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July 11, 2007

070408-TP

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32309

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

Dear Ms. Cole:

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

- Neutral Tandem, Inc.'s Petition for Resolution of Interconnection Dispute with Level 3 Communications and Request for Expedited Resolution, with accompanying Exhibits; and
- Direct Testimony of Surendra Saboo on behalf of Neutral Tandem. 05825-07
- Direct Testimony of Rian Wren on behalf of Neutral Tandem. 05826-07

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

Sincerely,

Thomas A. Range

Enclosures

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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 070408-TP ORIGINAL
Filed: July 11, 2007

**PETITION OF NEUTRAL TANDEM, INC. AND NEUTRAL TANDEM-FLORIDA, LLC
FOR RESOLUTION OF INTERCONNECTION DISPUTE WITH LEVEL 3
COMMUNICATIONS, LLC AND REQUEST FOR EXPEDITED RESOLUTION**

Pursuant to Rule 25-22.0365, Florida Administrative Code, and Sections 364.16(2), 364.01(2), and 364.01(4)(g), Florida Statutes, Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC (collectively "Neutral Tandem"), by and through its undersigned counsel, respectfully submits this amended petition, asking the Commission to: (1) resolve Neutral Tandem's interconnection dispute with Level 3 Communications, LLC and its subsidiaries (collectively "Level 3") regarding the delivery of tandem transit traffic by Neutral Tandem to Level 3's network;¹ and (2) resolve this Petition on an expedited basis.

Neutral Tandem delivers nearly **600,000,000 minutes** of local telecommunications traffic, to and from the largest competitive carriers in Florida, every month. In the process, Neutral Tandem creates substantial costs savings for the leading competitive local service providers throughout Florida. At the same time, Neutral Tandem's presence promotes network diversity and redundancy within the public switched telephone network ("PSTN"), by giving these carriers alternative means to deliver and receive that traffic. Neutral Tandem delivers

¹ As used in this Petition, "tandem transit" traffic refers to the intermediary switching of local and other non-access traffic that originates and terminates on the networks of different telecommunications providers within a local calling area or MTA.

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nearly **65,000,000 minutes** of local telecommunications traffic to Level 3 in Florida every month.

Level 3's position in this dispute would seriously undermine the benefits Neutral Tandem's competitive tandem transit services bring to competition in the State of Florida, and to the PSTN as a whole. Neutral Tandem brings this Petition both on its own behalf, and on behalf of the numerous telecommunications carriers that have chosen to use Neutral Tandem's services to deliver local telecommunications traffic to Level 3 in the State of Florida.

BACKGROUND

I. The Parties

Neutral Tandem is a registered competitive local exchange telecommunications company providing services within the State of Florida. Among other services, Neutral Tandem provides tandem transit services within this State. Neutral Tandem provides these services principally to the leading wireless and wireline competitive telecommunications carriers in Florida. However, as reflected in its Tariff on file with the Commission, as a common carrier, Neutral Tandem is prepared to provide services to any person or entity that desires to purchase services from Neutral Tandem under the terms of its Tariff. Neutral Tandem also provides local telecommunications services to various non-carrier, enterprise customers in the State of Florida.

The transit traffic at issue in the proceedings consists entirely of local telephone calls within the State of Florida. If Neutral Tandem is prevented from terminating these local telephone calls on the networks to which the calls are directed, those local telephone calls will fail. Consequently, end-user customers would receive a "fast busy" signal, instead of reaching the called party. As such, Neutral Tandem is a "provider of local exchange telecommunications service," with rights to interconnect with other such providers, in accordance with Section 364.16(2), Florida Statutes.

Neutral Tandem's address and telephone number are:

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Chicago, IL 60606
(312) 384-8000

Neutral Tandem's representatives to be served are:

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On information and belief, Level 3 is a registered competitive local exchange telecommunications company providing telecommunications services within the state of Florida.

II. Jurisdiction

The Commission has authority to grant the relief requested in this Petition pursuant to Sections 364.16(2), 364.01(2) and 364.01(4)(g), Florida Statutes. Specifically, Section 364.16(2) provides that: "Each competitive local telecommunications company shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions."

Section 364.16(2) further provides that, if "the parties are unable to negotiate mutually acceptable prices, terms and conditions after 60 days, either party may petition the commission

and the commission shall have 120 days to make a determination after proceeding as required by s. 364.162(2) pertaining to interconnection services.” In turn, Section 364.162(2) provides that the Commission shall, within 120 days after receiving a petition, “set nondiscriminatory rates, terms, and conditions” for interconnection.

Furthermore, pursuant to Section 364.01(2), Florida Statutes, the Commission has broad authority over any issue arising under Chapter 364, and more specifically, has authority to ensure that all telecommunications providers are treated fairly and not subjected to anticompetitive behavior of other carriers, as set forth in Section 364.01(4)(g), Florida Statutes. Notably, this authority to ensure fair treatment and prevent anticompetitive behavior is broad and extends over “all providers of telecommunications service.”

More specifically, under Section 364.01(4)(g), Florida Statutes, the Commission has the authority to provide the relief Neutral Tandem has requested in order to assure that Neutral Tandem, as a telecommunications service provider, is treated fairly in the Florida market. The Commission has addressed the issue of transit traffic in the *TDS Telecom Order*, Order No. PSC-06-0776-FOF-TP, issued September 18, 2006,² finding therein that: (1) the Commission has jurisdiction over interconnection for the delivery of transit traffic; (2) determining that the terminating carrier does not have authority to determine how a call is delivered to it; and (3) acknowledging that the originating carrier is responsible for the costs associated with transiting and terminating a local call.

This Commission should act to ensure that Neutral Tandem is treated fairly in the market by ensuring that these same determinations are applied in a nondiscriminatory fashion to Neutral Tandem as a competitive provider of the identical service addressed in the *TDS Telecom*

² See *In re Joint Petition by TDS Telecomm.*, Docket Nos. 050119-TP, 050125-TP; Order No. PSC-06-0776-FOF-TP, 2006 Fla. PUC LEXIS 543, at *36-37 (Sept. 18, 2006) (“*TDS Telecom Order*”).

decision. Otherwise, Neutral Tandem will find itself at a significant and unfair competitive disadvantage as compared to ILEC transit offerings. Moreover, the competitive benefits and the network diversity improvements to the PSTN that Neutral Tandem's transit service provides will be substantially undermined if the Commission fails to recognize jurisdiction over this important matter.

Pursuant to Section 364.01(4)(g), the Commission also is charged with authority to prevent anticompetitive behavior, such as Level 3's conduct at issue in this dispute, within the State of Florida. As recognized by the New York Public Service Commission in its decision on this same matter,

. . . denial of the relief sought by Neutral Tandem would create potential impediments to competition, by enhancing Level 3's capacity to act as a bottleneck between its end-users and CLECs if the CLEC chooses Neutral Tandem's tandem switch over Verizon's. While Level 3 argues that any interference with originating CLECs' access through Neutral Tandem to Level 3's end-users would violate Level 3's own business interests, Neutral Tandem has shown that Level 3 has allowed incoming traffic to be disrupted in analogous situations in the past. Level 3's potential bottleneck function becomes an ever greater concern insofar as Level 3 may seek to provide tandem switch service in competition with Neutral Tandem.³

Like the New York Commission, this Commission should act to prevent Level 3 from using its control of bottleneck facilities in an anticompetitive manner that undermines both competition and homeland security.

