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COMMISSION
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June 20, 2007

Ms. Ann Cole
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32309

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

Dear Ms. Cole:

Enclosed for filing on behalf of Neutral Tandem, Inc., please find the original and 15 copies of the following:

1. Neutral Tandem's Notice of Filing Additional Supplemental Authority.

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, and if you have any questions, please do not hesitate to contact me.

Sincerely,

Thomas A. Range

Enc.

ORIGINAL

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) Filed: June 20, 2007
Expedited Resolution.)

NEUTRAL TANDEM INC.'S NOTICE OF FILING ADDITIONAL SUPPLEMENTAL AUTHORITY

Neutral Tandem, Inc. ("Neutral Tandem"), through its undersigned counsel, hereby files the following as supplemental authority:

A copy of the Connecticut Department of Public Utility Control's decision in Docket No. 07-02-29: **Petition of Neutral Tandem, Inc. for an Interconnection Agreement with Level 3 Communications and Request for Interim Order** ("CDPUC Decision"), which was decided by a 3-0 vote of the CDPUC at its regularly scheduled meeting on June 20, 2007. The CDPUC Decision differs in two important respects from the supplemental authority filed in this proceeding by Level 3 on June 12, 2007. First, the language quoted by Level 3 was a preliminary draft decision and is not part of the final CDPUC Decision. Second, the CDPUC Decision did not adopt the provisions Level 3 referred to that (1) authorized Level 3 to terminate service to Neutral Tandem on August 24, 2007; and (2) required Neutral Tandem to notify customers. *Compare CDPUC Decision with June 12, 2007 Letter of Kenneth A. Hoffman, Docket Number 070127-TX (Document Number 04734-07).*

This supplemental authority from the CDPUC is provided in further support of Neutral Tandem's position set forth in these proceedings.

Respectfully submitted,

NEUTRAL TANDEM, INC.

By: Thomas A. Range

Beth Keating

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and Hand Delivery to Martin McDonnell, Esquire, and Kenneth Hoffman, Esquire, Rutledge, Ecenia, Purnell, and Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee, FL 32301, and that an electronic copy has also been provided to the persons listed below on June 20, 2007:

Gregg Strumberger, Esquire
Gregory Rogers, Esquire
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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 07-02-29 PETITION OF NEUTRAL TANDEM, INC. FOR AN
INTERCONNECTION AGREEMENT WITH LEVEL 3
COMMUNICATIONS AND REQUEST FOR INTERIM
ORDER

June 20, 2007

By the following Commissioners:

Anthony J. Palermino
Anne C. George
John W. Betkoski, III

DECISION

DECISION

I. INTRODUCTION

A. BACKGROUND OF THE PROCEEDING

By petition received on February 28, 2007 (Petition), Neutral Tandem, Inc. (Neutral Tandem) requested the approval of the Department of Public Utility Control (Department) of an interconnection agreement and also requested that an interim Decision pursuant to §§16-247a, 16-247b and 16-247f of the General Statutes of Connecticut (Conn. Gen. Stat.) be issued. Specifically, Neutral Tandem requested that the Department establish interconnection terms and conditions for the continued delivery of tandem transit traffic from Neutral Tandem to Level 3 Communications LLC (Level 3) and issue an interim Decision directing Level 3 not to block traffic carried under existing interconnections while the Petition was pending.

B. CONDUCT OF THE PROCEEDING

In order to facilitate its investigation, the Department, on March 29, 2007, sought written comments from interested persons addressing the Petition, including but not limited to, the applicability of federal and Connecticut law relative to interconnection and commercial agreements as they apply to Neutral Tandem and Level 3 and the Department's authority in approving those agreements; the alternative administrative vehicles (e.g., tariffs) for interconnection and/or commercial agreements that the Department might employ to provide the terms and conditions for interconnection between Neutral Tandem and Level 3; the compensation arrangements for originating and terminating traffic over the Neutral Tandem and Level 3 networks in Connecticut; and the status of similar Neutral Tandem petitions filed in other states.

