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March 13, 2007

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Docket No. 070127-TX

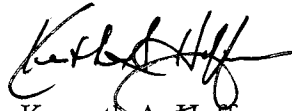
Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Level 3 Communications, Inc. ("Level 3") are the original and fifteen copies of Level 3's Corrected Motion to Dismiss and Response to Petition for Neutral Tandem, Inc. for Interconnection and Request for Expedited Resolution.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

- CMP**
- COM 1
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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-TX

Filed: March 13, 2007

**LEVEL 3 COMMUNICATIONS, LLC'S CORRECTED MOTION
TO DISMISS AND RESPONSE TO PETITION OF
NEUTRAL TANDEM, INC. FOR INTERCONNECTION
AND REQUEST FOR EXPEDITED RESOLUTION**

Level 3 Communications, LLC ("Level 3) pursuant to Rules 28-106.203, 28-106.204, and 25-22.0365, Florida Administrative Code, hereby files its Corrected Motion to Dismiss and Response to the Petition of Neutral Tandem, Inc. ("Neutral Tandem") for Interconnection and Request for Expedited Resolution.¹

I. BACKGROUND

1. Level 3 is a registered competitive local exchange telecommunications company ("CLEC") providing telecommunications services within the State of Florida.

2. Level 3's address and telephone number are:

Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021-8869
720-888-1780 (Telephone)

3. All pleadings, discovery, correspondence, orders or other documents filed or served in this proceeding should be served on the following on behalf of Level 3:

¹ On March 12, 2007, Level 3 filed its Motion to Dismiss and Response to the Petition of Neutral Tandem. However, due to word processing difficulties, all paragraphs in the document were not sequentially numbered and footnotes were not properly paged with their references in the body of the pleading. This "Corrected" version corrects those clerical errors.

DOCUMENT NUMBER-DATE

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II. INTRODUCTION

4. Neutral Tandem requests the Commission to exercise jurisdiction that has not been granted by the Legislature. The Commission should refrain from doing so. Neutral Tandem admits in its Petition that is it an independent, alternative provider of tandem transit services and that its services provide an alternative to the tandem transit services provided by incumbent local exchange companies (“ILECs”).

5. The fundamental legal issue raised by Neutral Tandem’s Petition is whether the Commission has the authority to (a) **compel** Level 3 to directly interconnect with Neutral Tandem), (b) **require** Level 3 to terminate that transit traffic that is not originated on the network of Neutral Tandem, and (c) **require** Level 3 to terminate that transit traffic without compensating Level 3 for the costs of those calls. All of these requests are made by Neutral Tandem even though it has not alleged that it provides local exchange telecommunications services. The Commission lacks the legal authority under the statutes cited by Neutral Tandem, Sections 364.16(2) and 364.162, Florida Statutes, to compel such interconnection and to establish the rates, terms and conditions associated therewith.

6. Neutral Tandem’s Petition admits that the parties have voluntarily negotiated commercial agreements where Level 3 agreed to provide, for a stated duration, termination for Neutral Tandem’s transit traffic (“Transit Termination Services”) delivered to Level 3 telephone

numbers. Neutral Tandem admits that those negotiated agreements were terminable on 30 days' notice. Nonetheless, Neutral Tandem now asks the Commission to act outside of its statutory authority by requiring Level 3 to continue to provide Transit Termination Services to Neutral Tandem under rates, terms and conditions that would be established by the Commission. As Level 3 shows below, the Commission lacks the statutory authority to grant this relief.

7. Neutral Tandem also requests that this case be processed under the expedited procedures set forth in Rule 25-22.0365, Florida Administrative Code. The Commission should not be coerced into an expedited procedures process where a party manufactures the emergency. In this case, Neutral Tandem has created a "crisis" and "time crunch" by failing to take timely and prudent actions to address the impact of Level 3's lawful termination of certain commercial agreements and by refusing to plan for termination of Level 3's Transit Termination Services. Neutral Tandem has employed a transparent tactic of deliberately exposing its third-party carrier customers and the end users of those customers to potential service interruption by refusing to prepare in any way for the lawful termination of voluntarily negotiated traffic exchange agreements. The Commission cannot and should not condone such tactics by allowing Neutral Tandem to exploit the expedited procedures rule, particularly where Commission jurisdiction does not exist.

8. Finally, Level 3 emphasizes to the Commission its commitment to conduct an orderly transition and migration to allow for disconnection of its Transit Termination Services without service disruptions for the end-user customers of the third-party carriers that utilize Neutral Tandem's tandem transit service. Level 3 requests that Neutral Tandem fulfill its obligation to the public switched telephone network, its third party carrier customers and end-user consumers by cooperating with Level 3 in an orderly migration process.

III. PERTINENT FACTS

9. Level 3 and its subsidiary, Broadwing Communications, entered into various commercial agreements with Neutral Tandem dating back to July 6, 2004. These agreements are as follows:

a. Pursuant to a traffic exchange agreement dated July 6, 2004 (referred to in Neutral Tandem's Petition as the "Level 3 Contract"), Neutral Tandem delivered "tandem transit traffic" (traffic originated by Neutral Tandem's customers) to Level 3 for delivery to its telephone numbers, in exchange for which Neutral Tandem paid Level 3 according to a formula contained in the Level 3 Contract.

b. Pursuant to a "Master Services Agreement" dated February 2, 2004, Level 3's subsidiary, Broadwing Communications, purchased Neutral Tandem's transit services (subject to payments contained in such agreement) and further agreed to provide Transit Termination Services for termination of Neutral Tandem's transit services to Broadwing telephone numbers. This contract is referred to in Neutral Tandem's Petition as the "Broadwing Contract."

c. Level 3 also entered into an agreement and an amendment whereby Level 3 became a tandem transit service customer of Neutral Tandem (for traffic originating on the Level 3 network). This contract is referred to in Neutral Tandem's Petition as the "Originating Contract."

10. In early February 2007, Level 3 informed Neutral Tandem that it desired to renegotiate the terms of the Level 3 and Broadwing contracts. Level 3 expressed its desire that the parties negotiate one comprehensive, nationwide agreement governing Level 3's provision of Transit Termination Services to Neutral Tandem. Level 3 notified Neutral Tandem of its intent to terminate the Level 3 and Broadwing contracts in accordance with their express terms, and

thereafter negotiate a single replacement agreement. Level 3 then agreed to extend the effective date of termination of the Level 3 Contract until March 23, 2007, so as to allow the parties to discuss a revised commercial agreement. Level 3 informed Neutral Tandem, both orally and in writing, that it would work with Neutral Tandem on a migration plan that would eliminate any impact on the customers of either party. When Neutral Tandem refused to cooperate with Level 3 on such migration plan, Level 3 unilaterally decided to allow the existing Transit Termination Services to remain in place until June 25, 2007. Before disconnection of the Transit Termination Services, Neutral Tandem or its carrier customers will need to migrate their terminating tandem transit traffic arrangements to ILECs in Florida to insure that no service disruption occurs for end-users of the carriers that utilize Neutral Tandem for originating traffic. Assurance that there will not be such service disruption will require the cooperation of Neutral Tandem and the third-party carriers who use Neutral Tandem to originate tandem transit traffic to insure an orderly migration of traffic terminated to Level 3 to the tandem switches of the ILECs in Florida.