Finally, this Commission has the authority to consider Neutral Tandem's request for expedited resolution pursuant to Rule 25-22.0365, Florida Administrative Code, which provides an expedited process for resolution of disputes between telecommunications companies. Rule 25-22.0365 sets forth a series of factors the Commission considers in determining whether to

³ See Case No. 07-C-0233, *In re Petition of Neutral Tandem - New York, LLC for Interconnection with Level 3 Commc'ns*, N.Y. Pub. Serv. Comm'n, Order Preventing Service Disruption and Requiring Continuation of Interim Connection, at 11 (June 22, 2007) (hereinafter the "New York Order").

address a dispute on an expedited basis. As discussed below, each of these factors supports consideration of Neutral Tandem's Petition on an expedited basis.

III. The Nature of Neutral Tandem's Service

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

Neutral Tandem is the telecommunications industry's leading *independent* provider of tandem transit services. Among its other services, Neutral Tandem offers tandem transit services to CLECs, wireless carriers, and cable companies throughout Florida, and in over 118 LATAs nationwide. In addition to telecommunications carriers, Neutral Tandem also serves numerous enterprise customers, including such as companies as Vonage and SunRocket, who use Neutral Tandem's local telecommunications services to conduct their businesses.

Neutral Tandem provides both carriers and enterprise customers with alternative, competitive means to interconnect and exchange traffic with each other. Neutral Tandem provides service to and/or has direct connections with nearly every major CLEC, wireless carrier, and cable provider in the United States. In Florida, Neutral Tandem interconnects with more than a dozen leading competitive carriers and enterprise customers, and delivers tandem transit traffic from its carrier customers to Level 3 in several markets throughout the State.

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

Apart from the public benefits associated with competition in the tandem transit business, Neutral Tandem provides significant operational benefits to competitive carriers that utilize Neutral Tandem's tandem transit service. These benefits include Neutral Tandem's practice of paying for and managing -- through the use of diverse transport suppliers -- all of the transport connecting Neutral Tandem to competitive carrier customers' switches. Neutral Tandem uses approximately ten different transport providers in Florida, increasing the diversity for this local traffic. In addition, another unique feature of Neutral Tandem's service is the fact that it does not charge the terminating carrier for transporting traffic to its network. Historically, terminating carriers incur part of the transport cost for receiving transit traffic from the incumbent LECs.

This Commission already has found that transiting services should be categorized as "an interconnection arrangement under Section 364.16, Florida Statutes."⁴ This Commission's finding is consistent with the Legislature's determination that the term "service" should "be

⁴ *TDS Telecom Order*, 2006 Fla. PUC LEXIS 543, at *22-*24, Order No. PSC-06-0776-FOF-TP.

construed in its broadest and most inclusive sense.”⁵ Indeed, as noted by the Florida Supreme Court, “while the statute at issue in the instant case is not a paragon of clarity with regard to precisely describing operative service categories, it certainly is clear that the Legislature intended to draft the definition of ‘service’ contained in section 364.02(11) extremely broadly.”⁶ By providing transiting services which enable the completion of local telephone calls, Neutral Tandem clearly falls under the umbrella of a “provider of local exchange telecommunication services” under Florida law.

IV. The Parties’ Interconnection Dispute

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

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

⁵ FLA. STAT. ANN. § 364.02(11).

⁶ *BellSouth Telecomm., Inc. v. Jacobs*, 834 So.2d 855, 859 (Fla. 2002).

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

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

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

Nevertheless, in its February 14 letter, Level 3 claimed that the contracts were "not commercially balanced between the two parties" and that maintaining interconnection with Neutral Tandem under those contracts "is not a commercially reasonable or manageable option." (*Id.* at 2.) The letter stated that Level 3's goal was to "reach a single agreement with Neutral

Tandem” prior to March 23 that would “supersede the current agreements” and “provide a single set of terms and conditions for the benefit of both parties.” (*Id.*)

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

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

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

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

However, the parties have been unable to reach agreement. The major impediment has been Level 3's insistence that Neutral Tandem pay Level 3 reciprocal compensation when Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3, even though the traffic being delivered by Neutral Tandem has been originated by end-users of the third party carriers. Thus, even though Level 3 will continue to receive the benefit of competitive tandem transit service (including lower rates) for traffic that it *originates* through Neutral Tandem pursuant to the Originating Amendment, Level 3 stated that it would begin refusing to accept tandem transit traffic Neutral Tandem delivers to Level 3 on behalf of third party carriers as of March 23, 2007. (Ex. 2; Ex. 4.)⁷

V. Proceedings Across the Country.

Level 3's threats to disconnect its existing interconnections with Neutral Tandem are not limited to Florida. Thus, Neutral Tandem filed proceedings similar to this one in other state commissions around the country, and several state commissions already have taken action to prevent Level 3 from effectuating its threats. On June 25, 2007, the Illinois Commerce Commission adopted an order: (i) finding in Neutral Tandem's favor, (ii) finding that Level 3's

⁷ Level 3 later unilaterally extended the date it would start refusing to accept tandem transit traffic of other third party carriers directly from Neutral Tandem to June 25, 2007.

attempt to disconnect the parties' interconnections violated Illinois law, and (iii) ordering that Level 3 pay nearly all of Neutral Tandem's and the Commission's cost to prosecute the case.⁸ On June 22, 2007, the New York Public Service Commission issued its Order Preventing Disruption and Requiring Continuation of Interim Interconnection, which found in Neutral Tandem's favor, specifically finding that Neutral Tandem's services improved network diversity in the State and provided significant competitive benefits.⁹ On June 19, 2007, the Georgia Public Service Commission adopted, by a 5-0 vote, the recommendation of its Staff that Neutral Tandem's similar petition in Georgia be granted, likewise finding that Neutral Tandem's services were important for the development of a competitive market.¹⁰

On June 20, 2007, the Connecticut Department of Public Utility Control issued an Order finding that it likely had jurisdiction over Neutral Tandem's complaint, and directing the parties to attempt to resolve their differences through negotiation prior to November 1, 2007.¹¹ On June 29, 2007, Neutral Tandem's counsel sent a letter to Level 3 attempting to initiate these negotiations. As of the date of this Petition, more than ten days after that letter was sent, Level 3 has not even responded.

⁸ See Docket No. 07-0277, *Neutral Tandem, Inc. v. Level 3 Communications, LLC*, Illinois Commerce Commission, Final Order of the Administrative Law Judge (June 25, 2007) (orally adopted by the Commission on July 10, 2007).

⁹ New York Order, at 10-11.

¹⁰ See Docket No. 24844-U, *Petition of Neutral Tandem Inc. for Interconnection with Level 3 Communications and Request for Emergency Relief*, Georgia Public Service Commission, Consideration of Staff's Recommendation, at 1 (June 12, 2007) (unanimously adopted by the Commission on June 19, 2007).

¹¹ See Docket No. 07-02-29, *Petition of Neutral Tandem Inc. for Interconnection with Level 3 Commc'ns*, Conn. Dep't of Pub. Util. Control, Opinion (June 20, 2007).

ARGUMENT

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

Florida law unambiguously requires Level 3 to interconnect with Neutral Tandem on nondiscriminatory terms. Specifically, Florida law provides that every competitive telecommunications carrier, including Level 3, “shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions.”¹²

This Commission already has found that it has authority over the terms and conditions of interconnection for tandem transit services provided between the networks of different carriers.¹³ In addition, Chapter 364, Florida Statutes, generally charges the Commission with broad authority to foster a competitive environment for the provisioning of telecommunications services and the provision of alternative transit services is an important step in the building of a competitive PSTN.

In addition to being required by law, continued interconnection between Neutral Tandem and Level 3 is in the public interest. In Florida, Neutral Tandem provides the sole alternative to the tandem transit services offered by BellSouth and other incumbent LECs. Consequently, Neutral Tandem provides third-party carriers with an important competitive alternative. This results in more efficient delivery of local telephone traffic, by allowing those carriers to select the most cost-efficient route for delivery of their calls to Level 3. Competition for tandem transit services exerts downward pressure on transit charges, while fostering market competition and

¹² FL. STAT. ANN. §§ 364.16(1), (2) (2006).