On March 30, 2007, Level 3 submitted a Motion to Strike Petition of Neutral Tandem (Motion to Strike). On April 24, 2007, the Department ruled that the public interest was best served by holding the Motion to Strike in abeyance until the final Decision in this proceeding, thus preserving all legal issues raised by Level 3 in its Motion to Strike, and allowing the docket to continue in parallel with proceedings in other states.

By Notice of Hearing dated April 25, 2007, a public hearing on this matter was convened at the Department's offices, Ten Franklin Square, New Britain Connecticut 06051 on May 7, 2007, at which time it was closed.

The Department issued a draft Decision in this matter on June 7, 2007. All parties were afforded the opportunity to submit written exceptions and present oral argument concerning the draft Decision.

C. PARTIES

The Department recognized Neutral Tandem-New York, 1 South Wacker Drive, Suite 200, Chicago, Illinois 60606; Level 3 Communications, LLC, 1025 Eldorado

Boulevard, Broomfield Colorado 80021; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051 as parties to this proceeding.

II. DEPARTMENT ANALYSIS

Neutral Tandem has requested that the Department (1) establish interconnection terms and conditions for the continued delivery of tandem transit traffic to Level 3 Communications,¹ and (2) issue an interim order directing Level 3 not to block traffic terminating from Neutral Tandem over the parties' existing interconnections while the Petition is pending.²

Neutral Tandem states that for over two years, it has interconnected with Level 3 in Connecticut and other states pursuant to negotiated contracts. Recently, Level 3 informed Neutral Tandem that it was terminating their contracts that enabled Neutral Tandem to deliver tandem transit traffic to Level 3, because Level 3 did not believe their terms were sufficiently advantageous to Level 3. Neutral Tandem also states that to date, efforts to negotiate new contracts have been unsuccessful. Accordingly, Neutral Tandem has requested that the Department enforce the interconnection mandates of Connecticut law, by establishing prospective terms and conditions under which Neutral Tandem and Level 3 would continue to interconnect for the delivery of tandem transit traffic to Level 3.³

In addition, Neutral Tandem contends that Level 3 plans to terminate their agreements as of March 23, 2007, which could lead to service disruption for the carriers that utilize Neutral Tandem's tandem transit service in Connecticut, as well as those carriers' end-user customers. To prevent these service disruptions, Neutral Tandem requests that the Department issue an interim order directing Level 3 to maintain the parties' existing interconnections pending resolution of the Petition.⁴

In its response to the Petition, Level 3 argues that Neutral Tandem seeks to radically alter the existing interconnection methodology between non-dominant competitive local exchange carriers (CLEC). Specifically, Level 3 maintains that Neutral Tandem has requested the Department to mandate, without any legal basis, that CLECs must directly, rather than indirectly interconnect with each other on rates, terms and conditions mandated by the Department, rather than through commercial negotiations, including requiring that each CLEC perform the termination function without any compensation from the directly interconnected CLEC. Level 3 also maintains that Neutral Tandem seeks to directly interconnect with Level 3. Additionally, Level 3 claims that other CLECs would then be indirectly interconnected with Level 3 via the voluntary tandem transit service function being offered by Neutral Tandem. Level 3 further claims that if Neutral Tandem is given the right to demand direct interconnection,

¹ 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. Petition, p. 1.

² *Id.*

³ *Id.*

⁴ *Id.*, p. 2.

then every CLEC would be allowed to demand the same treatment from every other CLEC.⁵

Consequently, Level 3 concludes that the fundamental legal issue raised by the Petition is whether the Department has the statutory authority to and should (1) compel a CLEC to directly interconnect with another CLEC, and (2) require Level 3 to transport and terminate transit traffic without adequate compensation.⁶

The issue of transit traffic is not new to the Department. For example, in its January 15, 2003 Decision in Docket No. 02-01-03 Petition of Cox Connecticut Telcom, L.L.C. for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates, the Department addressed the offering of transit traffic service by the Southern New England Telephone Company (Telco), Connecticut's major incumbent local exchange company (ILEC) and the CLECs' purchase of that service from the Telco. In that Decision, the Department required in part that the Telco offer, in addition to its existing transit traffic service offering, another transit service which did not include a "bill clearinghouse" function. The January 15, 2003 Decision did not prohibit the offering of a bill clearinghouse function nor did it address direct or indirect interconnection or the issues from which Neutral Tandem seeks relief from in this proceeding.

