

ORIGINAL
RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

07 MAR 26 10
COMMISSION
CLERK
-CEMED-REC

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
LORENA A. HOLLEY
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
MAGGIE M. SCHULTZ
GOVERNMENTAL CONSULTANTS
PARSONS B. HEATH
MARGARET A. MENDUNI

March 26, 2007

VIA ELECTRONIC MAIL

Beth Keating, Esq.
Akerman Senterfitt
106 East College Avenue
Suite 1200
Tallahassee, Florida 32302

Re: Docket No. 070127-TX

Dear Ms. Keating:

I write for two purposes. The first is to respond to Neutral Tandem's claim in its Response to Level 3's Motion to Dismiss that Level 3 has made false statements. To this attorney, that is a serious charge and requires a response. I also write to see if we can resolve Neutral Tandem's objections to Level 3's discovery as required by Rule 1.380(2), Florida Rules of Civil Procedure, and Rule 28-106.204(3), Florida Administrative Code.

Regarding Neutral Tandem's Response, on page 2, here is what Neutral Tandem states:

Level 3 claims that Neutral Tandem "has not alleged that it provides local exchange telecommunications services." (Mot. to Dismiss, at 13). *That claim is false.* (Emphasis supplied).

That claim is not false. If it were false, Neutral Tandem would have pointed the Commission to the page in Neutral Tandem's Petition where Neutral Tandem has alleged that it provides local exchange telecommunications services. Neutral Tandem's statement that Level 3 had made a false claim should be retracted. The truth is that Neutral Tandem has not made that allegation and Neutral Tandem has offered, in its place, an argument that by alleging that it is a CLEC, that is tantamount to alleging that it provides local exchange telecommunications services. That's fine. Level 3 disagrees with that argument. The applicable CLEC certification statute (Section 364.337, F.S.) uses the terms "competitive local exchange service" with the term "basic local telecommunications

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

02608 MAR 26 07

FPSC-COMMISSION CLERK

Beth Keating, Esq.
Page 2
March 26, 2007

services” synonymously. The Commission’s CLEC rules, Rules 25-24.830 and 25-24.840, F.A.C., describe the services provided by a CLEC and CLEC customers as “basic local exchange telecommunications” or “basic telecommunications service” customers. The issue of whether Neutral Tandem has even alleged that it provides local exchange telecommunications services or basic local telecommunications service is a fundamental, critical issue regarding Neutral Tandem’s standing to file its Petition and the Commission’s jurisdiction over the Petition. The Commission will ultimately make a determination on this issue. But the notion, and it is purely a notion, that Neutral Tandem has actually and factually alleged that it provider of local exchange telecommunications services is obviously not true.

Similarly, on page 12 of Neutral Tandem’s Response, Neutral Tandem states:

Finally, contrary to Level 3’s argument that Neutral Tandem cannot “bring an action to compel interconnection under Section 364.162,” because Neutral Tandem and Level 3 are not incumbent local carriers, *Neutral Tandem has never claimed that it was bringing its Petition pursuant to Section 364.162.* (Emphasis supplied).

In the first sentence of Neutral Tandem’s Petition, Neutral Tandem states:

Pursuant to Rule 25-22.0365, Florida Administrative Code, and FL. STAT. ANN. §§364.16 and 364.162, Neutral Tandem...

On page 3 of Neutral Tandem’s Petition, Neutral Tandem alleges:

The Commission has authority to grant the requested relief in this Petition pursuant to FL. STAT. ANN. §§364.16(2) and 364.162(2).

Obviously, the plain words used in Neutral Tandem’s Petition confirm that Neutral Tandem has brought its Petition under Section 364.162, Florida Statutes. To say that Neutral Tandem has never claimed that it was bringing its Petition under that statute amounts to a fiction.

Moving to Neutral Tandem’s objections to Level 3’s discovery requests, Level 3 notes the following:

Beth Keating, Esq.
Page 3
March 26, 2007

Level 3's First Set of Requests for Production of Documents

Neutral Tandem has stated that it will produce documents in response to a number of Level 3's requests. Please advise where and when these documents will be produced.

Level 3's First Set of Interrogatories

With respect to Interrogatory No. 6 and the subparts thereof, Neutral Tandem has raised certain general boiler plate objections and has also objected on the grounds that the information sought by Level 3 is confidential. Please advise if Neutral Tandem intends to provide the requested information subject to an acceptable Confidentiality and Non-Disclosure Agreement entered into by Level 3 and Neutral Tandem.

Level 3's First Set of Requests for Admissions

Neutral Tandem has objected to every request for admission - - all fourteen. In some cases, Neutral Tandem objects to a term such as "end-user customer" or "voice calls" because such terms are undefined in the discovery requests and apparently are not understood by Neutral Tandem. On the other hand, when Level 3 has defined a term by utilizing a statutory definition, Neutral Tandem objects because the request supposedly seeks an admission concerning a question of law. Level 3's request for admissions properly request the application of statutorily defined terms to a stated set of facts. As Florida courts have held, such requests for admissions are proper under Rule 1.370, Florida Rules of Civil Procedure. *Salazar v. Valle*, 360 So.2d 132 (Fla. 3rd DCA 1978); *Davis v. Dollar Rent A Car Systems, Inc.*, 909 So.2d 297 (Fla. 5th DCA 2005).

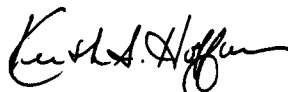
Although Neutral Tandem has requested an expedited proceeding, it has halted discovery by placing Level 3 in a no-win situation through its objections. If Level 3 defines a term and asks a request for admission that applies a given set of facts to a statutorily defined term, as proper under Florida case law, Neutral Tandem improperly objects on the ground that Level 3 has sought a legal conclusion. If Level 3 does not define a term that is generally understood by telecommunications carriers, Neutral Tandem objects on the ground that the request is vague.

Please advise if Neutral Tandem is willing to attempt to resolve its stated objections to Level 3's Requests for Admissions.

Beth Keating, Esq.
Page 4
March 26, 2007

Thank you for your attention to this matter.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Gregg Strumberger, Esq.
Ron Gavillett, Esq.
John R. Harrington, Esq.
Adam Teitzman, Esq.
Ms. Sally Simmons
Martin P. McDonnell, Esq.
Commission Clerk and Administrative Services

level3\neutraltandem\keatingltr.march2207