

NET2PHONE INC
Form SC TO-T/A
December 23, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO
(Amendment No. 5)

Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

NET2PHONE, INC.

(Name of Subject Company (Issuer))

NTOP ACQUISITION, INC.

IDT CORPORATION

HOWARD S. JONAS

JAMES A. COURTER

(Name of Filing Persons (Offerors))

Common Stock, par value \$0.01 per share

(Title of Class of Securities)

64108N10

(CUSIP Number of Class of Securities)

Ira A. Greenstein

President

IDT Corporation

520 Broad Street

Newark, New Jersey 07102

(973) 438-1000

(Name, Address and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

Joyce Mason, Esq.

General Counsel

IDT Corporation

520 Broad Street

Newark, New Jersey 07102

(973) 438-1000

Abbe L. Dienstag, Esq.

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, New York 10036

(212) 715-9100

CALCULATION OF FILING FEE

Transaction Valuation*
\$94,605,978.90

Amount of Filing Fee*
\$10,122.84

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- * Estimated solely for purposes of calculating the amount of the filing fee. This calculation assumes the purchase of 46,149,258 shares of the common stock, par value \$0.01 per share (the Shares), of Net2Phone, Inc. (Net2Phone), including Shares issuable upon exercise of vested stock options and upon conversion of shares of the class A common stock, par value \$0.01 per share (Class A Common Stock), of Net2Phone, at a price per Share of \$2.05 in cash. Such number of Shares represents 48,890,306 Shares outstanding and Shares issuable upon exercise of vested stock options and upon conversion of the shares of Class A Common Stock, in each case not already beneficially owned by IDT Corporation (IDT), as of November 1, 2005, less the 2,773,798 Shares already beneficially owned by IDT. The amount of the filing fee, calculated in accordance with Rule 0 11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 6 for fiscal year 2005 equals \$107.00 per \$1,000,000.00 of the value of the transaction.
- x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$10,863.54

Form or Registration Number: Schedule TO/13E-3 (SEC File No. 005-56655)

Filing Parties: NTOP Acquisition, Inc. and IDT Corporation.

Date Filed: November 10, 2005

- .. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- x third-party tender offer subject to Rule 14d-1.
- .. issuer tender offer subject to Rule 13e-4.
- x going private transaction subject to Rule 13e-3.
- .. amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ..

Amendment No. 5 to Schedule TO

This Amendment No. 5 (this Amendment No. 5) is being filed by the filing persons listed on the cover page hereof and amends and supplements the Tender Offer Statement and Schedule 13E-3 Transaction Statement on Schedule TO (the Initial Schedule TO) initially filed with the Securities and Exchange Commission (the SEC) on November 10, 2005 by NTOP Acquisition, Inc., a Delaware corporation (NTOP Acquisition), and IDT Corporation, a Delaware corporation (IDT), as amended by Amendment No. 1 filed with the SEC on November 23, 2005, Amendment No. 2 filed with the SEC on November 30, 2005, Amendment No. 3 filed with the SEC on December 13, 2005 and Amendment No. 4 filed with the SEC on December 20, 2005 (the Initial Schedule TO, as so amended, is referred to as the Schedule TO). This Amendment No. 5 relates to the tender offer by NTOP Acquisition, a wholly-owned subsidiary of IDT, to purchase all of the outstanding shares of the common stock, par value \$0.01 per share, of Net2Phone, Inc., a Delaware corporation (Net2Phone), not otherwise beneficially owned by IDT (the Shares), at a purchase price of \$2.05 net per Share in cash without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase dated November 10, 2005, as revised to date (the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(i) to Amendment No. 3, and the related Letter of Transmittal (the Letter of Transmittal), a copy of which is attached as Exhibit (a)(1)(ii) to the Initial Schedule TO.

The information set forth in the Offer to Purchase, including all schedules and annexes thereto, is hereby incorporated by reference in response to items 1 through 11 and 13 of this Schedule TO, and is supplemented by the information specifically provided herein.

ITEM 11.

Item 11 is hereby amended and supplemented by adding the following thereto:

Between December 13, 2005 and December 22, 2005, counsel for IDT, counsel for the Independent Committee, counsel for Net2Phone and counsel for the plaintiffs in the actions described in the Offer to Purchase discussed modifications to the memorandum of understanding related to the settlement of such actions. The original memorandum of understanding provided for settlement of the actions and releases from all claims only in the event that IDT beneficially owned 90% or more of the outstanding shares of the Net2Phone common stock upon consummation of the Offer, and a short-form merger of Net2Phone with NTOP Acquisition was thereafter effected. As announced by IDT on December 20, 2005 and as reflected in an amendment to this Schedule TO, IDT has decided to waive the 90% condition to the Offer. On December 22, 2005, counsel for IDT and counsel for the plaintiffs entered into an amended memorandum of understanding providing for settlement of the actions and releases from all claims with respect to the Offer.

As of December 23, 2005, counsel for Net2Phone and counsel for the Independent Committee had not yet executed the revised memorandum of understanding. Counsel for the Independent Committee informed counsel for IDT that the Independent Committee was not willing to execute the revised memorandum of understanding unless IDT increased the Offer Price by an unspecified amount. IDT and the plaintiffs executed the revised memorandum of understanding without the participation of the Independent Committee.

SIGNATURES

After due inquiry and to the best of their knowledge, the undersigned certify that the information set forth in this statement is true, complete and correct.

NTOP ACQUISITION, INC.

By: /s/ Ira A. Greenstein

Name: Ira A. Greenstein

Title: President

IDT CORPORATION

By: /s/ Ira A. Greenstein

Name: Ira A. Greenstein

Title: President

HOWARD S. JONAS

By: /s/ Howard S. Jonas

JAMES A. COURTER

By: /s/ James A. Courter

Date: December 23, 2005

EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
(a)(1)(xiv)	Amended Memorandum of Understanding, In Re: Net2Phone, Inc.: Consolidated Shareholders Litigation, Civil Action No. 1467-N.