

ORIGINAL

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: 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)

Docket No. 070408-TP
Filed: July 11, 2007

Pre-Filed Direct Testimony
of Rian Wren
On Behalf of
Neutral Tandem, Inc.
and Neutral Tandem-Florida, LLC .

July 11, 2007

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 DIRECT TESTIMONY OF

3 RIAN WREN

4 ON BEHALF OF

5 NEUTRAL TANDEM, INC. AND

6 NEUTRAL TANDEM-FLORIDA, LLC

7 DATE OF FILING: July 11, 2007

8
9 **Q. MR. WREN, PLEASE STATE YOUR NAME, EMPLOYER, AND TITLE.**

10 **A.** My name is Rian Wren. I am employed by Neutral Tandem, Inc. ("Neutral Tandem") as
11 President and Chief Executive Officer.

12
13 **Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL**
14 **EXPERIENCE.**

15 **A.** I hold a B.S. degree in Electrical Engineering from the New Jersey Institute of
16 Technology and an M.S. from Stanford University. I have over 29 years of executive
17 management experience in the telecommunications industry. Prior to joining Neutral
18 Tandem in February 2006, I was the Senior Vice President and General Manager of
19 Telephony for Comcast Cable, where I was responsible for the overall delivery of
20 telephony services for the country's leading cable and broadband communications
21 providers. I also have served in the following positions: CEO of Broadnet, Comcast's
22 international wireless company; President of the business unit of Comcast Business
23 Communications; and President of the Southeast Region of AT&T.

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Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of my testimony is to: (1) explain the nature of Neutral Tandem’s services; (2) describe, from Neutral Tandem’s perspective, the current dispute between Level 3 and Neutral Tandem; (3) address Level 3’s asserted economic bases for attempting to terminate its interconnection with Neutral Tandem; and (4) explain how continued interconnection between Level 3 and Neutral Tandem is in the public interest and serves significant public policy concerns.

I. THE NATURE OF NEUTRAL TANDEM’S SERVICES

Q. PLEASE DESCRIBE THE SERVICES THAT NEUTRAL TANDEM OFFERS.

A. Neutral Tandem is the telecommunications industry’s only *independent* tandem transit-services provider. Neutral Tandem provides third party carriers with alternative means to indirectly interconnect and exchange traffic with each other, without using incumbent LEC tandem transit services.

Q. WHAT ARE “TANDEM TRANSIT SERVICES”?

A. “Tandem transit services,” also known as “transiting,” 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.

Q. TO WHOM DOES NEUTRAL TANDEM PROVIDE THESE SERVICES?

1 A. Neutral Tandem offers tandem transit services to CLECs, wireless carriers, and cable
2 companies throughout Florida, and in over 60 LATAs nationwide. Neutral Tandem's
3 tandem transiting services are available to all carriers in the state of Florida through its
4 tariff. Currently, Neutral Tandem provides tandem transit service to approximately a
5 dozen different competitive carriers in Florida.

6
7 **Q. APPROXIMATELY HOW MUCH TRAFFIC DOES NEUTRAL TANDEM**
8 **DELIVER IN FLORIDA?**

9 A. Overall, Neutral Tandem delivers almost 600 million minutes of traffic per month on
10 behalf of the carriers in Florida that utilize Neutral Tandem's tandem transit services.

11
12 **Q. OTHER THAN TANDEM TRANSITING SERVICES, DOES NEUTRAL TANDEM**
13 **OFFER ANY OTHER SERVICES IN FLORIDA?**

14 A. Neutral Tandem also provides services to three enterprise customers in Florida, such as
15 Vonage and SunRocket, to enable them conduct their businesses. Neutral Tandem utilizes
16 8 VoIP switches to deliver this traffic, utilizing 178 T1s of traffic. In addition, Level 3 is
17 connected to approximately 10 other VoIP customers in Florida. Neutral Tandem does not,
18 however, deliver terminating traffic to Level 3 on behalf of these enterprise customers.

19
20 **Q. FROM YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY,**
21 **ARE YOU FAMILIAR WITH THE WAYS IN WHICH TELECOMMUNICATION**
22 **CARRIERS CONNECT WITH OTHER CARRIERS?**

1 A. Yes. Competitive telecommunications carriers interconnect either directly or indirectly
2 through a tandem service provider with other competitive carriers. As a practical matter,
3 the number of connections needed to directly connect all of their switches grows
4 exponentially larger than the number of carrier switches. Competitive carriers can and do
5 establish direct connections between their switches, but that is the exception. So, generally,
6 competitive telecommunications carriers connect indirectly with each other via a tandem
7 service provider's switches.

