

Ruth Nettles

From: Keating, Beth [beth.keating@akerman.com]
Sent: Thursday, July 05, 2007 4:53 PM
To: Filings@psc.state.fl.us
Subject: Docket No 070127-TP
Attachments: 20070705173638001.pdf; 20070705174022690.pdf

Enclosed for filing in the referenced Docket, please find the attached filing.

A. Beth Keating
Akerman Senterfitt
106 East College Ave., Suite 1200
Tallahassee, FL 32301
(850) 224-9634
(850) 521-8002 (direct)
beth.keating@akerman.com

B. Docket No. 070127-TP: Petition for interconnection with Level 3 Communications and request for expedited resolution, by Neutral Tandem, Inc.

C. On behalf of Neutral Tandem, Inc.

D. Two Documents: Motion for Leave to Amend Petition - 4 pages
Amended Petition - 30 pages

E. Motion for Leave to Amend Petition
Amended Petition



Akerman Senterfitt
ATTORNEYS AT LAW

www.akerman.com | Bio | V Card

CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential information, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

CIRCULAR 230 NOTICE: To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments to this e-mail, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

Motion
DOCUMENT NUMBER-DATE

05631 JUL-5 5

FPSC-COMMISSION CLERK

Amended Petition
DOCUMENT NUMBER-DATE

05632 JUL-5 5

FPSC-COMMISSION CLERK

7/5/2007

Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

Suite 1200
106 East College Avenue
Tallahassee, FL 32301
www.akerman.com
850 224 9634 tel 850 222 0103 fax

ORIGINAL

July 5, 2007

ELECTRONIC FILING

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32309

**Re: Docket No. 070127-TX - Petition of Neutral Tandem, Inc. For Interconnection
with Level 3 Communications and Request for Expedited Resolution**

Dear Ms. Cole:

Enclosed for filing on behalf of Neutral Tandem, Inc., please find two documents for filing in the above-referenced Docket: 1. Neutral Tandem's Motion for Leave to File Amended Petition; and 2. Neutral Tandem's Amended Petition.

Your assistance in this matter is greatly appreciated. If you have any questions whatsoever, please do not hesitate to contact me.

Sincerely,



Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
Phone: (850) 521-8002
Fax: (850) 222-0103

{TL130731;1} ENCLOSURES

DOCUMENT NUMBER-DATE

05631 JUL-5 8

FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Neutral Tandem, Inc.)	Docket No. 070127-TX
for Interconnection with Level 3)	
Communications and Request for)	Filed: July 5, 2007
Expedited Resolution)	
)	

NEUTRAL TANDEM'S MOTION FOR LEAVE TO AMEND PETITION

Petitioner, Neutral Tandem, Inc. ("Neutral Tandem"), hereby respectfully submits this Motion to Amend petition, and in support thereof states as follows:

1 On February 26, 2007, Neutral Tandem filed a Petition for Interconnection and Request for Expedited Resolution of a dispute with Level 3 Communications (Level 3) regarding the termination of traffic to Level 3's network by Neutral Tandem.

2. Neutral Tandem files to amend its Petition to include additional information relevant to the Commission's consideration of this case.

3. Specifically, Neutral Tandem seeks to amend its Petition to include information and documentation further confirming that Neutral Tandem is specifically authorized by its customers to act on their behalf in establishing arrangements for the termination of transit traffic to other carriers and that Level 3's refusal to accept such transit traffic from Neutral Tandem has an immediate, detrimental impact on both Neutral Tandem and customers who rely on Neutral Tandem to establish such transit traffic arrangements.

4. Counsel has contacted counsel for Level 3 and informs the Commission that Level 3 objects to allowing Neutral Tandem to file the Amended Petition. However, no party would be negatively impacted by the Commission granting Neutral Tandem's request for leave to amend the Petition.

5. Furthermore, there is currently a staff recommendation pending before the Commission that suggests Neutral Tandem's Petition should be dismissed without prejudice, in order to allow Neutral Tandem an opportunity to refile its Petition and cure a defect staff perceives in Neutral Tandem's assertions of standing to pursue relief in this matter. While Neutral Tandem does not concede that such a defect exists, Neutral Tandem's amendment further demonstrates such authority to act as agent for its originating customers in the establishment of such transit traffic arrangements. Commission staff has suggested in its recommendation to the Commission that such demonstration would remedy the staff's concerns with regard to Neutral Tandem's standing in this matter. As such, allowing Neutral Tandem the opportunity to amend its Petition now will avoid the unnecessary time and expense of withdrawing the Petition altogether and refiling the amended Petition at a later date to include the referenced additional information.

6. Moreover, allowing amendment of the Petition at this time will also avoid any additional, prolonged delay in the Commission's resolution of the important underlying issues raised in the Petition.¹ Further significant delay, will only cause increased, unnecessary uncertainty for both Neutral Tandem and its carrier customers, who terminate a half a billion minutes of transit traffic through NT each month in Florida.²

7. Neutral Tandem recognizes that it may be appropriate to allow Level 3 an opportunity to respond to the Amended Petition, and that, consequently, a deferral of the staff recommendation currently scheduled for the July 10, 2007 Agenda Conference may be

¹ See, Fouts v. Margules, 98 So. 2d 394 (3d D.C.A. 1957).

² On a related note, Neutral Tandem has also had to delay its IPO financing to remedy these actions by Level 3; actions that other states have already found violate the public interest.

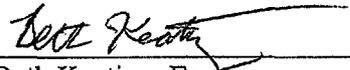
appropriate. However, counsel for Level 3 has represented to Neutral Tandem that Level 3 feels such a deferral is not appropriate.

8. Attached, please find the Amended Petition of Neutral Tandem.

Thus, for all reasons set forth herein, Neutral Tandem respectfully requests that the Commission grant Neutral Tandem's Motion to Amend its Petition in this proceeding and, based on this additional information, set this matter directly for hearing.

Respectfully submitted,

NEUTRAL TANDEM, INC.

By: 
Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
beth.keating@akerman.com

Attorney for Neutral Tandem, Inc.

Ronald Gavillet
Executive Vice President &
General Counsel
Neutral Tandem, Inc.
One South Wacker, Suite 200
Chicago, IL 60606
(312) 384-8000
rongavillet@neutraltandem.com

John R. Harrington
Jenner & Block LLP
330 N. Wabash Ave.
Suite 4700
Chicago, IL 60611
(312) 222-9350
jharrington@jenner.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail First Class and Hand Delivery to Martin McDonnell, Esquire, and Kenneth Hoffman, Esquire, Rutledge, Ecenia, Purnell, and Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee, FL 32301, and that a copy has also been provided to the persons listed below this 5th day of July, 2007:

Gregg Strumberger, Esquire
Gregory Rogers, Esquire
Level 3 Communications, Inc.
1025 El Dorado Boulevard
Broomfield, CO 80021
greg.rogers@level3.com

Adam Teitzman, Staff Counsel
Florida Public Service Commission,
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
pwiggins@psc.state.fl.us

Beth Salak, Director/Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
bsalak@psc.state.fl.us

By:  _____

Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
Fax: (850) 222-0103
beth.keating@akerman.com