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February 26, 2007

Ms. Blanca S. Bayó
Director, Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32309

070127-TX

Re: Petition of Neutral Tandem, Inc. For Interconnection with Level 3 Communications and Request for Expedited Resolution

Dear Ms. Bayó:

Enclosed for filing, please find the original and 15 copies of the following:

- ✦ Neutral Tandem, Inc.'s Petition for Interconnection with Level 3 Communications and Request for Expedited Resolution, with accompanying Exhibits 1 through 7; and
- ✦ Direct Testimony of Surendra Saboo on behalf of Neutral Tandem.

Please acknowledge receipt of this filing by stamping and returning the extra copy of this letter to me. Your assistance in this matter is greatly appreciated. If you have any questions whatsoever, please do not hesitate to contact me.

Sincerely,

Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
Phone: (850) 521-8002
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ENCLOSURES

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Neutral Tandem, Inc.)
for Interconnection with Level 3)
Communications and Request for)
Expedited Resolution)
)

Docket No. 070127
Filed: February 26, 2007

PETITION OF NEUTRAL TANDEM, INC. FOR INTERCONNECTION WITH LEVEL 3 COMMUNICATIONS AND REQUEST FOR EXPEDITED RESOLUTION

Pursuant to Rule 25-22.0365, Florida Administrative Code, and FL. STAT. ANN. §§ 364.16 and 364.162, Neutral Tandem, Inc. and its subsidiaries (collectively "Neutral Tandem"), by and through its undersigned counsel, respectfully petitions this Commission to: (1) establish interconnection terms and conditions for the continued delivery by Neutral Tandem of tandem transit traffic to Level 3 Communications and its subsidiaries (collectively "Level 3");¹ (2) resolve this 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 this Petition is pending. In support of this Petition, Neutral Tandem states as follows:

INTRODUCTION

Neutral Tandem and Level 3 both are certificated competitive local exchange telecommunications companies in Florida. Florida law imposes a clear obligation on such companies to interconnect their networks upon request. For over two years, Neutral Tandem and Level 3 have been interconnected in Florida and other states pursuant to negotiated agreements. Recently, however, Level 3 informed Neutral Tandem that it was terminating the contracts that enabled Neutral Tandem to deliver tandem transit traffic to Level 3, because Level 3 did not believe the terms of those contracts were sufficiently advantageous to Level 3. To date, efforts

¹ As used in this Petition, "tandem transit" traffic 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. See Saboo Direct. at 2.

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to negotiate new agreements have been unsuccessful. Neutral Tandem therefore requests that this Commission enforce the interconnection mandates of Florida law, by establishing prospective terms and conditions under which Neutral Tandem and Level 3 will continue to interconnect for the purpose of Neutral Tandem delivering tandem transit traffic to Level 3.

Level 3 plans to terminate the parties' agreements as of March 23, 2007. Level 3 has threatened to disconnect the parties' existing interconnections as of that date. This unlawful action could lead to service disruptions for the 20 other carriers that utilize Neutral Tandem's tandem transit service in Florida, as well as disruptions for the millions of end-user customers of those 20 carriers. To prevent these service disruptions, Neutral Tandem requests that the Commission consider Neutral Tandem's Petition on an expedited basis, and that the Commission order Level 3 to maintain the parties' existing interconnections pending resolution of Neutral Tandem's Petition.

BACKGROUND

I. The Parties

Neutral Tandem is a registered competitive local exchange telecommunications company within the State of Florida. Like BellSouth and other incumbent LECs throughout Florida, Neutral Tandem provides "tandem transit" services to other telecommunications carriers.² Competitive telecommunications carriers use Neutral Tandem's tandem transit services to deliver traffic to the networks of other competitive telecommunications carriers with which they are not directly interconnected. Neutral Tandem's address and telephone number are:

Neutral Tandem, Inc.
One South Wacker

² Saboo Direct. at 3

Suite 200
Chicago, IL 60606
(312) 384-8000

Neutral Tandem's representatives to be served are:

Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
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Executive Vice President &
General Counsel
Neutral Tandem, Inc.
One South Wacker, Suite 200
Chicago, IL 60606
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On information and belief, Level 3 is a registered competitive local exchange telecommunications company providing telecommunications services within the state of Florida.

II. Jurisdiction

The Commission has authority to grant the requested relief in this Petition pursuant to FL. STAT. ANN. §§ 364.16(2) and 364.162(2). Specifically, Section 364.16(2) provides that: "Each competitive local telecommunications company shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions."

Section 364.16(2) further provides that, if "the parties are unable to negotiate mutually acceptable prices, terms and conditions after 60 days, either party may petition the commission, and the commission shall have 120 days to make a determination after proceeding as required by s. 364.162(2) pertaining to interconnection services." In turn, Section 364.162(2) provides that the Commission shall, within 120 days after receiving a petition, "set nondiscriminatory rates, terms, and conditions" for interconnection.

Further, this Commission has the authority to consider Neutral Tandem's request for expedited resolution pursuant to Rule 25-22.0365, Florida Administrative Code, which provides an expedited process for resolution of disputes between telecommunications companies. Rule 25-22.0365 sets forth a series of factors the Commission considers in determining whether to address a dispute on an expedited basis. As discussed below, each of these factors supports this Commission's consideration of Neutral Tandem's Petition on an expedited basis.

Finally, this Commission has authority to issue an interim order requiring Level 3 not to violate its interconnection obligations under Florida law, and not to cause disruption to other carriers and their end-users throughout Florida, by discontinuing its existing interconnections with Neutral Tandem while this Petition is pending. This Commission has such authority pursuant to its authority to prevent anticompetitive behavior between providers. It should exercise that authority in order to protect the welfare of the third party carriers that use Neutral Tandem's services, as well as those carriers' end-user customers, by ordering Level 3 not to terminate its existing interconnection arrangements with Neutral Tandem. *See* Section 364.01(4), Florida Statutes.

III. The Nature of Neutral Tandem's Service

Incumbent LECs no longer are the sole providers of telecommunications services to end-users. Rather, CLECs, wireless carriers, and cable companies all provide these services as well. In an era of multiple telecommunications providers, customers of one non-incumbent LEC carrier, such as a cable telephone provider, inevitably call customers of another non-ILEC, such as a wireless carrier. These companies must be able to route such calls to each other's networks, even though they may not be directly interconnected with each other. Traditionally, the only way for these companies to obtain this service (known as "tandem transit" service) was to utilize

the incumbent LECs' tandem switch services. In Florida, BellSouth and other incumbent LECs are the principal providers of such transit services to competitive carriers.

Neutral Tandem is the telecommunications industry's only *independent* provider of tandem transit services. Neutral Tandem offers tandem transit services to CLECs, wireless carriers, and cable companies throughout Florida, and in over 60 LATAs nationwide. Neutral Tandem provides these carriers with alternative means to interconnect and exchange local traffic with each other, without using incumbent LEC tandem transit services. Neutral Tandem provides service to and/or has direct connections with nearly every major CLEC, wireless carrier, and cable provider in the United States. In Florida, Neutral Tandem provides tandem transit service to 20 different competitive carriers, and delivers tandem transit traffic from those carriers to Level 3, in the Miami, Tampa, and Orlando markets.³

Through its competitive tandem transit services, Neutral Tandem provides carriers with lower per-minute transit charges, reduced port charges and nonrecurring fees, simpler network configurations, increased network reliability, improved quality of service, and traffic transparency. The availability of Neutral Tandem's tandem transit services helps level the playing field by increasing competitive carriers' leverage with incumbent LECs. Competitive tandem transit service also inherently builds redundancy into the telecommunications sector and infrastructure, which allows for faster disaster recovery and provides more robust homeland security. Neutral Tandem's competitive tandem transit services also strengthen the redundancy and survivability of the public switched telephone network ("PSTN").

Apart from the public benefits associated with competition in the tandem transit business, Neutral Tandem provides significant benefits to competitive carriers that utilize Neutral

³ Saboo Direct. at 3, 5.

Tandem's tandem transit service. These benefits include Neutral Tandem's willingness to pay for and manage -- through the use of diverse transport suppliers -- all of the transport connecting Neutral Tandem to the competitive carrier. Neutral Tandem uses 13 different transport providers in Florida.

IV. The Parties' Interconnection Dispute

Neutral Tandem and Level 3 have been interconnected for over two years pursuant to a series of negotiated contracts. Specifically, Neutral Tandem delivers tandem transit traffic to Level 3 that has been originated by third party carriers, and accepts certain traffic originated by Level 3 for delivery to third party carriers, pursuant to a contract dated July 6, 2004 (the "Level 3 Contract"). Similarly, Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3's subsidiary Broadwing Communications, and accepts tandem transit traffic from Broadwing for transiting to third party carriers, pursuant to a February 2, 2004 contract (the "Broadwing Contract").

Neutral Tandem also accepts certain traffic originated by Level 3 for transiting to other carriers pursuant to a contract dated August 18, 2005 (the "Originating Contract"). Under these three contracts, Neutral Tandem and Level 3 currently are interconnected in fourteen states, including Florida.

The parties' various contracts renewed automatically on several occasions without incident. Indeed, Neutral Tandem and Level 3 entered into an amendment of the Originating Contract on January 31, 2007 (the "Originating Amendment"). The Originating Amendment provided Level 3 with more advantageous pricing for traffic Level 3 originates to Neutral Tandem for transiting to other carriers. This was done to make Neutral Tandem's services more attractive to Level 3, in order to increase use of Neutral Tandem's services by Level 3.

Within hours of signing the Originating Amendment, Level 3 sent a fax to Neutral Tandem stating its intention to terminate the Level 3 Contract effective March 2, 2007. (Ex. 1.) Level 3's fax was sent by the same Level 3 executive who just hours earlier had signed the Originating Amendment, yet the fax offered no explanation for Level 3's decision.

On February 14, 2007, Level 3 notified Neutral Tandem that it intended to terminate the Broadwing Contract in addition to the Level 3 Contract. (Ex. 2.) The February 14 letter stated that Level 3 would terminate both contracts effective March 23, 2007. (*Id.*) By terminating the contracts under which Level 3 *received* tandem transit traffic, while at the same time renewing the contract under which Level 3 *originated* tandem transit traffic, Level 3 sought to deny its competitors the benefit of Neutral Tandem's competitive tandem transit services, while at the same time increasing Level 3's benefit by obtaining better terms from Neutral Tandem for Level 3's own originating traffic.

Nevertheless, in its February 14 letter, Level 3 claimed that the contracts were "not commercially balanced between the two parties" and that maintaining interconnection with Neutral Tandem under those contracts "is not a commercially reasonable or manageable option." (*Id.*) The letter stated that Level 3's goal was to "reach a single agreement with Neutral Tandem" prior to March 23 that would "supersede the current agreements" and "provide a single set of terms and conditions for the benefit of both parties." (*Id.* at 2.)

However, if the parties have not reached agreement on a new contract by March 23, 2007, Level 3 stated that it intended to "otherwise manage the traffic exchanged under" the February 2004 and July 2004 Contracts. (*Id.*) Level 3 further stated that it would attempt to "affect an orderly transition to mitigate any risks associated with Neutral Tandem customer traffic" if that occurs. (*Id.*)

On February 19, 2007, Neutral Tandem responded to Level 3's letters. (Ex. 3.) Neutral Tandem reiterated its desire to work with Level 3 to arrive at mutually acceptable terms and conditions for continued two-way interconnection. However, Neutral Tandem also reminded Level 3 that, at a minimum, it was obligated to interconnect with Neutral Tandem to receive tandem transit traffic pursuant to the law of Florida and several other states. (*Id.* at 2.) Neutral Tandem notified Level 3 that any refusal by Level 3 to interconnect with Neutral Tandem would violate these interconnection obligations. (*Id.*)

Level 3 responded to Neutral Tandem's request for interconnection under Florida law on February 22, 2007. (Ex. 4.) Level 3 denied that it was required to interconnect with Neutral Tandem for the purpose of receiving tandem transit traffic from third party carriers' networks. (*Id.*) Level 3 also reiterated its threat to effectuate the termination of the parties' existing interconnection facilities as of March 23, 2007. (*Id.* at 2.) Specifically, Level 3 stated that its termination of the parties' current interconnections could "materially impact the flow of traffic for [Neutral Tandem's] customers" and that there could be "interruptions of service associated with the termination of the agreements." (*Id.* at 2.)

Neutral Tandem has held discussions with representatives from Level 3 on multiple occasions to try to resolve these disputes. Several senior executives from Neutral Tandem traveled to Level 3's Colorado headquarters for an in-person meeting on February 16, 2007. In preparation for that meeting, Neutral Tandem participated in several telephonic conference calls with Level 3 regarding these issues. After the in-person meeting on February 16, Neutral Tandem again met with Level 3 by telephone on February 21, 2007 to try to negotiate mutually agreeable interconnection terms.

