

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by 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
ORDER NO. PSC-08-0079-PCO-TP
ISSUED: February 8, 2008

ORDER DENYING MOTION FOR EXPEDITED
RESPONSES AND SETTING RESPONSE TIME
TO PARTIES' DISCOVERY REQUESTS

I. Case Background

On July 11, 2007, Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC (Neutral Tandem) filed its Second Petition for Interconnection with Level 3 and Request for Expedited Resolution and/or Interim Relief (Second Petition). Docket No. 070408-TP was opened to address Neutral Tandem's Second Petition.¹ On July 25, 2007, Level 3 Communications, LLC (Level 3) filed its Response and Motion to Dismiss Neutral Tandem's Second Petition (Motion to Dismiss). On August 3, 2007, Neutral Tandem filed its Response to Level 3's Motion to Dismiss (Response). On September 21, 2007, Order No. PSC-07-0772-PCO-TP was issued allowing the parties to file supplemental briefs addressing Issues 1-3a. Each party filed a legal brief on October 5, 2007.

Following this Commission's consideration of our staff's recommendation at the January 8, 2008, Agenda Conference the Commission issued Order No. PSC-08-0073-FOF-TP on January 30, 2008, denying Level 3's Motion to Dismiss and setting the matter for hearing.

On January 28, 2008, Level 3 filed its Motion for Expedited Responses to Discovery Request (Motion for Expedited Responses), seeking to order Neutral Tandem to respond to Level 3's discovery requests within fourteen (14) days of service, specifically, on or before February 11, 2008. On February 4, 2008, Neutral Tandem filed its Response in Opposition to Level 3's Motion for Expedited Responses to Discovery Request (Response in Opposition).

¹By Order No. PSC-07-0698-FOF-TP, issued August 27, 2007, this Commission acknowledged, without prejudice, Neutral Tandem's Voluntary Dismissal of its First Petition for Interconnection with Level 3 Communications in Docket No. 070127-TX (Voluntary Dismissal Order). Pursuant to the Voluntary Dismissal Order, the hearing record from Docket No. 070127-TX was merged into Docket 070408-TP because the same issues were raised in both dockets.

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II. Arguments

Level 3's Motion for Expedited Responses

Level 3 states that at the January 8, 2008, Agenda Conference, this Commission ruled that it has subject matter jurisdiction to consider Neutral Tandem's Petition. Level 3 states that the Commission further determined that Neutral Tandem may have standing to bring its action requesting a Commission order mandating direct interconnection between Level 3 and Neutral Tandem pursuant to Sections 364.16(2) and 364.162, Florida Statutes.

Level 3 asserts that the "basis for the Commission's ruling that Neutral Tandem may have standing to bring this action was a statement by [Neutral Tandem's] counsel at the Agenda Conference that Neutral Tandem has '911 connectivity.'" Level 3 states that it now seeks to bring back the standing issue before this Commission as soon as possible. To that end, Level 3 has served limited discovery on Neutral Tandem specifically addressing its alleged connectivity concurrently with the filing of its Motion for Expedited Responses. The discovery requests comprise eleven (11) interrogatories and three (3) requests for production of documents.

Level 3 asserts that it "continues to be harmed by the procedural tactics employed by Neutral Tandem in this proceeding which have been discussed in detail in prior pleadings. Level 3 is attempting to mitigate this harm by the filing of a Motion for Interim Compensation Pending Final Agency Action." Level 3 argues that under the circumstances, and in light of the limited nature and number of the discovery requests, it is appropriate to require Neutral Tandem to respond to these discovery requests within fourteen days of service.

Neutral Tandem's Response in Opposition

Neutral Tandem asserts that any basis for this Commission's decision at the January 8, 2008, Agenda Conference is specifically set forth in its Order issued January 30, 2008. Neutral Tandem further notes that in its Order, this Commission directed our staff to "set this matter for hearing." Neutral Tandem thus argues that the "Order by its own terms does not contemplate an additional, separate proceeding regarding the issue of standing prior to conducting a full merits hearing" in this matter, and that an Issue Identification Meeting is scheduled for February 14, 2008.

Neutral Tandem argues that the only purported basis for the need for expedited response to Level 3's discovery requests served on Neutral Tandem "is Level 3's apparent interest in relitigating . . . the issue of standing" in a proceeding separate from the formal administrative hearing, and that Level 3's motion thus "ignores the terms of the Commission's January 30, Order." Finally, Neutral Tandem argues that Level 3 has stated no legitimate basis for requiring expedited responses to its discovery requests. Accordingly, Neutral Tandem requests that Level 3's Motion for Expedited Responses be denied.

III. Ruling

Upon consideration of the parties' arguments, I find it reasonable and appropriate to deny Level 3's Motion to Expedite Responses and to direct Neutral Tandem to provide responses to Level 3's discovery requests by Monday, February 18, 2008.

As noted above, an Issue Identification Meeting is scheduled for February 14, 2008. Soon thereafter, an Order Establishing Procedure will be issued. While expediting the discovery process in this matter may be advisable, it is more important to ensure that there is an orderly flow of thorough and complete information sufficient to provide this Commission with a "complete understanding of the services offered in Florida by Neutral Tandem," as was expressed in Order No. PSC-08-0073-FOF-TP. It is anticipated that obtaining that information will encompass not only the limited discovery served by Level 3 on Neutral Tandem, but also perhaps discovery requests served by Neutral Tandem on Level 3, as well as staff's discovery requests to both parties.

In its motion, Level 3 requested an order directing Neutral Tandem's responses on or before February 11, 2008. Level 3 has not adequately supported the need for such an abbreviated time frame. The Order Establishing Procedure will direct a discovery response turn-around time frame of twenty (20) days to promote the just, speedy, and inexpensive determination of all aspects of this docket. Response by Neutral Tandem to Level 3's first sets of discovery by February 18, 2008, is in keeping with that time frame.

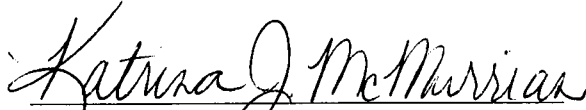
Based upon the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that Level 3 Communication, LLC's Motion to Expedite Responses is hereby denied. It is further

ORDERED that Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC shall provide responses to Level 3 Communication, LLC's first sets of discovery requests by Monday, February 18, 2008. It is further

ORDERED that all further discovery responses shall be served within twenty (20) calendar days of receipt of the discovery request.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 8th
day of February, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

HFM

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.