¹³ *TDS Telecom Order*, 2006 Fla. PUC LEXIS 543, at *22-*23, Order No. PSC-06-0776-FOF-TP.

entry into the telecommunications industry. As the New York Commission has found: “The availability of an independent tandem in turn furthers the development of facilities-based competition among wireless, cable, and landline telephony, by offering the providers of all such services an economically advantageous alternative to the [incumbent’s] tandem.”¹⁴

Likewise, the Federal Communications Commission long has recognized the substantial benefits of competition in the market for tandem switching services:

By further reducing barriers to competition in switched access services, our actions will benefit all users of tandem switching... Our actions also should promote more efficient use and deployment of the country’s telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long distance rates, all of which should contribute to economic growth and the creation of new jobs. In addition, these measures should increase access to diverse facilities, which could improve network reliability.¹⁵

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

¹⁴ *New York Order*, at 9.

¹⁵ *Expanded Interconnection with Local Tel. Co. Facilities, Transport Phase II*, 9 FCC Rcd. 2718, ¶ 2 (rel. May 27, 1994).

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

[M]ore than 3 million customer phone lines were knocked out in Louisiana, Mississippi, and Alabama following Hurricane Katrina. ... Katrina highlighted the dependence on tandems and tandem access to SS7 switches. The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. *Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution.*¹⁶

The New York Commission noted that Neutral Tandem's competitive transit services enhance network diversity and reliability, which can be particularly critical in states susceptible to natural or man-made disasters:

[T]he redundancy resulting from alternative tandem switching options enhances the diversity and reliability of the public switched telephone network. These objectives have consistently been recognized on several occasions, particularly as a response to lessons of the September 11, 2001 attacks and Hurricane Katrina. While Level 3 disputes the benefits of redundancy on the basis that Neutral Tandem's tandem switch is just as vulnerable as other CLECs' facilities sharing the same physical location with Neutral Tandem's, even an arrangement where Neutral Tandem and CLECs collocate provides clear diversity and reliability advantages as compared with relying only on an ILEC's tandem switch maintained solely at the ILEC's location.¹⁷

Neutral Tandem does not collocate with any ILECs and utilizes approximately ten different transport carriers in the State of Florida. Neutral Tandem's operations thus facilitate transport redundancy and tandem redundancy, both of which the FCC found would have been helpful in response to Hurricane Katrina.

To be clear, the traffic at issue here is local traffic and originating carriers have made the business decision to send that traffic to Level 3 using Neutral Tandem's services. Neutral

¹⁶ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks Effect of Hurricane Katrina on Various Types of Communications Networks*, FCC Docket No. 06-83, at 9 (2006) (emphasis added).

¹⁷ *New York Order*, at 10-11.

Tandem currently provides tandem transit services to approximately a dozen different carriers in Florida, and transits nearly 600 million minutes of local telephone traffic per month in this State. Local telephone traffic bound for Level 3 represents approximately 65 million of the more than half a billion monthly minutes terminated by Neutral Tandem. This Commission thus has jurisdiction over this matter under Section 364.16(2), Florida Statutes, as well as Chapter 364, Florida Statutes, generally, because the Commission is charged with broad authority to foster a competitive environment for the provisioning of telecommunications services.

Given that Sections 364.16(2) and 364.162 specifically require interconnection on nondiscriminatory terms and conditions, the harm Neutral Tandem faces is precisely the type of harm which those provisions are designed to address. Level 3's position is tantamount to an attempt to read a new right into Section 364.16(2); namely that terminating carriers can dictate how calls are routed. If Level 3's view that all terminating carriers could choose how to receive traffic were to prevail, terminating carriers could force originating carriers to bear the cost of inefficient interconnection arrangements, and originating carriers would have no recourse for recovering the cost of those inefficiencies other than to raise their end-user retail rates.

As noted previously herein, this Commission already has found that transiting services should be categorized as "an interconnection arrangement under Section 364.16, Florida Statutes."¹⁸ Transiting services, such as those provided by Neutral Tandem, clearly are "local exchange telecommunication services" under Florida law. The traffic Neutral Tandem carries consists entirely of local telephone calls. Neutral Tandem faces serious harm to its business if Level 3 is allowed to terminate the parties' interconnections and refuse to receive traffic from Neutral Tandem. Neutral Tandem therefore has standing to seek relief under Section 364.16(2)

¹⁸ *TDS Telecom Order*, 2006 Fla. PUC LEXIS 543, at *23, Order No. PSC-06-0776-FOF-TP.

under the express terms of the statute, as well as under the broad authority vested in this Commission by Chapter 364, Florida Statutes.

Moreover, Neutral Tandem is authorized to act on behalf of its originating carrier customers for the purpose of negotiating the arrangements for the termination of traffic routed to other carriers using Neutral Tandem's service.¹⁹ Thus, in addition to having standing in its own right, Neutral Tandem has standing as the authorized agent for its originating carrier customers. These carriers will be directly and immediately harmed if Level 3 continues to refuse to accept terminating traffic from Neutral Tandem on reasonable, non-discriminatory terms. Specifically, should Level 3 prevail, carriers will be deprived of their ability to choose a competitive alternative to the ILEC tandem service, thus increasing their costs to serve their millions of Florida customers. Furthermore, any calls sent to Level 3 via Neutral Tandem could be blocked, resulting in the originating carriers' customers being unable to complete local calls.²⁰

As such, it is clear that Level 3's actions will cause Neutral Tandem and its customers substantial and immediate injury in fact, including: (1) the loss of direct interconnection with Level 3; (2) immediate and substantial economic loss and harm to its reputation; (3) immediate impairment of Neutral Tandem's ability to provide tandem transit services for calls to Level 3's network and to provide competitive alternatives to the ILECs' transit services; and (4) harm to Neutral Tandem's ability to expand its presence in the Florida market, and even its ability to continue providing tandem transit services.

¹⁹ See composite Exhibit 8, which consists of Letters of Agency (LOAs) from specific identified originating carriers.

²⁰ Notably, Level 3 itself has argued in favor of broad interconnection rights for wholesale telecommunications carriers. See, e.g., *Ex Parte Letter in Support of Petition of Time Warner Cable for Declaratory Ruling that CLEC May Obtain Interconnection under Section 251 of the Commc'ns. Act of 1934, as Amended, to Provide Wholesale Telecomm. Servs. to VoIP Providers*, WC Docket No. 06-55, Letter at 4 (filed February 13, 2007). (Ex. 5.)

For all these reasons, granting Neutral Tandem’s petition will result in enhanced competition to the benefit not only of Neutral Tandem, but also to the competitive service providers that use Neutral Tandem’s tandem transiting services, as well as those providers’ millions of Florida end-user customers.

II. The Commission Should Apply the “Calling Party’s Network Pays” Principle Previously Adopted in the *TDS Telecom* decision.

Florida law requires that Level 3 interconnect with Neutral Tandem under “nondiscriminatory prices, terms, and conditions.”²¹ This Commission recently addressed the appropriate compensation arrangements relating to transiting services in the *TDS Telecom* decision.²² The Commission found that the “calling party’s network pays” principle was appropriate in the transiting context.²³ In other words, the carrier of the end-user that originates the call is responsible to compensate the transiting carrier for the costs associated with delivering the call.²⁴ The originating carrier, not the transiting carrier, also is responsible to compensate the terminating carrier for any costs associated with receiving the call and delivering it to the terminating carrier’s end-user.²⁵

As discussed above, Neutral Tandem and Level 3 have been interconnected for over two years pursuant to negotiated contracts. Those contracts mirror the compensation system this Commission found appropriate in the *TDS Telecom* decision. Under the parties’ contracts, Level 3 pays Neutral Tandem for transiting services when Level 3 is the originating carrier; *i.e.*, the carrier whose end-user originates the call that Neutral Tandem transits to other carriers’

²¹ FL. STAT. ANN. § 364.16(2).