However, the parties have been unable to reach agreement. The major impediment has been Level 3's insistence that Neutral Tandem pay Level 3 reciprocal compensation when Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3, even though the traffic being delivered by Neutral Tandem has been originated by end-users of the third party carriers. Thus, even though Level 3 will continue to receive the benefit of competitive tandem transit service (including lower rates) for traffic that it *originates* through Neutral Tandem pursuant to the Originating Amendment, Level 3 has stated that it will begin refusing to accept tandem transit traffic Neutral Tandem delivers to Level 3 on behalf of third party carriers as of March 23, 2007. (Ex. 2; Ex. 4.)

ARGUMENT

I. Florida Law Requires Level 3 to Interconnect with Neutral Tandem.

Florida law unambiguously requires Level 3 to interconnect with Neutral Tandem. Specifically, Florida law provides that every competitive telecommunications carrier, including Level 3, "shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions."⁴ This Commission already has found that it has authority to establish the terms and conditions of interconnection for tandem transit services provided between the networks of different carriers.⁵

In addition to being required by law, continued interconnection between Neutral Tandem and Level 3 is in the public interest. Neutral Tandem provides the sole alternative to the tandem transit services offered by BellSouth and other incumbent LECs. Consequently, Neutral Tandem

⁴ FL. STAT. ANN. §§ 364.16(1), (2) (2006).

⁵ See *In re Joint Petition by TDS Telecom*, Docket Nos. 050119-TP; D050125-TP, Order No. PSC-06-0776-FOF-TP, 2006 Fla. PUC LEXIS 543, *22-*23 (September 18, 2006).

provides third-party carriers with a competitive alternative. This results in more efficient delivery of traffic, by allowing those carriers to select the most cost-efficient route for delivery of their calls to Level 3. Competition for tandem transit services exerts downward pressure on transit charges, while fostering market competition and entry into the telecommunications industry. The Federal Communications Commission long has recognized the substantial benefits of competition in the market for tandem switching services:

By further reducing barriers to competition in switched access services, our actions will benefit all users of tandem switching... Our actions also should promote more efficient use and deployment of the country's telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long distance rates, all of which should contribute to economic growth and the creation of new jobs. In addition, these measures should increase access to diverse facilities, which could improve network reliability.⁶

In addition, competitive tandem switching capacity builds redundancy into the telecommunications sector and infrastructure. Lack of tandem capacity is a recurring problem in numerous tandem offices throughout Florida, as well as other markets throughout the country. Indeed, in several markets, incumbent LEC tandem capacity has been reported to be exhausted.⁷ As a result, several carriers have asked Neutral Tandem to accept overflow traffic to and from the tandems of the incumbent LECs, because the competitive carriers already cannot obtain sufficient trunk capacity.⁸ Continued deployment of Neutral Tandem's offerings will decrease the level of tandem congestion at incumbent LEC tandems, thereby diminishing the threat of tandem exhaustion.

⁶ *Expanded Interconnection with Local Tel. Co. Facilities, Transport Phase II*, 9 FCC Rcd. 2718, ¶ 2 (rel. May 27, 1994).

⁷ Saboo Direct. at 9.

⁸ Saboo Direct. at 9.

Moreover, lack of tandem redundancy directly impacts homeland security and disaster recovery. As noted by the Federal Communications Commission, the impact of Hurricane Katrina illustrated the importance of building network redundancy in tandem switches:

[M]ore than 3 million customer phone lines were knocked out in Louisiana, Mississippi, and Alabama following Hurricane Katrina. ... Katrina highlighted the dependence on tandems and tandem access to SS7 switches. The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. *Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution.*⁹

Neutral Tandem does not collocate with BellSouth and utilizes several different transport carriers in the State of Florida. Neutral Tandem's operations thus facilitate transport redundancy and tandem redundancy, both of which the FCC found would have been helpful in response to Hurricane Katrina. Granting Neutral Tandem's petition thus will result in enhanced competition to the benefit not only of Neutral Tandem, but also to the competitive service providers that use Neutral Tandem's tandem transiting services, as well as those providers' end-user customers.¹⁰

II. The Commission Should Adopt Nondiscriminatory Prices, Terms, and Conditions for Interconnection Between Neutral Tandem and Level 3.

Florida law requires that Level 3 interconnect with Neutral Tandem under "nondiscriminatory prices, terms, and conditions."¹¹ This Commission recently addressed the appropriate compensation arrangements relating to transiting services in the *TDS Telecom*

⁹ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks Effect of Hurricane Katrina on Various Types of Communications Networks*, FCC Docket No. 06-83, at 9 (2006) (emphasis added).

¹⁰ Notably, Level 3 itself has argued in favor of broad interconnection rights for wholesale telecommunications carriers. See, e.g., *Ex Parte Letter in Support of Petition of Time Warner Cable for Declaratory Ruling that CLEC May Obtain Interconnection under Section 251 of the Comm. Act of 1934, as Amended, to Provide Wholesale Telecomm. Svcs. to VOIP Providers*, WC Docket No. 06-55, Letter at 4 (filed February 13, 2007). (Ex. 5.)

¹¹ FL. STAT. ANN. § 364.16(2).

decision.¹² The Commission found that the “calling party’s network pays” principle was appropriate in the transiting context.¹³ In other words, the carrier of the end-user that originates the call is responsible to compensate the transiting carrier for the costs associated with delivering the call.¹⁴ The originating carrier, not the transiting carrier, also is responsible to compensate the terminating carrier for any costs associated with receiving the call and delivering it to the terminating carrier’s end-user.¹⁵

As discussed above, Neutral Tandem and Level 3 have been interconnected for over two years pursuant to negotiated contracts. Those contracts mirror the compensation system this Commission found appropriate in the *TDS Telecom* decision. Under the parties’ contracts, Level 3 pays Neutral Tandem for transiting services when Level 3 is the originating carrier; *i.e.*, the carrier whose end-user originates the call that Neutral Tandem transits to other carriers’ networks. When Level 3 is the terminating carrier; *i.e.*, the carrier whose end-user receives the call from another carrier’s customer, Level 3 does not pay Neutral Tandem for that service. Instead, the originating carrier compensates Neutral Tandem for that service.

During the parties’ negotiations, Level 3 has taken the position that Neutral Tandem should be required to pay Level 3 reciprocal compensation when Level 3 is the terminating carriers; *i.e.*, when Neutral Tandem transits traffic to Level 3 from third party carriers’ network. (*See Ex. 4.*) Level 3 thus seeks to collect reciprocal compensation from Neutral Tandem instead of the carriers whose end-users originate the traffic that Neutral Tandem transits to Level 3’s network. Level 3 essentially seeks to force Neutral Tandem to become its collection agency or

¹² *See In re Joint Petition by TDS Telecom*, Docket Nos. 050119-TP; D050125-TP, Order No. PSC-06-0776-PAA-TP, 2006 Fla. PUC LEXIS 543, *35-*45 (September 18, 2006).

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See id.*

clearinghouse, by collecting reciprocal compensation from the carriers whose end-users originate the traffic that Neutral Tandem delivers to Level 3's network.

The parties' prior contracts expressly did *not* require Neutral Tandem perform this function for Level 3.¹⁶ Rather, consistent with Neutral Tandem's other contracts, Neutral Tandem passes on to Level 3 signaling information that Neutral Tandem receives from the originating carrier, so that Level 3 can bill the originating carrier appropriate termination charges.¹⁷ Neutral Tandem has made clear to Level 3 that it is willing to continue providing such information, so that Level 3 can seek appropriate compensation from the originating carrier. But it is not remotely consistent with the "calling party's network pays" principle adopted by this Commission in the *TDS Telecom* decision for Level 3 to insist that Neutral Tandem, rather than the originating carrier, pay reciprocal compensation.

Level 3's request also is inconsistent with both state and federal law. Level 3 does not receive reciprocal compensation from incumbent LECs, such as BellSouth, when the incumbent LEC acts as the transiting carrier and delivers third party carriers' traffic to Level 3's network. To the contrary, Level 3's interconnection agreement with BellSouth in Florida specifically states that BellSouth "will not be liable for any compensation to the terminating carrier or to

¹⁶ Under the Level 3 Contract, Neutral Tandem did agree to provide Level 3 with a usage-based transport recovery charge on an interim basis. However, that privately-negotiated arrangement was agreed to by Neutral Tandem in consideration of Level 3 establishing a two-way business relationship with Neutral Tandem; the transport recovery fee was set to phase down to zero as Level 3's usage of Neutral Tandem's transit service increased. It would not be appropriate to order such payments in the context of establishing nondiscriminatory terms and conditions for a one-way interconnection agreement. This interim transport recovery fee was unique to the Level 3 Contract; the Broadwing Contract did not provide for any such fee, and no other carriers accepting tandem transit traffic from Neutral Tandem in Florida receive such a fee.

¹⁷ *See* Ex. 6, § 7.1.

Level 3” when BellSouth delivers tandem transit traffic.¹⁸ Requiring Neutral Tandem to pay Level 3 reciprocal compensation for transiting traffic to Level 3 from the networks of third party carriers, when Level 3 would not receive such compensation from incumbent LECs such as BellSouth for transiting the same traffic, would discriminate against Neutral Tandem, in violation of Florida law. It also would violate the requirement of federal law that reciprocal compensation payments are to be made by the carrier that originates the traffic.¹⁹

Thus, consistent with this Commission’s *TDS Telecom* decision, the Commission should order the parties to adopt the following general interconnection terms:

- Level 3 should be ordered to maintain interconnection with Neutral Tandem for the purpose of receiving tandem transit traffic originated by third party carriers and delivered to Level 3’s network by Neutral Tandem; and
- The terms for interconnection between Level 3 and Neutral Tandem should be no less favorable than the terms in place between Level 3 and BellSouth for the delivery of transit traffic from BellSouth to Level 3, including that Neutral Tandem will not be required to make any payments to Level 3 for the delivery of tandem transit traffic originated by third party carriers.
- To facilitate Level 3’s ability to bill originating third party carriers for tandem transit traffic, Neutral Tandem will pass all signaling information received from originating third party carriers to Level 3.

To be clear, Neutral Tandem is *not* asking the Commission to order Level 3 to originate any traffic through Neutral Tandem or otherwise become a customer of Neutral Tandem. To the contrary, Neutral Tandem merely seeks an order directing Level 3 to comply with its obligation under Florida law to interconnect with Neutral Tandem for the purpose of *receiving* tandem transit traffic originated by third party carriers and delivered to Level 3 by Neutral Tandem.²⁰

¹⁸ Agreement Between Level 3 Communications, LLC and BellSouth Telecommunications, Inc. §7.6.2 (June 23, 2004).

¹⁹ See 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.701(e).

²⁰ This arrangement is similar to the April 20, 2005 Traffic Termination Agreement between Neutral Tandem and various Time Warner Telecom entities. The agreement between Neutral Tandem and

Upon adoption of the nondiscriminatory interconnection terms set forth above, Neutral Tandem and Level 3 should be able to enter into a new agreement promptly.²¹

III. The Commission Should Consider Neutral Tandem's Petition on an Expedited Basis.

Given Level 3's threat to terminate interconnections to Neutral Tandem service as of March 23, 2007, this Commission can and should consider Neutral Tandem's Petition on an expedited basis pursuant to FL. STAT. ANN. § 364.058 and FL. ADMIN. CODE § 25-22.0365.²² As set forth below, each of the factors under Rule 25-22.0365(4)(e), Florida Administrative Code, supports expedited treatment of Neutral Tandem's Petition:

1. Number and Complexity of the Issues

The issues presented by Neutral Tandem's Petition are neither numerous nor complex. The Petition involves a straightforward application of the clear interconnection requirements of Florida law. Many of the broader issues regarding the appropriate terms and conditions of interconnection related to transiting services already have been considered and decided by this

Time Warner provides a model for appropriate terms and conditions of one-way interconnection between a tandem transit provider and a terminating carrier. (Ex. 6.)

²¹ Ironically, as noted above, Level 3 signed the Originating Amendment on the same day it notified Neutral Tandem that it was terminating the Level 3 Contract. Level 3 thus seeks to benefit from the competitive tandem transit services (including lower transit rates and improved service) provided by Neutral Tandem for its own originating traffic, while denying those same benefits to other competitive carriers, by refusing to receive tandem transit traffic Neutral Tandem delivers from other third party carriers.

²² Expedited treatment of Neutral Tandem's Petition is crucial because Level 3 has an unfortunate history of following through on threats to use service disruptions to end-users as a negotiating tactic. For example, in October 2005, Level 3 blocked internet users of Cogent Communications from accessing the internet for three days as a result of the parties' compensation dispute. *See* Jeff Smith, *Level 3, Cogent Resolve Dispute; Feud Disrupted Internet Traffic*, Rocky Mountain News, Oct. 29, 2005, at 3C (Ex. 7). As a result of Level 3's conduct in that dispute, its President was forced apologize to both Level 3's and Cogent's customers. (*Id.*) According to one report, Level 3's President stated that the company had "learned a lesson" as a result of its conduct in that case. *See* Arshad Mohammed, *Internet Access Dispute Cut off Some Businesses*, Washington Post, Oct. 14, 2005, at D04 (Ex. 7). Based on its threat to disrupt service to millions of Florida end-users in this case, whether Level 3 really has "learned a lesson" is at best an open question.

