

Dorothy Menasco

From: Keating, Beth [beth.keating@akerman.com]
Sent: Monday, July 09, 2007 2:38 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 070127-TX
Attachments: 20070709151256369.pdf

ORIGINAL

Enclosed for filing in the referenced Docket, please find the attached filing.

A. Beth Keating
Akerman Senterfitt
106 East College Ave., Suite 1200
Tallahassee, FL 32301
(850) 224-9634
(850) 521-8002 (direct)
beth.keating@akerman.com

B. Docket No. 070127-TX: Petition for interconnection with Level 3 Communications and request for expedited resolution, by Neutral Tandem, Inc.

C. On behalf of Neutral Tandem, Inc.

D. Notice of Voluntary Dismissal - 4 pages, including cover letter

E. Notice of Voluntary Dismissal of Petition and amended Petition



Akerman Senterfitt
ATTORNEYS AT LAW

www.akerman.com | Bio | V Card

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DOCUMENT NO. DATE

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Suite 1200
106 East College Avenue
Tallahassee, FL 32301
www.akerman.com
850 224 9634 tel 850 222 0103 fax

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July 9, 2007

ELECTRONIC FILING

Ms. Ann Cole
Office of the Commission Clerk
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 in the above-referenced Docket on behalf of Neutral Tandem, Inc., please find a Notice of Voluntary Dismissal.

Your assistance in this matter is greatly appreciated. If you have any questions whatsoever, please do not hesitate to contact me.

Sincerely,

Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
Phone: (850) 521-8002
Fax: (850) 222-0103

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Neutral Tandem, Inc.)	Docket No. 070127-TX
for Interconnection with Level 3)	
Communications and Request for)	Filed: July 9, 2007
Expedited Resolution)	
)	

NEUTRAL TANDEM'S NOTICE OF VOLUNTARY DISMISSAL OF PETITION

Petitioner, Neutral Tandem, Inc. ("Neutral Tandem"), hereby respectfully submits this Notice of Voluntary Dismissal, without prejudice, of its Petition in this Docket. By this Notice, Neutral Tandem withdraws both the original version filed February 26, 2007, and its motion to amend the Petition submitted on July 5, 2007. In support of this Notice, Neutral Tandem states as follows:

1. On February 26, 2007, Neutral Tandem filed a Petition for Interconnection and Request for Expedited Resolution of a dispute with Level 3 Communications (Level 3) regarding the termination of traffic to Level 3's network by Neutral Tandem.

2. On July 5, 2007, Neutral Tandem filed a motion to amend its Petition. Neutral Tandem sought to amend its Petition in order to include additional information that Neutral Tandem believes is relevant to the Commission's consideration of this case.

3. Neutral Tandem believes its motion to amend its Petition was appropriate under applicable procedural rules and case law. However, in order to alleviate any potential procedural concerns regarding the Commission's ability to consider Neutral Tandem's amended Petition, Neutral Tandem is voluntarily dismissing its Petition without prejudice. Neutral Tandem will re-submit a new Petition for the Commission's consideration promptly.

4. The Florida Commission has recognized time and again, the right of a petitioner to take a voluntary dismissal is absolute, and that once the voluntary dismissal is taken, the trial

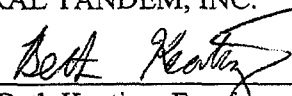
court, in this instance the Commission, loses its jurisdiction to act. See Order No. PSC-02-1559-FOF-TP; Order No. PSC-01-0082-FOF-EI; Order No. PSC-07-0485-FOF-EI; *citing* Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975); and Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978).¹

Thus, for all reasons set forth herein, Neutral Tandem respectfully requests that the Commission acknowledge Neutral Tandem's Notice of Voluntary Dismissal, without prejudice.

Respectfully submitted,

NEUTRAL TANDEM, INC.

By:


Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
beth.keating@akerman.com

Attorney for Neutral Tandem, Inc.

Ronald Gavillet
Executive Vice President &
General Counsel
Neutral Tandem, Inc.
One South Wacker, Suite 200
Chicago, IL 60606
(312) 384-8000
rongavillet@neutraltandem.com

John R. Harrington
Jenner & Block LLP
330 N. Wabash Ave.
Suite 4700
Chicago, IL 60611
(312) 222-9350
jharrington@jenner.com

¹ As a general matter, an agency has broad authority to accept a voluntary dismissal. Notably, in administrative law, rejection of a voluntary dismissal has been recognized as appropriate only in permitting proceedings or certificate applications, wherein the agency has clear jurisdiction to regulate the ongoing activities of the applicant and the applicant has no right to decline regulation by the agency, or when an evidentiary hearing has been completed. See Order No. PSC-07-0297-FOF-SU, issued in Docket No. 020640-SU; Order No. PSC-96-0992-FOF-WS, issued in Docket No. 950758-WS; and Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 645 So. 2d 374 (Fla. 1994) (a permitting proceeding in which an intervenor other than the applicant sought to voluntarily dismiss); *also citing* Middlebrooks v. St. Johns Water Management District, 529 So. 2d 1167 (Fla. 5th DCA 1988)(finding that once the hearing officer has heard the case, and the evidentiary record is established, it is too late for voluntary dismissal, because the Board cannot deviate from the hearing officer's findings of fact; rather, they can only reach different conclusions of law. Thus, the remaining proceedings before the Board were deemed more akin to post-verdict proceedings). Neither is applicable here. This is not a permitting proceeding, and an evidentiary hearing on the disputed issues of fact has not been conducted.

CERTIFICATE OF SERVICE

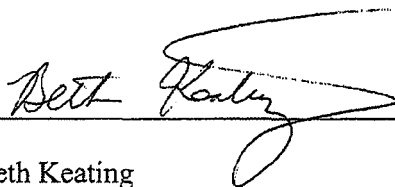
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail First Class and Hand Delivery to Martin McDonnell, Esquire, and Kenneth Hoffman, Esquire, Rutledge, Ecenia, Purnell, and Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee, FL 32301, and that a copy has also been provided to the persons listed below this 9th day of July, 2007:

Gregg Strumberger, Esquire
Gregory Rogers, Esquire
Level 3 Communications, Inc.
1025 El Dorado Boulevard
Broomfield, CO 80021
greg.rogers@level3.com

Adam Teitzman, Staff Counsel
Florida Public Service Commission,
Office of the General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
pwiggins@psc.state.fl.us

Beth Salak, Director/Division of Competitive Markets and Enforcement
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
bsalak@psc.state.fl.us

By: _____



Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
Fax: (850) 222-0103
beth.keating@akerman.com