IV. THE TRANSIT BUSINESS

11. According to its website, Neutral Tandem “has built the nation’s first independent Tandem network for competitive carriers.”² It is clear from its pleadings and other public statements that Neutral Tandem is a competitive provider of services. Nowhere do they allege that they are an incumbent provider of services. In fact, quite unlike any incumbent carrier and unlike nearly every CLEC, Neutral Tandem does not *originate or terminate* any traffic.

12. Although Neutral Tandem acknowledges that it is a competitive provider, it demands that the Commission grant it the same treatment that BellSouth and other incumbent providers of transit services have received through commercially negotiated or arbitrated broad-

² See Neutral Tandem Sheet, www.neutraltandem.com/NT_FactSheet.pdf, viewed on March 12, 2007.

based interconnection agreements. This request is simply not warranted under the law or as a matter of sound public policy.

13. Neutral Tandem can't have it both ways. The simple truth is that Neutral Tandem is a transit provider by choice and not by happenstance. Incumbent local exchange carriers are required to provide transit services because they are the only entities through which all other carriers must interconnect. In order for Neutral Tandem to provide transit services, it must, acting as a competitive provider, establish traffic exchange arrangements with carriers to whom it wishes to terminate traffic before it can represent to its customers that it can terminate traffic on another carrier's network. Level 3 operates under the same set of rules. Yet in this instance, Neutral Tandem contends that it is somehow entitled to demand direct interconnection with carriers without regard for the commercial terms parties negotiate in order to allocate costs and responsibilities. Neutral Tandem wants Transit Termination Services from Level 3 for free.

14. Commercial negotiation is the best and most efficient way to allocate costs and responsibilities with respect to the delivery and termination of traffic between two carriers who do not possess market power. Neutral Tandem would have this Commission intervene to mandate continued delivery of Transit Termination Services by Level 3 during the negotiations and, if necessary, to set the terms and conditions for Level 3's continued delivery of Transit Termination Services. Those steps are wholly unnecessary and would be counterproductive.

15. Level 3 and Neutral Tandem are in the best position to evaluate the relative value of Neutral Tandem's transit services to Level 3 and the extent to which the lower rates those services could provide some termination compensation to Level 3. This appears to be Neutral Tandem's general business plan, but Level 3 and Neutral Tandem apparently disagree on the

relative commercial benefit of their business arrangement. The Commission should allow such commercial disagreements to be resolved in the marketplace.

16. Finally, this Commission should not be moved by Neutral Tandem's pleas to prevent blocking. Ending traffic termination, like a workplace strike or lockout, is a critical part of the negotiating toolkit for both carriers. Indeed, the Courts have recognized that even blocking of long distance traffic can be permissible in the face of unreasonable rates. *See AT&T v. FCC*, 317 F.3d 227 (2003); *AT&T v. FCC*, 292 F.3d 808 (D.C. Cir. 2002). In this instance, Level 3 believes that traffic originating from customers of Neutral Tandem will still route to Level 3's end-users via the ILEC's transit service.

17. Neutral Tandem acknowledges to its customers that it may have to take steps to route traffic through different providers based on call congestion or lack of facilities. For example, Neutral Tandem's Florida Price List No. 2, effective March 18, 2005, states:

4.25. The Telephone Company will not charge a Tandem Transit MOU charge for any On-Net call re-routed by the Telephone Company to an Alternate Transit Network due to insufficient capacity on the Telephone Company network to terminate the call unless the Telephone Company is billed by the Alternate Transit Tandem company for the service.

Like any responsible network operator, Neutral Tandem should be required to inform its customers that it may have to use alternative routes to terminate their traffic. If Level 3 and Neutral Tandem are not able to resolve this commercial dispute and the Transit Termination Services are disconnected on June 25, 2007, then Neutral Tandem will have more than ample time to adjust its network plans accordingly. Level 3 believes that the marketplace provides a ready forum for these two carriers without significant market power to negotiate the terms and conditions for interconnection and delivery of service (both services required by Level 3, and services required by Neutral Tandem), and that no state intervention is necessary.

V. MOTION TO DISMISS

18. Neutral Tandem acknowledges in its Petition that Level 3 has the legal right to interconnect with third-party carriers - - for the origination and termination of calls - - either directly or indirectly.³ Through its Petition, Neutral Tandem asks the Commission to act outside of its jurisdiction and force Level 3 to establish “direct interconnections” with Neutral Tandem that will allow Neutral Tandem to receive Transit Termination Services from Level 3. Notably, this purported “direct interconnection” is not for the *exchange of traffic between* Neutral Tandem and Level 3; rather, the sole purpose and use of the “direct interconnection” will be to permit Neutral Tandem to send traffic to Level 3 for termination. Such a result violates federal law and cannot be granted under the state statutes cited as the basis for jurisdiction by Neutral Tandem.

19. Level 3 moves to dismiss Neutral Tandem’s Petition on the grounds that Neutral Tandem has failed to allege sufficient standing to file the Petition and the Commission lacks jurisdiction to grant the relief requested by Neutral Tandem.

20. In support of its position that the Commission has jurisdiction, Neutral Tandem relies on Sections 364.16(2) and 364.162, Florida Statutes. Section 364.16(2) provides, in pertinent part:

(2) Each competitive local exchange 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 non-discriminatory prices, terms and conditions. If the parties are unable to negotiate mutually acceptable prices, terms and conditions after 60 days, either party may petition

³ See 47 U.S.C. §251(a)(1); Order No. FCC 05-33, released March 3, 2005, CC Docket No. 01-92, *In Re: Developing a Unified Compensation Regime*, Further Notice of Proposed Rulemaking, at ¶125, as acknowledged by the Commission in the *TDS Telecom Order*, at 44.

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. (Emphasis supplied).

Notably, Section 364.16(2) does not specify how interconnection is to be provided. It is well settled, however, that carriers may (even under Federal law) satisfy interconnection responsibilities through direct *or indirect* interconnection. In this case, Neutral Tandem seeks to read into the statute an express requirement of *direct interconnection* between non-dominant carriers. Such a ruling would have broad policy implications for all competitive carriers in Florida.

21. Neutral Tandem has not alleged that it is a provider of local exchange telecommunications services. Although the term “local exchange telecommunications services” is not defined in Chapter 364, the Legislature has defined the term “basic local telecommunications service” under Section 364.02(1), Florida Statutes, as:

364.02 Definitions. - As used in this chapter.

(1) “Basic local telecommunications service” means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as “911,” all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

22. Section 364.16(2) mandates a CLEC to provide access to, and interconnection with, its telecommunications services *only* to other providers of local exchange telecommunications services. And as its tariff makes clear: “The Telephone Company does not undertake to transmit messages under this price list.”⁴ Since Neutral Tandem has not alleged that it provides such services, Neutral Tandem cannot utilize Section 364.16(2) as a basis to compel interconnection with Level 3. For this reason alone, Neutral Tandem’s Petition must be dismissed.