Commission in the *TDS Telecom* order. In addition, since Neutral Tandem and Level 3 have been interconnected for more than two years, there are no open technical issues.

2. Policy Implications that Resolution of the Dispute is Expected to Have

As noted above, the broader policy issues relating to interconnection for the purpose of providing transiting services already have been considered and decided by this Commission in the *TDS Telecom* order. In addition to the various policy issues considered by the Commission in that proceeding, granting Neutral Tandem's Petition will further the policy goals of fostering diversity, redundancy, efficiency, and increased reliability to the PSTN. By contrast, the net effect of Level 3 seeking to deny the benefits of competitive tandem transit service to other competitive carriers in Florida would be to raise those carriers' operating costs and reduce their network diversity, neither of which benefits their millions of end-users.

3. Topics on which the Company Plans to Conduct Discovery

Neutral Tandem does not anticipate serving discovery in this matter. The issues raised by Neutral Tandem's Petition present legal issues relating to Level 3's compliance with the clear interconnection requirements of Florida law, as articulated in the *TDS Telecom* decision. The only issues which might generate discovery relate to Level 3's insistence that it must receive reciprocal compensation payments from Neutral Tandem for delivering tandem transit traffic to Level 3 on behalf of third party carriers. However, given the clear requirement of Florida law that interconnection terms be "nondiscriminatory," and given that Level 3's interconnection agreement with BellSouth unambiguously shows that Level 3 does not receive reciprocal compensation payments from BellSouth for delivering tandem transit traffic, there should be no need for discovery to develop nondiscriminatory terms and conditions for interconnection between Neutral Tandem and Level 3. As such, Neutral Tandem anticipates that it will not be

necessary for it to serve affirmative discovery in this matter, although Neutral Tandem reserves the right to conduct discovery if necessary in response to Level 3's position.

4. Specific Measures Taken to Resolve the Dispute Informally

As described in more detail above, since Neutral Tandem first learned on January 31, 2007 that Level 3 intended to abruptly terminate the parties' contracts, Neutral Tandem has engaged in extensive and repeated negotiations with Level 3 to try to resolve this dispute informally. Senior Neutral Tandem executives have traveled to Level 3's Colorado headquarters for in-person meetings, and the parties have engaged in numerous telephonic negotiations. However, Level 3's intransigent insistence that Neutral Tandem pay it reciprocal compensation for delivering tandem transit traffic from third party carriers, instead of seeking such compensation from the originating carriers as required under state and federal law, has made it impossible to settle this dispute.

5. Any other Matter the Company Believes Relevant to Determining Whether the Dispute is One Suited for an Expedited Proceeding

Level 3 may contend that Neutral Tandem's Petition is premature because the parties did not negotiate for 60 days prior to the filing of this Petition.²³ If Level 3 makes that argument, the Commission should reject it out-of-hand. The 60-day negotiation requirement is designed to give new competitive local telecommunications companies 60 days from the time they receive their certifications to negotiate terms and conditions of interconnection.²⁴ Here, Neutral Tandem and Level 3 have been interconnected for years pursuant to privately negotiated contracts. Level 3 decided to terminate those contracts on less than 60 days' notice. Neutral Tandem commenced

²³ See FL. STAT. ANN. § 364.16(2) (noting that a party may petition the Commission for interconnection "[i]f the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days").

²⁴ See FL. STAT. ANN. § 364.162(1).

negotiations with Level 3 immediately upon learning of Level 3's termination plans, but it would be neither feasible nor appropriate to force Neutral Tandem to wait until after the contracts have been canceled before seeking relief at the Commission. Requiring Neutral Tandem to wait 60 days before bringing this Petition is particularly inappropriate in light of the significant network disruptions that could occur if Level 3 follows through on its threat to abruptly terminate the existing interconnections between the parties as of March 23, 2007.

IV. The Commission Should Issue an Interim Order Directing Level 3 Not to Disrupt Neutral Tandem's Service While the Commission Considers this Petition.

In addition to considering this Petition on an expedited basis, Neutral Tandem respectfully requests that this Commission issue an interim order directing Level 3 not to violate its interconnection obligations under Florida law by discontinuing its existing interconnections with Neutral Tandem while this Petition is pending. Interim relief is appropriate in this case for at least four reasons.

First, as discussed above, Level 3's obligation to interconnect with Neutral Tandem is clear and unambiguous; the only issue is what terms and conditions will govern that interconnection prospectively.

Second, termination of the parties' existing interconnections would cause substantial and irreparable harm to Neutral Tandem's business reputation and to its relationships with the carriers that utilize Neutral Tandem's tandem transiting services.²⁵ Level 3's planned disruption of service also would require those carriers to expend significant time and effort on a re-engineering of the flow of hundreds of millions of minutes of traffic off of Neutral Tandem's network in a short period of time.²⁶ The network connections that allow Neutral Tandem to

²⁵ Saboo Direct at 14.

²⁶ *Id.* at 12.

deliver hundreds of millions of minutes of traffic to and from these carriers have been developed over a number of years. It is neither feasible nor appropriate to require the third party carriers that use Neutral Tandem's services to undertake the massive network re-engineering effort that would be necessary for them to stop sending traffic to Level 3 through Neutral Tandem, and instead send that traffic through incumbent LECs such as BellSouth, as of March 23, 2007.²⁷ Indeed, there is no assurance that BellSouth and the other incumbents are even able to accept all of this additional traffic on such short notice, particularly given the well-documented problems with tandem exhaust discussed above.²⁸ This undertaking would be especially inappropriate given that the work would need to be undone after the Commission establishes terms and conditions for prospective interconnection in response to this Petition.

Third, and even more critically, Level 3's termination of the parties' existing interconnections could impair the ability of millions of end-user customers to complete calls.²⁹ Those end-users could find that their calls have been blocked as a result of Level 3's refusal to accept traffic transited by Neutral Tandem.³⁰ Level 3's actions could even damage the PSTN as a whole by exacerbating tandem exhaust problems, causing call blockage throughout the state.³¹

Indeed, Level 3 has shown in the past that it will follow-through on threats to disrupt service to other carriers' end-users. For example, in October 2005, Level 3 blocked internet users of Cogent Communications from accessing the internet for three days during a

²⁷ *Id.* at 9-10.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 8.

compensation dispute between the parties.³² As a result of Level 3's conduct in that dispute, its President was forced to apologize to both Level 3's and Cogent's customers.³³

Fourth, Level 3 faces no harm whatsoever from maintenance of the *status quo* pending resolution by this Commission of Neutral Tandem's Petition. Indeed, Neutral Tandem would accept the application of the final terms of interconnection established by the Commission pursuant to this Petition on a retroactive basis to March 23, 2007.

To ensure that Level 3's threatened termination of its connections with Neutral Tandem does not cause service disruptions to multiple third party carriers and to their millions of end-users throughout Florida, this Commission should order that the current interconnections between Neutral Tandem and Level 3 will remain in place while this Commission decides what the terms and conditions of the parties' interconnection will be on a prospective basis. Clearly, far more action would be required by Level 3 to reconfigure the network connections than to maintain the current arrangements.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Neutral Tandem, Inc. respectfully requests that the Commission provide the following relief:

(1) Order Level 3 not to discontinue existing interconnections pursuant to which Neutral Tandem currently delivers tandem transit traffic from third party carriers to Level 3 pending resolution of this Petition;

³² See Jeff Smith, *Level 3, Cogent Resolve Dispute; Feud Disrupted Internet Traffic*, Rocky Mountain News, Oct. 29, 2005, at 3C (Ex. 7).

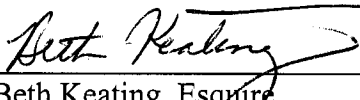
³³ *Id.*

(2) Establish terms and conditions for one-way interconnection between Neutral Tandem and Level 3 to allow Neutral Tandem to continue delivering tandem transit traffic from third party carriers to Level 3; and

(3) Resolve this Petition on an expedited basis pursuant to Rule 25-22.0365 of the Florida Administrative Code

Respectfully submitted,

NEUTRAL TANDEM, INC.

By: 
Beth Keating, Esquire
Akerman Senterfitt
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P.O. Box 1877 (32302)
Tallahassee, Florida 32301
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beth.keating@akerman.com

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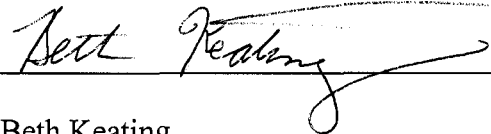
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail First Class and Electronic Mail to Kenneth Hoffman, Esquire, Rutledge, Ecenia, Purnell, and Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee, FL 32301 (ken@reuphlaw.com), and that a copy has also been provided to the persons listed below this 26th day of February, 2007:

Gregory Rogers, Director/State Regulatory Affairs
Level 3 Communications, Inc.
1025 El Dorado Boulevard
Broomfield, CO 80021
greg.rogers@level3.com

Patrick Wiggins, Supervising Attorney
Florida Public Service Commission,
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
pwiggins@psc.state.fl.us

Beth Salak, Director/Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd.
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By: 

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beth.keating@akerman.com

EXHIBIT

1



January 30, 2007

NTI Communications, Inc.
Two North La Salle, Suite 1615
Chicago, IL 60602

Attention: Executive Vice President and General Counsel

RE: Agreement for Wireline Network Interconnection
Between Neutral Tandem Inc. and Level 3 Communication L.L.C.

Dear Sir/Madam:

Pursuant to Section 11 of the above named Agreement, I am writing to provide written request for termination of the above named Agreement between Neutral Tandem Inc. (NTI) and Level 3 Communications, L.L.C. (Level 3), which was executed on June 25, 2004 and July 6, 2004 respectively.

Accordingly on March 2, 2007, this agreement is terminated and no longer in effect.

If you have any questions regarding this letter or any other matter associated with such, please contact me at 720-888-3795.

Sincerely,

Scott E. Beer, Vice President
Carrier Relations

Level 3 Communications, LLC Broomfield, CO 80021
www.Level3.com

EXHIBIT

2



February 14, 2007

Mr. Ron Gavillet, EVP and General Counsel
Neutral Tandem, Inc.
2 North La Salle, Suite 1615
Chicago, IL 60602

Re: February 16, 2007 Meeting

Dear Mr. Gavillet:

In anticipation of our discussions this Friday, February 16th, we wanted to provide Neutral Tandem with some additional background regarding Level 3's intentions and goals for establishing a new commercial relationship.

As you know, Level 3 already has provided written notice of its intent to terminate the agreement between Neutral Tandem and Level 3 Communications, LLC. Fundamentally, this agreement provides no material benefit to Level 3's shareholders and is not commercially balanced between the two parties. Due to recent acquisition activities, Level 3 has, in many cases, acquired duplicative contracts with the same vendors. In order to better manage these relationships, Level 3 has undertaken a process to review all major vendor relationships and negotiate new agreements, as appropriate.

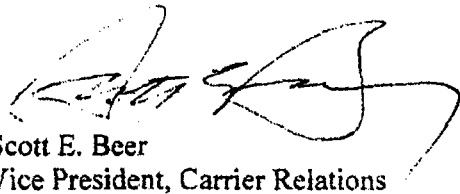
Our review of the various agreements between the acquired Level 3 companies and Neutral Tandem, including the agreement with Broadwing Corporation, has served to further highlight the current imbalance that exists between Neutral Tandem and the combined Level 3 companies. As such, pursuant to the Term Section of the MASTER SERVICE AGREEMENT between Neutral Tandem Inc. and Focal Communications Corporation, dated February 2, 2004, we are providing notice to terminate this contract effective March 23, 2007.

Continuing the relationship with Neutral Tandem under the current combined Level 3 agreements, therefore, is not a commercially reasonable or manageable option. As such, Level 3 hopes to be able to reach a single agreement with Neutral Tandem to correct the current commercial imbalance and allow Level 3 to more easily manage its relationship with Neutral Tandem. We expect that a new agreement would supersede the current agreements and, moving forward, provide a single set of terms and conditions for the benefit of both parties.

In furtherance of the goals stated herein, Level 3 has agreed to extend the termination effective date of the agreement between Level 3 Communications, LLC and Neutral Tandem to March 23, 2007, with a desire to renegotiate a suitable commercial relationship. To the extent that Level 3 and Neutral Tandem are not able to reach mutually agreeable terms, Level 3 intends to exercise its contractual rights to terminate the remaining existing agreements with Neutral Tandem and the combined Level 3 companies in accordance with our contractual rights and to otherwise manage the traffic exchanged under these legacy agreements. Under this scenario, Level 3 would work closely with Neutral Tandem in order to affect an orderly transition to mitigate any risks associated with Neutral Tandem customer traffic.

We look forward to our upcoming discussions and hope we can reach a new agreement that more appropriately balances the interests of our respective companies.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E. Beer", written over a faint, illegible stamp or watermark.