²² *TDS Telecom Order*, 2006 Fla. PUC LEXIS 543, at *35-*45, Order No. PSC-06-0776-FOF-TP.

²³ *See id.*

²⁴ *See id.*

²⁵ *See id.*

networks. When Level 3 is the terminating carrier; *i.e.*, the carrier whose end-user receives the call from another carrier's customer, Level 3 does not pay Neutral Tandem for that service. Instead, the originating carrier compensates Neutral Tandem for that service.

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

The parties' prior contracts expressly did *not* require Neutral Tandem perform this function for Level 3.²⁶ Rather, consistent with Neutral Tandem's other contracts, Neutral Tandem passes on to Level 3 signaling information that Neutral Tandem receives from the originating carrier, so that Level 3 can bill the originating carrier appropriate termination charges.²⁷ Neutral Tandem has made clear to Level 3 that it is willing to continue providing such information, so that Level 3 can seek appropriate compensation from the originating carrier. But it is not remotely consistent with the "calling party's network pays" principle adopted by this

²⁶ Under the Level 3 Contract, Neutral Tandem did agree to provide Level 3 with a usage-based transport recovery charge on an interim basis. However, that privately-negotiated arrangement was agreed to by Neutral Tandem in consideration of Level 3 establishing a two-way business relationship with Neutral Tandem; the transport recovery fee was set to phase down to zero as Level 3's usage of Neutral Tandem's transit service increased. It would not be appropriate to order such payments in the context of establishing nondiscriminatory terms and conditions for a one-way interconnection agreement. This interim transport recovery fee was unique to the Level 3 Contract; the Broadwing Contract did not provide for any such fee, and no other carriers accepting tandem transit traffic from Neutral Tandem in Florida receive such a fee.

²⁷ See Ex. 6, § 7.1.

Commission in the *TDS Telecom* decision for Level 3 to insist that Neutral Tandem, rather than the originating carrier, pay reciprocal compensation.

Level 3's request also is inconsistent with both state and federal law. Level 3 does not receive reciprocal compensation from incumbent LECs, such as BellSouth, when the incumbent LEC acts as the transiting carrier and delivers third party carriers' traffic to Level 3's network. To the contrary, Level 3's interconnection agreement with BellSouth in Florida specifically states that BellSouth "will not be liable for any compensation to the terminating carrier or to Level 3" when BellSouth delivers tandem transit traffic.²⁸ Requiring Neutral Tandem to pay Level 3 reciprocal compensation for transiting traffic to Level 3 from the networks of third party carriers, when Level 3 would not receive such compensation from incumbent LECs such as BellSouth for transiting the same traffic, would discriminate against Neutral Tandem, in violation of Florida law. It also would violate the requirement of federal law that reciprocal compensation payments are to be made by the carrier that originates the traffic.²⁹

To be clear, Neutral Tandem is *not* asking the Commission to order Level 3 to originate any traffic through Neutral Tandem or otherwise become a customer of Neutral Tandem. To the contrary, Neutral Tandem merely seeks an order directing Level 3 to comply with its obligation under Florida law to interconnect with Neutral Tandem for the purpose of *receiving* tandem transit traffic originated by third party carriers and delivered to Level 3 by Neutral Tandem. Upon adoption of the nondiscriminatory interconnection terms set forth above, Neutral Tandem and Level 3 should be able to enter into a new agreement promptly.

²⁸ Agreement Between Level 3 Communications, LLC and BellSouth Telecommunications, Inc. § 7.6.2 (June 23, 2004).

²⁹ See 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.701(e).

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

In light of the urgency of this issue, the Commission can and should consider Neutral Tandem's Petition on an expedited basis pursuant to Section 364.058, Florida Statutes and 25-22.0365, Florida Administrative Code.³⁰ As set forth below, each of the factors under Rule 25-22.0365(4)(e) supports expedited treatment of Neutral Tandem's Petition:

1. Number and Complexity of the Issues

The issues presented by Neutral Tandem's Petition are neither numerous nor complex. The Petition involves a straightforward application of the clear interconnection requirements of Florida law. Many of the broader issues regarding the appropriate terms and conditions of interconnection related to transiting services already have been considered and decided by this Commission in the *TDS Telecom* decision. In addition, since Neutral Tandem and Level 3 have been interconnected for more than two years, there are no open technical issues.

Moreover, the parties' experience in other states reinforces that the issues in dispute are neither numerous nor complex. The parties have conducted evidentiary hearings in five other states. Each of these hearings has been completed in 1-2 days. And decisions have already been issued in four of those States.

³⁰ Expedited treatment of Neutral Tandem's Petition is crucial because Level 3 has an unfortunate history of following through on threats to use service disruptions to end-users as a negotiating tactic. For example, in October 2005, Level 3 blocked internet users of Cogent Communications from accessing the internet for three days as a result of the parties' compensation dispute. See Jeff Smith, *Level 3, Cogent Resolve Dispute; Feud Disrupted Internet Traffic*, Rocky Mountain News, Oct. 29, 2005, at 3C (Ex. 7). As a result of Level 3's conduct in that dispute, its President was forced apologize to both Level 3's and Cogent's customers. (*Id.*) According to one report, Level 3's President stated that the company had "learned a lesson" as a result of its conduct in that case. See Arshad Mohammed, *Internet Access Dispute Cut Off Some Businesses*, Washington Post, Oct. 14, 2005, at D04 (Ex. 7). Based on its threat to disrupt service to millions of Florida end-users in this case, whether Level 3 really has "learned a lesson" is at best an open question. Indeed, Level 3's prior motion to dismiss Neutral Tandem's prior Petition plainly set forth Level 3's view that blocking traffic is "a critical part of the negotiating toolkit." See *Petition for Interconnection with Level 3 Communications and Request for Expedited Resolution, by Neutral Tandem*, Fla. Pub. Serv. Comm'n Docket No. 070127-TX, Level 3's Motion to Dismiss, at 7.

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

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

3. Topics on which the Company Plans to Conduct Discovery

Neutral Tandem does not anticipate serving discovery in this matter. The issues raised by Neutral Tandem's Petition present legal issues relating to Level 3's compliance with the clear interconnection requirements of Florida law, as articulated in the *TDS Telecom* decision. In addition, the parties already have exchanged discovery in proceedings in other states, so further discovery should not be necessary in Florida. Neutral Tandem does, however, reserve the right to conduct discovery if necessary.

4. Specific Measures Taken to Resolve the Dispute Informally

As described in more detail above, since Neutral Tandem first learned on January 31, 2007 that Level 3 intended to abruptly terminate the parties' contracts, Neutral Tandem has engaged in extensive and repeated negotiations with Level 3 to try to resolve this dispute informally. Senior Neutral Tandem executives have traveled to Level 3's Colorado headquarters for in-person meetings, and the parties have engaged in numerous telephonic negotiations. However, Level 3's intransigent insistence that Neutral Tandem pay it reciprocal compensation

for delivering tandem transit traffic from third party carriers, instead of seeking such compensation from the originating carriers as required under state and federal law, has made it impossible to settle this dispute.

In addition, pursuant to directives from the Connecticut Department of Public Utility Control, as well as directives from other state commissions, Neutral Tandem has attempted to initiate negotiations with Level 3. However, as noted above, Level 3 has not responded to Neutral Tandem's inquiry as of the date of this Petition.

