

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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

**AMENDED PETITION OF NEUTRAL TANDEM, INC. FOR INTERCONNECTION  
WITH LEVEL 3 COMMUNICATIONS AND REQUEST FOR  
EXPEDITED RESOLUTION**

Pursuant to Rule 25-22.0365, Florida Administrative Code, and FL. STAT. ANN. §§ 364.16 and 364.162, Neutral Tandem, Inc. and its subsidiaries (collectively “Neutral Tandem”), by and through its undersigned counsel, respectfully submits this amended petition, asking the Commission to: (1) establish interconnection terms and conditions for the continued delivery by Neutral Tandem of tandem transit traffic to Level 3 Communications and its subsidiaries (collectively “Level 3”);<sup>1</sup> (2) resolve this Petition on an expedited basis; and (3) issue an interim order directing Level 3 not to block traffic terminating from Neutral Tandem over the parties’ existing interconnections while this Petition is pending. In support of this Petition, Neutral Tandem states as follows:

**INTRODUCTION**

Neutral Tandem and Level 3 both are certificated competitive local exchange telecommunications companies in Florida. Florida law imposes a clear obligation on such companies to interconnect their networks upon request. For over two years, Neutral Tandem and Level 3 have been interconnected in Florida and other states pursuant to negotiated agreements. Recently, however, Level 3 informed Neutral Tandem that it was terminating the contracts that

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<sup>1</sup> As used in this Petition, “tandem transit” traffic refers to the intermediary switching of local and other non-access traffic that originates and terminates on the networks of different telecommunications providers within a local calling area or MTA. See Saboo Direct. at 2.

enabled Neutral Tandem to deliver tandem transit traffic to Level 3, because Level 3 did not believe the terms of those contracts were sufficiently advantageous to Level 3. To date, efforts to negotiate new agreements have been unsuccessful. Neutral Tandem therefore requests that this Commission enforce the interconnection mandates of Florida law, by establishing prospective terms and conditions under which Neutral Tandem and Level 3 will continue to interconnect for the purpose of Neutral Tandem delivering tandem transit traffic to Level 3.

Level 3 plans to terminate the parties' agreements as of March 23, 2007. Level 3 has threatened to disconnect the parties' existing interconnections as of that date. This unlawful action could lead to service disruptions for the 20 other carriers that utilize Neutral Tandem's tandem transit service in Florida, as well as disruptions for the millions of end-user customers of those 20 carriers. To prevent these service disruptions, Neutral Tandem requests that the Commission consider Neutral Tandem's Petition on an expedited basis, and that the Commission order Level 3 to maintain the parties' existing interconnections pending resolution of Neutral Tandem's Petition.

## **BACKGROUND**

### **I. The Parties**

Neutral Tandem is a registered competitive local exchange telecommunications company within the State of Florida. Like BellSouth and other incumbent LECs throughout Florida, Neutral Tandem provides "tandem transit" services to other telecommunications carriers.<sup>2</sup> Competitive telecommunications carriers use Neutral Tandem's tandem transit services to deliver traffic to the networks of other competitive telecommunications carriers with which they are not directly interconnected. Neutral Tandem's address and telephone number are:

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<sup>2</sup> Saboo Direct. at 3

Neutral Tandem, Inc.  
One South Wacker  
Suite 200  
Chicago, IL 60606  
(312) 384-8000

Neutral Tandem's representatives to be served are:

Beth Keating, Esquire  
Akerman Senterfitt  
106 East College Avenue, Suite 1200  
P.O. Box 1877 (32302)  
Tallahassee, Florida 32301  
(850) 521-8002  
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Ronald Gavillet  
Executive Vice President &  
General Counsel  
Neutral Tandem, Inc.  
One South Wacker, Suite 200  
Chicago, IL 60606  
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On information and belief, Level 3 is a registered competitive local exchange telecommunications company providing telecommunications services within the state of Florida.

## **II. Jurisdiction**

The Commission has authority to grant the requested relief in this Petition pursuant to FL. STAT. ANN. §§ 364.16(2) and 364.162(2). Specifically, Section 364.16(2) provides that: "Each competitive local telecommunications company shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions."

Section 364.16(2) further provides that, if "the parties are unable to negotiate mutually acceptable prices, terms and conditions after 60 days, either party may petition the commission, and the commission shall have 120 days to make a determination after proceeding as required by s. 364.162(2) pertaining to interconnection services." In turn, Section 364.162(2) provides that

the Commission shall, within 120 days after receiving a petition, “set nondiscriminatory rates, terms, and conditions” for interconnection.

Further, this Commission has the authority to consider Neutral Tandem’s request for expedited resolution pursuant to Rule 25-22.0365, Florida Administrative Code, which provides an expedited process for resolution of disputes between telecommunications companies. Rule 25-22.0365 sets forth a series of factors the Commission considers in determining whether to address a dispute on an expedited basis. As discussed below, each of these factors supports this Commission’s consideration of Neutral Tandem’s Petition on an expedited basis.