Scott E. Beer
Vice President, Carrier Relations

EXHIBIT

3



One South Wacker, Suite 200
Chicago, IL 60606
phone 312.384.8000
fax 312.346.3276

February 19, 2007

Scott E. Beer
Vice President, Carrier Relations
Level 3 Communications
1025 Eldorado Blvd.
Broomfield, CO 80021

Re: Neutral Tandem's Request for Interconnection with Level 3

Dear Mr. Beer:

Thank you for taking the time to meet with Ron Gavillet, Dave Lopez and me last Friday. I write to you in response to that meeting and your letter of February 14, 2007.

As you know, Neutral Tandem, Inc. (together with its applicable affiliates, "Neutral Tandem") provides tandem switching and transit services ("Tandem Services") in a number of states where Level 3 Communications, LLC (together with its applicable affiliates, "Level 3") also operates. In addition to providing these Tandem Services to Level 3, Neutral Tandem also provides Tandem Services to other carriers, such as CLECs, wireless carriers, and cable companies.

Level 3 and Neutral Tandem currently interconnect pursuant to two contracts -- a July 6, 2004 Agreement for Wireline Network Interconnection (the "July 2004 Contract") and a February 2, 2004 Master Services Agreement (originally executed by Focal Communications, which is now part of Level 3) (the "February 2004 Contract"). Pursuant to these two-way interconnection agreements, Neutral Tandem provides Tandem Services to (i) Level 3 for traffic that originates with Level 3 and terminates to third party terminating carriers, and (ii) third party carriers for traffic that originates with those carriers and terminates with Level 3.¹

On the evening of January 31, 2007, Level 3 sent a fax to Neutral Tandem terminating the July 2004 Contract effective March 2, 2007. By way of your February 14 letter, Level 3 (i) agreed to extend the termination date of the July 2004 Contract to March 23, 2007, to allow negotiations for a new two-way agreement to take place and (ii) terminated the February 2004 Contract effective March 23, 2007.

Let me reiterate what we said during the meeting on Friday: Neutral Tandem is willing to work with Level 3 to reach a commercial agreement for two-way interconnection which will enable Level 3 to enjoy the benefits of our competitive Tandem Service. We therefore look forward to our call tomorrow.

¹ On January 31, 2007, before Level 3 sent the fax to Neutral Tandem terminating the two-way July 2004 Contract, Neutral Tandem and Level 3 executed a new contract under which Neutral Tandem will provide certain termination services for certain traffic originated by Level 3. That agreement does not provide for termination of traffic to Level 3 from Neutral Tandem that originates with third party carriers and indeed its rates and terms were predicated on the existence of the July 2004 Contract.



Mr. Beer
February 19, 2007
Page 2

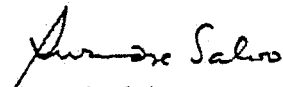
However, as we also stated in our meeting, Level 3 is required by law to interconnect with Neutral Tandem in all of the states where the parties operate. For example, applicable state law requires Level 3 to interconnect with Neutral Tandem upon request in each of Illinois, New York, Florida, and Georgia. See 220 ILL. COMP. STAT. 5/13-514; N.Y. COMP. CODES R. & REGS. 16, § 605.2; N.Y. PUB. SERV. LAW §§ 91, 92, 94, 97; FL. STAT. ANN. § 364.16; GA. CODE ANN. § 46-5-164. Therefore, any refusal by Level 3 to interconnect with Neutral Tandem would violate both state and federal law.²

Accordingly, Neutral Tandem hereby formally requests interconnection with Level 3 in all of the states in which our respective companies operate in order for Neutral Tandem to terminate to Level 3 traffic originated by third party carriers on terms no less favorable than those made available to the incumbent local exchange carrier for the termination of tandem services. This request includes, but is not limited to, the following states: Illinois, New York, Florida, and Georgia.

To be clear, Neutral Tandem is *not* seeking interconnection with Level 3 under applicable law for the purpose of compelling Level 3 to originate traffic to Neutral Tandem. Rather, Neutral Tandem requests interconnection with Level 3 solely for the purpose of delivering traffic originated by third party carriers utilizing Neutral Tandem's Tandem Service.

We look forward to our call tomorrow.

Sincerely,


Surendra Saboo
Chief Operating Officer

cc: John Harrington, Jenner & Block LLP

² In addition to being required by law, Neutral Tandem presumes that Level 3 will comply with this request given that it is entirely consistent with the numerous public positions regarding interconnection taken by Level 3, including positions supporting the right of wholesale carriers to interconnect, the need for competitive transit services, and the need for interconnection to support the development of competitive transit services. Moreover, such interconnection furthers general public policies supporting competition and network redundancy.

EXHIBIT

4



John M. Ryan
Senior Vice President
Assistant General Counsel

TEL: (720) 888-6150
FAX: (720) 888-5134
John.Ryan@Level3.com

February 22, 2007

Mr. Surendra Saboo
Chief Operating Officer
Neutral Tandem
One South Wacker, Suite 200
Chicago, IL 60606

Re: Request for Interconnection dated February 19, 2007

Dear Mr. Saboo,

The purpose of this letter is to respond to your formal request for interconnection that you believe is required by state statutes in Illinois, New York, Georgia and Florida. We are pleased by your pledge to work with us to reach an appropriate and mutually beneficial commercial arrangement, the terms of which have been discussed between our teams. In fact, under separate cover, we are delivering tomorrow a revised proposal describing commercial terms for a services agreement between Neutral Tandem and Level 3. Our team is working to modify our initial proposal to address specific commercial concerns raised by Neutral Tandem during business discussions over the last few days.

In your letter, you indicate that you desire to interconnect with Level 3 on non-discriminatory rates, terms and conditions. There is apparently, however, a misunderstanding on your part concerning the nature of, and the terms and conditions contained in, the interconnection agreements that Level 3 has executed with competitive local exchange carriers ("CLECs") such as Neutral Tandem.

The interconnection agreements that Level 3 has signed with CLECs permit the exchange of traffic that is generated directly by each carrier's end user customers. Our standard form interconnection agreement does not allow, and in fact expressly prohibits, each party from sending "transit traffic" over the interconnection trunks. "Transit traffic" is generally defined as "any traffic that originates from one telecommunications carrier's network, transits another carrier's network, and terminates to yet another telecommunications carrier."

Neutral Tandem has requested "interconnection with Level 3 solely for the purpose of delivering traffic originated by third party carriers utilizing Neutral Tandem's Tandem Service." Thus, even if we were to concede that Level 3 has a statutory obligation to interconnect with Neutral Tandem containing the financial terms that your team has demanded (which we do not), execution of a fair and non-discriminatory interconnection agreement would not permit Neutral Tandem to send Level 3 its transit traffic for termination.

Mr. Surendra Saboo
February 22, 2007
Page 2

As previously stated, we remain open to a commercial agreement that would allow Neutral Tandem to deliver its transit traffic to Level 3 with appropriate commercial terms and conditions. Our business teams will continue to work with you on those matters.

While we remain hopeful that rational business discussions can lead to a commercial agreement that is beneficial to both parties, we must reiterate our intention that, in the absence of such agreement, both parties must cooperate to effectuate the termination of the existing agreements without material adverse consequences to our customers. Along those lines, we expect that you are or will be shortly advising customers of the termination of our agreement and making appropriate plans for alternative routing of traffic. If termination is likely to materially impact the flow of traffic for your customers, please let us know and we can work with both you and your impacted customers to assure that there are no interruptions of service associated with the termination of the agreements.

In the meantime, please direct all communication regarding your formal request for statutory interconnection to me.

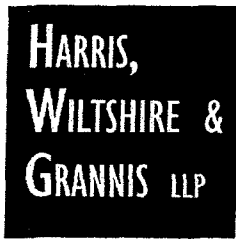
Sincerely,



John M. Ryan
Senior Vice President and Assistant General Counsel

EXHIBIT

5



1200 EIGHTEENTH STREET, NW
WASHINGTON, DC 20036
TEL 202.730.1300 FAX 202.730.1301
WWW.HARRISWILTSHIRE.COM
ATTORNEYS AT LAW

February 13, 2007

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55.

Dear Ms. Dortch:

Level 3 Communications, LLC ("Level 3") urges the Commission to grant Time Warner Cable's ("TWC") Petition for Declaratory Ruling. As Level 3 demonstrated in its Comments and Reply Comments,¹ nothing in Sections 251 and 252 carves wholesale carriers out of the rights granted to requesting carriers under those sections; grant of TWC's Petition is necessary to ensure that consumers throughout the United States enjoy the benefits of competition as intended by the 1996 Act. Further, to give effect to its decision and forestall RLEC efforts to avoid their obligations under Sections 251(a) and (b) and Section 252, the Commission should confirm that the Section 251(f)(1) rural exemption does not relieve RLECs of their obligations under Sections 251(a), 251(b), and 252, including the duty to arbitrate with respect to the Section 251(a) and (b) duties.

Recently, the South Carolina Telephone Coalition ("SCTC") has argued that TWC's Petition should be denied because a grant would invest TWC with "benefits" under Title II.² This argument fundamentally misconstrues TWC's Petition, which seeks to reaffirm a wholesale telecommunications carriers' rights under Title II. There is nothing in the statute to support SCTC's novel limitation of Sections 251(a), 251(b), and

¹ *Comments of Level 3 Communications, LLC In Support of Petition for Declaratory Ruling*, WC Docket No. 06-55 (filed April 10, 2006); *Reply Comments of Level 3 Communications, LLC*, WC Docket No. 06-55 (filed April 25, 2006) ("Level 3 Reply Comments").

² *Ex Parte Notice of the South Carolina Telephone Coalition*, WC Docket No. 06-55, Attachment at 8 (filed January 30, 2007).

Marlene Dortch
February 13, 2007
Page 2

252 to apply only to requests for interconnection by retail telecommunications carriers or, in the case of Section 251(b), retail LECs. The Act contains no such qualifier, and thus, according to the plain language of the Act, Section 251(a) and (b) and 252 apply to requests by wholesale, as well as retail, telecommunications carriers. Moreover, the implementation issues that SCTC raises could be addressed in any negotiation and, if necessary, arbitration between the ILEC and the wholesale carrier.

The Western Telecommunications Alliance's ("WTA") recent *ex parte* correctly recognizes that rights and obligations under Section 251(b) and (c) are intertwined with and inseparable from the arbitration and negotiation provisions of Section 252.³ As explained by WTA, these provisions apply to all CLECs, and enable CLECs to "enter into Section 251(b) agreements with ILECs."⁴ While WTA would prefer that CLECs not sell wholesale services, that anti-competitive position finds no support in the statute or Commission precedent. But what even WTA acknowledges is that the rights and obligations granted under Section 251(b) can be enforced under Section 252.

Section 251(a) unequivocally imposes a duty on all telecommunications carriers to interconnect with other carriers: "Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."⁵ Despite this clear language, some RLECs have responded to Level 3's attempts to negotiate interconnection and bring interconnection disputes before state commissions for arbitration by arguing that their Section 251(f)(1) rural exemption frees them from any obligation to negotiate or arbitrate in response to Level 3's requests.

In Washington, for example, CenturyTel argued that Level 3 "cannot make a valid request to negotiate with [CenturyTel] because it is exempt from the provisions of Section 251(c)."⁶ The Washington Commission rejected CenturyTel's arguments, explaining that "[t]he rural exemption set forth in 47 U.S.C. 251(f) applies only to the requirements of Section 251(c)" and that "[r]ural companies remain obligated to comply with the provisions of Sections 251(a) and (b)."⁷ In Wisconsin, CenturyTel likewise attempted to avoid its interconnection obligations by arguing that the state commission was without jurisdiction to direct it to interconnect with Level 3's network.⁸ The state

³ *Ex Parte Notice of the Western Telecommunications Alliance*, WC Docket No. 06-55, Attachment at 4 (filed February 6, 2007).

⁴ *Id.*

⁵ 47 U.S.C. § 251(a)(1).

⁶ *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc., Pursuant to 47 U.S.C. § 252*, Third Supplemental Order Confirming Jurisdiction, Docket No. UT-023043, at 2 (WUTC Oct. 25, 2002).

⁷ *Id.* at 3.

⁸ *Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms and Conditions With CenturyTel of Wisconsin*, Arbitration Award, Wisconsin Public Service Commission, Docket No. 05-MA-130, at 8-13 (Dec. 2, 2002).

Marlene Dortch
February 13, 2007
Page 3

commission resoundingly rejected this argument as well, explaining that Section 251(a)(1) “does not except any carrier from the reach of this provision.”⁹

Unfortunately, not every state commission faced with these arguments has correctly applied the Communications Act. In Colorado, CenturyTel again claimed that the state commission lacked jurisdiction over Level 3’s 251(a) interconnection request, a claim that the commission accepted.¹⁰ Because CenturyTel was not required to negotiate interconnection under Section 251(c) by virtue of its rural exemption, the Commission’s statutory misinterpretation left Level 3 without a means of directly interconnecting with CenturyTel.