23. Similarly, Section 364.162, Florida Statutes, by its plain language, provides procedures for the negotiation and, if necessary, Commission establishment, of rates, terms and conditions of interconnection between a CLEC and a “local exchange telecommunications company.” A “local exchange telecommunications company” is defined by Section 364.02(8), Florida Statutes, as “any company certificated by the Commission to provide local exchange telecommunications service in this state on or before June 30, 1995.” Neutral Tandem was not certificated prior to June 30, 1995 and as such is not a “local exchange telecommunications company”; Neutral Tandem therefore lacks standing to bring an action to compel interconnection under Section 364.162. By the same standard, Level 3 is not a “local exchange telecommunications company” since its certificate was granted after June 30, 1995.

24. Because Neutral Tandem is not a local exchange telecommunications company and has not alleged that it provides local exchange telecommunications services, it cannot compel interconnection with Level 3 and the Commission lacks the statutory authority and jurisdiction to address Neutral Tandem’s Petition.

⁴ Neutral Tandem-Florida LLC, Florida Price List No. 2, Section 3.1.1(A), Effective March 18, 2005.

25. Even if the Commission determines that Neutral Tandem has standing to bring its claims, the Commission lacks the statutory authority to grant the relief sought by Neutral Tandem. Neutral Tandem's Petition asks the Commission to impose a new commercial contract compelling Level 3 to deliver for free Transit Termination Services. The Commission lacks jurisdiction to enter such an order. The commercial contracts at issue were voluntarily negotiated between Level 3 and Neutral Tandem. They are not interconnection agreements. They were not filed with the Commission because they were not required to be filed and as such were not approved by the Commission. Neutral Tandem does not allege that the Commission has jurisdiction over these contracts yet it requests the Commission to create and impose a new commercial agreement between the parties.

26. The jurisdiction of the Commission is derived solely from grant of legislative authority. If there is a reasonable doubt as to the lawful exercise of a particular power by the Commission, the further exercise of that power should be arrested. *United Telephone Company of Florida v. Public Service Commission*, 496 So.2d 116, 118 (Fla. 1986), citing *Radio Telephone Communications, Inc. v. Southeastern Telephone Co.*, 170 So.2d 577, 582 (Fla. 1965). In the *United Telephone Company* case, the Florida Supreme Court held that the Commission lacked the authority to modify the rates reflected in a series of interrelated contractual agreements between three telephone companies. Here, the Commission similarly has no statutory authority to compel Level 3 to deliver Transit Termination Services to Neutral Tandem on the terms and conditions that Neutral Tandem dictates.

27. Neutral Tandem's Petition repeatedly cites to the *TDS Telecom Order*.⁵ Neutral Tandem does not assert that the *TDS Telecom Order* provides a basis for the Commission's assertion of jurisdiction over its Petition, nor could it. The *TDS Telecom Order* arose out of petitions challenging a transit traffic service tariff filed by an ILEC, BellSouth Telecommunications, Inc. ("BellSouth") – a local exchange company certified before June 30, 1995. At issue in the *TDS Telecom Order* was whether BellSouth could impose tariff pricing for its offering of transit service as a default mechanism where negotiations with carriers were unsuccessful. The Commission held that a terminating carrier could not use its tariff to mandate termination payments on originating carriers that use the ILEC's transit service in lieu of establishing direct interconnection. *Id.*, at 18. The Commission held that such arrangements were to be negotiated and, in the event negotiations failed, would be established by the Commission. *Id.*, at 18, 59. Importantly, the Commission *did not mandate* any carrier to interconnect with BellSouth for the purpose of receiving and terminating BellSouth's transit traffic. That is the relief sought by Neutral Tandem with respect to Level 3 in this proceeding. There is no authority under the Florida Statutes or under the *TDS Telecom Order* to impose Commission established rates, terms and conditions for Level 3's provision of Transit Termination Services to Neutral Tandem.

28. In sum, the Commission may only exercise authority that has been granted by the Legislature to the Commission. *City of Cape Coral v. GAC Utilities, Inc.*, 281 So.2d 493 (Fla.

⁵*In re: Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ("Joint Petitioners") objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc. and In re: Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC, Order No. PSC-06-0776-FOF-TP issued September 18, 2006 in Docket Nos. 050119-TP and 050125-TP.*

1973); *United Telephone Company, supra*. In this case, Neutral Tandem cannot rely upon Section 364.16(2) to compel “direct interconnection” and require Level 3 to deliver Transit Termination Services pursuant to Commission-established prices, terms and conditions. Neutral Tandem has not alleged that it provides local exchange telecommunications services. Nor can Neutral Tandem rely upon Section 364.162 as a basis for Commission jurisdiction because Neutral Tandem is not a local exchange telecommunications company. Finally, even assuming that Neutral Tandem has standing to bring a claim, under Chapter 364 the Commission lacks the statutory power to mandate terms and conditions requiring Level 3 to continue to provide Transit Termination Services to Neutral Tandem since Neutral Tandem. Accordingly, the Commission lacks statutory authority to grant the relief requested by Neutral Tandem and Neutral Tandem’s Petition must be dismissed.

**VI. LEVEL 3’S RESPONSE TO NEUTRAL TANDEM’S PETITION
FOR EXPEDITED DISPUTE RESOLUTION**

29. Subject to and without waiving the standing and jurisdictional arguments in its Motion to Dismiss, Level 3 provides the following Response to Neutral Tandem’s Petition, including its Response to Neutral Tandem’s contention that this matter should be processed under Rule 25-22.0365, Florida Administrative Code, entitled *Expedited Dispute Resolution Process for Telecommunications Companies*.

30. If the Commission were to act outside of its jurisdiction and entertain the Petition of Neutral Tandem, the Commission would need to address complex issues of first impression. Contrary to Neutral Tandem’s contentions, the portion of the *TDS Telecom Order* requiring that the “calling party pays” was applied in that decision to require the *originating* carrier to pay BellSouth, the transiting carrier, a transiting charge for *originating traffic*. This case, however,

deals not with any request for payment to the provider of transit services (which in this instance is Neutral Tandem); rather, this case deals with Neutral Tandem's demand that Level 3 deliver Transit Termination Services free of charge. In the *TDS Telecom Order*, the Commission did not direct a compensation rate but instead directed the parties to address a rate in negotiations. Level 3's commercial request that Neutral Tandem compensate Level 3 for the costs Neutral Tandem imposes on Level 3's network is not in violation of the *TDS Telecom Order*.

31. Further, in the *TDS Telecom Order*, the Commission *declined* to establish a rate to be paid by the originating carrier for BellSouth's transit service, leaving that issue to negotiation and potential arbitration by the parties.⁶ (emphasis added.) Should the Commission proceed forward with Neutral Tandem's Petition, the Commission would need to address all of the issues required to establish a comprehensive "traffic exchange agreement" or master services agreement between the parties – including, presumably, the rates that would be paid by Level 3 when it purchases tandem transit service from Neutral Tandem.