Finally, this Commission has authority to issue an interim order requiring Level 3 not to violate its interconnection obligations under Florida law, and not to cause disruption to other carriers and their end-users throughout Florida, by discontinuing its existing interconnections with Neutral Tandem while this Petition is pending. This Commission has such authority pursuant to its authority to prevent anticompetitive behavior between providers. It should exercise that authority in order to protect the welfare of the third party carriers that use Neutral Tandem’s services, as well as those carriers’ end-user customers, by ordering Level 3 not to terminate its existing interconnection arrangements with Neutral Tandem. *See* Section 364.01(4), Florida Statutes.

### **III. The Nature of Neutral Tandem’s Service**

Incumbent LECs no longer are the sole providers of telecommunications services to end-users. Rather, CLECs, wireless carriers, and cable companies all provide these services as well. In an era of multiple telecommunications providers, customers of one non-incumbent LEC carrier, such as a cable telephone provider, inevitably call customers of another non-ILEC, such as a wireless carrier. These companies must be able to route such calls to each other’s networks,

even though they may not be directly interconnected with each other. Traditionally, the only way for these companies to obtain this service (known as “tandem transit” service) was to utilize the incumbent LECs’ tandem switch services. In Florida, BellSouth and other incumbent LECs are the principal providers of such transit services to competitive carriers.

Neutral Tandem is the telecommunications industry’s only *independent* provider of tandem transit services. Neutral Tandem offers tandem transit services to CLECs, wireless carriers, and cable companies throughout Florida, and in over 60 LATAs nationwide. Neutral Tandem provides these carriers with alternative means to interconnect and exchange local traffic with each other, without using incumbent LEC tandem transit services. Neutral Tandem provides service to and/or has direct connections with nearly every major CLEC, wireless carrier, and cable provider in the United States. In Florida, Neutral Tandem provides tandem transit service to 20 different competitive carriers, and delivers tandem transit traffic from those carriers to Level 3, in the Miami, Tampa, and Orlando markets.<sup>3</sup>

Through its competitive tandem transit services, Neutral Tandem provides carriers with lower per-minute transit charges, reduced port charges and nonrecurring fees, simpler network configurations, increased network reliability, improved quality of service, and traffic transparency. The availability of Neutral Tandem’s tandem transit services helps level the playing field by increasing competitive carriers’ leverage with incumbent LECs. Competitive tandem transit service also inherently builds redundancy into the telecommunications sector and infrastructure, which allows for faster disaster recovery and provides more robust homeland security. Neutral Tandem’s competitive tandem transit services also strengthen the redundancy and survivability of the public switched telephone network (“PSTN”).

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<sup>3</sup> Saboo Direct. at 3, 5.

Apart from the public benefits associated with competition in the tandem transit business, Neutral Tandem provides significant benefits to competitive carriers that utilize Neutral Tandem's tandem transit service. These benefits include Neutral Tandem's willingness to pay for and manage -- through the use of diverse transport suppliers -- all of the transport connecting Neutral Tandem to the competitive carrier. Neutral Tandem uses 13 different transport providers in Florida.

#### **IV. The Parties' Interconnection Dispute**

Neutral Tandem and Level 3 have been interconnected for over two years pursuant to a series of negotiated contracts. Specifically, Neutral Tandem delivers tandem transit traffic to Level 3 that has been originated by third party carriers, and accepts certain traffic originated by Level 3 for delivery to third party carriers, pursuant to a contract dated July 6, 2004 (the "Level 3 Contract"). Similarly, Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3's subsidiary Broadwing Communications, and accepts tandem transit traffic from Broadwing for transiting to third party carriers, pursuant to a February 2, 2004 contract (the "Broadwing Contract").

Neutral Tandem also accepts certain traffic originated by Level 3 for transiting to other carriers pursuant to a contract dated August 18, 2005 (the "Originating Contract"). Under these three contracts, Neutral Tandem and Level 3 currently are interconnected in fourteen states, including Florida.

The parties' various contracts renewed automatically on several occasions without incident. Indeed, Neutral Tandem and Level 3 entered into an amendment of the Originating Contract on January 31, 2007 (the "Originating Amendment"). The Originating Amendment provided Level 3 with more advantageous pricing for traffic Level 3 originates to Neutral

Tandem for transiting to other carriers. This was done to make Neutral Tandem's services more attractive to Level 3, in order to increase use of Neutral Tandem's services by Level 3.

Within hours of signing the Originating Amendment, Level 3 sent a fax to Neutral Tandem stating its intention to terminate the Level 3 Contract effective March 2, 2007. (Ex. 1.) Level 3's fax was sent by the same Level 3 executive who just hours earlier had signed the Originating Amendment, yet the fax offered no explanation for Level 3's decision.

On February 14, 2007, Level 3 notified Neutral Tandem that it intended to terminate the Broadwing Contract in addition to the Level 3 Contract. (Ex. 2.) The February 14 letter stated that Level 3 would terminate both contracts effective March 23, 2007. (*Id.*) By terminating the contracts under which Level 3 *received* tandem transit traffic, while at the same time renewing the contract under which Level 3 *originated* tandem transit traffic, Level 3 sought to deny its competitors the benefit of Neutral Tandem's competitive tandem transit services, while at the same time increasing Level 3's benefit by obtaining better terms from Neutral Tandem for Level 3's own originating traffic.