Level 3’s experience with CenturyTel was part of a broader business effort to expand the reach of its network into the territories of independent and rural carriers. During a three-month period in 2002, Level 3 made approximately 225 requests for interconnection negotiations under Section 251(a) and (b). Level 3’s intention was to expand the markets available to its ISP customers. (It’s worth noting that in most of the rural territories, the rural carrier also maintained an ISP affiliate that would face competition from Level 3’s customers). Less than 20 percent of the companies engaged in negotiations with only a handful resulting with a non-arbitrated agreement. Most companies simply refused to acknowledge the request for negotiation. Unable to engage the companies in negotiations and unable to spend the money needed to litigate the question with more than 200 companies, Level 3 was forced to dramatically scale back its network expansion efforts.

Level 3 is not the only carrier that has been forced to overcome arguments that the Section 251(f)(1) rural exemption somehow trumps the general duty to interconnect.¹¹ Indeed, one rural carrier has been so bold as to file a petition for declaratory ruling at the FCC to establish that an exempt rural carrier’s duties under Section 251(a) are not subject

⁹ *Id.*

¹⁰ *Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 with CenturyTel of Eagle, Inc. Regarding Rates, Terms, and Conditions for Interconnection*, Decision Denying Exceptions, Docket No. 02B-408T, C03-0117, at ¶ 34 (Col. Public Utilities Comm’n Jan. 17, 2003).

¹¹ *See, e.g., Cambridge Telephone Co. et al. Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief*, Order, Docket No. 05-0259 (Ill. Commerce Comm’n July 13, 2005) (explaining RLECs exempt from Section 251(c) are nonetheless obligated to negotiate terms and conditions for interconnection with requesting telecommunications carrier); (concluding state commission has no arbitration authority over requests to negotiate under Section 251(a)); *Sprint Communications Co. L.P. v. Public Utility Comm’n of Texas*, Case No. A-06-CA-65-SS, Slip Op. 9-10 (W.D. Tex. Aug. 14, 2006) (holding rural exemption allows RLEC to refuse negotiation and arbitration); *see also ExParte Notice of Sprint Nextel*, WC Docket 06-55, at 2 & n.4 (filed January 30, 2007) (detailing RLEC refusals of requests for interconnection under Section 251(a) and for arbitration under Section 252).

Marlene Dortch
February 13, 2007
Page 4

to the negotiation and arbitration procedures specified in Section 252.¹² These efforts delay¹³ (and sometimes deny) competition in rural areas, impose unnecessary costs on new entrants, and slow the deployment of advanced services in remote areas, outcomes that are plainly inconsistent with the procompetitive aims of the 1996 Act.

Arguments that Section 251(a) imposes no enforceable interconnection obligation on exempt rural LECs fundamentally misconstrue Sections 251 and 252. As discussed above, Section 251 unambiguously imposes a duty on *all telecommunications carriers*, thus including rural ILECs, to interconnect with other telecommunications carriers. Certain subsections of Section 251 impose additional obligations on particular subclasses of telecommunications carriers. Section 251(b) imposes additional obligations—resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation—on *all LECs*.¹⁴ And Section 251(c) imposes additional obligations—a duty to negotiate, more detailed interconnection requirements, unbundled access, more detailed resale requirements, notice of changes, and collocation—on incumbent LECs.¹⁵ But these Section 251(c) obligations are in addition to the general duty to interconnect, pursuant to Section 251(a). Section 252 provides a mechanism for negotiation, mediation, and arbitration of requests to negotiate made “pursuant to Section 251” – without any limitation to specific subsections of Section 251.¹⁶

Section 251(f)(1), which exempts rural carriers from Section 251(c) touches only on the issue of *which obligations* enumerated in Section 251 apply to a rural incumbent LEC.¹⁷ It does not in any way limit the authority of a state commission to arbitrate an interconnection dispute pursuant to 252 to implement the still applicable provisions of Section 251(a) and (b). Moreover, a valid Section 251(f)(1) “rural exemption” by its terms does not exempt an incumbent LEC from interconnection obligations under Section 251(a) or (b). In explaining the scope of the rural exemption, the Commission has articulated this limit: “Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the requirements of Section 251(c).”¹⁸

The Commission should act now to put an end to RLECs’ misplaced arguments. The declaratory relief that Time Warner seeks will have little meaning if a rural LEC can refuse to negotiate interconnection and exchange of traffic with the wholesale CLEC

¹² *Developing a Unified Intercarrier Compensation Regime*, Oklahoma Western Telephone Company Petition for Clarification of Declaratory Ruling and Report and Order, CC Docket 01-92 (filed Nov. 27, 2006).

¹³ Even where RLECs do not ultimately succeed in denying entry, their reliance on arguments under Section 251(f) without invoking the 251(f) process or being subject to the relevant 251(f) time frames. See Level 3 Reply Comments at 10 & n.12 (detailing four years of proceedings before Iowa Utilities Board granted Level 3 authority to provide services to VoIP providers).

¹⁴ 47 U.S.C. § 251(b).

¹⁵ 47 U.S.C. § 251(c).

¹⁶ 47 U.S.C. § 252.

¹⁷ See 47 U.S.C. § 251(f)(1).

¹⁸ *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 7236, 7303 (1997).

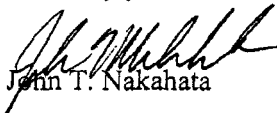
HARRIS, WILTSHIRE & GRANNIS LLP

Marlene Dortch
February 13, 2007
Page 5

serving Time Warner. The states that have considered the issue have split. Consequently, the Commission should make clear for the whole country what the law, in fact, is – that the negotiation and arbitration provisions of Section 252 apply to requests for interconnection under Section 251(a) and (b), including requests made to RLECs subject to the rural exemption under Section 251(f)(1).

For the foregoing reasons, in any Order addressing the TWC Petition, the Commission should make clear that competitive carriers are free to request interconnection from all ILECs, including RLECs, pursuant to Sections 251(a) and (b), and that such requests are subject to the negotiation and arbitration procedures contained in Section 252.

Sincerely yours,



John T. Nakahata

Counsel to Level 3 Communications, LLC

cc: Thomas Navin, Chief, Wireline Competition Bureau, Federal Communications Commission

EXHIBIT

6

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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ALMATY
BEIJING

May 13, 2005

VIA HAND DELIVERY

Honorable Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

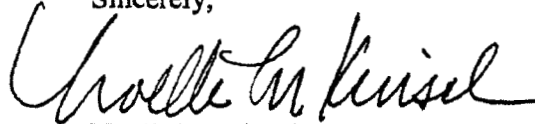
Re: Traffic Termination Agreement Between Neutral Tandem-New York, LLC
and Time Warner Telecom – NY, L.P.

Dear Secretary Brillling:

On behalf of Time Warner Telecom – NY, L.P., enclosed please find an original and five copies of a Traffic Termination Agreement Between Neutral Tandem-New York, LLC and Time Warner Telecom – NY, L.P.

If you have any questions regarding this filing, please contact me.

Sincerely,



Noelle M. Kinsch

BTF/rsb
Enclosures

cc: Ms. Rochelle D. Jones
Ms. Suraya Yahaya
Brian T. FitzGerald, Esq.

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TRAFFIC TERMINATION AGREEMENT

Dated as of APR 20 2005, 2005

By and Between

**NEUTRAL TANDEM-NEW YORK, LLC
NEUTRAL TANDEM-GEORGIA, LLC
NEUTRAL TANDEM-INDIANA, LLC
NEUTRAL TANDEM-ILLINOIS, LLC
NEUTRAL TANDEM-CALIFORNIA, LLC
NEUTRAL TANDEM-MINNESOTA, LLC
NEUTRAL TANDEM-MICHIGAN, LLC**

And

**TIME WARNER TELECOM - NY, L.P.
TIME WARNER TELECOM OF GEORGIA, L.P.
TIME WARNER TELECOM OF INDIANA, L.P.
TIME WARNER TELECOM OF WISCONSIN, L.P.
TIME WARNER TELECOM OF CALIFORNIA, L.P.
TIME WARNER TELECOM OF MINNESOTA LLC
TIME WARNER TELECOM OF OHIO LLC**

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TRAFFIC TERMINATION AGREEMENT

This Traffic Termination Agreement ("Agreement"), by and between Time Warner Telecom - NY, L.P., Time Warner Telecom of Georgia, L.P., Time Warner Telecom of Indiana, L.P., Time Warner Telecom of Wisconsin, L.P., Time Warner Telecom of California, L.P., Time Warner Telecom of Minnesota LLC and Time Warner Telecom of Ohio LLC with offices located at 10475 Park Meadows Drive, Littleton, CO 80124, (collectively "TWTC") and Neutral Tandem-New York, LLC, Neutral Tandem-Georgia, LLC, Neutral Tandem-Indiana, LLC, Neutral Tandem-Illinois, LLC, Neutral Tandem-California, LLC, Neutral Tandem-Minnesota, LLC, and Neutral Tandem-Michigan, LLC, with offices located at 1 S. Wacker Drive, Suite 200, Chicago, IL 60606 (collectively "NT"), (TWTC and NT being referred to collectively as the "Parties" and individually as "Party") is effective as of this 29th day of April, 2005 (the "Effective Date").

RECITALS

WHEREAS, the Parties are duly authorized Telecommunications Carriers (as defined below) providing local exchange and other services in the State of New York, Georgia, Indiana, Wisconsin, California, Minnesota and Ohio; and

WHEREAS, the Parties wish to enter into an Agreement pursuant to which NT may deliver Transit Traffic (as defined below) originated by providers of Telecommunications Services (as defined below) that are Customers of NT ("NT's Carrier Customers") for termination on the TWTC's network; and

WHEREAS, TWTC intends to continue delivering its originating traffic either directly or through a transiting arrangement with the Incumbent Local Exchange Carrier ("ILEC"); and

WHEREAS the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which NT will deliver traffic to and, if applicable, compensate TWTC for the transport facility if ordered through TWTC; and

WHEREAS compensation for termination of Local Traffic, EAS Traffic, ISP Traffic and any Intra-LATA Toll Traffic (as defined below) on TWTC's network shall be billed to NT's Carrier Customers, and NT shall take all responsible steps to ensure that NT's Carrier Customers transmit to NT and NT passes along to TWTC all call detail information necessary for billing.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND RECITALS

Each of the above Recitals is incorporated into the body of this Agreement as if fully set forth herein for all intents and purposes. The capitalized terms used in this Agreement shall have the meanings specified below in this Section or as specifically otherwise defined elsewhere within this Agreement.

- 1.1.** "Act" means the Communications Act of 1934 (47 U.S.C. § 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission having authority to interpret the Act within its state of jurisdiction.
- 1.2.** "Automatic Number Identification" ("ANI") shall mean the process that identifies the telephone number of the line initiating a call in order to send this information to the automatic message accounting system.
- 1.3.** "Calling Party Number" ("CPN") is a Common Channel Interoffice Signaling ("CCIS") parameter which refers to the number transmitted through a network identifying the calling party.
- 1.4.** "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:
 - (a) "End Office Switches" which are used to terminate Customer station Loops for the purpose of Interconnection to each other and to trunks; and
 - (b) "Tandem Office Switches" or "Tandems" which are used to connect and switch trunk circuits between and among other Central Office Switches.
 - (c) "Tandem Switching" is defined as the function that establishes a communications path between two switching offices through a third switching office through the provision of trunk side to trunk side switching.
- 1.5.** "Commission" means the applicable state administrative agency to which the state legislature has delegated the authority to regulate the operations of LECs within the state of New York, Georgia, Indiana, Wisconsin, California, Minnesota and Ohio.
- 1.6.** "Common Channel Interoffice Signaling" or "CCIS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be SS7.
- 1.7.** "Confidential Information" shall mean confidential or proprietary

information (including without limitation technical and business plans, specifications, drawings, computer programs, network configurations, facilities deployment information, procedures, orders for services, usage information, Customer Service Records, Customer account data, and CPNI) that one Party ("Owner") may disclose to the other Party ("Recipient") in connection with the performance of this Agreement and that is disclosed by an Owner to a Recipient in document or other tangible form (including on magnetic tape) or by oral, visual or other means, and that the Owner prominently and clearly designates as proprietary and confidential whether by legends or other means.