A. The Commission Should Not Consider Neutral Tandem's Petition on an Expedited Basis

32. The Commission should not consider Neutral Tandem's Petition on an expedited basis pursuant to the procedure set forth in Rule 25-22.0365.

Number and Complexity of the Issues.

33. Contrary to its assertions, Neutral Tandem's Petition raises factual and legal issues that are complex and broad in their application. The fundamental legal issue is whether

⁶The Neutral Tandem-Time Warner Telecom Contracts cited and attached by Neutral Tandem to its Petition (Petition, at p. 14; Ex. 6) have no particular relevance in this proceeding other than to perhaps reflect certain terms and conditions of interconnection which Neutral Tandem supports in the event the Commission does not dismiss Neutral Tandem's Petition.

under Florida law an alternative, competitive transit provider may compel interconnection and whether the Commission has authority to establish rates, terms and conditions for Transit Termination Services. Contrary to the statements of Neutral Tandem, an appropriate rate for Transit Termination Service was not established by the Commission in the *TDS Telecom Order*. The Commission will need to consider testimony and evidence addressing fact specific issues related to Level 3's network, Neutral Tandem's network, and the networks of affected third-party carriers; relevant contracts between and among Level 3, Neutral Tandem and the third-party carrier customers of Neutral Tandem; and the relevant facts and circumstances concerning whether Level 3's proposed terms for the delivery of Transit Termination Services are reasonable and nondiscriminatory under applicable law.

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

34. The fundamental issue raised by Neutral Tandem's Petition is whether a competitive, alternative transit provider may compel direct interconnection and whether the Commission can impose, rates, terms and conditions for transit service under Sections 364.16(2) and 364.162, Florida Statutes. The fundamental legal issues have broad policy implications for CLECs, ILECs and wireless carriers in the State of Florida. Indeed, if the Commission were to venture outside of its jurisdiction and entertain this Petition, the Commission would likely need to address the legal question and policy implications of compelling **direct** interconnections, upon request, between competitive providers across the state. Such would be the result of entertaining Neutral Tandem's position - a result that is inconsistent with 47 U.S.C. § 251 which permits a carrier to *directly or indirectly* interconnect with another carrier. In addition, if the Commission granted competitive providers the right to arbitrate interconnection or traffic exchange agreements with other competitive providers, this would substantially expand the arbitration

rights contemplated under state and federal law. Under Florida law, CLECs can only arbitrate agreements with local exchange companies (defined as being certificated prior to June 30, 1995). The Legislature's intent in establishing a cutoff date of June 30, 1995 was to ensure that competitive providers would only be able to arbitrate claims against incumbent local exchange providers and not against each other. The federal Telecommunications Act of 1996 follows the same course and does not grant any right to CLEC-CLEC arbitrations under Sections 251 and 252. Both the United States Congress and the Legislature are in agreement that arbitration will be reserved for those cases where an entity is seeking to interconnect with a provider of bottleneck facilities (i.e.: the incumbent) and that new entrants seeking to interconnect with each other will utilize commercial negotiations. If the Commission accepts Neutral Tandem's argument, in contradiction of the expressed intent of the U.S. Congress and the Legislature, the result would require arbitrated interconnection between all CLECs in the state of Florida, resulting in substantial additional work for the Commission.

Further, the potential cost impact on each and every CLEC in Florida would be substantial, as each CLEC would be required to establish network interconnection with every requesting CLEC or transit provider (even those with no facilities or end-users), thus resulting in substantial duplication of required network facilities and unnecessary network expenditures to the detriment of end users in Florida.

Topics on Which Level 3 Plans to Conduct Discovery.

35. Neutral Tandem states in its Petition that it does not anticipate serving discovery although it reserves the right to do so. Level 3, without conceding Commission jurisdiction or waiving the arguments set forth in its Motion to Dismiss, has already served initial discovery on Neutral Tandem, copies of which are attached hereto as Composite Exhibit A. Should the

Commission deny Level 3's Motion to Dismiss, extensive additional written discovery and depositions will be necessary to develop information and prepare for hearing on the factual issues. Level 3 will need to conduct discovery to formulate prospective positions on the appropriate rates, terms and conditions for delivery of Transit Termination Services to Neutral Tandem and to prepare its own testimony addressing an appropriate rate to be paid by Neutral Tandem to Level 3 for the termination of Neutral Tandem's traffic, as well as other terms and conditions for interconnection with Neutral Tandem.

Attempts to Resolve the Dispute Informally.

36. Level 3 agrees with Neutral Tandem that the parties have engaged in negotiations toward a comprehensive agreement addressing all of Level 3's traffic in the State of Florida and that, to date, such negotiations have not been successful. Level 3 has insisted through its negotiations with Neutral Tandem that it cannot be compelled to maintain the existing commercial agreement and cannot be forced into rates, terms and conditions that are not commercially reasonable and not commercially balanced between the two parties.

Any Other Matter Level 3 Believes Relevant to Determining Whether the Dispute is One Suited for An Expedited Proceeding.

37. Neutral Tandem's attempt to sidestep the 60 day negotiation requirement under Section 364.162 reflects its willingness to pick and choose the provisions of a statute which has no application to Neutral Tandem in the first place. Section 364.162 applies only to negotiations between CLECs and ILECs. As previously addressed, Neutral Tandem is not an ILEC and cannot utilize Section 364.162 to compel interconnection and the establishment of rates, terms and conditions of interconnection with Level 3.

38. The Commission should not apply its expedited dispute procedures in a docket such as this where complex factual issues have been raised, expert testimony may be required to address network issues, trunking arrangements, and other terms and conditions of traffic exchange between the parties; and where the Commission's decision will have broad precedent and policy implications across the telecommunications industry. Neutral Tandem's allegations that its business reputation will be harmed as a result of Level 3's lawful exercise of its contractual rights to terminate existing contractual arrangements and use different providers to establish indirect interconnections cannot create statutory authority for the Commission which has not been granted by the Legislature. Further, this allegation does not justify the rejection by the Commission of the standard procedures and time frames typically utilized by the Commission when it is called upon to address and develop terms and conditions for interconnection.