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

Commissions in several other states have already determined that Level 3 should be required to maintain interconnection with Neutral Tandem for the purpose of receiving tandem transit traffic.³¹ Furthermore, the Commission's staff also has previously stated in a recommendation filed June 27, 2007, in Docket No. 070127-TX, wherein Staff addressed the question of standing, that it does believe Neutral Tandem will experience an "injury in fact of sufficient immediacy" if Level 3 terminates the direction connection between the two companies. Level 3's actions are plainly anticompetitive in nature and harmful both to Neutral Tandem and to competition as a whole.³² Expediting this proceeding will lessen the likelihood that Neutral Tandem will suffer irreparable harm while this proceeding is conducted, and will also lessen, to some degree, the level of harm suffered by Neutral Tandem's customers and their end-users.

³¹ See composite Exhibit 9, containing the Orders of the Illinois Commerce Commission, the New York Public Service Commission, the Connecticut Public Utilities Commission, and the Georgia Public Service Commission.

³² See *Petition for Interconnection with Level 3 Communications and Request for Expedited Resolution, by Neutral Tandem*, Fla. Pub. Serv. Comm'n Docket No. 070127-TX, Staff Recommendation, at 9 (June 27, 2007).

CONCLUSION

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

(1) Resolve Neutral Tandem's interconnection dispute with Level 3 regarding the delivery of tandem transit traffic by Neutral Tandem to Level 3's network; and

(2) Resolve this Petition on an expedited basis in accordance with Rule 25-22.0365, Florida Administrative Code.

Respectfully submitted,

NEUTRAL TANDEM, INC.

By: Thomas A. Range

Beth Keating, Esq.
Thomas A. Range, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail First Class and Electronic Mail to Kenneth Hoffman, Esquire, Rutledge, Ecenia, Purnell, and Hoffman, P.A., 215 South Monroe Street, Suite 420, Tallahassee, FL 32301 (ken@reuphlaw.com), and that a copy has also been provided to the persons listed below this 11th day of July, 2007:

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

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

Beth Salak, Director/Division of Competitive Markets and Enforcement
Florida Public Service Commission
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By: Thomas A Range

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beth.keating@akerman.com

EXHIBIT 1



January 30, 2007

NTI Communications, Inc.
Two North La Salle, Suite 1515
Chicago, IL 60602

Attention: Executive Vice President and General Counsel

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

Dear Sir/Madam:

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

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

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

Sincerely,

Scott E. Beer, Vice President
Carrier Relations

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

EXHIBIT 2



February 14, 2007

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

Re: February 16, 2007 Meeting

Dear Mr. Gavillet:

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

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

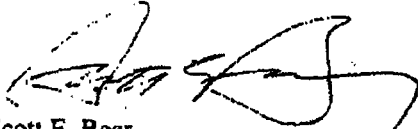
Our review of the various agreements between the acquired Level 3 companies and Neutral Tandem, including the agreement with Broadwing Corporation, has served to further highlight the current imbalance that exists between Neutral Tandem and the combined Level 3 companies. As such, pursuant to the Term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

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

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

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

Sincerely,

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

Scott E. Beer
Vice President, Carrier Relations

EXHIBIT 3



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

February 19, 2007

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

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

Dear Mr. Beer:

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

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

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

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

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

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



Mr. Beer
February 19, 2007
Page 2

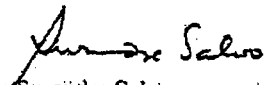
However, as we also stated in our meeting, Level 3 is required by law to interconnect with Neutral Tandem in all of the states where the parties operate. For example, applicable state law requires Level 3 to interconnect with Neutral Tandem upon request in each of Illinois, New York, Florida, and Georgia.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

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

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

We look forward to our call tomorrow.

Sincerely,


Surendra Saboo
Chief Operating Officer

cc: John Harrington, Jenner & Block LLP

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

EXHIBIT 4



John M. Ryan
Senior Vice President
Assistant General Counsel

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

February 22, 2007

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

Re: Request for Interconnection dated February 19, 2007

Dear Mr. Saboo,

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

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

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

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

Mr. Surendra Saboo
February 22, 2007
Page 2

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

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

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

Sincerely,



John M. Ryan
Senior Vice President and Assistant General Counsel

EXHIBIT 5



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

February 13, 2007

Ex Parte

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

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

Dear Ms. Dortch:

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

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

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

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

Marlene Dorch
February 13, 2007
Page 2

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

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

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

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

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

⁴ *Id.*

⁵ 47 U.S.C. § 251(a)(1).

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

⁷ *Id.* at 3.

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

Marlene Dortch
February 13, 2007
Page 3

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

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

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

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

⁹ *Id.*

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

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

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

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

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

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

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

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

¹⁴ 47 U.S.C. § 251(b).

¹⁵ 47 U.S.C. § 251(c).

¹⁶ 47 U.S.C. § 252.

¹⁷ See 47 U.S.C. § 251(f)(1).

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

HARRIS, WILTSHIRE & GRANNIS LLP

Marlene Dortch
February 13, 2007
Page 5

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

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

Sincerely yours,



John T. Nakahata

Counsel to Level 3 Communications, LLC

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

EXHIBIT 6

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BEIJING

May 13, 2005

VIA HAND DELIVERY

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

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

Dear Secretary Brillling:

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

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

Sincerely,


Noelle M. Kinsch

BTF/rsb
Enclosures

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

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TRAFFIC TERMINATION AGREEMENT

Dated as of APR 22 2005, 2005

By and Between

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

And

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

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Appendix 1 – Network Arrangements Schedule - Exchange of Traffic

Exhibit A - Contact and Escalation List

TRAFFIC TERMINATION AGREEMENT

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

RECITALS

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

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

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

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

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

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

1. DEFINITIONS AND RECITALS

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

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

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

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

service tariff of the ILEC.

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

2. INTERPRETATION AND CONSTRUCTION

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

3. TERMINATION OF TRAFFIC

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

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

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

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

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

through the appropriate TWTC channels and procedures.

4.7 Trunk Forecasts For Direct Connections

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

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

4.8 Review and Update of Trunk Forecasts

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

4.9 Provisioning Responsibilities for Direct Connections; Trouble Reporting and Management

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

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

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

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

5. NETWORK TRAFFIC MANAGEMENT

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

6. SIGNALING

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

7. COMPENSATION FOR TERMINATION

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

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

7.2 Traffic Recording, Exchange of Necessary Factors and Audits

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

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

7.3 Billing

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

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

8. DEFAULT

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

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

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

9. GENERAL RESPONSIBILITIES OF THE PARTIES

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

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

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

10. TERM AND TERMINATION OF AGREEMENT

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

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

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

- 10.3** In the event that any requested re-negotiation does not conclude prior to expiration of the then-current term, this Agreement shall continue in full force and effect until replaced by a successor agreement.
- 10.4** The Parties shall use their best endeavours to resolve all outstanding issues in the renegotiation process. However, if the Parties are unable to come to a resolution of certain issues during the renegotiation process, either Party may at any time during the renegotiation, request arbitration, mediation or assistance from the Commission or, if applicable, the FCC, to resolve the remaining issues in the renegotiation process, in accordance with the Commission's or FCC's, as appropriate, prescribed procedures.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

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

12. INDEMNIFICATION

- 12.1** Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party") from and against all Losses arising out of any claims, demands or suits ("Claims") of a third party against the Indemnified Party to the extent arising out of the negligence or willful misconduct of the Indemnifying Party or out of the failure of the Indemnifying Party to perform, or cause to be performed, its obligations under this Agreement, including but not limited to, services furnished by the Indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.
- 12.2** Each Party, as an Indemnifying Party, agrees to indemnify, defend, and hold harmless the other Party from any third party Claims that assert any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the Indemnifying Party's or its employees, agents and contractors, or by the Indemnifying Party's equipment, associated with the provision of any service provided under this Agreement. This provision includes but is not

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

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

13. LIMITATION OF LIABILITY

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

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

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

14. COMPLIANCE

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

15. INDEPENDENT CONTRACTORS

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

16. FORCE MAJEURE

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

17. CONFIDENTIALITY

- 17.1** By virtue of this Agreement, TWTC and NT may have access to or exchange Confidential Information belonging to the other Party. A recipient of such Confidential Information shall not disclose any Confidential Information to any person or entity except recipient's employees, contractors and consultants who have a need to know and who agree in writing to be bound by this Section 17 to protect the received Confidential Information from unauthorized use or disclosure. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for the purpose of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information, but in no event less than a reasonable degree of care.
- 17.2** The restrictions of this Section 17 shall not apply to information that: (i) was publicly known at the time of the owner's communication thereof to the recipient; (ii) becomes publicly known through no fault of the recipient subsequent to the time of the owner's communication thereof to the recipient; (iii) was in the recipient's possession free of any obligation

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

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

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

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

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

18. GOVERNING LAW

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

19. TRANSFER AND ASSIGNMENT

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

20. TAXES

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

taxes as specified under the relevant sales contracts or tariffs.