- 1.8.** Customer Proprietary Network Information ("CPNI") as defined by 47 U.S.C. § 222 and the rules and regulations of the Federal Communications Commission.
- 1.9.** "Customer" or "End User" means a third-party residence or business that subscribes to Telecommunications Services provided by a Telecommunications Carrier, including either of the Parties.
- 1.10.** "Exchange Access" is as defined in the Act.
- 1.11.** "Exchange Area" means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 1.12.** "Extended Area Service Traffic" ("EAS Traffic") means those calls that fall within a type of calling arrangement as generally defined and specified in the general subscriber service tariff of the ILEC, but excluding calls that would rate as interLATA local calls.
- 1.13.** "FCC" means the Federal Communications Commission.
- 1.14.** "Incumbent Local Exchange Carrier" ("ILEC") is as defined in the Act.
- 1.15.** "Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.16.** "Intra-LATA Toll Traffic" means all intra-LATA calls other than Local Traffic calls.
- 1.17.** "Internet Service Provider Traffic" ("ISP Traffic") mean any traffic that is transmitted to or returned from the internet at any point during the duration of the transmission.
- 1.18.** "Local Access and Transport Area" ("LATA") is as defined in the Act.
- 1.19.** "Local Exchange Carrier" ("LEC") is as defined in the Act.
- 1.20.** "Local Traffic" means those calls that originate from an End User's use of local or foreign exchange service in one exchange and terminate in either the same exchange or another calling area associated with the originating exchange, as generally defined and specified in the general subscriber

service tariff of the ILEC.

- 1.21. "Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including reasonable attorneys' fees), except incidental, consequential, indirect, and special losses or damages.
- 1.22. "North American Numbering Plan" ("NANP") means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- 1.23. "NXX" means the 3-digit code that appears as the first 3-digits of a 7-digit telephone number.
- 1.24. "SS7" means Signaling System 7.
- 1.25. "Telecommunications" is as defined in the Act.
- 1.26. "Telecommunications Carrier" is as defined in the Act.
- 1.27. "Telecommunications Service" is as defined in the Act.
- 1.28. "Telephone Exchange Service" is as defined in the Act.
- 1.29. "Transit Traffic" means Local or non-Local traffic that is originated on a third party Telecommunications Carrier's network, transited through a Party's network, and terminated to the other Party's network.

2. INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context specifically otherwise requires. In the event of a conflict or discrepancy between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

3. TERMINATION OF TRAFFIC

- 3.1 TWTC agrees, in accordance with the terms of this Agreement, to terminate Transit Traffic delivered from NT that is destined for TWTC's subscribers, including without limitation, Local, EAS, intrastate Intra-LATA Toll Traffic, and calls to internet service providers and other enhanced service providers. The Point of Interconnection ("POI") shall be the TWTC Central Office Switch designated in the attached Appendix 1. NT agrees its Transit Traffic shall be routed to TWTC's network in accordance with

Appendix 1. Pursuant to Section 4.6, TWTC agrees to provision a connection for terminating traffic from NT within sixty (60) days of a request of NT. TWTC agrees to provision additional facilities as ordered by NT to sufficiently trunk the network for traffic volumes consistent with the Industry Blocking Standard identified below.

- 3.2** The Parties may determine subsequent to the Effective Date of this Agreement that services other than those contemplated by this Agreement are desired, in which event, the Parties may amend this Agreement or enter into a separate agreement as the Parties mutually agree.
- 3.3** Upon a written request from NT to TWTC for the termination of Transit Traffic for a state not covered by this Agreement, the Parties will enter into an amendment within thirty (30) days of the request to add the new state to this Agreement.

4. TRUNK FORECASTING, ORDERING AND PROVISIONING FOR TERMINATION OF TRAFFIC

- 4.1** NT shall establish direct trunking with TWTC for the purpose of solely delivering terminating traffic.
- 4.2** NT shall provision, at its sole cost and expense, an appropriate number of T1s and/or DS3 trunks ("Trunk" or "Trunks") for the transport and delivery of its Transit Traffic in accordance with the traffic engineering standards stated in Section 5.1 or in the alternative NT must ensure that NT's Carrier Customers have established and maintain an alternative route via the ILEC for the delivery of overflow traffic for termination by TWTC.
- 4.3** Trunks shall be provided, at a minimum, over a DS1 line with B8ZS and 64 Clear Channel Capability ("CCC").
- 4.4** Each Party shall be responsible for engineering and maintaining its network on its side of the POI.
- 4.5** All direct Trunks installed pursuant to this Agreement shall carry Local, EAS and Intra-LATA Toll traffic.
- 4.6** NT shall be responsible for all the transport costs of delivering its Transit Traffic to TWTC's Central Office Switches for services under this Agreement. NT may either purchase trunks from TWTC at the same price as NT could purchase such trunks from the ILEC, or NT may negotiate individual sales contracts or a master service agreement with TWTC

through the appropriate TWTC channels and procedures.

4.7 Trunk Forecasts For Direct Connections

4.7.1 NT shall provide TWTC with Trunk quantity forecasts in a mutually agreed upon format once every six (6) months, commencing on the date NT establishes a direct connection. The forecasts shall include all information necessary to allow TWTC to manage its trunking facilities.

4.7.2 NT shall provide forecasted Trunk quantity requirements for a period that is no less than one (1) year from the date of the forecast and no more than two (2) years from the date of the forecast. The forecast shall be itemized by switch location. Each switch location shall be identified by the use of Common Language Location Identifier ("CLLI") Codes, which are described in Telecordia documents BR 795-100-100 and BR 795-400-100.

4.8 Review and Update of Trunk Forecasts

4.8.1 At the time the direct connection is established, each Party shall provide the other with a point of contact regarding Trunk forecasts. If NT becomes aware of any factors that would materially modify the forecast it has previously provided, it shall promptly provide written notice of such modifications to TWTC.

4.9 Provisioning Responsibilities for Direct Connections; Trouble Reporting and Management

4.9.1 Each Party shall provide to the other Party the contact number(s) to its control office which shall be accessible and available 24 hours a day, 7 days a week, for the purpose of, without limitation, (a) coordinating Trunk orders (e.g., notifying the other Party of delays in Trunk provisioning), (b) maintaining service (e.g., notifying the other Party of any trouble or need for repairs), and (c) notifying the other Party of any equipment failures which may affect the interconnection Trunks. Any changes to either Party's operational contact currently listed in Exhibit A shall be promptly provided to the other Party in writing pursuant to the procedures in Section 22, below.

4.9.2 Each Party shall coordinate and schedule testing activities of its own personnel, and others as applicable, to ensure that Trunks are installed in accordance with the Access Service Request ("ASR"),

meet agreed-upon acceptance test requirements, and are placed in service by the in-service date.

- 4.9.3 Prior to reporting any trouble with interconnection facilities to the other Party, each Party shall perform sectionalization to determine if trouble is located in its facility or in its portion of the Trunks.
- 4.9.4 The Parties shall cooperatively plan and implement coordinated repair procedures for the interconnection facilities in order to ensure that trouble reports are resolved in a timely manner and that the trouble is promptly eliminated.
- 4.9.5 Prior to the placement of any orders for direct connection Trunks, the Parties shall meet and mutually agree upon technical and engineering parameters, including Glare and other control responsibilities.
- 4.9.6 Overflow traffic carried on the direct Trunks will be routed to LEC tandems.

5. NETWORK TRAFFIC MANAGEMENT

- 5.1 Blocking Standard. NT shall maintain a blocking standard of no more than one percent (1%) during the bouncing busy hour, i.e., the peak busy time each day, based upon mutually agreed engineering criteria ("Industry Blocking Standard").

6. SIGNALING

- 6.1 NT shall pass the call detail information required to permit billing of access and reciprocal compensation charges on all calls originating from carriers interconnected to the NT tandem and terminating traffic to TWTC. NT agrees not to change, manipulate, or in any way intentionally and fraudulently modify traffic line records, including CPNI and ANI.

7. COMPENSATION FOR TERMINATION

- 7.1 TWTC will terminate NT's Transit Traffic without compensation from NT. NT agrees to pass to TWTC all signaling received by NT from the originating carrier. In the event that an originating carrier passing traffic to TWTC through NT is not sending adequate signaling information, TWTC may request call record detail on such traffic and NT shall identify to TWTC the originating carrier for such traffic. Nothing in this Agreement will alter the manner in which TWTC bills NT's Carrier Customers for terminating traffic. NT will bill NT's Carrier Customers for sending Transit

Traffic to TWTC through NT for termination, and NT will not bill TWTC for the originating Carrier Customer's Transit Traffic.

7.2 Traffic Recording, Exchange of Necessary Factors and Audits

7.2.1 In order to accurately bill traffic exchanged, the Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder, regardless of whether or not this Agreement results in a flow of compensation between the Parties. NT agrees that either it or its Carrier Customers shall perform Local Number Portability ("LNP") queries and that TWTC shall in no way be required to perform this function. Each Party agrees to use commercially reasonable efforts to accurately capture and transmit the actual MOU associated with the Intra-LATA Toll, Local and ISP Traffic it terminates for the other Party in order to properly calculate the necessary compensation between TWTC and NT's Carrier Customers.

7.2.3 Audits. NT agrees to participate in any TWTC audit initiated with NT's Carrier Customers to ensure the proper billing of traffic. TWTC may review records of call detail and supporting network information relevant to the exchange of traffic under this Agreement and request that such network information include switch translations for call routing data, which can be used to determine the jurisdiction in which the call originated. If such a request for switch translation verification is made, the NT must submit the necessary information, or, allow the audit to be accomplished on the NT premises within a reasonable time period. The audit must be accomplished during normal business hours. Audit requests may not be submitted more frequently than once per calendar year. The Parties agree to work together cooperatively to resolve any problems uncovered as the result of an audit performed in accordance with this Section 7.2.3 TWTC and NT must retain records of call detail and other information subject to audit under this Section for a minimum of twelve (12) months from the date the records are established.

7.3 Billing

7.3.1 All terminating traffic will be billed to NT's Carrier Customers in accordance with TWTC's applicable tariffs or interconnection agreement.

7.3.2 Transport facility costs shall be billed either at the rate charged by the ILEC in the serving area or at the rate negotiated with the TWTC Sales organization, in accordance with Section 4.6 above.

8. DEFAULT

8.1 In the event of Default, either Party may terminate this Agreement in whole or in part provided that the non-defaulting Party has first advised the defaulting Party in writing ("Default Notice") of the alleged Default and the defaulting Party fails to cure the alleged Default within sixty (60) days after receipt of the Default Notice. Default is defined as:

8.1.1 Either Party's insolvency or initiation of bankruptcy or receivership proceedings by or against the Party;

8.1.2 Failure to perform any of the material terms of this Agreement.

9. GENERAL RESPONSIBILITIES OF THE PARTIES

9.1 Contact with Subscribers (End Users). TWTC shall be the primary contact and account control for all interactions with its own subscribers. Nothing in this agreement will prevent TWTC from contacting and or contracting with NT's Carrier Customers.

9.2 Escalation Contact Lists and Service Recovery Procedures. Each Party shall provide the other Party with all network escalation contact lists and service recovery procedures (including, without limitation, the procedures for opening of trouble tickets) necessary to facilitate the rapid resolution of disputes and service issues in a mutually agreed upon format and in a timely and reasonable manner. The Parties shall provide each other with as much advance notice as possible of any changes in their respective escalation contact lists and service recovery procedures. This escalation contact list is attached hereto and made a part hereof as Exhibit A.

9.3 Collocation. Except as specifically provided herein, nothing in this Agreement shall obligate either Party to provide collocation space, facilities or services to the other Party. Any such collocation arrangement shall be entered into by each Party in its sole discretion. The terms and conditions for any agreed-upon collocation shall be set forth in a separate written agreement between the Parties.

10. TERM AND TERMINATION OF AGREEMENT

10.1 The initial term of this Agreement shall commence on the Effective Date and shall continue thereafter for a period of two (2) years (the "Initial Term").

10.2 Following expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year terms unless either Party requests

re-negotiation or gives notice of termination at least sixty (60) days prior to the expiration of the then-current term.

10.3 In the event that any requested re-negotiation does not conclude prior to expiration of the then-current term, this Agreement shall continue in full force and effect until replaced by a successor agreement.

10.4 The Parties shall use their best endeavours to resolve all outstanding issues in the renegotiation process. However, if the Parties are unable to come to a resolution of certain issues during the renegotiation process, either Party may at any time during the renegotiation, request arbitration, mediation or assistance from the Commission or, if applicable, the FCC, to resolve the remaining issues in the renegotiation process, in accordance with the Commission's or FCC's, as appropriate, prescribed procedures.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

11.1 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

12. INDEMNIFICATION

12.1 Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party") from and against all Losses arising out of any claims, demands or suits ("Claims") of a third party against the Indemnified Party to the extent arising out of the negligence or willful misconduct of the Indemnifying Party or out of the failure of the Indemnifying Party to perform, or cause to be performed, its obligations under this Agreement, including but not limited to, services furnished by the Indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.

12.2 Each Party, as an Indemnifying Party, agrees to indemnify, defend, and hold harmless the other Party from any third party Claims that assert any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the Indemnifying Party's or its employees, agents and contractors, or by the Indemnifying Party's equipment, associated with the provision of any service provided under this Agreement. This provision includes but is not

limited to Claims arising from unauthorized disclosure of the End User's name, address or telephone number, from third party Claims that the equipment provided by one Party to the other Party or the manner in which either Party configures its network violates any third party intellectual property right.

