange of international traffic. For purposes of this Compliance Plan, "IDT" shall mean IDT Corporation and any and all of its U.S. communications common carrier affiliates and subsidiaries. The Compliance Plan shall include the following components:

⁷ Letter from Troy F. Tanner, Bingham McCutchen LLP, Counsel for IDT Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 1, 2007 (attaching Carrier Service Agreement between IDT and Telecommunications D'Haiti S.A.M., October 22, 2003) ("Tanner March 1 Letter").

⁸ *Additional U.S.-International Routes Exempted from the International Settlements Policy*, Public Notice, 19 FCC Rcd 22032, 22035 (2004).

⁹ Letter from Troy F. Tanner, Bingham McCutchen LLP, Counsel for IDT Corp., to Helen Domenici, Chief, International Bureau, Federal Communications Commission, dated May 23, 2007, at 2 ("Domenici May 23 Letter").

¹⁰ *Id.* at 2.

¹¹ Tanner March 1 Letter, Attachment.

¹² Domenici May 23 Letter, at 2.

¹³ *See IDT NAL.*

- A. Compliance Training Program. IDT will develop (or further develop) and maintain a training program devoted to compliance with the Commission requirements governing the execution and FCC filing of agreements with foreign carriers for the exchange of international traffic on routes subject to the ISP. The training program will be for employees responsible for executing said agreements on behalf of IDT and IDT attorneys that review and/or approve said agreements. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the Commission's regulations and policies and, for new employees who are engaged in such activities, within the first sixty (60) days of employment. This training program shall address at least the following subject matter areas:
1. the international routes currently subject to the ISP;
 2. the specific filing obligations relating to contracts and other arrangements between IDT and foreign carriers for the exchange of international telecommunications traffic on routes subject to the ISP;
 3. the specific filing obligations for modification requests that offer terms different from those made available to any other carrier serving the same U.S.-international route subject to the ISP;
 4. the requirement for prior Commission approval before implementing any such arrangements on routes subject to the ISP;
 5. the requirement to notify all other carriers providing service on the same international route, subject to the ISP, of any modification request; and
 6. the potential ramifications of failing to comply with the Act and the Commission's Rules and Orders.
 7. IDT shall update and enhance the foregoing training as appropriate and necessary.
- B. Internal Controls. IDT will develop (or further develop), and shall maintain, internal control processes designed to ensure compliance with the Act and the Commission's Rules and Orders regarding contracts and other arrangements between IDT and foreign carriers for the exchange of international telecommunications traffic on routes subject to the ISP.
- C. Self-Reporting. IDT will promptly file with the Commission all current Foreign Carrier Service Agreements or amendments of such agreements between IDT and foreign carriers for the exchange of international traffic on routes currently subject to the ISP. IDT will file such agreements and amendments within fifteen (15) days of discovery or the Effective Date of this Consent Decree, whichever is later. If there are no such agreements, IDT shall so notify the Commission. IDT will report such filings to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- D. Compliance Report. IDT will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective

Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of IDT, stating that the officer has personal knowledge that IDT has operating procedures designed to ensure compliance with this Consent Decree. All compliance reports shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

- E. Termination Date. Unless stated otherwise, the requirements of this Compliance Plan will expire thirty-six (36) months after the Effective Date.

10. Voluntary Contribution. IDT agrees that it will make a voluntary contribution to the United States Treasury in the amount of four hundred thousand dollars (\$400,000.00) (“Voluntary Contribution”) within thirty (30) days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. The Company also will send electronic notification on the date said payment is made to Mindy.Littell@fcc.gov.

11. Termination of Investigation. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate its Investigation. In consideration of IDT’s Voluntary Contribution and its agreement to develop and adhere to an internal Compliance Plan as set forth herein, the Commission shall not initiate or continue any inquiries, investigations, forfeiture proceedings, hearings, or actions, or impose any sanctions or penalties, against IDT or its affiliates or subsidiaries based in whole or in part on (i) the Investigation; (ii) any other investigation or complaint related to IDT’s or any of its affiliates’ or subsidiaries’ compliance with sections 43.51 and 64.1001 of the Commission’s rules (and Sections 211 and 220 of the Communications Act, as amended, insofar as they relate to obligations to file with the Commission a copy of any agreement with a foreign carrier or modifications thereto) prior to the Effective Date with respect to any “Foreign Carrier Service Agreements” entered into by IDT on routes between the United States and any foreign country, (iii) the allegations contained in any of the foregoing, (iv) the underlying facts or conduct that relate to any of the foregoing, or (v) any act or omission by IDT or its affiliates or subsidiaries occurring prior to the Effective Date and relating to any of the foregoing.

12. Waivers. IDT waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. IDT shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither IDT nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and IDT shall waive any statutory right to a trial *de novo*. IDT hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. Subsequent Rule or Order. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically

intended to revise the terms of this Consent Decree to which IDT does not expressly consent) that provision will be superseded by such Commission Rule or Order.

14. **Successors and Assigns.** IDT agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau
Federal Communications Commission

James A. Courter
Chief Executive Officer
IDT Corporation

Date

Date