39. As previously stated, Neutral Tandem is attempting to invoke this Commission's expedited procedures process by relying upon a crisis of its own creation. Neutral Tandem is willing to expose its third party carrier customers and their end user consumers to potential service interruption by ignoring Level 3's lawful termination rights and failing to take prudent steps to ensure an orderly migration of Level 3's terminating traffic to other carriers. In fact, by ignoring its customers and not providing notice to them, Neutral Tandem may be violating the terms of Section 3.10.10 of its own price list which provides:

3.10.10 Notice of Service Affecting Activities

The Telephone Company will provide the customer reasonable notification of service affecting activities that may occur in the normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, *removals or rearrangements*, routine preventive maintenance and major switching machine change out. Generally, such activities are not customer service specific, they affect many customer services. No specific advance notification period is applicable to all service activities. The Telephone Company will work

cooperatively with the customer to determine reasonable notification requirements.⁷ (emphasis added)

40. No less important is the fact that this past week Level 3 has agreed to leave existing Transit Termination Services in place until June 25, 2007. Level 3 has agreed to this extension to help ensure the continuous flow of traffic terminated by Neutral Tandem to Level 3 and to allow reasonable additional time to develop and execute an orderly migration process. To maximize the prospects of success and the cooperation of Neutral Tandem in insuring an orderly migration of transit traffic terminated to Level 3, Level 3 respectfully requests that the Commission Staff schedule and conduct a mediation attended by authorized representatives of Level 3 and Neutral Tandem within 30 days to assist in the development of an orderly migration plan.

Preliminary Statement of Issues and Position

41. Due to the expedited nature of this response, Level 3 maintains that these issues will need to be specifically identified by the prehearing officer and that the parties can thereafter provide their positions on specific issues addressing the terms and conditions for interconnection.

42. Subject to the development of additional issues through discovery in this proceeding, Level 3 provides the following preliminary issues and positions:

a. Whether the Commission has jurisdiction over Neutral Tandem's Petition. Level 3 maintains that Neutral Tandem has failed to allege requisite standing to file its Petition and that the Commission lacks subject matter jurisdiction over the Petition.

b. If the Commission determines that it has jurisdiction over a commercial agreement between a CLEC and a competitive transit provider, then the issues in this proceeding include:

⁷ Neutral Tandem-Florida LLC, Florida Price List No. 2, Effective March 18, 2005.

(1) whether a CLEC may interconnect indirectly with a competitive transit provider or whether Neutral Tandem may force Level 3 and other CLECs to directly interconnect with it for the purpose of terminating transit traffic from third-party carrier customers of Neutral Tandem. Level 3 maintains that Neutral Tandem cannot force Level 3 and other CLECs to directly interconnect for the purpose of terminating traffic from third-party carrier customers of Neutral Tandem.

(2) What are the appropriate rates, terms and conditions for the commercial traffic exchange agreement between Neutral Tandem and Level 3? Level 3 maintains that the rate that it seeks as compensation from Neutral Tandem for the termination of Neutral Tandem's traffic is fair and reasonable. Level 3 will provide specific positions on all of the network, trunking, billing and other traffic exchange related issues following an issues identification conference and a defined list of issues established by the prehearing officer.

(3) What are the policy and economic implications of adopting Neutral Tandem's position? Level 3 maintains that, if Neutral Tandem's position is adopted by the Commission, CLECs in Florida will be compelled to establish duplicative network interconnections with multiple other CLECs and transit providers, thereby increasing the costs associated with delivery of services in Florida.

B. The Commission Should Not Issue an Interim Order Requiring Level 3 to Maintain Its Existing Interconnections with Neutral Tandem Pending the Outcome of this Proceeding

43. The Commission should deny the interim relief sought by Neutral Tandem. The request for interim relief is predicated in full on its assertion that Level 3 has an obligation under Florida to interconnect with Neutral Tandem. As Florida Statutes hold, Level 3 has no such obligation.

44. The alleged potential harm to Neutral Tandem's business reputation is not an appropriate consideration in this proceeding. Neutral Tandem can mitigate any such concerns by providing the notice to its customers that is required Section 3.1.10 of its Florida Price List No. 2. If Neutral Tandem believed that it had a legal right to compel direct interconnection and free Transit Termination Service from Level 3, it should have addressed that issue in its existing traffic exchange agreement with Level 3 and provided for a reasonable deadline and time frame for resolution of the matter prior to Level 3's lawful exercise of its contractual rights to terminate the contract. Neutral Tandem does not allege that Level 3 would be in breach of its contractual arrangements by its termination of the contracts. Hence, Neutral Tandem's attempt to force a Commission established extension of these contracts is unlawful and cannot be justified on the basis of Neutral Tandem's reputation.

45. Level 3 will take every reasonable step to mitigate potential service disruptions in exercising its contractual right to terminate the Neutral Tandem contracts. Level 3 has done so by extending the interconnection termination deadline to June 25, 2007 and by seeking to develop a migration plan. The Commission should not allow Neutral Tandem to use the regulatory process to arbitrage its business plan.

46. Neutral Tandem's allegation that Level 3 would not be harmed by maintenance of the *status quo* is wrong. First, the Commission has no authority to extend the *status quo*, *i.e.*, to extend the existing delivery of Transit Termination Services which are not subject to the Commission's jurisdiction. Second, Level 3 has a legal right to enter into more favorable alternative indirect or direct interconnection arrangements with other providers and the maintenance of the status quo will indeed cause harm to Level 3 by requiring Level 3 to absorb

costs associated with delivery of Transit Termination Services that are not in the best interests of Level 3 and its customers.

VI. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, Level 3 respectfully requests that the Commission grant Level 3's Motion to Dismiss Neutral Tandem's Petition with prejudice. If the Commission denies Level 3's Motion to Dismiss, Level 3 requests the Commission to:

A. Deny Neutral Tandem's request to resolve its Petition on an expedited basis pursuant to Rule 25-22.0365, Florida Administrative Code;

B. Deny Neutral Tandem's request that the Commission order Level 3 not to discontinue existing arrangements pursuant to which Neutral Tandem delivers tandem transit traffic from third-party carriers to Level 3 pending resolution of Neutral Tandem's Petition;

C. Schedule and conduct a mediation attended by authorized representatives of Level 3 and Neutral Tandem within 30 days to assist in the development of an orderly migration plan: and,

D. Issue a Case Assignment and Scheduling Record with reasonable time frames for the filing of prefiled testimony and the scheduling of a formal administrative hearing in this proceeding to establish an appropriate rate and other appropriate terms and conditions for terminating Level 3's transit traffic through Neutral Tandem to third-party carriers.

Respectfully submitted,



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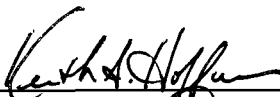
Attorneys for Level 3 Communications, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Electronic Mail and U.S. Mail on March 13th, 2007, to the following:

Beth Keating, Esq.
Akerman and Senterfitt
106 East College Avenue
Suite 1200
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beth.keating@akerman.com

Adam Teitzman, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
ateitzma@psc.state.fl.us



Kenneth A. Hoffman, Esq.

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RECEIVED FPSC

**BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION**

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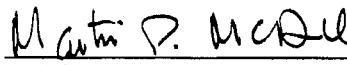
In re: Petition of Neutral Tandem, Inc. for)
Interconnection with Level 3)
Communications and Request for)
Expedited Resolution.)