Nevertheless, in its February 14 letter, Level 3 claimed that the contracts were "not commercially balanced between the two parties" and that maintaining interconnection with Neutral Tandem under those contracts "is not a commercially reasonable or manageable option." (*Id.*) The letter stated that Level 3's goal was to "reach a single agreement with Neutral Tandem" prior to March 23 that would "supersede the current agreements" and "provide a single set of terms and conditions for the benefit of both parties." (*Id.* at 2.)

However, if the parties have not reached agreement on a new contract by March 23, 2007, Level 3 stated that it intended to "otherwise manage the traffic exchanged under" the February 2004 and July 2004 Contracts. (*Id.*) Level 3 further stated that it would attempt to

“affect an orderly transition to mitigate any risks associated with Neutral Tandem customer traffic” if that occurs. (*Id.*)

On February 19, 2007, Neutral Tandem responded to Level 3’s letters. (Ex. 3.) Neutral Tandem reiterated its desire to work with Level 3 to arrive at mutually acceptable terms and conditions for continued two-way interconnection. However, Neutral Tandem also reminded Level 3 that, at a minimum, it was obligated to interconnect with Neutral Tandem to receive tandem transit traffic pursuant to the law of Florida and several other states. (*Id.* at 2.) Neutral Tandem notified Level 3 that any refusal by Level 3 to interconnect with Neutral Tandem would violate these interconnection obligations. (*Id.*)

Level 3 responded to Neutral Tandem’s request for interconnection under Florida law on February 22, 2007. (Ex. 4.) Level 3 denied that it was required to interconnect with Neutral Tandem for the purpose of receiving tandem transit traffic from third party carriers’ networks. (*Id.*) Level 3 also reiterated its threat to effectuate the termination of the parties’ existing interconnection facilities as of March 23, 2007. (*Id.* at 2.) Specifically, Level 3 stated that its termination of the parties’ current interconnections could “materially impact the flow of traffic for [Neutral Tandem’s] customers” and that there could be “interruptions of service associated with the termination of the agreements.” (*Id.* at 2.)

Neutral Tandem has held discussions with representatives from Level 3 on multiple occasions to try to resolve these disputes. Several senior executives from Neutral Tandem traveled to Level 3’s Colorado headquarters for an in-person meeting on February 16, 2007. In preparation for that meeting, Neutral Tandem participated in several telephonic conference calls with Level 3 regarding these issues. After the in-person meeting on February 16, Neutral



Tandem again met with Level 3 by telephone on February 21, 2007 to try to negotiate mutually agreeable interconnection terms.

However, the parties have been unable to reach agreement. The major impediment has been Level 3's insistence that Neutral Tandem pay Level 3 reciprocal compensation when Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3, even though the traffic being delivered by Neutral Tandem has been originated by end-users of the third party carriers. Thus, even though Level 3 will continue to receive the benefit of competitive tandem transit service (including lower rates) for traffic that it *originates* through Neutral Tandem pursuant to the Originating Amendment, Level 3 has stated that it will begin refusing to accept tandem transit traffic Neutral Tandem delivers to Level 3 on behalf of third party carriers as of March 23, 2007. (Ex. 2; Ex. 4.)

## ARGUMENT

### **I. Florida Law Requires Level 3 to Interconnect with Neutral Tandem.**

Florida law unambiguously requires Level 3 to interconnect with Neutral Tandem. Specifically, Florida law provides that every competitive telecommunications carrier, including Level 3, "shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions."<sup>4</sup> This Commission already has found that it has authority to establish the terms and conditions of interconnection for tandem transit services provided between the networks of different carriers.<sup>5</sup>

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<sup>4</sup> FL. STAT. ANN. §§ 364.16(1), (2) (2006).

<sup>5</sup> See *In re Joint Petition by TDS Telecom*, Docket Nos. 050119-TP; D050125-TP, Order No. PSC-06-0776-FOF-TP, 2006 Fla. PUC LEXIS 543, \*22-\*23 (September 18, 2006).

In addition to being required by law, continued interconnection between Neutral Tandem and Level 3 is in the public interest. Neutral Tandem provides the sole alternative to the tandem transit services offered by BellSouth and other incumbent LECs. Consequently, Neutral Tandem provides third-party carriers with a competitive alternative. This results in more efficient delivery of traffic, by allowing those carriers to select the most cost-efficient route for delivery of their calls to Level 3. Competition for tandem transit services exerts downward pressure on transit charges, while fostering market competition and entry into the telecommunications industry. The Federal Communications Commission long has recognized the substantial benefits of competition in the market for tandem switching services:

By further reducing barriers to competition in switched access services, our actions will benefit all users of tandem switching... Our actions also should promote more efficient use and deployment of the country's telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long distance rates, all of which should contribute to economic growth and the creation of new jobs. In addition, these measures should increase access to diverse facilities, which could improve network reliability.<sup>6</sup>

In addition, competitive tandem switching capacity builds redundancy into the telecommunications sector and infrastructure. Lack of tandem capacity is a recurring problem in numerous tandem offices throughout Florida, as well as other markets throughout the country. Indeed, in several markets, incumbent LEC tandem capacity has been reported to be exhausted.<sup>7</sup> As a result, several carriers have asked Neutral Tandem to accept overflow traffic to and from the tandems of the incumbent LECs, because the competitive carriers already cannot obtain sufficient trunk capacity.<sup>8</sup> Continued deployment of Neutral Tandem's offerings will decrease

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<sup>6</sup> *Expanded Interconnection with Local Tel. Co. Facilities, Transport Phase II*, 9 FCC Rcd. 2718, ¶ 2 (rel. May 27, 1994).