21. NON-WAIVER

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

22. NOTICES

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

TWTC:

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

Tel: (303) 566-1279

Fax: (303) 566-1010

With a copy to:

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

Tel: (212) 364-7319

Fax: (212) 364-2355

NT:

NT Tandem, Inc.

1 S. Wacker Drive, Suite 200

Chicago, IL 60606

Attn: Ron Gavillet

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

23. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

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

24. USE OF LICENSES

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

25. INSURANCE

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

26. SURVIVAL

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

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

27. ENTIRE AGREEMENT

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

28. COUNTERPARTS

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

29. AUTHORITY

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

30. GENERAL

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

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

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

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

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

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

Time Warner Telecom - NY, L.P.

Neutral Tandem-New York, LLC

By : Time Warner Telecom General Partnership,
its general partner

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

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Burnicle

Name: John Burnicle

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Georgia, L.P.

Neutral Tandem-Georgia, LLC

By : Time Warner Telecom General Partnership,
its general partner

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

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 20 2005

By: John Burnicle

Name: John Burnicle

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Indiana, L.P.

Neutral Tandem-Indiana, LLC

By : Time Warner Telecom General Partnership,
its general partner

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

By: Tina Davis

Name: Tina Davis

By: John Burnicle

Name: John Burnicle

Title: Vice President and Deputy General Counsel

Date: APR 21 2005

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Wisconsin, L.P.

Neutral Tandem-Illinois, LLC

By : Time Warner Telecom General Partnership,
its general partner

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

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 21 2005

By: John Barnicle

Name: John Barnicle

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of California, L.P.

Neutral Tandem-California, LLC

By : Time Warner Telecom General Partnership,
its general partner

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

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 21 2005

By: John Barnicle

Name: John Barnicle

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Minnesota LLC

Neutral Tandem-Minnesota, LLC

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

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: APR 21 2005

By: John Barnicle

Name: John Barnicle

Title: PRESIDENT

Date: 4-20-05

Time Warner Telecom of Ohio LLC

By: Time Warner Telecom Holdings Inc.,

its sole member

By: Tina Davis

Name: Tina Davis

Title: Vice President and Deputy General Counsel

Date: 4-20-05

Neutral Tandem-Michigan, LLC

By: John Barnicle

Name: JOHN BARNICLE

Title: PRESIDENT

Date: 4-20-05

Appendix 1

Network Arrangements Schedule - Exchange of Traffic

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

<u>NT CLI</u>	<u>TWTC CLI</u>
ATLNGAQS08T	ATLNGAGADS0
CLEVOHK01T	CLMDOH44DS0
CLEVOHK01T	CLMCOH1BDS0
IPLWIN7500T	IPLTINSDDSO
IPLWIN7500T	IPLTINSDDSO2
LSANCARC57T	IRVECAJTDS0
LSANCARC57T	LSANCAJQDS0
LSANCARC57T	RUSDCAMLDS0
CHCGIL2495T	BRFDWIJZDS0
CHCGIL2495T	MILXWIIXDS0
MPLSMNCD07T	MNNTMNICDS0
NYCMNYBX41T	NYCLNYJWDS0
NYCMNYBX41T	NYCMNYTGDS0
NYCMNYBX41T	NYCLNYJWDS2

Exhibit A

Contact and Escalation List

NT:

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

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

Trouble Reporting

To report a trouble (24x7), please contact us at: **1-866-388-7258**

How to open a trouble ticket:

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

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

How to escalate an open trouble ticket:

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

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

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

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

TWTC:

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

EXHIBIT 7

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

October 29, 2005 Saturday
Final Edition

SECTION: BUSINESS; Pg. 3C

LENGTH: 443 words

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

BYLINE: Jeff Smith, Rocky Mountain News

BODY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LOAD-DATE: October 29, 2005

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The Washington Post

October 14, 2005 Friday
Final Edition

SECTION: Financial; D04

LENGTH: 791 words

HEADLINE: Internet Access Dispute Cut Off Some Businesses

BYLINE: Arshad Mohammed, Washington Post Staff Writer

BODY:

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

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

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

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

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

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

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

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

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

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

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

Internet Access Dispute Cut Off Some Businesses The Washington Post Octo

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

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

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

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

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

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

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

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

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

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

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

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

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

LOAD-DATE: October 14, 2005

EXHIBIT 8

XO

TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

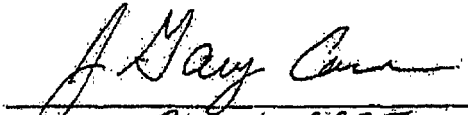
The undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You (terminating carrier) may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:



Name: GARY CASE
Title: DIRECTOR - CARRIER MANAGEMENT
Date: 7/3/2007



Sprint Nextel
KSOPHA0310-38472
8330 Sprint Parkway
Overland Park, KS 66251-6102
Voice: (913) 762-4200 Fax: (913) 762-0117
Keith.L.Kassien@sprint.com

Keith L. Kassien
Manager
ICA Solutions

July 3, 2007

Via Overnight Mail and E-mail

Mr. Frank Cefall
Neutral Tandem
1 South Wacker
Chicago, IL 60606

Re: Letter of Agency ("LOA")

Dear Mr. Cefall:

Sprint Spectrum, L.P. d/b/a Sprint PCS and Sprint Communications Company L.P., collectively referred to as "Sprint", appoint Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations of Neutral Tandem to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

Sincerely,

Keith Kassien
Mgr. - ICA Solutions

cc: James C. Kite II



TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

Pursuant to the Florida Service Descriptions dated December 2, 2005 and September 11, 2006, the undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

Name: PHILIP MILLER
Title: EXECUTIVE DIRECTOR, BUSINESS DEVELOPMENT VOICE SERVICES
Date: 7/3/07



Alltel Communications, Inc.
1 Allied Drive
Little Rock, AR 72223

TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

The undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

A handwritten signature in black ink, appearing to read 'Charles Cleary', written over a horizontal line.

Name: Charles Cleary
Title: Staff Manager, Interconnect
Date: July 1st, 2007



Re: TRANSIT TRAFFIC TERMINATION ARRANGEMENT

TO: Neutral Tandem

The undersigned appoints Neutral Tandem to act as its Agent solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers.

This authority is limited to the establishment of technical and operational aspects of such arrangements. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers.

You may deal directly with the Agent on all matters pertaining to the traffic termination arrangement and follow its instructions thereto.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

A handwritten signature in black ink, appearing to read "Craig Schanley", is written over a horizontal line.