8

9 **Q. PRIOR TO NEUTRAL TANDEM'S ENTRY INTO THE MARKET, HOW DID**
10 **CARRIERS ESTABLISH INDIRECT CONNECTION BETWEEN THEIR**
11 **SWITCHES?**

12 A. The only available method of indirect interconnection in virtually all local markets was the
13 tandem switch operated by incumbent LECs, such as BellSouth. Thus, for example, if a
14 cable telephone provider wished to terminate calls to a wireless carrier, it either had to
15 establish a direct connection to the wireless carrier's switch, or purchase tandem switching
16 and transport from the incumbent LECs.

17

18 **Q. ARE YOU FAMILIAR WITH THE METHOD BY WHICH CARRIERS SUCH AS**
19 **LEVEL 3 ARE COMPENSATED FOR TERMINATING LOCAL TRAFFIC?**

20 A. Yes. As a matter of industry practice and reciprocal compensation rules, the calling party's
21 network is responsible for paying the costs associated with terminating local traffic.
22 Although I am not a lawyer, I understand that the FCC and a number of states have found
23 that transiting carriers do not originate traffic for reciprocal compensation purposes, and

1 that transiting carriers need not involve themselves in the reciprocal compensation
2 arrangements between originating and terminating carriers.

3 **Q. DID NEUTRAL TANDEM'S ENTRY INTO THE MARKET IMPACT THE WAY**
4 **IN WHICH CARRIERS INTERCONNECT?**

5 A. Yes. Neutral Tandem's entry provides these carriers with a third option, in addition to
6 connecting directly or through the incumbent LECs. This additional interconnection option
7 affords carriers that choose to use Neutral Tandem's services with significant benefits.

8
9 **Q. HOW SPECIFICALLY ARE THIRD PARTY CARRIERS BENEFITED BY**
10 **NEUTRAL TANDEM'S SERVICES?**

11 A. Neutral Tandem provides significant benefits to third party carriers, including lower per
12 minute transit charges, reduced port charges and nonrecurring fees, simpler network
13 configurations, increased network reliability, improved quality of service and traffic
14 transparency. Increased traffic transparency provides better protection against the
15 terminating carrier receiving "phantom traffic." Thus, through its competitive tandem
16 switching and transit services, Neutral Tandem provides the traditional benefits of
17 competition: lower cost, increased service, unique features, and neutrality. The availability
18 of Neutral Tandem's services, especially from a competitively-neutral provider, also helps
19 level the playing field by increasing competitive carriers' leverage with ILECs. I will
20 discuss these benefits in more detail later in my testimony.

21
22 **Q. WHAT BENEFITS DOES THE PSTN RECEIVE FROM NEUTRAL TANDEM'S**
23 **ENTRY INTO THE MARKET?**

1 A. Competitive tandem switching inherently builds redundancy into the telecommunications
2 transport and switching infrastructure, which, in turn, provides diversity, efficiency, and
3 increased reliability to the PSTN. This allows for faster disaster recovery and provides
4 more robust homeland security. Neutral Tandem does not collocate its switching facilities
5 with any ILECs and utilizes ten different transport providers in Florida to provide diversity
6 and redundancy. Again, I will discuss these benefits in more detail later in my testimony.
7

8 **Q. ARE YOU AWARE OF ANY OTHER INDEPENDENT TANDEM TRANSIT**
9 **PROVIDERS IN FLORIDA?**

10 A. No. Neutral Tandem is the first alternative tandem service provider that facilitates the
11 interchange of traffic between wireless carriers, cable telephony carriers, CLECs, and VoIP
12 providers. Its first-of-its-kind network already currently connects over 630 switches owned
13 by more than 50 carriers and allows diverse tandem terminations in over 200 million
14 telephone numbers in 38 markets in the United States. Neutral Tandem has invested
15 millions of dollars developing the network infrastructure in Florida that allows Neutral
16 Tandem to provide those services.
17

18 **Q. TO THE BEST OF YOUR KNOWLEDGE, IS LEVEL 3 CURRENTLY OFFERING**
19 **TANDEM TRANSIT SERVICES?**

20 A. No. Level 3's witnesses have asserted in other states that Level 3 provides tandem
21 transiting services as that term "is defined by Neutral Tandem." However, the witnesses
22 failed to specify whether Level 3 is offering tandem transit services in Florida, whether any
23 carriers are utilizing these purported services, and, if so, whether the services being offered

1 are in fact equivalent to Neutral Tandem's independent tandem transiting services. If it is
2 indeed true that Level 3 is offering tandem transit services in Florida, Neutral Tandem
3 believes this is another reason why Commission intervention is necessary in this
4 proceeding to prevent Level 3 from undertaking actions driven by improper and unlawful
5 anti-competitive motives aimed at causing Neutral Tandem harm.