<sup>7</sup> Saboo Direct. at 9.

<sup>8</sup> Saboo Direct. at 9.

the level of tandem congestion at incumbent LEC tandems, thereby diminishing the threat of tandem exhaustion.

Moreover, lack of tandem redundancy directly impacts homeland security and disaster recovery. As noted by the Federal Communications Commission, the impact of Hurricane Katrina illustrated the importance of building network redundancy in tandem switches:

[M]ore than 3 million customer phone lines were knocked out in Louisiana, Mississippi, and Alabama following Hurricane Katrina. ... Katrina highlighted the dependence on tandems and tandem access to SS7 switches. The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. *Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution.*<sup>9</sup>

Neutral Tandem does not collocate with BellSouth and utilizes several different transport carriers in the State of Florida. Neutral Tandem's operations thus facilitate transport redundancy and tandem redundancy, both of which the FCC found would have been helpful in response to Hurricane Katrina.

To be clear, the traffic at issue here is local traffic and originating carriers have made the business decision to send that traffic to Level 3 using Neutral Tandem's services. Neutral Tandem currently provides tandem transit services to 18 different carriers in Florida, and transits more than 500 million minutes of traffic per month in this State. Traffic bound for Level 3 represents approximately 75 million of that 500 million monthly minutes. Absent intervention by the Commission, Neutral Tandem will be unable to interconnect with Level 3 to deliver those 75 million of minutes of traffic per month after June 25, 2007.

Given that Sections 364.16(2) and 364.162 specifically require interconnection on nondiscriminatory terms and conditions, the harm Neutral Tandem faces is precisely the type of

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<sup>9</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks Effect of Hurricane Katrina on Various Types of Communications Networks*, FCC Docket No. 06-83, at 9 (2006) (emphasis added).

harm which those provisions are designed to address. Level 3's position is tantamount to an attempt to read a new right into Section 364.16(2); namely that terminating carriers can dictate how calls are routed. If Level 3's view that all terminating carriers could choose how to receive traffic were to prevail, terminating carriers could force originating carriers to bear the cost of inefficient interconnection arrangements, and originating carriers would have no recourse for recovering the cost of those inefficiencies other than to raise their end-user retail rates.

This Commission already has found that transiting services should be categorized as "an interconnection arrangement under Section 364.16, Florida Statutes."<sup>10</sup> Transiting services, such as those provided by Neutral Tandem, clearly are "local exchange telecommunication services" under Florida law. The traffic Neutral Tandem carries consists entirely of local calls. Neutral Tandem therefore has standing to seek relief under Section 364.16(2) under the express terms of the statute. Moreover, Neutral Tandem is authorized to act on behalf of its originating carrier customers as the originating carrier's agent for the purpose of negotiating the arrangements for the termination of traffic routed to other carriers using Neutral Tandem's service.<sup>11</sup> Thus, Neutral Tandem has standing in its own right, and also as the authorized agent for its originating carrier customers. These carriers will be directly and immediately harmed if Level 3 prevails. Specifically, should Level 3 prevail, carriers will be deprived of their ability to choose a competitive alternative to the ILEC tandem service, thus increasing their costs to serve their own customers. Furthermore, any calls sent to Level 3 via Neutral Tandem, will be blocked, resulting in the originating carriers' customers being unable to complete local calls.

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<sup>10</sup> *TDS Telecom Order*, 2006 Fla. PUC LEXIS 543, at \*22-\*24.

<sup>11</sup> See Exhibit I, which consists of Letters of Agency (LOAs) from specific identified originating carriers.

Consequently, granting Neutral Tandem's petition will result in enhanced competition to the benefit not only of Neutral Tandem, but also to the competitive service providers that use Neutral Tandem's tandem transiting services, as well as those providers' end-user customers.<sup>12</sup>

**II. The Commission Should Adopt Nondiscriminatory Prices, Terms, and Conditions for Interconnection Between Neutral Tandem and Level 3.**

Florida law requires that Level 3 interconnect with Neutral Tandem under "nondiscriminatory prices, terms, and conditions."<sup>13</sup> This Commission recently addressed the appropriate compensation arrangements relating to transiting services in the *TDS Telecom* decision.<sup>14</sup> The Commission found that the "calling party's network pays" principle was appropriate in the transiting context.<sup>15</sup> In other words, the carrier of the end-user that originates the call is responsible to compensate the transiting carrier for the costs associated with delivering the call.<sup>16</sup> The originating carrier, not the transiting carrier, also is responsible to compensate the terminating carrier for any costs associated with receiving the call and delivering it to the terminating carrier's end-user.<sup>17</sup>