Name: Craig Schanley
Title: Director of Engineering
Date: June 29, 2007

LOCAL

LONG DISTANCE

INTERNET

1551623.1

2301 Lucien Way - Suite 200 - Maitland, FL 32751
407-835-0300 - Fax 407-835-0309 - www.fdn.com



Kimberly A. Meola
Executive Director
National Access Management

Room 2A-126
One AT&T Way
Bedminster, N.J. 07921
Phone: 732-392-2828
Fax: 908-234-8835
E-mail: kameola@att.com

July 5, 2007

Neutral Tandem, Inc.
One South Wacker, Suite 200,
Chicago, IL 60606

**RE: Master Service Agreement between Neutral Tandem, Inc. ("Neutral Tandem")
and AT&T Corp. ("AT&T"), dated May 11, 2004, as amended ("Agreement").**

TO: Neutral Tandem

Pursuant to the above referenced Agreement, the specific terms of which are confidential, AT&T purchases certain services from Neutral Tandem which require Neutral Tandem to act in a capacity similar to that of an agent for AT&T solely for the purpose of making arrangements for the termination of transit traffic routed through Neutral Tandem to other carriers within the State of Florida.

This authority is limited to the establishment of technical and operational aspects necessary for the termination of the transit traffic as defined in the Agreement. Neutral Tandem remains fully responsible for the cost, maintenance and management of the facilities between Neutral Tandem and the terminating carriers. This authority does not alter in any way the legal or financial obligations to the terminating carriers or AT&T.

This LOA shall continue until such time as revoked on 30 days notice by the undersigned.

SIGNED:

A handwritten signature in cursive script that reads "Kimberly A. Meola".

Name: Kimberly Meola
Title: Executive Director
Date: 07/05/07

EXHIBIT 9

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Neutral Tandem, Inc. and	:	
Neutral Tandem-Illinois, LLC	:	
-vs-	:	
Level 3 Communications, LLC	:	
	:	07-0277
Verified Complaint and Request for	:	
Declaratory Ruling pursuant to	:	
Sections 13-515 and 10-108 of the	:	
Illinois Public Utilities Act.	:	

ORDER

This matter concerns an interconnection dispute between Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC (collectively "NT") and Level 3 Communications, LLC ("Level 3"). NT alleges that Level 3 refuses to accept delivery of transit traffic without NT paying charges for which it is not properly responsible, and that Level 3 has threatened to disconnect NT if it does not accept Level 3's terms. NT states that it seeks interconnection at reasonable and non-discriminatory terms for the delivery of traffic bound for Level 3 subscribers, but that it does not seek to force Level 3 to be a customer of NT. Level 3 maintains that the prior agreement under which NT delivers traffic to Level 3 has expired. Level 3 avers that it is free to terminate the agreement pursuant to the provisions contained therein. For the reasons that follow, we find in favor of NT, with the relief sought granted in part and denied in part.

BACKGROUND

NT and Level 3 are both telecommunications carriers in Illinois. Level 3 is a competitive local exchange carrier (CLEC) with end user customers. Traffic is originated by or terminated to customers on the Level 3 network. NT does not have such end-user customers; no traffic originates from or terminates to NT's network. NT's customers use NT to deliver traffic to the networks of other CLECs with which they are not directly interconnected. NT "transits" such traffic over its tandems, and delivers it to the recipient CLEC for termination to its end user.

To achieve this, NT is interconnected with various local exchange carriers (LECs), both incumbent (ILEC) as well as CLEC. NT receives traffic from the originating LEC at their point of interconnection, transits the traffic over its own network,

and delivers it to its point of interconnection with the terminating LEC. The terminating LEC accepts the traffic and completes the call to the end user.

Interconnection, as a general matter, is an obligation of LECs pursuant to federal and Illinois law.¹ The parties to this matter disagree on which *manner* of interconnection complies with federal and state law.

NT states that it is the only independent tandem services provider; all other providers of tandem services are ILECs. NT's competitor for this service in Illinois is none other than AT&T.² NT also states that it delivers 492 million minutes of traffic per month on behalf of the nineteen CLECs that utilize NT's services. NT avers that these nineteen CLECs are among the largest facilities-based CLECs in Illinois. NT's volume represents 50% of the local tandem transit traffic in Illinois, and includes 56 million minutes per month delivered to Level 3 for termination to its subscribers. NT notes that, if Level 3 is allowed to block traffic from NT, all of these third-party CLECs will be denied their chosen method of delivering this traffic to Level 3.

NT's network provides an alternate path for traffic to the AT&T tandems. NT asserts that this benefits the public and the strength of the public switched telephone network (PSTN) by decreasing the likelihood of tandem exhaust, call blocking, and, during an emergency, network-wide failure due to a disruption at a particular point.

Pursuant to various contracts, NT and Level 3 exchanged traffic since 2004. Under one contract, NT delivered to Level 3 traffic originated by third-party CLECs and bound for Level 3. Under a second, NT similarly delivered traffic to Level 3's subsidiary Broadwing Communications. Under a third contract, Level 3 delivers to NT traffic originated by Level 3 and bound for third-party CLECs. Pursuant to this contract, NT transmits the traffic originated on the Level 3 network.

NT notes that it pays 100% of the cost of the transport facilities and electronics between NT and Level 3 that are used to terminate traffic to Level 3's network. NT also provides to Level 3 all of the billing information that Level 3 needs to collect reciprocal compensation from the originating carriers, including all of the signaling information NT receives from the originating carrier.

On January 31, 2007, the parties executed a contract³ extending the term for Level 3 to deliver traffic to NT for transiting to third-party CLECs. Later that same day, Level 3 sent notice terminating the agreement by which third-party CLECs can deliver traffic to Level 3 via NT's tandems. Termination of the agreement was designated to

¹ See 47 U.S.C. 251; 220 ILCS 5/13-514(1).

² Both NT and Level 3 refer to the ILEC by its brand name of "AT&T" rather than its legal name of Illinois Bell Telephone Company. For consistency, this Order will do the same.

³ NT calls it an amendment to the prior contract; Level 3 explicitly denies that it is an amendment, and insists that it is a new contract. Its label is immaterial to the chronology of events leading to this proceeding.

occur on March 2, 2007. The same executive at Level 3 who signed the contract with NT also signed the notice of termination.⁴

Letters were exchanged between NT and Level 3 throughout February, 2007. The termination date was moved back to March 23, 2007, and at some subsequent time, to June 25, 2007.

On April 24, 2007, Level 3 sent a letter stating that, pursuant to 83 Ill. Adm. Code 731.905, it was giving notice that the expiration was set for June 25, 2007, after which Level 3 would disconnect NT.

On April 25, 2007, NT filed with the Illinois Commerce Commission (the "Commission") its Verified Complaint and Request for Declaratory Ruling (the "Complaint"), in which it alleges violations by Level 3 of Section 13-514, subsections (1), (2), and (6), as well as Sections 13-702 and 9-250, of the Public Utilities Act⁵ (the "Act").

Respondent filed its Answer on May 2, 2007, in accordance with Section 13-515(d)(4) of the Act.

Consistent with Section 13-515(d)(6) of the Act and pursuant to due notice, a status hearing was convened on May 8, 2007. Also on May 8, 2007, Level 3 sent a letter to NT stating that:

commencing on June 25, 2007, if and to the extent that Neutral Tandem elects to deliver transit traffic to Level 3 for termination, and if Level 3 elects to terminate such traffic on Neutral Tandem's behalf, Level 3 will charge Neutral Tandem at a rate of \$0.001 per minute terminated. Level 3 reserves ... the right to terminate the acceptance and delivery of Neutral Tandem's transit traffic. * * * By continuing to send traffic to Level 3 for termination from and after June 25, 2007, Neutral Tandem will be evidencing its acceptance of these financial terms.⁶

Notwithstanding the foregoing, Level 3 has stated in this proceeding that it does not collect reciprocal compensation from originating carriers for traffic terminated to the Level 3 network, and does not proactively pay reciprocal compensation to other CLECs for traffic it originates and terminates on their networks.