6
7 **II. THE RELATIONSHIP BETWEEN NEUTRAL TANDEM AND LEVEL 3**

8 **Q. WHAT IS THE CURRENT RELATIONSHIP BETWEEN LEVEL 3 AND**
9 **NEUTRAL TANDEM?**

10 **A.** Neutral Tandem and Level 3 have been interconnected for more than two years pursuant to
11 a series of negotiated contracts. Neutral Tandem delivers tandem transit traffic to Level 3
12 originated from other carriers, and accepts local traffic originated by Level 3 for delivery to
13 other carriers, pursuant to a contract dated July 6, 2004. Similarly, Neutral Tandem
14 delivers tandem transit traffic to Level 3's subsidiary Broadwing Communications and
15 accepts originating local traffic from Broadwing pursuant to a February 2, 2004 contract.
16 Neutral Tandem also accepts certain traffic originated by Level 3 for delivery to other
17 carriers pursuant to a contract dated August 18, 2005. Pursuant to these contracts, Neutral
18 Tandem and Level 3 are interconnected in fourteen states, including Florida. Neutral
19 Tandem currently delivers tandem transit traffic to and accepts originating transit traffic
20 from Level 3 and its subsidiary Broadwing in Florida.

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Q. APPROXIMATELY HOW MUCH TRAFFIC DOES NEUTRAL TANDEM DELIVER TO LEVEL 3 IN FLORIDA EACH MONTH?

A. The carriers utilizing Neutral Tandem's transit services in Florida direct more than 64 million minutes of traffic each month to Level 3, and its subsidiary Broadwing, through Neutral Tandem's tandem switches.

Q. UNDER THE JULY 6, 2004 CONTRACT, DID NEUTRAL TANDEM PAY LEVEL 3 OR BROADWING TO ACCEPT TRAFFIC FOR TERMINATION?

A. Neutral Tandem's contract with Broadwing did not provide that Neutral Tandem would make any payments to Broadwing for terminating traffic, and Neutral Tandem does not make any payment to any other carrier for terminating traffic. Neutral Tandem did agree to provide Level 3 with a transitional promotional credit on an interim basis. However, that privately-negotiated arrangement was agreed to by Neutral Tandem in consideration of establishing a two-way business relationship with Level 3, under which it was contemplated that Level 3 would begin to originate traffic to Neutral Tandem for transit services. The promotional credit was designed to phase down to zero as Level 3's usage of Neutral Tandem's transit service increased. When Neutral Tandem initially interconnected with Level 3, Level 3 lacked the technical ability to segregate and route local traffic, therefore it was unable to originate transit traffic to Neutral Tandem.

1 **Q. HAVE NEUTRAL TANDEM'S CONTRACTS WITH LEVEL 3 EVER BEEN**
2 **AMENDED?**

3 **A.** Neutral Tandem and Level 3 entered into an amendment of the August 2005 Contract on
4 January 31, 2007, in order to provide Level 3 with more advantageous pricing for the
5 traffic Level 3 originated through Neutral Tandem. This was a continued attempt to
6 encourage Level 3 to utilize Neutral Tandem's services.

7
8 **Q. AT ANY TIME, DID LEVEL 3 TERMINATE EITHER OF ITS EXISTING**
9 **CONTRACTS WITH NEUTRAL TANDEM?**

10 **A.** Within hours of signing the January 2007 Amendment, Level 3 sent a fax to Neutral
11 Tandem stating its intention to terminate the July 2004 contract effective March 2, 2007.
12 This effectively was an attempt to cut off Neutral Tandem's ability to terminate traffic to
13 Level 3 from the other third party carriers (competitors of Level 3) using Neutral Tandem's
14 services in Florida.

15
16 **Q. DID LEVEL 3 EXPLAIN WHY IT WAS TERMINATING THE JULY 2004**
17 **AGREEMENT?**

18 **A.** No. Level 3's fax was sent by the same Level 3 executive who just hours earlier had
19 signed the January 2007 Amendment, yet the fax offered no explanation for Level 3's
20 decision to terminate the July 2004 Agreement on the same date that the parties had
21 extended their other contract.

22

23

1 **Q. HAS LEVEL 3 TERMINATED THE FEBRUARY 2004 CONTRACT?**

2 **A.** On February 14, 2007, Level 3 notified Neutral Tandem that it intended to terminate the
3 February 2004 Broadwing Contract in addition to the July 2004 Contract. The February 14
4 letter stated that Level 3 would terminate both contracts effective March 23, 2007.

5
6 **Q. HAS LEVEL 3 NOTIFIED NEUTRAL TANDEM OF ITS INTENTION TO**
7 **TERMINATE THE PARTIES' AUGUST 2005 CONTRACT?**

8 **A.** No. Level 3 has not sought to terminate its August 2005 Contract, which was amended on
9 January 31, 2007, under which Level 3 takes advantage of Neutral Tandem's service for
10 delivering its originating traffic to other carriers. Thus, even though Level 3 plans to
11 continue to receive the benefit of competitive service (including lower rates) for traffic that
12 it originates and delivers to third party carriers through Neutral Tandem, Level 3 has stated
13 its intention to begin refusing to accept tandem transit traffic Neutral Tandem delivers to
14 Level 3 on behalf of other third party carriers.