As discussed above, Neutral Tandem and Level 3 have been interconnected for over two years pursuant to negotiated contracts. Those contracts mirror the compensation system this Commission found appropriate in the *TDS Telecom* decision. Under the parties' contracts, Level

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<sup>12</sup> Notably, Level 3 itself has argued in favor of broad interconnection rights for wholesale telecommunications carriers. See, e.g., *Ex Parte Letter in Support of Petition of Time Warner Cable for Declaratory Ruling that CLEC May Obtain Interconnection under Section 251 of the Comm. Act of 1934, as Amended, to Provide Wholesale Telecomm. Svcs. to VOIP Providers*, WC Docket No. 06-55, Letter at 4 (filed February 13, 2007). (Ex. 5.)

<sup>13</sup> FL. STAT. ANN. § 364.16(2).

<sup>14</sup> See *In re Joint Petition by TDS Telecom*, Docket Nos. 050119-TP; D050125-TP, Order No. PSC-06-0776-PAA-TP, 2006 Fla. PUC LEXIS 543, \*35-\*45 (September 18, 2006).

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

3 pays Neutral Tandem for transiting services when Level 3 is the originating carrier; *i.e.*, the carrier whose end-user originates the call that Neutral Tandem transits to other carriers' networks. When Level 3 is the terminating carrier; *i.e.*, the carrier whose end-user receives the call from another carrier's customer, Level 3 does not pay Neutral Tandem for that service. Instead, the originating carrier compensates Neutral Tandem for that service.

During the parties' negotiations, Level 3 has taken the position that Neutral Tandem should be required to pay Level 3 reciprocal compensation when Level 3 is the terminating carriers; *i.e.*, when Neutral Tandem transits traffic to Level 3 from third party carriers' network. (See Ex. 4.) Level 3 thus seeks to collect reciprocal compensation from Neutral Tandem instead of the carriers whose end-users originate the traffic that Neutral Tandem transits to Level 3's network. Level 3 essentially seeks to force Neutral Tandem to become its collection agency or clearinghouse, by collecting reciprocal compensation from the carriers whose end-users originate the traffic that Neutral Tandem delivers to Level 3's network.

The parties' prior contracts expressly did *not* require Neutral Tandem perform this function for Level 3.<sup>18</sup> Rather, consistent with Neutral Tandem's other contracts, Neutral Tandem passes on to Level 3 signaling information that Neutral Tandem receives from the originating carrier, so that Level 3 can bill the originating carrier appropriate termination charges.<sup>19</sup> Neutral Tandem has made clear to Level 3 that it is willing to continue providing such

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<sup>18</sup> Under the Level 3 Contract, Neutral Tandem did agree to provide Level 3 with a usage-based transport recovery charge on an interim basis. However, that privately-negotiated arrangement was agreed to by Neutral Tandem in consideration of Level 3 establishing a two-way business relationship with Neutral Tandem; the transport recovery fee was set to phase down to zero as Level 3's usage of Neutral Tandem's transit service increased. It would not be appropriate to order such payments in the context of establishing nondiscriminatory terms and conditions for a one-way interconnection agreement. This interim transport recovery fee was unique to the Level 3 Contract; the Broadwing Contract did not provide for any such fee, and no other carriers accepting tandem transit traffic from Neutral Tandem in Florida receive such a fee.

<sup>19</sup> See Ex. 6, § 7.1.

information, so that Level 3 can seek appropriate compensation from the originating carrier. But it is not remotely consistent with the “calling party’s network pays” principle adopted by this Commission in the *TDS Telecom* decision for Level 3 to insist that Neutral Tandem, rather than the originating carrier, pay reciprocal compensation.

Level 3’s request also is inconsistent with both state and federal law. Level 3 does not receive reciprocal compensation from incumbent LECs, such as BellSouth, when the incumbent LEC acts as the transiting carrier and delivers third party carriers’ traffic to Level 3’s network. To the contrary, Level 3’s interconnection agreement with BellSouth in Florida specifically states that BellSouth “will not be liable for any compensation to the terminating carrier or to Level 3” when BellSouth delivers tandem transit traffic.<sup>20</sup> Requiring Neutral Tandem to pay Level 3 reciprocal compensation for transiting traffic to Level 3 from the networks of third party carriers, when Level 3 would not receive such compensation from incumbent LECs such as BellSouth for transiting the same traffic, would discriminate against Neutral Tandem, in violation of Florida law. It also would violate the requirement of federal law that reciprocal compensation payments are to be made by the carrier that originates the traffic.<sup>21</sup>

Thus, consistent with this Commission’s *TDS Telecom* decision, the Commission should order the parties to adopt the following general interconnection terms:

- Level 3 should be ordered to maintain interconnection with Neutral Tandem for the purpose of receiving tandem transit traffic originated by third party carriers and delivered to Level 3’s network by Neutral Tandem; and
- The terms for interconnection between Level 3 and Neutral Tandem should be no less favorable than the terms in place between Level 3 and BellSouth for the delivery of transit traffic from BellSouth to Level 3, including that Neutral Tandem will not be

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<sup>20</sup> Agreement Between Level 3 Communications, LLC and BellSouth Telecommunications, Inc. §7.6.2 (June 23, 2004).

