

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-07-0295-PCO-TX  
ISSUED: April 6, 2007

ORDER DENYING EXPEDITED RESOLUTION AND/OR INTERIM RELIEF

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.

This Order addresses Neutral Tandem's Request for Expedited Resolution and/or Interim Relief pursuant to Section 364.058, Florida Statutes and Rule 25-22.0365, Florida Administrative Code.

II. Parties' Arguments

Each party addressed the following factors listed under Rule 25-22.0365(4)(e), F.A.C.:

*A. Number and Complexity of the Issues*

Neutral Tandem asserts that the issues presented are neither numerous nor complex. Neutral Tandem argues that the Petition involves a straightforward application of the clear interconnection requirements of Florida law.

Level 3 asserts that the issues raised in Neutral Tandem's Petition are complex and broad. Specifically, Level 3 contends that we will have to consider testimony and evidence addressing fact specific issues related to Level 3's network, Neutral Tandem's network, and the networks of affected third-party carriers; relevant contracts between and among Level 3, Neutral Tandem and the third-party carrier customers of Neutral Tandem; and the relevant facts and circumstances concerning whether Level 3's proposed terms for the delivery of Transit Termination Services are reasonable and nondiscriminatory under applicable law.

DOCUMENT NUMBER-DATE

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*B. Policy Implications*

Neutral Tandem contends that if we grant its Petition, this Commission will further the policy goals of fostering diversity, redundancy, efficiency, and increased reliability to the public switched telecommunications network.

Level 3 argues that the fundamental issue raised by Neutral Tandem's Petition is whether a competitive, alternative transit provider may compel direct interconnection and whether we can impose rates, terms, and conditions for transit service under Section 364.16(2) and 364.162, F.S. Level 3 contends that the fundamental legal issues have broad policy implications for CLECs, ILECs, and wireless carriers in the State of Florida.

*C. Discovery Topics*

Neutral Tandem states it does not anticipate conducting discovery in this matter. Neutral Tandem states further that the only issues which might generate discovery relate to the parties' dispute regarding reciprocal compensation payments.

Level 3 states it will need to conduct discovery to formulate prospective positions on the appropriate rates, terms, and conditions for delivery of Transit Termination Services to Neutral Tandem and to prepare its own testimony addressing an appropriate rate to be paid by Neutral Tandem to Level 3 for the termination of Neutral Tandem's traffic, as well as other terms and conditions for interconnection with Neutral Tandem.

*D. Informal Dispute Resolution*

Neutral Tandem states that since it first learned on January 31, 2007 of Level 3's intentions to terminate the parties' contracts, the parties have engaged in extensive negotiations.

Level 3 agrees with Neutral Tandem that the parties have engaged in negotiations.

*E. Other Relevant Matters*

Neutral Tandem asserts that Level 3 may contend that the Petition is premature because the parties did not negotiate for 60 days prior to filing. Neutral Tandem argues that it is not feasible nor appropriate to be required to wait until the contracts have been canceled before seeking relief.

Level 3 argues that we should not apply expedited dispute procedures in a docket such as this where complex factual issues have been raised; expert testimony may be required to address network issues, trunking arrangements, and other terms and conditions of traffic exchange between the parties; and where the Commission's decision will have broad precedent and policy implications across the telecommunications industry.

Decision

Upon review and consideration of the parties' arguments, I do not find it appropriate to grant Neutral Tandem's Request for Expedited Resolution and/or Interim Relief. Pertinent to my consideration is the fact that Neutral Tandem has not alleged that Level 3's threat of disconnection is in any way violative of the parties' current negotiated agreement. In fact, based upon a cursory review, it appears that Level 3 is in compliance with the termination provisions of the parties' negotiated agreement. As such, I do not find it appropriate for the Commission to interfere with the parties' negotiated arrangement by granting Neutral Tandem's Request for Expedited Relief and/or Interim Relief.

Additionally, Neutral Tandem's petition raises issues of first impression before this Commission. The impact of our decisions in these matters will go beyond the interconnection rights of Neutral Tandem and Level 3. For example, our potential consideration of CLEC-to-CLEC interconnection would undoubtedly result in decisions that impact CLECs throughout the State of Florida. Accordingly, I do not find it appropriate to address such a far-reaching policy matter on an expedited basis.

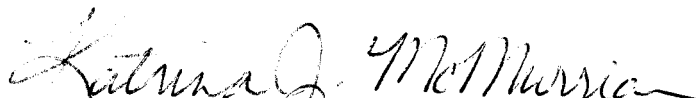
I am encouraged that the parties have engaged in comprehensive negotiations regarding this matter and expect those efforts to continue. Our staff is available to assist in those discussions as the parties deem necessary.

Finally, this decision should in no way be construed as prejudging the merits of this case or the pending Motion to Dismiss.

It is, therefore

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that Neutral Tandem, Inc.'s Request for Expedited Resolution and/or Interim Relief is denied.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 6th day of April, 2007.

  
KATRINA J. McMURRIAN  
Commissioner and Prehearing Officer

( S E A L )

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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.