15
16 **Q. HOW DID NEUTRAL TANDEM RESPOND TO THE NOTICES OF**
17 **TERMINATION?**

18 **A.** Neutral Tandem has attempted to negotiate with Level 3 to maintain the current
19 interconnection. When those efforts failed, Neutral Tandem provided Level 3 with a formal
20 request for interconnection.

21
22

1 **Q. WHAT EFFORTS DID NEUTRAL TANDEM TAKE TO RESOLVE THE DISPUTE**
2 **WITH LEVEL 3 INFORMALLY?**

3 **A.** Neutral Tandem has met with representatives from Level 3 on multiple occasions in an
4 attempt to resolve these disputes. Several senior executives from Neutral Tandem traveled
5 to Level 3's Colorado headquarters for an in-person meeting on February 16, 2007.
6 Neutral Tandem also has had multiple telephone and e-mail exchanges with Level 3 to try
7 to negotiate mutually agreeable interconnection terms. On February 18, 2007, Neutral
8 Tandem responded to Level 3's letters. Neutral Tandem reiterated its desire to work with
9 Level 3 to arrive at mutually acceptable terms and conditions for interconnection.
10 However, the parties have been unable to reach an agreement primarily because Level 3
11 wanted to use Neutral Tandem as a bill collector or billing clearinghouse for reciprocal
12 compensation fees from the third party originating carriers. Neutral Tandem also reminded
13 Level 3 that it was obligated to interconnect with Neutral Tandem in order to receive traffic
14 originated by other carriers, pursuant to applicable state law. Neutral Tandem notified
15 Level 3 that any refusal by Level 3 to interconnect with Neutral Tandem would violate
16 these interconnection obligations. However, the parties have been unable to reach an
17 agreement.

18
19 **Q. HOW DID LEVEL 3 RESPOND?**

20 **A.** On February 22, 2007, Level 3 responded to Neutral Tandem's request for interconnection
21 under state law. Level 3 denied that it was required under state law to interconnect with
22 Neutral Tandem for the purpose of receiving traffic Neutral Tandem transited from other
23 carriers' networks. Level 3 also reiterated its threat to effectuate the termination of the

1 parties' existing interconnections as of March 23, 2007. Specifically, Level 3 stated that its
2 termination of the parties' current interconnections could "materially impact the flow of
3 traffic for [Neutral Tandem's] customers" and that there could be "interruption of service
4 associated with the termination of the agreements." After Neutral Tandem filed petitions in
5 several other states, Level 3 unilaterally extended the threatened termination date to June
6 25, 2007.

7
8 **Q. FROM NEUTRAL TANDEM'S PERSPECTIVE, ARE THERE ANY SIGNIFICANT**
9 **IMPEDIMENTS WHICH STAND IN THE WAY OF THE PARTIES RESOLVING**
10 **THIS DISPUTE?**

11 **A.** Yes. From Neutral Tandem's perspective, the most significant impediment standing in the
12 way of the parties resolving this dispute has been Level 3's continued insistence that
13 Neutral Tandem pay Level 3 "reciprocal compensation" when Neutral Tandem delivers to
14 Level 3 tandem transit traffic from third-party carriers. Level 3 demands "reciprocal
15 compensation" from Neutral Tandem even though the traffic Neutral Tandem delivers to
16 Level 3 is originated by end-users of the third-party carriers. In its Verified Answer filed in
17 response to a nearly identical complaint Neutral Tandem filed in California, Level 3 stated
18 that it "admits that in negotiations for a new contract, . . . it requested 'reciprocal
19 compensation' from Neutral Tandem." Even worse, Level 3 appears to be seeking double
20 recovery in certain circumstances, because it has admitted in discovery responses in other
21 states that its subsidiary Broadwing already recovers reciprocal compensation payments
22 from certain originating carriers.

1 **Q. HAS LEVEL 3 PROVIDED ANY EXPLANATION FOR ITS FAILURE TO SEEK**
2 **COMPENSATION FROM ORIGINATING CARRIERS?**

3 **A.** Level 3 has been conspicuously silent on this issue. Notably, however, Sarah Baack, Level
4 3's Senior Vice President in the Wholesale Markets Group, has admitted in testimony in
5 other states that Level 3 apparently has made no effort to approach originating carriers to
6 obtain payment when Level 3 terminates this originating traffic. When asked to explain,
7 Ms. Baack has offered the opinion that, in Level 3's view, it is "hard" to obtain
8 compensation from originating carriers. Ms. Baack also has acknowledged that Level 3's
9 subsidiary Broadwing has approached other carriers and does receive such compensation.
10 Moreover, in testimony provided on May 3, before the Georgia Public Service
11 Commission, Timothy Gates, another Level 3 witness, testified, in essence, that Level 3 has
12 not sought to collect compensation from originating carriers because doing so "was not
13 worth its time."