COMMISSION
Docket No. 07-0127 CLERK
Filed March 6, 2007

**LEVEL 3 COMMUNICATIONS LLC's NOTICE OF SERVICE OF FIRST SET
OF REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 1- 16) FIRST SET
OF INTERROGATORIES (NOS. 1-6) AND FIRST SET OF REQUESTS FOR
ADMISSION (NOS. 1-14) TO NEUTRAL TANDEM, INC.**


Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel, hereby files and serves Notice that on March 5, 2007, Level 3 served its First Set of Requests for Production of Documents (Nos. 1-16), First Set of Interrogatories (Nos. 1-6), and First Set of Requests for Admissions (Nos. 1-14) to Neutral Tandem, Inc. by Electronic Mail and U. S. Mail; and upon other all parties of record in the manner set forth in the attached Certificate of Service.

RESPECTFULLY SUBMITTED this 6th day of March, 2007


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RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02032 MAR-6 6

FPSC-COMMISSION CLERK

COMPOSITE EXHIBIT A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Electronic Mail and U.S. Mail to Beth Keating, Esquire Akerman and Senterfitt, 106 East College Avenue Suite 1200, Tallahassee, FL 32301 and Adam Teitzman, Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399 this 6th day of March, 2007.

Martin P. McDell for
KENNETH A. HOFFMAN, ESQUIRE

**BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Neutral Tandem, Inc. for)
Interconnection with Level 3) Docket No. 070127-TX
Communications and Request for)
Expedited Resolution.)

**LEVEL 3 COMMUNICATIONS, LLC'S
FIRST SET OF INTERROGATORIES
TO NEUTRAL TANDEM, INC. (NOS. 1-6)**

LEVEL 3 COMMUNICATIONS, LLC ("Level 3"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.340, Florida Rules of Civil Procedure, hereby propounds the following interrogatories on Petitioner NEUTRAL TANDEM, INC. ("Neutral Tandem"). As Neutral Tandem has filed its Petition under Rule 25-22.0365, Florida Administrative Code, Level 3 requests that Neutral Tandem serve its responses to these interrogatories electronically on or before March 9, 2007.¹

GENERAL INSTRUCTIONS

1. Each interrogatory shall be answered in full.
2. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder, and state whatever information you have concerning the unanswered portion. If your answer is qualified or limited in any respect, please set forth the details of such qualifications and/or limitations.

¹Level 3 intends to file a Motion to Dismiss the Petition on the grounds that Neutral Tandem lacks standing to request the relief it seeks from the Commission and that the Commission lacks jurisdiction over the Petition. By serving these discovery requests, Level 3 does not concede Commission jurisdiction over Neutral Tandem's Petition and Level 3 does not waive any argument that it may raise regarding Neutral Tandem's lack of standing and the Commission's lack of jurisdiction over the Petition.

3. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information: (a) the nature of the privilege claimed (including work product); (b) the date of the document or oral communication; (c) if a document; its type (correspondence, memorandum, facsimile, electronic mail, etc.), custodian, location, and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee; (d) if an oral communication; the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and (e) the general subject matter of the document or the oral communication.

4. If you object to all or part of any interrogatory and refuse to answer that part, state your objection, identify the part to which you are objecting, and answer the remaining portion of the interrogatory.

5. Whenever an interrogatory calls for information that is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information requested in the form in which it is available, or supply the data from which the information requested can be obtained.

6. The singular shall include the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the term "including" means "including without limitation."

7. These interrogatories shall be answered under oath by you or through your agent who is qualified to answer and who shall be fully identified, with said answers being served as provided pursuant to the Florida Rules of Civil Procedure.

DEFINITIONS

1. As used herein, the terms "Neutral Tandem," "you," "your" or "yourself" refers to Neutral Tandem, along with any and all agents, employees, servants, officers, directors, attorneys or other persons acting or purporting to act on Neutral Tandem's behalf.

2. As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau, board or department.

3. As used herein, the term “document” means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, electronic mail, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, which is in your possession, custody or control or which was, but is no longer, in your possession, custody or control.

4. As used herein, the term “communication” means any oral or written utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements and other understandings between or among two or more persons.

5. “Identify” shall mean to denote, list, state, or respond in similar fashion. “Identify” shall also mean: (a) when used with respect to a person, to state the person’s full name, present or last known business address; and present or last known employer and position; **(b) when used in respect to a document, to describe the document by character (e.g., letter, report, memorandum, etc.), author, date, and to state its present location and custodian;** and (c) when used with respect to an oral communication, to identify the persons making and receiving the communication, the approximate date of and time of the communication, and a summary of its content or substance.

6. “Relate to” shall mean contain, discuss, describe or address.

7. “All” means all or any.

8. The “Level 3 Contract” refers to the contract dated July 6, 2004 between Level 3 and Neutral Tandem, as described on page 6 of Neutral Tandem’s Petition.

9. The “Broadwing Contract” refers to the contract dated February 2, 2004 between Level 3’s subsidiary, Broadwing Communications, and Neutral Tandem, as described on page 6 of Neutral Tandem’s Petition.

INTERROGATORIES

Request No. 1. Has Neutral Tandem advised any of its customers in Florida that Level 3 was terminating the Level 3 Contract, and that the Neutral Tandem customers would need to find an alternative method to route traffic bound to Level 3? If so, please list the customers and explain how they were notified. If the customers were notified in writing, please provide the letter. If Neutral Tandem has not notified its customers that Level 3 has terminated the agreement, explain why Neutral Tandem has not done so.

Request No. 2. Has Neutral Tandem advised any of its customers in Florida that Level 3 was terminating the Broadwing Contract, and that the Neutral Tandem customers would need to find an alternative method to route traffic bound to Level 3? If so, please list the customers and explain how they were notified. If the customers were notified in writing, please provide the letter. If Neutral Tandem has not notified its customers that Level 3 has terminated the agreement, explain why Neutral Tandem has not done so.

Request No. 3. Has Neutral Tandem advised any Incumbent Local Exchange Carrier (“ILEC”) or other tandem transit provider in Florida that Level 3 has terminated the Level 3 Contract and that these other providers may need to take actions that may be necessary to accept traffic originating from Neutral Tandem’s customers and bound to Level 3? If so, please list the ILEC(s) and explain how they were notified. If the ILECs were notified in writing, please provide the letter. If Neutral Tandem has not notified ILECs that there may be a need to increase the capacity of the interconnection arrangement, explain why Neutral Tandem has not done so.

Request No. 4. Has Neutral Tandem advised any ILEC or other tandem transit provider in Florida that Level 3 has terminated the Broadwing Contract and that these other providers may need to take actions that may be necessary to accept traffic originating from Neutral Tandem's customers and bound to Level 3? If so, please list the ILEC(s) and explain how they were notified. If the ILECs were notified in writing, please provide the letter. If Neutral Tandem has not notified ILECs that there may be a need to increase the capacity of the interconnection arrangement, explain why Neutral Tandem has not done so.

Request No. 5. Mr. Saboo's testimony claims that "if these direct connections to Level 3 are removed third party carriers would have to augment their interconnection trunks with the ILEC in order to seek to terminate this traffic indirectly to Level 3. These alternative routes do not necessarily have sufficient capacity to send all of the blocked traffic." (Saboo Testimony at 9.) Explain in detail what action Neutral Tandem is taking, other than filing this petition, to ensure that traffic bound to Level 3 will not fail on March 23, 2007.