- 12.3** The Indemnified Party shall notify the Indemnifying Party promptly in writing of any Claim by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 12. The Indemnified Party shall tender the defense of such Claim to the Indemnifying Party and shall cooperate in every reasonable manner with the defense or settlement of such Claim.
- 12.4** The Indemnifying Party shall, to the extent of its obligations to indemnify under this Agreement, defend with counsel any Claim brought by a third party against the Indemnified Party. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the Claim. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense; provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.
- 12.5** The Indemnifying Party shall not be liable under the indemnification provisions of this Agreement for a settlement or compromise of any Claim unless the Indemnifying Party has approved the settlement or compromise in advance. The Indemnifying Party shall not unreasonably withhold, condition or delay such approval. If the defense of a Claim has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense, then the Indemnifying Party shall be liable under the indemnification provisions of this Agreement for a settlement or compromise of such Claim by the Indemnified Party, regardless of whether the Indemnifying Party has approved such settlement or compromise.
- 12.6** The indemnification obligations of the Parties under this Section 12 shall survive the expiration or termination of this Agreement for a period of three (3) years.

13. LIMITATION OF LIABILITY

- 13.1** Except as otherwise provided in Section 12 Indemnification, each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the

service(s) and facility(ies) provided by the other Party, its agents, subcontractors, or others retained by such parties. Neither Party will be liable to the other for any Loss relating to or arising out of any ordinary negligent act or omission by a Party, except involving cases of infringement of a third party's intellectual property rights or the improper disclosure of Confidential Information. In no event will either Party be liable to the other Party for any indirect, special, incidental or consequential damages, including, but not limited to loss of profits, income or revenue, even if advised of the possibility thereof, whether such damages arise out of breach of contract, breach of warranty, negligence, strict liability, or any other theory of liability and whether such damages were foreseeable or not at the time this Agreement was executed.

- 13.2** With respect to any claim or suit for damages arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays or errors, or defects in transmission or service which are caused or contributed to by the negligent or wilful act of the other Party, or which arise from the use of the other Party's provided facilities or equipment, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. This limitation of liability provision does not restrict or otherwise affect a Party's indemnification obligations under this Agreement.

14. COMPLIANCE

- 14.1** Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

15. INDEPENDENT CONTRACTORS

- 15.1** No partnership, joint venture, fiduciary, employment or agency relationship is established by entering into this Agreement. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties.

16. FORCE MAJEURE

16.1 In no event shall either Party have any claim or right against the other Party for any delay or failure of performance by such other Party if such delay or failure of performance is caused by or is the result of causes beyond the reasonable control of such other Party and is without such Party's fault or negligence (a "Force Majeure Event"), including, but not limited to, acts of God, fire, flood, epidemic or other natural catastrophe; unusually severe weather; explosions, nuclear accidents or power blackouts; terrorist acts; laws, orders, rules, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter of this Agreement or any civil or military authority; the condemnation or taking by eminent domain of any of a Party's facilities used in connection with the provision of services to its subscribers; national emergency, insurrection, riot or war; labor difficulties or other similar occurrences.

16.2 In the event that a Force Majeure Event causes a Party to delay or fail to perform any obligation(s) under this Agreement, the delaying Party shall resume performance of its obligations as soon as practicable in a nondiscriminatory manner that does not favor its own provision of services over that of the non-delaying Party.

17. CONFIDENTIALITY

17.1 By virtue of this Agreement, TWTC and NT may have access to or exchange Confidential Information belonging to the other Party. A recipient of such Confidential Information shall not disclose any Confidential Information to any person or entity except recipient's employees, contractors and consultants who have a need to know and who agree in writing to be bound by this Section 17 to protect the received Confidential Information from unauthorized use or disclosure. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for the purpose of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information, but in no event less than a reasonable degree of care.

17.2 The restrictions of this Section 17 shall not apply to information that: (i) was publicly known at the time of the owner's communication thereof to the recipient; (ii) becomes publicly known through no fault of the recipient subsequent to the time of the owner's communication thereof to the recipient; (iii) was in the recipient's possession free of any obligation

of confidence at the time of the owner's communication thereof to the recipient, and, the recipient provides the owner with written documentation of such possession at the time the owner makes the disclosure; (iv) is developed by the recipient independently of and without reference to any of the owner's Confidential Information or other information that the owner disclosed in confidence to any third party; (v) is rightfully obtained by the recipient from third parties authorized to make such disclosure without restriction; or (vi) is identified in writing by the owner as no longer proprietary or confidential.

- 17.3** In the event the recipient is required by law, regulation or court order to disclose any of the owner's Confidential Information, the recipient will promptly notify the owner in writing prior to making any such disclosure in order to facilitate the owner seeking a protective order or other appropriate remedy from the proper authority to prevent or limit such disclosure. The recipient agrees to cooperate with the owner in seeking such order or other remedy. The recipient further agrees that if the owner is not successful in precluding or limiting the requesting legal body from requiring the disclosure of the Confidential Information, the recipient will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable written assurances that confidential treatment will be accorded the Confidential Information.
- 17.4** All Confidential Information disclosed in connection with this Agreement shall be and remain the property of the owner. All such information in tangible form shall be returned to the owner promptly upon written request and shall not thereafter be retained in any form by the recipient.
- 17.5** The Parties acknowledge that Confidential Information is unique and valuable, and that disclosure in breach of this Section 17 will result in irreparable injury to the owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the owner shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
- 17.6** CPNI related to a Party's subscribers obtained by virtue of this Agreement shall be such Party's Confidential Information and may not be used by the other Party for any purpose except performance of its obligations under this Agreement, and in connection with such performance, shall be disclosed only in accordance with this Section 17, unless the Party's subscriber expressly directs such Party in writing to disclose such information to the other Party pursuant to the requirements of 47 U.S.C.

Section 222(c)(2). If the other Party seeks and obtains written approval to use or disclose such CPNI from the Party's subscribers, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the requesting Party may use or disclose only such information as the disclosing Party provides pursuant to such authorization and may not use information that the requesting Party has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.

17.7 Except as otherwise expressly provided in this Section 17, nothing herein shall be construed as limiting the rights of either Party with respect to its subscriber information under applicable law, including without limitation 47 U.S.C. Section 222.

17.8 The provisions of this Section 17 shall survive the termination or expiration of this Agreement for a period of two years.

18. GOVERNING LAW

18.1 This Agreement shall be governed by the laws of the state in which services provided under this Agreement are performed, without giving effect to the principles of conflicts of law thereof, except that if federal law, including the Act, applies, federal shall control.

19. TRANSFER AND ASSIGNMENT

19.1 Neither Party may assign or transfer this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, provided however, either Party may assign this Agreement to a parent, subsidiary, affiliate, or to an entity that acquires all or substantially all the equity or assets by sale, merger or otherwise without the consent of the other Party, provided the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns. No assignment or delegation hereof should relieve the assignor of its obligations under this Agreement.

20. TAXES

20.1 In the event NT purchases transport facilities from TWTC in accordance with Section 4.6 above, NT agrees that it shall be subject to all applicable

taxes as specified under the relevant sales contracts or tariffs.

21. NON-WAIVER

21.1 No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party as the case may be. Neither the failure of either Party to insist upon a strict performance of any of this agreements, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies.

22. NOTICES

22.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by nationally recognized overnight delivery service, (c) mailed by, certified US mail postage prepaid, return receipt requested or (d) delivered by telecopy to the following addresses of the Parties or to such other address as either Party shall designate by proper notice:

TWTC:

Tina Davis
Vice President and Deputy General Counsel
Time Warner Telecom
10475 Park Meadows Drive
Littleton, CO 80124

Tel: (303) 566-1279

Fax: (303) 566-1010

With a copy to:

Rochelle Jones
Vice President, Regulatory Northeast
14 Wall St, 9th Floor
New York, NY 10005

Tel: (212) 364-7319

Fax: (212) 364-2355

NT:

NT Tandem, Inc.

1 S. Wacker Drive, Suite 200

Chicago, IL 60606

Attn: Ron Gavillet

22.2 Notices will be deemed given as of the date of actual receipt or refusal to accept, as evidenced by the date set forth on the return receipt, confirmation, or other written delivery verification.

23. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

23.1 Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent, which consent may be granted in such Party's sole discretion.

24. USE OF LICENSES

24.1 No license under patents, copyrights or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

25. INSURANCE

25.1 Each Party shall retain appropriate insurance necessary to cover its services and obligations under this Agreement.

26. SURVIVAL

26.1 Except as otherwise specifically stated, the Parties' obligations under this Agreement which by their nature are intended to continue beyond the

termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

27. ENTIRE AGREEMENT

27.1 The terms contained in this Agreement and any Schedules, Exhibits, Appendices, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement does not in any way affect either Party's obligation to pay the other Party for any goods or services provided by the other Party pursuant to a separate agreement or under tariff.

28. COUNTERPARTS

28.1 This Agreement may be executed in several counterparts, each shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

29. AUTHORITY

29.1 Each Party represents and warrants to the other that (a) it has full power and authority to enter into and perform this Agreement in accordance with its terms, (b) the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement, and (c) it has authority to do business in each of the jurisdictions in which it provides local exchange services to subscribers under this Agreement, and has obtained and will maintain all licenses, approvals and other authorizations necessary to provide such services and to perform its obligations under this Agreement, and (d) it is an entity, duly organized, validly existing and in good standing under the laws of the state of its origin.

30. GENERAL

30.1 Changes in Law; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this

Agreement are based in part on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of (a) any legislative, regulatory, judicial or other legal action that materially affects the ability of a Party to perform any material obligation under this Agreement, or (b) any amendment to the Act or the enactment or amendment to any applicable FCC rule, including but not limited to the FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185, and CS Docket No. 96-166 that affects this Agreement, or (c) the enactment or amendment to any applicable Commission rule, Local Service Guideline, or Commission order or arbitration award purporting to apply the provisions of the Act (individually and collectively, a "Change in Law"), either Party may, on thirty (30) days' written notice to the other Party (delivered not later than thirty (30) days following the date on which the Change in Law has become legally binding); require that the affected provision(s) be renegotiated, or that new terms and conditions be added to this Agreement, if applicable, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that the new provisions shall not affect the validity of the remainder of this Agreement not so affected by the Change of Law. In the event such new provisions are not renegotiated within ninety (90) days after such notice, either Party may request that the dispute be resolved in accordance with the dispute resolution procedures set forth in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, each Party reserves its rights and remedies with respect to the collection of such rates or charges; including the right to seek a surcharge before the applicable regulatory authority.

- 30.2 Remedies.** In the event of a dispute between the Parties hereunder, unless specifically delineated in another Section of this Agreement, either Party may, at its option, exercise any remedies or rights it has at law or equity, including but not limited to, filing a complaint with the state commission, termination, or any service under this Agreement, or termination of this Agreement. No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise. However, any other rights or remedies now or hereafter existing under applicable law or otherwise shall continue to be available only to the extent such right or remedy has not been excluded or modified by the terms of this Agreement.
- 30.3 Severability.** If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of

the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. However, the Parties shall negotiate in good faith to amend this Agreement to replace, with enforceable language that reflects such intent as closely as possible, the unenforceable language and any provision that would be materially affected by vacation of the unenforceable language.

- 30.4** No Third Party Beneficiary, No Agency Relationship. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a joint venturer, partner, employee, legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 30.5** Joint Work Product. This Agreement is the joint work product of TWTC and NT. Accordingly, in the event of ambiguity, no presumption shall be imposed against either Party by reason of document preparation.
- 30.6** Non-exclusive. This Agreement between TWTC and NT is non-exclusive. Nothing in this Agreement shall prevent either Party from entering into similar arrangements with any other entities.
- 30.7** Regulatory Filing. The Parties acknowledge that this Agreement, and any or all of the terms hereof, may be subject to filing with, and regulatory approval by, various state and/or federal agencies. Should such filing or approval be required from time to time, or at any time, the Parties shall cooperate, to the extent reasonable and lawful, in providing such information as is necessary in connection with such filing or approval.
- 30.8** Amendments. Unless otherwise expressly permitted herein, this Agreement cannot be modified except in writing signed by a duly authorized officer of both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above.

Time Warner Telecom - NY, L.P.

Neutral Tandem-New York, LLC

By : Time Warner Telecom General Partnership,
its general partner

By : Time Warner Telecom Holdings Inc.,
its managing general partner

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Barwick

Name: JOHN BARWICK

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Georgia, L.P.

Neutral Tandem-Georgia, LLC

By : Time Warner Telecom General Partnership,
its general partner

By : Time Warner Telecom Holdings Inc.,
its managing general partner

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Barwick

Name: JOHN BARWICK

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Indiana, L.P.

Neutral Tandem-Indiana, LLC

By : Time Warner Telecom General Partnership,
its general partner

By : Time Warner Telecom Holdings Inc.,
its managing general partner

By: Tina Davis

Name: Tina Davis

By: John Barwick

Name: JOHN BARWICK

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Wisconsin, L.P.