14
15 **Q. IS NEUTRAL TANDEM AWARE OF WHETHER LEVEL 3 RECEIVES**
16 **"RECIPROCAL COMPENSATION" FROM INCUMBENT LECS WHEN THE**
17 **INCUMBENT LEC ACTS AS A TRANSITING CARRIER AND DELIVERS**
18 **THIRD PARTY CARRIERS' TRAFFIC TO LEVEL 3'S NETWORK?**

19 **A.** Level 3 has repeatedly testified that it does not receive compensation from any ILECs
20 when the ILEC terminates transit traffic to Level 3. In addition, based upon Neutral
21 Tandem's review of Level 3's interconnection agreement with incumbent LEC BellSouth,
22 Level 3 does not receive "reciprocal compensation" from BellSouth when BellSouth acts as
23 a transiting carrier and delivers third party carriers' traffic to Level 3's network. Section

1 7.6.2 of the interconnection agreement states that BellSouth “will not be liable for any
2 compensation to the terminating carrier or Level 3” when BellSouth delivers tandem
3 traffic.

4
5 **Q. DOES NEUTRAL TANDEM BELIEVE THAT PAYING LEVEL 3 “RECIPROCAL
6 COMPENSATION” IN THIS CIRCUMSTANCE IS APPROPRIATE?**

7 **A.** No. Under its current contracts with Level 3, Neutral Tandem passes to Level 3 the
8 signaling information that Neutral Tandem receives from the originating carriers, just as the
9 incumbent LECs do when terminating transit traffic to Level 3, so that Level 3 can bill the
10 originating carriers appropriate termination charges. Neutral Tandem has made clear to
11 Level 3 that it is willing to continue providing such information to Level 3, so that Level 3
12 can seek appropriate compensation from the originating carrier. Again, when the
13 incumbent LECs act as a transiting carrier, like Neutral Tandem, the ILECs do not make
14 any such payments to Level 3.

15
16 **Q. IN OTHER PROCEEDINGS, LEVEL 3’S WITNESSES HAVE ASSERTED THAT
17 “NEUTRAL TANDEM MUST FAIRLY COMPENSATE LEVEL 3 FOR
18 PROVIDING TERMINATION SERVICES THAT SUPPORT NEUTRAL
19 TANDEM’S TRANSIT SERVICES.”. HOW DO YOU RESPOND?**

20 **A.** Level 3’s request to receive reciprocal compensation from Neutral Tandem for terminating
21 transit traffic delivered to Level 3 by Neutral Tandem is decidedly unreasonable and
22 discriminatory. As noted above, Level 3 does not receive compensation from the ILECs
23 for terminating the same transit traffic when the ILEC delivers transit traffic to Level 3’s

1 network. Moreover, under existing FCC policy, originating carriers are responsible for
2 costs associated with traffic that terminates to Level 3. Level 3's witnesses, however, fail
3 to explain why Level 3 does not take advantage of its rights under existing law and FCC
4 precedent and attempt to receive reciprocal compensation from these carriers.

5
6 **Q. IS NEUTRAL TANDEM ATTEMPTING TO FORCE LEVEL 3 TO CONTINUE TO**
7 **COMPLY WITH THE TERMS OF THE PARTIES' PRIOR CONTRACTS?**

8 **A.** No. In testimony in other states, Ms. Baack has alleged that "by virtue of a commercial
9 relationship, Level 3 is now required to interconnect with Neutral Tandem on whatever
10 terms Neutral Tandem dictates." In actuality, Neutral Tandem does not seek to require
11 Level 3 to become a customer of Neutral Tandem, to originate any traffic through Neutral
12 Tandem, or to make any payments of any kind to Neutral Tandem. Neutral Tandem only
13 seeks to require Level 3 to abide by its basic interconnection and nondiscrimination
14 obligations under Florida law, by *receiving* traffic that other originating carriers have
15 chosen to route to Level 3 through Neutral Tandem at nondiscriminatory terms and
16 conditions.

17
18 **Q. DOES NEUTRAL TANDEM TRANSIT SUFFICIENT TRAFFIC TO LEVEL 3 TO**
19 **SUPPORT A DIRECT CONNECTION BETWEEN THE CARRIERS?**

20 **A.** Yes. Neutral Tandem delivers approximately 65 million minutes of traffic to Level 3, and
21 its subsidiary Broadwing, per month in Florida. Neutral Tandem utilizes over 230 T1s to
22 deliver this traffic.