<sup>21</sup> See 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.701(e).

required to make any payments to Level 3 for the delivery of tandem transit traffic originated by third party carriers.

- To facilitate Level 3's ability to bill originating third party carriers for tandem transit traffic, Neutral Tandem will pass all signaling information received from originating third party carriers to Level 3.

To be clear, Neutral Tandem is *not* asking the Commission to order Level 3 to originate any traffic through Neutral Tandem or otherwise become a customer of Neutral Tandem. To the contrary, Neutral Tandem merely seeks an order directing Level 3 to comply with its obligation under Florida law to interconnect with Neutral Tandem for the purpose of *receiving* tandem transit traffic originated by third party carriers and delivered to Level 3 by Neutral Tandem.<sup>22</sup>

Upon adoption of the nondiscriminatory interconnection terms set forth above, Neutral Tandem and Level 3 should be able to enter into a new agreement promptly.<sup>23</sup>

### **III. The Commission Should Consider Neutral Tandem's Petition on an Expedited Basis.**

Given Level 3's threat to terminate interconnections to Neutral Tandem service as of March 23, 2007, this Commission can and should consider Neutral Tandem's Petition on an expedited basis pursuant to FL. STAT. ANN. § 364.058 and FL. ADMIN. CODE § 25-22.0365.<sup>24</sup> As

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<sup>22</sup> This arrangement is similar to the April 20, 2005 Traffic Termination Agreement between Neutral Tandem and various Time Warner Telecom entities. The agreement between Neutral Tandem and Time Warner provides a model for appropriate terms and conditions of one-way interconnection between a tandem transit provider and a terminating carrier. (Ex. 6.)

<sup>23</sup> Ironically, as noted above, Level 3 signed the Originating Amendment on the same day it notified Neutral Tandem that it was terminating the Level 3 Contract. Level 3 thus seeks to benefit from the competitive tandem transit services (including lower transit rates and improved service) provided by Neutral Tandem for its own originating traffic, while denying those same benefits to other competitive carriers, by refusing to receive tandem transit traffic Neutral Tandem delivers from other third party carriers.

<sup>24</sup> Expedited treatment of Neutral Tandem's Petition is crucial because Level 3 has an unfortunate history of following through on threats to use service disruptions to end-users as a negotiating tactic. For example, in October 2005, Level 3 blocked internet users of Cogent Communications from accessing the internet for three days as a result of the parties' compensation dispute. *See* Jeff Smith, *Level 3, Cogent Resolve Dispute; Feud Disrupted Internet Traffic*, Rocky Mountain News, Oct. 29, 2005, at 3C (Ex. 7). As a result of Level 3's conduct in that dispute, its President was forced apologize to both Level 3's and Cogent's customers. (*Id.*) According to one report, Level 3's



set forth below, each of the factors under Rule 25-22.0365(4)(e), Florida Administrative Code, supports expedited treatment of Neutral Tandem's Petition:

**1. Number and Complexity of the Issues**

The issues presented by Neutral Tandem's Petition are neither numerous nor complex. The Petition involves a straightforward application of the clear interconnection requirements of Florida law. Many of the broader issues regarding the appropriate terms and conditions of interconnection related to transiting services already have been considered and decided by this Commission in the *TDS Telecom* order. In addition, since Neutral Tandem and Level 3 have been interconnected for more than two years, there are no open technical issues.

**2. Policy Implications that Resolution of the Dispute is Expected to Have**

As noted above, the broader policy issues relating to interconnection for the purpose of providing transiting services already have been considered and decided by this Commission in the *TDS Telecom* order. In addition to the various policy issues considered by the Commission in that proceeding, granting Neutral Tandem's Petition will further the policy goals of fostering diversity, redundancy, efficiency, and increased reliability to the PSTN. By contrast, the net effect of Level 3 seeking to deny the benefits of competitive tandem transit service to other competitive carriers in Florida would be to raise those carriers' operating costs and reduce their network diversity, neither of which benefits their millions of end-users.

**3. Topics on which the Company Plans to Conduct Discovery**

Neutral Tandem does not anticipate serving discovery in this matter. The issues raised by Neutral Tandem's Petition present legal issues relating to Level 3's compliance with the clear

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President stated that the company had "learned a lesson" as a result of its conduct in that case. See Arshad Mohammed, *Internet Access Dispute Cut off Some Businesses*, Washington Post, Oct. 14, 2005, at D04 (Ex. 7). Based on its threat to disrupt service to millions of Florida end-users in this case, whether Level 3 really has "learned a lesson" is at best an open question.

interconnection requirements of Florida law, as articulated in the *TDS Telecom* decision. The only issues which might generate discovery relate to Level 3's insistence that it must receive reciprocal compensation payments from Neutral Tandem for delivering tandem transit traffic to Level 3 on behalf of third party carriers. However, given the clear requirement of Florida law that interconnection terms be "nondiscriminatory," and given that Level 3's interconnection agreement with BellSouth unambiguously shows that Level 3 does not receive reciprocal compensation payments from BellSouth for delivering tandem transit traffic, there should be no need for discovery to develop nondiscriminatory terms and conditions for interconnection between Neutral Tandem and Level 3. As such, Neutral Tandem anticipates that it will not be necessary for it to serve affirmative discovery in this matter, although Neutral Tandem reserves the right to conduct discovery if necessary in response to Level 3's position.

