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August 20, 2007

Via Hand Delivery

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED-1780
07 AUG 20 PM 2:52
COMMISSION
CLERK

Re: Docket No. 070408-TP
Petition of Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for
Resolution of Interconnection Dispute with Level 3 Communications, LLC
and Request for Expedited Resolution

Dear Ms. Cole:

Enclosed for filing on behalf of Level 3 Communications, LLC, please find an original and 15 copies of Level 3 Communications, LLC's Response in Opposition to Neutral Tandem's Motion to Strike Level 3's Notice of Supplemental Filing.

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Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for assistance with this filing.

Sincerely,



Martin P. McDonnell

MPM/vp
Enclosures
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Neutral Tandem, Inc. and)	
Neutral Tandem-Florida, LLC for)	Docket No. 070408-TP
Resolution of Interconnection Dispute with)	
Level 3 Communications, LLC, and)	Filed: August 20, 2007
Request for Expedited Resolution.)	
)	

LEVEL 3 COMMUNICATIONS, LLC'S RESPONSE IN OPPOSITION TO NEUTRAL TANDEM'S MOTION TO STRIKE LEVEL 3'S NOTICE OF SUPPLEMENTAL FILING

Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel, and pursuant to Rule 28-106.204 (1), Florida Administrative Code, files this Response in Opposition to Neutral Tandem's Motion to Strike or in the Alternative, Response in Opposition to Level 3's Notice of Supplemental Filing, and states as follows:

1. On July 11, 2007, Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC (hereinafter referred to collectively as "Neutral Tandem"), filed a Petition for Resolution of Interconnection Dispute with Level 3 Communications, LLC, and Request for Expedited Resolution. On July 25, 2007, Level 3 filed a Motion to Dismiss and Response to Neutral Tandem's Petition. Thereafter, on August 3, 2007, Neutral Tandem filed a Response in Opposition to Level 3's Motion to Dismiss.

2. Neutral Tandem and Level 3 have been litigating the issue of whether Level 3 is required under state law to maintain a direct physical interconnection with Neutral Tandem for the purpose of terminating Neutral Tandem's transit traffic before numerous state commissions. On August 2 and 3, 2007, after the date on which Level 3 was required to and did file its Response to Neutral Tandem's Petition, Neutral Tandem filed motions or requests for dismissals of similar pending disputes with Level 3 with state commissions in Indiana, Massachusetts, Maryland, New Jersey, Ohio, Wisconsin and Pennsylvania. According to Neutral Tandem's

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Chief Operating Officer, these requests for dismissals were based on the fact that Neutral Tandem no longer delivers any traffic to Level 3 in each of those states via the parties' existing interconnections.

3. On August 10, 2007, Level 3 filed a Notice of Supplemental Filing attaching the above described filings of Neutral Tandem in five other states. The purpose of Level 3's Notice of Supplemental Filing was to bring Neutral Tandem's actions to the attention of the Commission. Since Neutral Tandem took these actions after the procedural due date, Level 3 had no opportunity to address these filings in its Response to Neutral Tandem's Petition.

4. On August 13, 2007, Neutral Tandem filed its Motion to Strike or in the Alternative, Response in Opposition to Level 3's Notice of Supplemental Filing. Level 3 will respond to the arguments asserted by Neutral Tandem in support of its Motion to Strike. Level 3 will not at this time provide a detailed reply to Neutral Tandem's Response other than to summarily state that Level 3 disagrees with Neutral Tandem's characterizations of Level 3's actions in other states and that Neutral Tandem, once again, has not advised the Commission of the full extent of all rulings in all other states where Level 3 and Neutral Tandem have been in litigation over Neutral Tandem's request for mandated direct interconnection.

5. Neutral Tandem first argues that Level 3's Notice of Supplemental Filing should be stricken on the grounds the Commission has previously stricken notices of supplemental authority which contain argument. The Commission should summarily reject this argument because Level 3 did not file a notice of supplemental authority. As defined in Rule 9.225, Florida Rules of Appellate Procedure, a notice of supplemental authority may be used to call a tribunal's attention to "decisions, rules, statutes, or other authorities that are significant to the issues raised and that have been discovered after the last brief served in that cause." Level 3 did

not file any sort of ruling, decision or order issued by these other state commissions. Level 3 filed pleadings filed by Neutral Tandem in these other states. As previously mentioned, Level 3 could not address these pleadings in its Response to Neutral Tandem's Petition since the pleadings were filed after Level 3 filed its Response to Neutral Tandem's Petition.

6. Neutral Tandem next argues that the pleadings filed by Neutral Tandem requesting dismissals in these other states are "irrelevant to this proceeding and are not even precedent or *authority* in the broadest sense."¹ Through this statement, Neutral Tandem admits that Level 3 has not filed any type of supplemental authority because the pleadings filed by Neutral Tandem in these other states are not precedent or any type of legal authority. They are the actions of a party, Neutral Tandem. So Neutral Tandem has impeached its earlier attempt to mischaracterize Level 3's filing as a notice of supplemental authority.

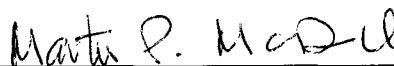
7. That leaves Neutral Tandem's allegation that the pleadings filed by Neutral Tandem in other states are irrelevant. That is a decision that will rest with the Chairman or presiding officer if Neutral Tandem's Petition is not dismissed with prejudice on jurisdictional and/or standing grounds and this matter is scheduled for a final hearing. Level 3 believes that these pleadings are relevant as they contradict the allegations in Neutral Tandem's Petition regarding the benefits that Neutral Tandem brings to competitive local service providers and the public switch network and the testimony of Neutral Tandem witnesses Saboo and Wren. In Neutral Tandem's Motion to Strike and Alternative Response, Neutral Tandem conceded that it has decided to redirect traffic off of its network in these other states because the amount of traffic at issue does not, in Neutral Tandem's judgment, justify the cost of litigation. While Neutral Tandem is certainly entitled to make these commercial business decisions, Neutral Tandem's

¹ Neutral Tandem's Motion to Strike, at paragraph 2.

concession lends further support to Level 3's consistent position that the Level 3/Neutral Tandem arrangements are commercial arrangements and business decisions that have not been and are not subject to state commission arbitration and oversight.

WHEREFORE, for the foregoing reasons, Level 3 respectfully requests that the Commission deny Neutral Tandem's Motion to Strike Level 3's Notice of Supplemental Filing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

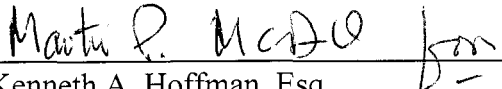
I HEREBY CERTIFY that a copy of the foregoing was furnished by Electronic Mail and U. S. Mail on August 20, 2007 to the following:

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