In support of the Petition, Neutral Tandem also cites to Conn. Gen. Stat. §§16-247a, 16-247b(b) and 16-247f.⁷ The Department is not persuaded by Neutral Tandem's reliance on Conn. Gen. Stat. §16-247b(b). While it is true that this statute requires telephone companies to provide "reasonable nondiscriminatory access and pricing to all telecommunications services . . ." the Department finds this statute does not apply here because Level 3 is not a telephone company as defined by Conn. Gen. Stat. §16-1(a)(23). In particular, Level 3 does not provide "one or more noncompetitive or emerging competitive services."⁸ Rather, Level 3 (and Neutral Tandem) are considered a telecommunications company⁹ or certified telecommunications provider.¹⁰ Consequently, Conn. Gen. Stat. §16-247b(b) does not apply.¹¹

The Department also finds that Conn. Gen. Stat. §16-247f also does not apply. Conn. Gen. Stat. §16-247f merely provides for the classification of and tariffing requirements for telecommunications services. It does not provide for the regulatory or interconnection relief sought by the Petition.

⁵ Level 3 Motion to Strike, pp. 1 and 2.

⁶ *Id.*, p. 2.

⁷ Petition, pp. 3, 9-12.

⁸ Conn. Gen. Stat. §16-1(a)(23).

⁹ Conn. Gen. Stat. §16-1(a)(25).

¹⁰ Conn. Gen. Stat. §16-1(a)(38).

¹¹ The distinction between a "telephone company" and a "telecommunications company" or "certified telecommunications provider" is not mere pedantry. A "telephone company" is among the list of companies included in the definition of a "public service company" (Conn. Gen. Stat. § 16-1(a)(4)), and thus may charge rates for noncompetitive and emerging competitive services only in accordance with traditional regulation pursuant to Conn. Gen. Stat. §16-19 or alternative regulation pursuant to Conn. Gen. Stat. §16-247k.

However, Conn. Gen. Stat. §16-247a does provide the Department with the ability to facilitate the development of competition for all telecommunications services within the state. While this statute may provide the Department with the requisite authority to address this issue, the evidentiary record does not warrant Department intervention at this time. In particular, the record does not demonstrate that there has been a good faith effort by the parties to resolve this matter. Consequently, the Department will not decide this matter now, but will direct the parties to continue their negotiations to develop a settlement that produces a nondiscriminatory commercial agreement governing the delivery of tandem transit traffic. The Department encourages the parties to resolve this matter quickly so that Neutral Tandem's customers are not disadvantaged by the absence of a commercial agreement governing the delivery of this traffic.

The Department will permit the parties until November 1, 2007, to conduct their good faith negotiations. If Neutral Tandem and Level 3 are unable to produce a commercial agreement, the parties will be required to report to the Department at that time detailing those negotiations.

III. CONCLUSION AND ORDERS

A. CONCLUSION

The record of this proceeding does not demonstrate that there has been a good faith effort on behalf of the parties to resolve this matter. Consequently, the Department will not decide this matter, but will direct the parties to continue their negotiations to develop a settlement that produces a nondiscriminatory commercial agreement. The Department encourages the parties to resolve this matter quickly so that Neutral Tandem's customers are not disadvantaged by the absence of a commercial agreement governing service.

B. ORDERS

1. Neutral Tandem and Level 3 shall continue good faith negotiations to produce a commercial agreement.
2. In the event that the Neutral Tandem and Level 3 are successful in producing a commercial agreement they shall inform the Department within 15 business days of that agreement.
3. Neutral Tandem and Level 3 shall, no later than November 15, 2007, report to the Department concerning their negotiations to produce a commercial agreement.

DOCKET NO. 07-02-29 PETITION OF NEUTRAL TANDEM, INC. FOR AN
INTERCONNECTION AGREEMENT WITH LEVEL 3
COMMUNICATIONS AND REQUEST FOR INTERIM
ORDER

This Decision is adopted by the following Commissioners:

Anthony J. Palermino

Anne C. George

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard

Louise E. Rickard
Acting Executive Secretary
Department of Public Utility Control

June 20, 2007

Date