1 **Q. IS NEUTRAL TANDEM ASKING TO RECEIVE SPECIAL OR PREFERRED**
2 **TERMS IN THIS ACTION?**

3 **A.** No. Neutral Tandem is merely asking for third party carrier traffic to be delivered by
4 Neutral Tandem under reasonable and nondiscriminatory terms, which is to say the terms
5 under which Level 3 receives transit traffic from the incumbent LECs. These terms are
6 consistent with the originating-carrier-pays principle set forth by the FCC. In fact, it is
7 Level 3 that is seeking preferential treatment in this proceeding, by seeking to dictate how
8 originating carriers -- the carriers that bear the costs associated with the delivery of their
9 traffic -- traffic should be routed. There is no precedent of which I am aware to support
10 Level 3's claimed right to dictate how other carriers deliver their originating traffic.

11
12 **Q. BOTH MR. GATES AND MS. BAACK NOTED IN THEIR TESTIMONY IN**
13 **OTHER STATES THAT THE PARTIES' PRIOR CONTRACT INCLUDED SOME**
14 **PAYMENT ARRANGEMENTS WHEN NEUTRAL TANDEM DELIVERED**
15 **TRAFFIC TO LEVEL 3. HOW DO YOU RESPOND?**

16 **A.** As noted above, one of the two original contracts between Neutral Tandem and Level 3 did
17 provide for a promotional, *interim* credit, which Neutral Tandem agreed to make only on a
18 temporary basis, in order to establish a two-way commercial relationship with Level 3, and
19 this transitional credit was to phase down to zero. Notably, once this credit began to phase
20 down to zero, because Level 3 began originating more traffic through Neutral Tandem,
21 Level 3 canceled the contract. Neutral Tandem's contract with Broadwing, Level 3's
22 subsidiary, as well its contracts with all the other Florida carriers, do not contain any
23 similar provision regarding terminating traffic.

1 **III. LEVEL 3'S ASSERTED ECONOMIC BASES FOR DISCONNECTING ITS**
2 **INTERCONNECTION FACILITIES FROM NEUTRAL TANDEM.**

3 **Q. CAN YOU THINK OF ANY LEGITIMATE REASON WHY LEVEL 3 WOULD BE**
4 **SEEKING TO TERMINATE ITS INTERCONNECTION ARRANGEMENTS**
5 **WITH NEUTRAL TANDEM?**

6 **A.** I can think of no proper, legitimate reason for the positions Level 3 has taken in connection
7 with its threats to terminate interconnection facilities with Neutral Tandem. Level 3's
8 positions are contrary to its own stated public policies, and to the interests of the
9 competitive marketplace and the consumer, including Level 3's own customers. Indeed, an
10 argument can be made that Level 3's own long-term economic interests are disserved by a
11 system in which the ILEC is the only transit provider.

12
13 **Q. WHY ARE LEVEL 3'S POSITIONS CONTRARY TO THE INTERESTS OF THE**
14 **COMPETITIVE MARKETPLACE AND TO LEVEL 3'S OWN CUSTOMERS?**

15 **A.** To begin with, Neutral Tandem pays 100% of the cost of transport facilities between
16 Neutral Tandem and Level 3 used for terminating transit traffic to Level 3's network on
17 behalf of third party carriers. Incumbent LECs, on the other hand, require Level 3 to share
18 in the cost of the transport facilities between the incumbent LEC (BellSouth) and Level 3
19 used for terminating transit traffic to Level 3. Second, there are no additional minutes of
20 traffic terminated to Level 3 through Neutral Tandem that would not have otherwise
21 occurred through connectivity with the incumbent LEC. Moreover, there is no incremental
22 cost to Level 3 for receiving this same amount of traffic from Neutral Tandem versus from
23 the incumbent LEC. Further, Level 3 also secures increased redundancy through its

1 connection with Neutral Tandem and better visibility as to who is terminating traffic to
2 Level 3.

3
4 **Q. DOES LEVEL 3 INCUR INCREMENTAL COST FOR ITS INTERCONNECTION**
5 **WITH NEUTRAL TANDEM?**

6 **A.** No. Level 3 does not incur expenses as a result of receiving terminating transit traffic from
7 Neutral Tandem that Level 3 would not incur if it received the same transit traffic from the
8 ILECs. Regardless of whether the originating carriers utilize the tandems of Neutral
9 Tandem or the ILEC tandem, the same amount of traffic will be placed to Level 3's
10 customers, and Level 3 will have to maintain the necessary connections to receive this
11 traffic. For each trunk the ILEC must add to carry transit traffic to Level 3, the ILECs will
12 require Level 3 to bear some of the costs to establish that trunk. As a result, Level 3 will
13 have to establish at least the same number of connections as with the ILEC as it needs with
14 Neutral Tandem. In both instances, the same resources, maintenance, and utilization of
15 Level 3's network will be necessary.