Neutral Tandem-Illinois, LLC

By : Time Warner Telecom General Partnership,
its general partner

By : Time Warner Telecom Holdings Inc.,
its managing general partner

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Barnicce

Name: JOHN BARNICCE

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of California, L.P.

Neutral Tandem-California, LLC

By : Time Warner Telecom General Partnership,
its general partner

By : Time Warner Telecom Holdings Inc.,
its managing general partner

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Barnicce

Name: JOHN BARNICCE

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Minnesota LLC

Neutral Tandem-Minnesota, LLC

By: Time Warner Telecom Holdings Inc.,
its sole member

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Barnicce

Name: JOHN BARNICCE

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Ohio LLC

By: Time Warner Telecom Holdings Inc.,

its sole member

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: 4-20-05

Neutral Tandem-Michigan, LLC

By: John Barnicle

Name: JOHN BARNICLE

Title: PRESIDENT

Date: 4-20-05

Appendix 1

Network Arrangements Schedule - Exchange of Traffic

Traffic subject to this Agreement is to be exchanged between the noted TWTC office CLLIs below, and to be updated based upon the utilization of the latest version of CLLIs contained in the LERG:

<u>NT CLI</u>	<u>TWTC CLI</u>
ATLNGAQS08T	ATLNGAGADSO
CLEVOHK01T	CLMDOH44DSO
CLEVOHK01T	CLMCOH1BDSO
IPLWIN7500T	IPLTINSDDSO
IPLWIN7500T	IPLTINSDDS2
LSANCARC57T	IRVECAJTDSO
LSANCARC57T	LSANCAJQDSO
LSANCARC57T	RUSDCAMLDSO
CHCGIL2495T	BRFDWIJZDSO
CHCGIL2495T	MILXWIIXDSO
MPLSMNCD07T	MNNTMNICDSO
NYCMNYBX41T	NYCLNYJWDSO
NYCMNYBX41T	NYCMNYTGDSO
NYCMNYBX41T	NYCLNYJWDS2

Exhibit A

Contact and Escalation List

NT:

Corporate Headquarters One South Wacker, 2nd Fl Chicago, IL 60606			Phone:	312.384.8000	
			Toll free:	888.682.6336	
			Fax:	312.346.3276	
Sales					
		email address	phone	mobile	pager
Dave Lopez	Sr. Vice President	dlopez@neutraltandem.com	312.384.8015	312.286.1739	
Frank Cefali	Regional Vice President	fcefali@neutraltandem.com	312.384.8025	312.560.8136	
Kevin Daly	National Account Manager	kdaly@neutraltandem.com	781.647.7733	508.259.3445	
Gary Kern	National Account Manager	gkern@neutraltandem.com	212.809.0510	914.772.2987	
Ed Emberson	Account Manager	eemberson@neutraltandem.com	312.384.8069		
Customer Care			phone	mobile	pager
Jan Hewitt	Vice President	jhewitt@neutraltandem.com	312.384.8018	630.881.3588	866.590.7857
Cindy Metz	Provisioning	cmetz@neutraltandem.com	312.384.8016		
Jenny Beaudion	Provisioning	jbeaudion@neutraltandem.com	312.384.8017		
Stephanie Netzel	Provisioning	snetzel@neutraltandem.com	312.384.8022		
Elizabeth Ross	Implementation	lizross@neutraltandem.com	312.384.8019		
Len Bologna	Implementation	lbologna@neutraltandem.com	646.307.1229		
Operations			phone	mobile	On Call/Pager
David Redmon	West Operations Manager		248.351.0089	248.914.0768	877.364.7933
	Chicago Switch		312.235.0901		312.348.8500
	Cleveland Switch		216.344.9952		216.799.0500
	Detroit Switch		248.351.0089		248.794.1500
	Milwaukee POI		414.287.9845		414.406.8340
	Colmbus POI		614.222.0925		614.778.8057
Manuel Ceara	Miami Operations Manager		305.416.4071	954.471.6906	305.677.1500
Ralph Valente	Northeast Operations Manager		212.809.0510	917.566.9640	917.786.2824
	New York Switch		212.809.0510		646.307.1500

	Connecticut POI		212.809.0510		646.307.1500
Mark Virdin	L.A. Operations Manager		213.624.6402	626-216-1042	213.340.0500
Jeff Wells	Vice President Operations		312.384.8020	312.543.1666	866.776.1761
Executive			phone	mobile	pager
John Barnide	Chief Operating Officer		312.384.8010	312.543.1660	866.590.7846
Jim Hynes	Chief Executive Officer		312.384.8012		

Trouble Reporting

To report a trouble (24x7), please contact us at: 1-866-388-7258					
How to open a trouble ticket:					
1. Contact Neutral Tandem at 1-866-388-7258.					
2. Provide the following information:					
a. Customer name and contact information.					
b. Circuit ID					
c. Brief description of the problem.					
3. You will be provided a trouble ticket number for tracking purposes.					
4. Our on-call switch technician will be immediately notified of the trouble ticket and will contact you shortly.					

In the event that you would like to escalate a trouble ticket, please follow these guidelines.

How to escalate an open trouble ticket:					
1. Contact Neutral Tandem at 1-866-388-7258, or use the escalation table.					
2. Please remain in the established time periods, unless the trouble warrants immediate attention.					

Use This Table to Escalate on an Open Existing Trouble Ticket.

Level	Interval	Contact	Phone
1 st Level	0 to 2 Hours	On-Call Technician	See contact Sheet
2 nd Level	2 to 4 Hours	Switch Manager	See contact Sheet
3 rd Level	4 to 8 Hours	Jeff Wells	312-384-8020 (w)

		EVP Operations	312-543-1666 (c)		
			866-776-1761 (p)		
4 th Level	8 Hours	John Barnide	312-384-8010 (w)		
		COO	312-543-1660 (c)		
			866-590-7846 (p)		

TWTC:

NAME	TITLE	PHONE	EMAIL
Mike Kloster	Sr. Engineer Translation	(303)566-5825	michael.kloster@twtelecom.com
Lori Morris	Sr. Manager, Switch Traffic	(303) 542-4111	lori.morris@twtelecom.com
Sheri Lamkin	Switch Traffic Analyst	(303)542-4190	sheri.lamkin@twtelecom.com
Bill Mueller	Switch Traffic Analyst	(303)542-4470	william.mueller@twtelecom.com

EXHIBIT

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The Washington Post

October 14, 2005 Friday
Final Edition

SECTION: Financial; D04

LENGTH: 791 words

HEADLINE: Internet Access Dispute Cut Off Some Businesses

BYLINE: Arshad Mohammed, Washington Post Staff Writer

BODY:

Last week, the computers in Barbara F. Buckley's office in the District suddenly went blind to parts of the Internet.

A colleague at the Precursor Group, which analyzes the telecommunications industry for institutional investors, couldn't get online to send out the firm's research. Another couldn't download statistics from a government Web site.

"This is a disaster," Buckley, a Precursor vice president, recalled thinking. "A research firm is really only supposed to do two things and that is create the research and sell it, and we can't do either."

After a day of troubleshooting, Buckley finally found the "culprit." It was a dispute between Cogent Communications Group Inc. and Level 3 Communications Inc., two of the companies that move Internet traffic around the world seamlessly but, in this case, cut off many of their clients from parts of the Web.

Broomfield, Colo.-based Level 3 on Oct. 5 ended its agreement to exchange Internet traffic free with Washington-based Cogent. It cut their link, leaving Cogent clients such as Precursor unable to see parts of the Internet served only by Level 3, and vice versa.

With the Internet as vital to many businesses as the telephone, the incident prompted calls for the government to step in if the industry does not prevent such disruptions on its own.

"Does it require regulation? I think if the industry does not show itself to be more mature -- yeah," said David J. Farber, a former chief technologist at the Federal Communications Commission. He said his natural instinct is to avoid regulation "if you can get more sane solutions from the industry."

Communications experts suggested that companies in such disputes should agree to arbitration, have a cooling-off period during which they cannot cut service and warn all customers of any disruption.

Few customers were warned in advance, leaving many people unable to figure out why they could not access Web sites, use Internet phones or send e-mail.

After customers complained, Level 3 restored its link to Cogent on Oct. 7 and agreed to keep it open until Nov. 9, allowing time to negotiate a new agreement.

Level 3 and Cogent have spent the past week blaming each other.

Internet Access Dispute Cut Off Some Businesses The Washington Post Octo

The dispute boils down to Level 3's claim that it was carrying a disproportionate amount of Cogent traffic and should be paid for it. Cogent said it had sent more traffic to Level 3 but only at the other firm's request. A Level 3 executive said he was not aware that his company had made such a request.

Neither side made provisions to arrange connections with other Internet "backbone" providers, which would have kept all their customers connected after the cutoff.

Level 3 appeared chastened by the experience but said government regulation was not needed because the market policed itself.

"It was the customers screaming that got things going again," Level 3 President Kevin J. O'Hara said in an interview. He hopes not to cut off any customers in the future. "We learned a lesson here."

Cogent chief executive David Schaeffer said the government should step in.

"I am a guy who is anti-regulation. . . . I am also a realist," he said. "There is a place for a regulator to ensure the quality and ubiquity of service."

It is unclear how much of the Internet was inaccessible to Cogent and Level 3 customers. Cogent said as many as 5 percent of Web sites may have been affected, while Level 3 put the estimate at roughly 1 percent.

Depending on the site, any loss of service can be devastating for businesses.

"If you take out one of the legs that holds up the chair, it all tumbles down surprisingly quickly," said Paul F. Ryan of Ulysses Financial LLC, a New York investment banker who lost access to the Groove Networks Web site that he and his colleagues use to track deals, send instant messages and coordinate their work across the country. "You get back to the dark ages of having to pick up the telephone."

It took Ryan two days to get his Groove Networks access back.

"I am trained as a Harvard free market economist and should be spouting the party line that the free market solves everything," Ryan said. "There needs to be government policing authority to stop this from happening because at this point too much relies on it to make it just a decision between two guys having a pissing match."

Some Cogent customers remain angry that they were victims of a commercial dispute between two companies that appeared to have played a game of chicken, with Level 3 threatening to cut off Cogent and Cogent all but daring it to do so.

Buckley said she was considering spending \$450 more a month to get a backup provider and was wondering whether to leave Cogent altogether. "I am trying to think of a reason to stay," she said.

LOAD-DATE: October 14, 2005

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Copyright 2005 Denver Publishing Company
Rocky Mountain News (Denver, CO)

October 29, 2005 Saturday
Final Edition

SECTION: BUSINESS; Pg. 3C

LENGTH: 443 words

HEADLINE: LEVEL 3, COGENT RESOLVE DISPUTE;
FEUD DISRUPTED INTERNET TRAFFIC

BYLINE: Jeff Smith, Rocky Mountain News

BODY:

Broomfield-based Level 3 Communications and rival Cogent Communications reached an agreement Friday on carrying each other's traffic, three weeks after a dispute led to computer users being temporarily blocked from portions of the Internet.

In a joint news release, the companies said they had agreed to exchange traffic, subject to specific payments if certain volume and other commitments aren't met.

The issue involved a so-called "peering" agreement that enables networks to connect to each other so Internet traffic can be moved without disruption.

Level 3 claimed Washington, D.C.-based Cogent was sending far more traffic than agreed upon, and on Oct. 5, Level 3 disconnected the peering point, saying it had given Cogent advance notice that would occur.

Internet service for some was disrupted for nearly three days before Level 3 agreed to set a new deadline of Nov. 9. The disconnection affected customers of both companies, and it was serious enough that a federal lawmaker called on the Federal Communications Commission to consider arbitrating the case.

Cogent initially claimed up to 17 percent of Internet traffic was affected, but Cogent Chief Executive Dave Schaeffer said Friday that independent groups have since determined about 4 percent to 5 percent of Internet traffic was affected by the service disruption. Those figures, said by others to be too high, couldn't immediately be verified Friday.

On Friday, Level 3 and Cogent praised the new agreement.

"We're pleased with the modified agreement and believe it is in the best interests of Level 3 and users of the Internet," Jack Waters, Level 3's executive vice president and chief technology officer, said in a statement.

Schaeffer called the agreement a "very equitable solution and, hopefully, other major network operators will think long and hard before disrupting any interconnection."

Schaeffer said the company heard from lawmakers, FCC officials and state attorneys general, "but ultimately this was a business decision made between the two companies."

An FCC official didn't immediately respond to calls for comment.

Level 3 didn't comment beyond its statement. But Level 3 President Kevin O'Hara apologized to customers during the company's recent third-quarter conference call as he talked about the company's efforts to make its traffic-exchange agreements more equitable.

LEVEL 3, COGENT RESOLVE DISPUTE; FEUD DISRUPTED INTERNET TRAFFIC Rocky M

"In one instance this quarter, a number of Level 3 customers and Cogent customers were hurt as we pursued this strategy," O'Hara said. "I apologize to both sets of customers. . . . We recognize that we have an obligation to customers of the Internet and, in this instance, we contributed to letting them down."

LOAD-DATE: October 29, 2005