

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for interconnection with Level 3
Communications and request for expedited
resolution, by Neutral Tandem, Inc.

DOCKET NO. 070127-TX
ORDER NO. PSC-07-0392-PCO-TX
ISSUED: May 3, 2007

FIRST ORDER ON PROCEDURE

I. Case Background

On February 26, 2007, Neutral Tandem, Inc. (Neutral Tandem) filed its Petition for Interconnection with Level 3 Communications (Level 3) and Request for Expedited Resolution and/or Interim Relief. Neutral Tandem requests that this Commission: (1) establish interconnection terms and conditions for the continued delivery by Neutral Tandem of tandem transit traffic to Level 3 and its subsidiaries; (2) resolve its 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 its Petition is pending. In its Petition, Neutral Tandem asserts that Level 3 plans to terminate the parties' agreements as of March 23, 2007. Level 3 has subsequently extended the termination date to June 25, 2007.

By Order No. PSC-07-0295-PCO-TX, issued April 6, 2007, Neutral Tandem's Request for Expedited Resolution and/or Interim Relief was denied. On April 18, 2007, an issue identification meeting was held. During the meeting, the parties and our staff discussed several procedural proposals for the Commission's handling of this case. At the conclusion of the meeting, parties tentatively agreed that the legal and policy issues could be handled in a manner consistent with the framework set forth in Section 120.57(2), Florida Statutes.

Subsequently, in a letter addressed to our staff counsel on April 19, 2007, Level 3 stated that upon further consideration Level 3 could not agree to address the policy issues pursuant to the framework set forth in Section 120.57(2), Florida Statutes. Level 3 stated the policy issues must be addressed through evidence, including fact and policy witnesses. Level 3 did propose that the legal issues could be addressed through a briefing and oral argument process prior to the taking of testimony and evidence on any remaining policy and factual issues.

On April 20, 2007, Neutral Tandem filed a letter in response to Level 3's proposal. Neutral Tandem stated it was disappointed with the position Level 3 took in its April 19th letter and objected to Level 3's proposal to postpone review of the policy issue until the Commission could receive evidence and testimony addressing the matter. Neutral Tandem requested the Commission proceed with the proposal set forth at the issue identification meeting or proceed with an expedited process to address all issues before the June 25, 2007 termination date.

DOCUMENT NUMBER-DATE

03753 MAY-3 07

FPSC-COMMISSION CLERK

II. Decision

Upon consideration of the parties' procedural proposals and the proposed issues, I find it appropriate to require the filing of briefs on the legal issues (1-3a), as set forth in Attachment A of this Order. Denying Level 3 an opportunity to fully present its case on the policy issues (3b-4), through testimony and evidence may result in a denial of Level 3's due process rights.

Accordingly, each party shall file briefs no longer than 25 pages, excluding attachments, addressing Issues 1-3a as set forth in Attachment A. The briefs shall be due on May 17, 2007. Additionally, the parties shall have twenty (20) minutes per side to present their arguments before the Commission on May 24, 2007.

If the Commission finds it does have authority to address Neutral Tandem's Petition and this case should proceed, an Order setting forth a hearing procedure shall be issued to address the remaining issues. Furthermore, it may be necessary at that time to revisit whether an Order requiring Level 3 not to disconnect the parties' existing interconnections is appropriate pending the Commission's final resolution of the factual and policy issues.


It is, therefore

ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that each party shall file briefs no longer than 25 pages, excluding attachments, addressing Issues 1-3a as set forth in Attachment A. It is further

ORDERED that briefs shall be due on May 17, 2007. It is further

ORDERED that the parties shall have twenty (20) minutes per side to present their arguments before the Commission on May 24, 2007.

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 3rd day of May, 2007.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

AJT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

PROPOSED ISSUES LIST

1. Does the Commission have jurisdiction over Neutral Tandem's Petition? If so, what is the source of the Commission's authority?
2. If the Commission has jurisdiction over Neutral Tandem's Petition, does Neutral Tandem have standing to seek relief under Sections 364.16 and 364.162, Florida Statutes?
3. If the Commission has jurisdiction over Neutral Tandem's Petition and determines that Neutral Tandem has standing to bring its Petition:
 - a. Can the Commission require direct interconnection between Level 3 and Neutral Tandem, for the purpose of terminating transit traffic from originating carriers, delivered by Neutral Tandem to Level 3?
 - b. Should the Commission require direct interconnection between Level 3 and Neutral Tandem, for the purpose of terminating transit traffic from originating carriers, delivered by Neutral Tandem to Level 3?
4. If the Commission requires direct interconnection between Level 3 and Neutral Tandem, for the purpose of terminating transit traffic from originating carriers, delivered by Neutral Tandem to Level 3:
 - a. What should be the duration of the interconnection arrangement?
 - b. Should the "calling party pays" principle apply to transit traffic delivered by Neutral Tandem from originating carriers to Level 3?
 - c. What are the appropriate rates (if any), terms, and conditions for the termination by Level 3 of Neutral Tandem's transit traffic?