Request No. 6 For each of the third-party carriers that utilize Neutral Tandem's service in Florida, state the following (for the period from January 1, 2006 to the present):

- a. The rates, terms and conditions by which Neutral Tandem provides transit services to each third party carrier for traffic routed to Level 3.
- b. The minutes of use, on a per day basis, of traffic that is originated by each third party carrier and delivered to Level 3.
- c. The capacity of each trunk or circuit through which traffic is routed from each of these third party carriers to Neutral Tandem for delivery to Level 3.
- d. Whether each third party carrier has another or alternative direct or indirect interconnection arrangement with each of the following ILECs in Florida: Sprint, Verizon and/or Bellsouth.
- e. The minutes of use, on a per day basis, of traffic that is originated in Florida by each third party carrier and delivered by the company or by Neutral Tandem to each of the following ILECs in Florida: Sprint, Verizon and/or Bellsouth.
- f. The dates on which each third party carrier has made a request to each ILEC in Florida for alternative or additional interconnection capacity, to account for the fact that traffic bound to Level 3 would not be able to be transited by Neutral Tandem, and the amount of time that the ILEC has indicated it would need to provision this alternative or additional interconnection capacity.
- g. State with particularity all rates that are paid by Neutral Tandem to other carriers to whom Neutral Tandem delivers traffic.

Respectfully submitted.

KENNETH A. HOFFMAN, ESQUIRE
FLA BAR No.: 307718
MARTIN P. MCDONNELL, ESQUIRE
FLA BAR No.: 301728
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by Electronic Mail to the following this 5th day of March, 2007:

Beth Keating, Esq.
Akerman and Senterfit
106 East College Avenue
Suite 1200
Tallahassee, FL 32301

Adam Teitzman, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

_____/s/_____
KENNETH A. HOFFMAN, ESQUIRE

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____
_____, as _____ of _____
_____ is personally known to me or who has produced a
Florida driver's license as identification and who did take an oath, did depose and say that
he/she did execute the foregoing Answers to Level 3 Communications, LLC's First Set of
Interrogatories to Neutral Tandem, Inc. and that the same are true, accurate and correct to
the best of his/her knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me this _____ day of
_____, 2007.

Notary Public

Typed, Printed or Stamped Name
My Commission Expires:

**BEFORE
THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Neutral Tandem, Inc. for)
Interconnection with Level 3) Docket No. 070127-TX
Communications and Request for)
Expedited Resolution.)

**LEVEL 3 COMMUNICATIONS, LLC'S
FIRST SET OF REQUESTS FOR ADMISSIONS
TO NEUTRAL TANDEM, INC. (NOS. 1-13)**

Respondent, LEVEL 3 COMMUNICATIONS, LLC ("Level 3"), by and through its undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.370(a), Fla. R. Civ. P., requests Petitioner, Neutral Tandem, Inc. ("Neutral Tandem"), to admit the following Requests for Admissions. As Neutral Tandem has filed its Petition under Rule 25-22.0365, Florida Administrative Code, Level 3 requests that Neutral Tandem serve its responses to these Requests for Admissions electronically on or before March 9, 2007.¹

REQUESTS FOR ADMISSIONS

Request No. 1. Admit that Neutral Tandem does not have any end user customers that initiate voice calls in Florida. If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 2. Admit that Neutral Tandem does not provide dial tone service to any customer in Florida.

¹Level 3 intends to file a Motion to Dismiss the Petition on the grounds that Neutral Tandem lacks standing to request the relief it seeks from the Commission and that the Commission lacks jurisdiction over the Petition. By serving these discovery requests, Level 3 does not concede Commission jurisdiction over Neutral Tandem's Petition and Level 3 does not waive any argument that it may raise regarding Neutral Tandem's lack of standing and the Commission's lack of jurisdiction over the Petition.

Request No. 3. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not acting as a “common carrier” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(10). The term “common carrier” or “carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate.] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 4. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not acting as a “connecting carrier” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(11).] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 5. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not providing “Exchange access” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(16). The term “exchange access” means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 6. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not providing “Information service” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(20).] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 7. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not providing “Telecommunications” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(43). The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 8. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not acting as a “Telecommunications carrier” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(44).] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 9. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not providing “Telecommunications Service” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(46). The term “telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 10. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not providing “Telephone exchange service” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(47).] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 11. Admit that when Neutral Tandem is routing traffic to Level 3 on behalf of its customers in Florida, Neutral Tandem is not providing “exchange access service” as that term is defined in the federal Communications Act. [47 U.S.C. § 153(16).] If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 12. Admit that when Neutral Tandem is routing traffic to or from Level 3 on behalf of its third party carrier customers in Florida, Neutral Tandem is not acting as a “Local Exchange Telecommunications Company”, as that term is defined in Section 364.02(8), Florida Statutes (2006). If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 13. Admit that Neutral Tandem does not provide local exchange telecommunications services in the State of Florida. If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Request No. 14. Admit that Neutral Tandem does not provide “basic local telecommunications service,” as that term is defined in Section 364.02(1), Florida Statutes (2006), in the State of Florida. If you deny this request or fail to admit the request in whole or in part, please fully explain the basis for the denial and provide all documents relating to the denial.

Respectfully submitted.

KENNETH A. HOFFMAN, ESQUIRE
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for information and documents, which come into your control during the time in which this proceeding is pending.

B. With respect to any document responsive hereto which has been destroyed, lost, or is no longer in your possession or subject to your control, you shall submit a statement setting forth as to each, a description of the item, its disposition, the date of disposition, and the names of all those with knowledge thereof.

C. The words "document" includes "memoranda", "work papers", "notes", "correspondence", "item", and "record", include any physical object, written, printed, typed, recorded or graphic, however produced or reproduced, whether sent, received or neither, including originals, copies and drafts, and including but not limited to: correspondence, email, telecopier correspondence, messages, reports and recordings of telephone or other conversations and of interviews and conferences, memoranda, notes, opinions, records, balance sheets, income statements, monthly statements, book entries, account letters, ledgers, journals, books or records of accounts, summaries of accounts, purchase or sales orders, invoices, vouchers, bills, receipts, checks stubs, cancelled checks, drafts, leases, contracts, offers, desk calendars, appointment books, diaries, expense reports, summaries, transcripts, minutes, reports, affidavits, statements, questionnaires, answers to questionnaires, plans, specifications, lab books and notations, data notations, workpapers, confirmations, formula, studies, forecasts, projections, analyses, evaluations, statistical records, tabulations, calculations, charts, graphs, surveys, renderings, diagrams, photographs, recordings, films, video recordings, microfilms, papers, books, periodicals, pamphlets, newspaper articles or clippings, publications, schedules, lists, indexes, all other records or information kept by electronic, photographic, mechanical or other means, and

any item similar to the foregoing, however denominated, whether currently in existence or already destroyed.