**4. Specific Measures Taken to Resolve the Dispute Informally**

As described in more detail above, since Neutral Tandem first learned on January 31, 2007 that Level 3 intended to abruptly terminate the parties' contracts, Neutral Tandem has engaged in extensive and repeated negotiations with Level 3 to try to resolve this dispute informally. Senior Neutral Tandem executives have traveled to Level 3's Colorado headquarters for in-person meetings, and the parties have engaged in numerous telephonic negotiations. However, Level 3's intransigent insistence that Neutral Tandem pay it reciprocal compensation for delivering tandem transit traffic from third party carriers, instead of seeking such compensation from the originating carriers as required under state and federal law, has made it impossible to settle this dispute.

**5. Any other Matter the Company Believes Relevant to Determining Whether the Dispute is One Suited for an Expedited Proceeding**

Level 3 may contend that Neutral Tandem's Petition is premature because the parties did not negotiate for 60 days prior to the filing of this Petition.<sup>25</sup> If Level 3 makes that argument, the Commission should reject it out-of-hand. The 60-day negotiation requirement is designed to give new competitive local telecommunications companies 60 days from the time they receive their certifications to negotiate terms and conditions of interconnection.<sup>26</sup> Here, Neutral Tandem and Level 3 have been interconnected for years pursuant to privately negotiated contracts. Level 3 decided to terminate those contracts on less than 60 days' notice. Neutral Tandem commenced negotiations with Level 3 immediately upon learning of Level 3's termination plans, but it would be neither feasible nor appropriate to force Neutral Tandem to wait until after the contracts have been canceled before seeking relief at the Commission. Requiring Neutral Tandem to wait 60 days before bringing this Petition is particularly inappropriate in light of the significant network disruptions that could occur if Level 3 follows through on its threat to abruptly terminate the existing interconnections between the parties as of March 23, 2007.

**IV. The Commission Should Issue an Interim Order Directing Level 3 Not to Disrupt Neutral Tandem's Service While the Commission Considers this Petition.**

In addition to considering this Petition on an expedited basis, Neutral Tandem respectfully requests that this Commission issue an interim order directing Level 3 not to violate its interconnection obligations under Florida law by discontinuing its existing interconnections with Neutral Tandem while this Petition is pending. Interim relief is appropriate in this case for at least four reasons.

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<sup>25</sup> See FL. STAT. ANN. § 364.16(2) (noting that a party may petition the Commission for interconnection "[i]f the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days").

<sup>26</sup> See FL. STAT. ANN. § 364.162(1).

*First*, as discussed above, Level 3's obligation to interconnect with Neutral Tandem is clear and unambiguous; the only issue is what terms and conditions will govern that interconnection prospectively.

*Second*, termination of the parties' existing interconnections would cause substantial and irreparable harm to Neutral Tandem's business reputation and to its relationships with the carriers that utilize Neutral Tandem's tandem transiting services.<sup>27</sup> Level 3's planned disruption of service also would require those carriers to expend significant time and effort on a re-engineering of the flow of hundreds of millions of minutes of traffic off of Neutral Tandem's network in a short period of time.<sup>28</sup> The network connections that allow Neutral Tandem to deliver hundreds of millions of minutes of traffic to and from these carriers have been developed over a number of years. It is neither feasible nor appropriate to require the third party carriers that use Neutral Tandem's services to undertake the massive network re-engineering effort that would be necessary for them to stop sending traffic to Level 3 through Neutral Tandem, and instead send that traffic through incumbent LECs such as BellSouth, as of March 23, 2007.<sup>29</sup> Indeed, there is no assurance that BellSouth and the other incumbents are even able to accept all of this additional traffic on such short notice, particularly given the well-documented problems with tandem exhaust discussed above.<sup>30</sup> This undertaking would be especially inappropriate given that the work would need to be undone after the Commission establishes terms and conditions for prospective interconnection in response to this Petition.

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<sup>27</sup> Saboo Direct at 14.

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Id.* at 9-10.

<sup>30</sup> *Id.* at 10.

*Third*, and even more critically, Level 3's termination of the parties' existing interconnections could impair the ability of millions of end-user customers to complete calls.<sup>31</sup> Those end-users could find that their calls have been blocked as a result of Level 3's refusal to accept traffic transited by Neutral Tandem.<sup>32</sup> Level 3's actions could even damage the PSTN as a whole by exacerbating tandem exhaust problems, causing call blockage throughout the state.<sup>33</sup>

Indeed, Level 3 has shown in the past that it will follow-through on threats to disrupt service to other carriers' end-users. For example, in October 2005, Level 3 blocked internet users of Cogent Communications from accessing the internet for three days during a compensation dispute between the parties.<sup>34</sup> As a result of Level 3's conduct in that dispute, its President was forced to apologize to both Level 3's and Cogent's customers.<sup>35</sup>

*Fourth*, Level 3 faces no harm whatsoever from maintenance of the *status quo* pending resolution by this Commission of Neutral Tandem's Petition. Indeed, Neutral Tandem would accept the application of the final terms of interconnection established by the Commission pursuant to this Petition on a retroactive basis to March 23, 2007.

