

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Neutral Tandem, Inc. )  
For Interconnection with Level 3 )  
Communications and Request for )  
Expedited Resolution. )  
\_\_\_\_\_ )

Docket No. 070127-TX

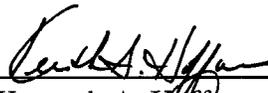
Filed: March 22, 2007

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COMMISSION  
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**LEVEL 3 COMMUNICATIONS, LLC'S  
NOTICE OF SUPPLEMENTAL AUTHORITY**

Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel, hereby files as Supplemental Authority a copy of the Michigan Public Service Commission Order issued March 21, 2007 denying the emergency relief requested by Neutral Tandem, Inc. before the Michigan Public Service Commission. This Supplemental Authority is provided in further support of Level 3's opposition to Neutral Tandem's request to invoke the Commission's expedited dispute resolution process pursuant to Rule 25-22.0365, Florida Administrative Code.

Respectfully submitted,

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of Level 3 Communications, LLC's Notice of Supplemental Authority was furnished by Hand Delivery and Electronic Mail(\*) on March 22, 2007 to the following:

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\_\_\_\_\_  
Kenneth A. Hoffman, Esq.

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint and request for )  
emergency relief of NEUTRAL TANDEM, INC., )  
against LEVEL 3 COMMUNICATIONS, LLC. )  
\_\_\_\_\_ )

Case No. U-15230

At the March 21, 2007 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman  
Hon. Laura Chappelle, Commissioner  
Hon. Monica Martinez, Commissioner

**ORDER DENYING EMERGENCY RELIEF**

On March 1, 2007, Neutral Tandem, Inc., filed a complaint and request for emergency relief concerning interconnection issues with Level 3 Communications, LLC (Level 3), pursuant to the provisions of MCL 484.2203. In the complaint, Neutral Tandem requested the Commission to: (1) establish interconnection terms and conditions for the continued delivery by Neutral Tandem of tandem transit traffic to Level 3 and its subsidiaries and (2) issue an order for emergency relief directing Level 3 to avoid blocking traffic terminating from Neutral Tandem over the parties' existing interconnection until a final order is issued in this case.

Neutral Tandem states that it is a licensed basic local exchange service provider under the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, (the Act) and for over two years has been interconnected with Level 3 pursuant to negotiated agreements. It alleges that Level 3 recently determined to terminate the contracts that enable Neutral Tandem to deliver tandem

transit traffic to Level 3 because it was no longer satisfied with the terms of the interconnection agreement. Neutral Tandem alleges that Level 3 stated it would disconnect the parties' existing interconnection as of March 23, 2007. It asserts that such an action would be unlawful and would seriously disrupt telecommunications services for affected customers. It states that it has about 15 third party carriers that use its transit service and those carriers have millions of end users, all of whom would feel the effects of disconnecting the interconnection.

Neutral Tandem asserts that Level 3's actions or threatened actions violate Section 305(a) and (b) of the Act, MCL 484.2305(a) and (b). It asserts the Commission has authority to resolve these issues in this proceeding pursuant to MCL 484.2204, which provides that if two telecommunications carriers cannot agree on interconnection issues, or matters prohibited by Section 305, either carrier may petition the Commission for assistance in resolving the issues.

On March 7, 2007, Level 3 filed an answer to the request for emergency relief in which it states that Neutral Tandem's failure to make alternative arrangements for traffic it desires to deposit on Level 3's network has created a crisis for which Neutral Tandem now seeks emergency relief. It points out that Neutral Tandem admits the contracts have expired and that Level 3 has agreed to work with Neutral Tandem to provide a smooth transition for the affected traffic. Level 3 argues that Neutral Tandem has merely filed this complaint, rather than seek out alternatives for the traffic.

However, Level 3 states, it is willing to maintain the existing arrangements with Neutral Tandem until June 25, 2007 (94 days beyond the March 23, 2007 deadline). Therefore, it states, Neutral Tandem's emergency relief request is moot and need not be addressed. Level 3 further clarifies that its willingness to maintain the existing arrangements does not waive any of its claims or defenses related to the Commission's subject matter jurisdiction to adjudicate the complaint.

Level 3 reasons that the extension of time eliminates the sole basis for Neutral Tandem's application for emergency relief and requests the Commission to deny that relief. Finally, Level 3 requests that the Commission mediate an alternative means to resolve the complaint pursuant to MCL 484.2203a.

Pursuant to MCL 484.2203(3), the Commission may issue an order granting emergency relief if it finds all of the following: (a) that the party has demonstrated exigent circumstances that warrant emergency relief, (b) that the party seeking relief will likely succeed on the merits, (c) that the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, and (d) that the order is not adverse to the public interest.

The Commission finds that Neutral Tandem's request for emergency relief should be denied without prejudice. It appears that there are no exigent circumstances at this time, based in part on Level 3's commitment to continue providing service to Neutral Tandem until June 5, 2007. Moreover, the Commission notes that MCL 484.2203(13) prohibits a provider from discontinuing service while a complaint is pending before the Commission, if the complainant has provided adequate security in an amount determined by the Commission. Should the parties be unable to resolve this complaint before the deadline established by Level 3's commitment, Neutral Tandem may seek protection under this section.

Having determined that there is no legitimate claim for emergency relief, the Commission finds that MCL 484.2203(14) should be invoked and the parties should be directed to engage in alternative dispute resolution as provided in MCL 484.2203a. The Commission Staff is available to the parties for assistance in obtaining mediation or other alternate dispute resolution services.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. The request for emergency relief should be denied without prejudice.
- c. The parties should engage in an alternative dispute resolution process.

THEREFORE, IT IS ORDERED that the request for emergency relief filed by Neutral Tandem, Inc., is denied without prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(6).

MICHIGAN PUBLIC SERVICE COMMISSION

( S E A L )

/s/ J. Peter Lark  
Chairman

By its action of March 21, 2007.

/s/ Laura Chappelle  
Commissioner

/s/ Mary Jo Kunkle  
Its Executive Secretary

/s/ Monica Martinez  
Commissioner