D. As used herein, the words "Neutral Tandem" or "Company" refer to the petitioner Neutral Tandem, Inc., and any predecessor, successor, or affiliated corporations, its present and former directors, officers, agents, representatives, employees, attorneys, and all other present or former persons, corporations, companies, partnerships, or organizations acting or purporting to act on behalf of Neutral Tandem.

INSTRUCTIONS

A. Scope of Production. In responding to this request to produce, produce all responsive documents, including any and all non-identical copies of each such document.

B. Manner of Objections and Inability to Respond. If you object to a part of a request and refuse to respond to that part, state your objection and answer the remaining portion of that request. If you object to the scope of a request and refuse to produce documents for that scope, state your objection and produce documents for the scope you believe is appropriate.

C. Privileged Information or Document. In the event you wish to assert attorney/client privilege or the work product doctrine or both, or any other claim of privilege, then as to such documents allegedly subject to such asserted privileges, you are requested to supply an identification of such documents in writing, with sufficient specificity to permit the Court to reach a determination in the event of a motion to compel as to the applicability of the asserted objection, together with an indication of the basis for their assertion of the claim or attorney/client privilege or the work product doctrine, or any other claim of privilege. The identification called for by this instruction shall include the nature of the document, (e.g.,

interoffice memoranda, correspondence, report etc.), the sender or author, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list associated with such document, and a summary of the subject matter of the document in sufficient detail to permit the Prehearing Officer or Commission to reach a determination in the event of a motion to compel.

D. Computer-Generated Documents. If a requested document is on computer or word processing disc or tape, produce an electronic copy of the document and a printout of the document.

E. With respect to the documents produced, please produce them as they are kept in the usual course of business, labeling them to correspond with each numbered paragraph of this Request in response to which such documents are produced. All pages now stapled or fastened together and all documents that cannot be copied legibly should be produced in their original form.

F. Neutral Tandem shall produce original copies and drafts of each item requested, as well as copies that bear a mark or notation not contained on the original.

G. For each response to the Request for Production of Documents, please provide the name of each person who assisted in the preparation of such request.

REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Request No. 1. Please provide all studies, work papers, correspondence, analysis, marketing materials and any other documentation reviewed or relied upon by each Neutral Tandem witness in preparing their prefiled testimony in this proceeding. If the witnesses relied upon any studies or work papers, please provide such studies or work papers in an electronic format.

This is a continuing request throughout this proceeding and includes both the testimony already presented as well as any future prefiled testimony submitted to other parties on behalf of Neutral Tandem.

Request No. 2. Produce all documents relating to or evidencing Neutral Tandem's allegation that it "provides tandem transit service to 20 different competitive carriers in Florida" (Petition, page 5), including all contracts or agreements with any such carriers.

Request No. 3. Produce all documents relating to or evidencing Neutral Tandem's allegation that it "uses thirteen different transport providers in Florida" (Petition, page 6), including all contracts or agreements with any such carriers.

Request No. 4. Produce all documents relating to or evidencing Neutral Tandem's allegation on page 10 of its Petition that "Competition for tandem transit services exerts downward pressure on transit charges, while fostering market competition and entry into the telecommunications industry."

Request No. 5. Provide a copy of any and all tariffs and/or price lists, including cancelled tariff pages and/or price lists, filed by Neutral Tandem with the Florida Public Service Commission.

Request No. 6. Provide copies of all current and expired contracts and agreements between Neutral Tandem and its customers in Florida.

Request No. 7. Provide copies of all studies, analyses and other documents that support Mr. Saboo's statement on Page 4 of his testimony that there are "lower per minute transit charges" available in the state of Florida, and "reduced port charges" and "nonrecurring fees"

Request No. 8. For each of the third-party carriers that utilize Neutral Tandem's service in Florida, provide the following:

- a. A copy of any contract or agreement between that company and Neutral Tandem.
- b. All documents reflecting the volume of traffic that is originated by each third party carrier and delivered to Level 3 for the period from January 1, 2006 to the present.
- c. All documents reflecting the number of circuits and/or trunks that interconnect each of those third party carriers to Neutral Tandem.
- d. All documents that reflect the volume of traffic that is originated by each third party carrier in Florida and delivered by the third party carrier or by Neutral Tandem to the following Incumbent Local Exchange Carriers ("ILECs") in Florida: Verizon, BellSouth and/or Sprint.
- e. All documents in support of Mr. Saboo's claim that if direct connections "with Level 3 are removed, third-party carriers would have to augment their

interconnection trunks with the ILEC in order to seek to terminate this traffic indirectly to Level 3.” (Saboo Testimony at 9).

f. All documents in support of Mr. Saboo’s claim that “the alternative routes do not necessarily have sufficient capacity to send all of the blocked traffic.” (Saboo Testimony at 9.)

g. All documents in support of Mr. Saboo’s claim that “some calls to Level 3 end-users from third-party carriers may be blocked and receive fast-busy signal due to lack of trunk capacity.” (Saboo Testimony at 9.)

h. All documents that reflect whether there are certain transport routes that may not experience call blocking in the event that the Florida Public Service Commission does not provide the emergency relief requested by Neutral Tandem.

Request No. 9. Produce all documents in support of Mr. Saboo’s claim that there is tandem exhaustion in Florida.

Request No. 10. Produce all documents in support of Mr. Saboo’s claim that several carriers have requested Neutral Tandem to accept overflow traffic to and from the LECs, either because “many LEC tandems are exhausted” (Saboo Testimony at 9), or for any other reason.

Request No. 11. Produce all documents in support of Mr. Saboo’s claim that third-party carriers “are also unlikely to have the necessary excess capacity to absorb additional Level 3 traffic.”

Request No. 12. Produce all documents relating to or reflecting communications between or among Neutral Tandem and its third party carrier customers in Florida whereby Neutral Tandem advised its customers that Level 3 was terminating interconnection in Florida and that the customers would need to find an alternative means to route traffic to Level 3.

Request No. 13. Produce all documents relating to or reflecting the amount of time that it would take Neutral Tandem’s customers to rearrange or provide for additional capacity in the event that the Commission does not grant the emergency relief requested by Neutral Tandem in its Petition. (Saboo Testimony at 11.)

Request No. 14. Produce all documents upon which Mr. Saboo relies for his statement that “many third-party carriers are currently operating their ILEC tandem groups at higher utilization rates than Neutral Tandem.” (Saboo Testimony at 12.)

Request No. 15. Produce all documents upon which Mr. Saboo relies for his statement that third-party carriers would be forced to pay higher rates to ILECs for terminating traffic to Level 3 in the event that the Commission does not grant the emergency relief requested by Neutral Tandem.” (Saboo Testimony at 12.)

Request No. 16. Produce all documents relating to or reflecting the alleged loss of goodwill that Neutral Tandem will incur in the event that the Commission does not grant the emergency relief requested by Neutral Tandem. (Saboo Testimony at 15.)

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished by Electronic Mail to the following this 5th day of March, 2007:

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_____/s/_____
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