To ensure that Level 3's threatened termination of its connections with Neutral Tandem does not cause service disruptions to multiple third party carriers and to their millions of end-users throughout Florida, this Commission should order that the current interconnections between Neutral Tandem and Level 3 will remain in place while this Commission decides what the terms and conditions of the parties' interconnection will be on a prospective basis. Clearly,

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 8.

<sup>34</sup> See Jeff Smith, *Level 3, Cogent Resolve Dispute; Feud Disrupted Internet Traffic*, Rocky Mountain News, Oct. 29, 2005, at 3C (Ex. 7).

<sup>35</sup> *Id.*

far more action would be required by Level 3 to reconfigure the network connections than to maintain the current arrangements.

**CONCLUSION**

WHEREFORE, for the reasons set forth herein, Neutral Tandem, Inc. respectfully requests that the Commission provide the following relief:


(1) Order Level 3 not to discontinue existing interconnections pursuant to which Neutral Tandem currently delivers tandem transit traffic from third party carriers to Level 3 pending resolution of this Petition;

(2) Establish terms and conditions for one-way interconnection between Neutral Tandem and Level 3 to allow Neutral Tandem to continue delivering tandem transit traffic from third party carriers to Level 3; and

(3) Resolve this Petition on an expedited basis.

Respectfully submitted,

NEUTRAL TANDEM, INC.

By:   
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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 Electronic Mail to Kenneth Hoffman, Esquire, Rutledge, Ecenia, Purnell, and Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee, FL 32301 (ken@reuphlaw.com), 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  
gregg.strumberger@level3.com

Adam Teitzman, Staff Counsel  
Florida Public Service Commission,  
Office of the General Counsel  
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ateitzma@psc.state.fl.us

Beth Salak, Director/Division of Competitive Markets and Enforcement  
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By:



Beth Keating  
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beth.keating@akerman.com

EXHIBIT I



XO

## TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

The undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You (terminating carrier) may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:



Name: GARY CASE

Title: DIRECTOR - CARRIER MANAGEMENT

Date: 7/3/2007



Sprint Nextel  
KSOPHA0310-3B472  
6330 Sprint Parkway  
Overland Park, KS 66251-6102  
Voice: (913) 762-4200 Fax: (913) 762-0117  
Keith.L.kassien@sprint.com

Keith L. Kassien  
Manager -  
ICA Solutions

July 3, 2007

**Via Overnight Mail and E-mail**

Mr. Frank Cefali  
Neutral Tandem  
1 South Wacker  
Chicago, IL 60606

Re: Letter of Agency ("LOA")

Dear Mr. Cefali:

Sprint Spectrum, L.P. d/b/a Sprint PCS and Sprint Communications Company L.P., collectively referred to as "Sprint", appoint Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations of Neutral Tandem to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

Sincerely,

Keith Kassien  
Mgr. - ICA Solutions

cc: James C. Kite II



## TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

Pursuant to the Florida Service Descriptions dated December 2, 2005 and September 11, 2006, the undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

  
Name: PHILIP MILLER  
Title: EXECUTIVE DIRECTOR, BUSINESS DEVELOPMENT VOICE SERVICES  
Date: 2/3/07



Alltel Communications, Inc.  
1 Allied Drive  
Little Rock, AR 72223

## TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

The undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

A handwritten signature in black ink, appearing to read 'Charles Cleary', written over a horizontal line.

Name: Charles Cleary  
Title: Staff Manager, Interconnect  
Date: July 1<sup>st</sup>, 2007



Re: TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

The undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

A handwritten signature in cursive script, appearing to read "Craig Schanley", is written over a horizontal line.

Name: Craig Schanley  
Title: Director of Engineering  
Date: June 29, 2007



Kimberly A. Meola  
Executive Director  
National Access Management

Room 2A-126  
One AT&T Way  
Bedminster, N.J. 07921  
Phone: 732-392-2828  
Fax: 908-234-8835  
E-mail: kameola@att.com

July 5, 2007

Neutral Tandem, Inc.  
One South Wacker, Suite 200,  
Chicago, IL 60606

**RE: Master Service Agreement between Neutral Tandem, Inc. ("Neutral Tandem") and AT&T Corp. ("AT&T"), dated May 11, 2004, as amended ("Agreement").**

TO: Neutral Tandem

Pursuant to the above referenced Agreement, the specific terms of which are confidential, AT&T purchases certain services from Neutral Tandem which require Neutral Tandem to act in a capacity similar to that of an agent for AT&T solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers within the State of Florida.

This authority is limited to the establishment of technical and operational aspects necessary for the termination of the transit traffic as defined in the Agreement. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers or AT&T.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

A handwritten signature in cursive script that reads "Kimberly A. Meola".

Name: Kimberly Meola  
Title: Executive Director  
Date: 07/05/07