16
17 **Q. WILL LEVEL 3 FOREGO ANY REVENUE OPPORTUNITIES BY**
18 **MAINTAINING ITS INTERCONNECTION FACILITIES WITH NEUTRAL**
19 **TANDEM?**

20 **A.** No. Under its contracts with Level 3, Neutral Tandem passes to Level 3 the signaling
21 information that Neutral Tandem receives from the originating carrier on request, so that
22 Level 3 can bill the originating carrier termination charges. Neutral Tandem has informed
23 Level 3 that it is willing to continue providing such information to Level 3, so that Level 3

1 can seek appropriate compensation from the originating carriers. Moreover, as discussed
2 above, Level 3 does not receive “reciprocal compensation” from any incumbent LECs
3 when the ILECS act as transiting carrier. Thus, Level 3 has the same opportunity to seek
4 compensation from the originating carrier, regardless whether an incumbent LEC or
5 Neutral Tandem delivers the traffic.

6
7 **Q. DO YOU BELIEVE THAT LEVEL 3’S POSITIONS IN THIS DISPUTE ARE**
8 **CONSISTENT WITH ITS OWN STATED PUBLIC POLICIES?**

9 **A.** No. Level 3 has, on more than one occasion, made public statements that are contrary to
10 the arguments and positions that Level 3 is pursuing before the Commission. For example,
11 in the Reply Comments of the Supporters of the Missoula Plan On Their Phantom Traffic
12 Proposal, which was signed by Level 3’s Vice President for Public Policy, William Hunt,
13 and filed with the FCC in January 2007, Level 3 argued that its proposal “reflects the more
14 reasoned approach of establishing rules, which are enforceable pursuant to established
15 [FCC] enforcement procedures, affirming that the terminating compensation is paid by
16 originating carriers to terminating carriers and requiring transit providers to pass through
17 call detail information they receive to terminating carriers.” In the Reply Comments of the
18 Missoula Plan supporters, which included Level 3, filed with the FCC in February 2007,
19 Level 3 stated that “it is always the option of the carrier with the financial duty for transport
20 [*i.e.*, the originating carrier] to choose how to transport its traffic to the terminating
21 carrier’s [network]; direct interconnection to the [network] via its own facilities, use of the
22 terminating carrier’s facilities, or via the facilities of a third party.” And in a letter Level 3
23 submitted in February 2007 to the FCC in support of Time Warner Cable’s request for a

1 declaratory ruling that CLECs may obtain interconnection under Section 251 of the 1834
2 Communications Act, Level 3 argued in favor of broad interconnection rights for wholesale
3 telecommunications carriers. Each of these public assertions by Level 3 is incompatible
4 with positions Level 3 is taking in this matter.

5
6 **Q. WHAT DOES NEUTRAL TANDEM BELIEVE MAY BE MOTIVATING LEVEL**
7 **3'S THREATS TO TERMINATE ITS INTERCONNECTION ARRANGEMENTS**
8 **WITH NEUTRAL TANDEM?**

9 **A.** Level 3's actions against Neutral Tandem may be driven by improper and unlawful motives
10 aimed at causing Neutral Tandem harm. Level 3 previously has stated its intention to begin
11 providing tandem transport services and compete with Neutral Tandem in that market. On
12 January 22, 2007, Neutral Tandem announced that it had filed a registration statement with
13 the SEC relating to a proposed Initial Public Offering. In the press release announcing its
14 IPO, Neutral Tandem said that it anticipated using the net proceeds from the IPO to fund
15 the continued expansion of its business. Within a few days of Neutral Tandem's IPO
16 announcement, Level 3 contacted Neutral Tandem and explained that the parties needed to
17 amend their August 2005 Contract – the agreement by which Neutral Tandem accepts
18 traffic *originated* by Level 3 for delivery to other carriers – and that the amendment had to
19 occur very quickly. Neutral Tandem and Level 3 entered into an amendment of the August
20 2005 Contract on January 31, 2007, in order to provide Level 3 with more advantageous
21 pricing for the traffic Level 3 originated through Neutral Tandem. On that same day, only
22 a few hours after Level 3 obtained more advantageous pricing for the traffic Level 3
23 originated with Neutral Tandem, Level 3 sent Neutral Tandem notice of Level 3's intent to

1 terminate certain of the parties' agreements effective March 2, 2007. Level 3's termination
2 of those contracts took place less than 10 days later after Neutral Tandem announced its
3 IPO. Against the backdrop of: (a) Level 3's stated intention to compete with Neutral
4 Tandem for tandem transport services, (b) Neutral Tandem's IPO announcement, and (c)
5 the suspicious timing of Level 3's contract termination notice, Neutral Tandem believes
6 that Level 3's motivation for threatening to terminate interconnection with Neutral Tandem
7 is to cause Neutral Tandem harm. Level 3 wants to compete with a smaller, less-funded
8 Neutral Tandem. Level 3 may have believed it could accomplish that goal by impacting
9 Neutral Tandem's IPO.

10
11 **Q. WHY ARE LEVEL 3'S IMPROPER ECONOMIC MOTIVATIONS RELEVANT**
12 **TO THE COMMISSION'S CONSIDERATION OF NEUTRAL TANDEM'S**
13 **COMPLAINT?**

14 **A.** They are relevant because of the public policy arguments Level 3 likely will advance in this
15 case. Level 3's basic argument is that the Commission has absolutely no role to play in
16 interconnection arrangements unless an incumbent LEC is involved, and that
17 interconnection arrangements not involving ILECs should be arrived at solely through
18 "commercial negotiations." Given Level 3's strident belief that commercial negotiations
19 should dictate the terms of interconnection without Commission oversight, it is relevant to
20 explore how Level 3 has chosen to approach its commercial negotiations with other
21 carriers, and it is particularly relevant to examine whether Level 3's approach to these
22 negotiations has been motivated by legitimate concerns, or instead has been driven by an
23 underlying desire to harm competitors and competition as a whole.

1 **IV. THE SUBSTANTIAL PUBLIC BENEFITS OF NEUTRAL TANDEM'S SERVICES.**

2 **Q. IF LEVEL 3 CARRIES OUT ITS THREAT TO TERMINATE ITS CURRENT**
3 **INTERCONNECTION FACILITIES WITH NEUTRAL TANDEM ON OR ABOUT**
4 **JUNE 25, 2007, HOW WILL THOSE ACTIONS IMPACT COMPETITION IN THE**
5 **STATE OF FLORIDA?**

6 **A.** The disconnection of Neutral Tandem's direct connections with Level 3 will harm the
7 development of the only viable tandem competitor in the United States: Neutral Tandem.
8 Neutral Tandem's loss in its ability to provide its unique service offering will mean that the
9 incumbent LECs will once again be the monopoly providers of tandem service in Florida.
10 This will result in higher tandem service rates among all communications service providers,
11 which will reduce competitive options to all carriers and non-carrier enterprise customers
12 as well as the ability of carriers to establish simpler network configurations.

13
14 **Q. WILL THE SERVICE DISRUPTIONS HAVE ANY OTHER IMPACT ON**
15 **COMPETITION?**

16 **A.** Disruption to Neutral Tandem's ability to operate in the market will result in higher per
17 minute transit charges, higher port charges and recurring fees. It will also lead to a loss of
18 network redundancy resulting in tandem exhaustion increased homeland security risk
19 through the loss of network redundancy, and reduced network reliability. It affects the
20 PSTN at large as a loss of a strong, viable competitor to the ILECs' tandem services. As
21 such, Neutral Tandem's VoIP and carrier customers and the PSTN also would suffer
22 substantial harm.

1 **Q. HOW WILL LEVEL 3'S ACTIONS AFFECT NEUTRAL TANDEM'S BUSINESS**
2 **OPERATIONS?**

3 **A.** Disruption of the connections already established between Level 3 and Neutral Tandem
4 will undoubtedly lead the carriers using its services to question Neutral Tandem's viability
5 in the market. Removal of termination capability to Level 3 will clearly harm other third
6 party carriers and non-carrier enterprise customers, and will undoubtedly cause the loss of
7 goodwill they have for Neutral Tandem. Customers using our transit services who have
8 their service disrupted, including the need to re-arrange facilities because of the loss of
9 terminations to Level 3, will certainly blame Neutral Tandem, not Level 3, for the
10 inconvenience and expense they suffer from having their traffic destined for Level 3
11 disrupted. These third party carriers and other customers will perceive Neutral Tandem as
12 unreliable and will undoubtedly share these opinions with other carriers and acquaintances
13 in the telecommunications industry. This will impair Neutral Tandem's ability to attract
14 new customers and retain its existing ones -- even those who were not disrupted.

15
16 **Q. IS NEUTRAL TANDEM SEEKING "FREE" TERMINATION AS ALLEGED BY**
17 **LEVEL 3?**

18 **A.** No, Level 3's assertion is false. Neutral Tandem currently pays 100% of the cost of
19 transport facilities and supporting equipment, as well as 100% of the daily costs to maintain
20 and supervise those facilities and equipment, between Neutral Tandem and Level 3 used
21 for terminating transit traffic to Level 3's network on behalf of third party carriers. As
22 such, it is disingenuous for Level 3 to argue that Neutral Tandem seeks a "free"
23 termination. Again, Neutral Tandem is not asking for preferential treatment, but is merely

1 asking for its customers' traffic to be accepted by Level 3 for termination under reasonable
2 and nondiscriminatory terms, which is to say the terms under which Level 3 is willing to
3 accept traffic switched by other providers of tandem transit services. Under the controlling
4 "calling party pays" law, Level 3 only can obtain compensation for its call completion costs
5 from the carriers that originate the traffic. Level 3's purported explanations in other states
6 for its failure to pursue this compensation from originating carriers are unpersuasive.

7
8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 **A.** Yes, it does.