The case was tried on May 22 and May 23, 2007. NT, Level 3, and the Staff of the Commission ("Staff") all appeared by counsel. NT offered testimony from Mr. Rian Wren, its President and Chief Executive Officer, as well as from Mr. Surendra Saboo, its

⁴ In its Answer, Level 3 generally admits this allegation and, in any event, did not deny it (See Complaint and Answer ¶25). Accordingly, Level 3 is deemed to have admitted it. 735 ILCS 5/2-610(b) ("Every allegation, except allegations of damages, not explicitly denied is admitted...").

⁵ See generally 220 ILCS 5/1-101 *et seq.*

⁶ Level 3 ex. 1.1.

Chief Operating Officer and Executive Vice President. Level 3 offered testimony from Ms. Sara Baack, the Senior Vice President of its Wholesale Markets Group, as well as from Mr. Timothy J. Gates, Senior Vice President of QSI Consulting, located in Highlands Ranch, Colorado. Staff offered testimony from Mr. Jeffrey Hoagg, Principal Policy Advisor in the Telecommunications Division of the Commission.

ANALYSIS

The Public Utilities Act

NT asserts that Level 3's actions violate Section 13-514 of the Act. That Section states:

A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:

- (1) unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier;
- (2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier; * * * *
- (6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers[.]⁷

NT also alleges a violation of Section 13-702, which states:

Every telecommunications carrier operating in this State shall receive, transmit and deliver, without discrimination or delay, the conversations, messages or other transmissions of every other telecommunications carrier with which a joint rate has been established or with whose line a physical connection may have been made.⁸

Finally, NT relies upon Section 9-250 of the Act, which states that, where the Commission, upon complaint or its own motion, finds that a rate, charge, ... contract, or other utility practice:

⁷ 220 ILCS 5/13-514, 13-514(1), 13-514(2), 13-514(6).

⁸ 220 ILCS 5/13-702.

[is] unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, ... the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.⁹

The Complaint does not seek relief pursuant to the federal Telecommunications Act of 1996.

Interconnection; Section 13-514

It is undisputed that Section 251 of the federal Telecommunications Act requires all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."¹⁰ The parties appear to agree that the fundamental purpose of interconnection is the exchange of traffic. At issue in this proceeding is the manner in which such interconnection may occur.

NT seeks to maintain its existing direct interconnection with Level 3. NT's CLEC customers, via NT, are indirectly interconnected with Level 3 under this arrangement. Because NT is a transit provider rather than a LEC, the preferred arrangements of both NT and Level 3 feature "indirect interconnection" but for different entities. For the purpose of this Order, this direct/indirect interconnection arrangement will be labeled "Type N" interconnection after its proponent.

Level 3 asserts that all that is required of it is indirect interconnection with NT. It argues that Section 251(a) requires all carriers to directly or indirectly interconnect, but does not mandate direct interconnection between carriers.¹¹ Level 3 relies on this choice offered by Section 251(a)(1) to justify its termination of the existing direct interconnection.

After Level 3 disconnects NT to prevent it from delivering traffic to Level 3, NT would be indirectly interconnected with Level 3 via AT&T. As Staff points out, NT's CLEC customers then would only have a doubly-indirect interconnection with Level 3, via NT *and* AT&T. This indirect/doubly-indirect interconnection arrangement will be labeled "Type L" interconnection for the purpose of this Order.

The difference between a "Type L" and "Type N" interconnection is that the "Type L" involves a second transit provider, i.e., a more intricate call path and a second set of transit costs for the originating CLEC. Furthermore, as Staff witness Hoagg explains, the "Type L" interconnection forces originating CLECs to utilize a call path other than

⁹ 220 ILCS 5/9-250. (This authority is explicitly extended to single rates or other charges, classifications, etc. *id.*) Cf. 220 ILCS 5/13-101 (applying Section 9-250, *inter alia*, to competitive telecommunications rates and services).

¹⁰ 47 U.S.C. 251(a)(1).

¹¹ See *id.*

the one they apparently prefer, as evident from their present subscriptions with NT. Accordingly, where a "Type N" interconnection is possible, forcing the use of a "Type L" interconnection violates Section 13-514(1) of the Act, which prohibits the provision of inferior connections to another carrier.¹² Requiring NT or an originating CLEC to incur a second set of transit costs is the hallmark of the inferiority of this type of interconnection. It also violates Section 13-514(2) of the Act, which prohibits a telecommunications carrier from inhibiting the speed, quality, or efficiency of services used by another carrier.¹³

Level 3 has secured a "Type N" interconnection for its own use, i.e., it is directly interconnected with NT for the purpose of having traffic originated on the Level 3 network transited by NT to other CLECs. The instant dispute concerns, in part, an attempt by Level 3 to force upon NT and its 18 other CLEC customers a "Type L" interconnection. By disconnecting NT and forcing it to route traffic bound for Level 3 via AT&T, Level 3 would simultaneously impose a substantial adverse effect on NT's ability to serve its customers, and foreclose from competing CLECs the very arrangement that Level 3 uses for itself. Both of these effects violate Section 13-514(6).¹⁴

In addition, Staff explains that, if Level 3 disconnects NT, it prevents other CLECs from using NT to transit their traffic to Level 3. The CLECs then will face the choice of paying either (i) the AT&T price, which is 130% of that charged by NT, or (ii) the price of both NT and AT&T (230% of NT's price¹⁵), and will invariably return to AT&T at the expense of NT. This scenario will degrade the ability of NT to do business, and will impede the development of competition in Illinois. Therefore, the position advocated by Level 3 violates Illinois law.¹⁶ Also, NT accurately characterizes Level 3's scheme, with two transit providers, two sets of costs, and mandatory routing of traffic through the ILEC, as functionally equivalent of a refusal by Level 3 to interconnect with NT. This violates the requirement of Section 251(a) of the Telecommunications Act to interconnect directly or indirectly. Notwithstanding Level 3's arguments that it is shielded by Section 251(a), that Section does not explicitly authorize doubly-indirect interconnection or preempt enforcement of State law claims.¹⁷

Finally, NT points out that the FCC previously determined that direct interconnection¹⁸ is appropriate when more than 200,000 minutes of traffic are delivered

¹² See 220 ILCS 5/13-514(1).

¹³ See 220 ILCS 5/13-514(2).

¹⁴ See 220 ILCS 5/13-514(6).

¹⁵ Setting NT's price as the base price, this figure represents the sum of the proportions of NT's price (100%) and AT&T's price (130%).

¹⁶ See 220 ILCS 5/13-514 (prohibiting a telecommunications carrier from "imped[ing] the development of competition in any telecommunications service market").

¹⁷ See 47 U.S.C. 251(a)(1).

¹⁸ This corresponds to that labeled as "Type N" interconnection in this matter, and favors a direct rather than indirect interconnection between NT and Level 3.

per month.¹⁹ NT states it delivers approximately 56 million minutes of traffic per month to Level 3—many times the threshold level of traffic. Therefore, the position advocated by Level 3 also is not consistent with the federal law on point.

Level 3 does argue that it should be free to end the existing relationship based on the termination clause in the contract. Nevertheless, Level 3 is still certified under the Act to operate as a telecommunications carrier in Illinois, and as such, it must comply with Illinois law. Section 13-406 of the Act, concerning discontinuation or abandonment of telecommunications service, directly addresses Level 3's argument. Section 13-406 provides, in relevant part, that:

No telecommunications carrier offering or providing competitive telecommunications service shall discontinue or abandon such service once initiated except upon 30 days notice to the Commission and affected customers. The Commission may, upon its own motion or upon complaint, investigate the proposed discontinuance or abandonment of a competitive telecommunications service and may, after notice and hearing, *prohibit such proposed discontinuance or abandonment if the Commission finds that it would be contrary to the public interest.*²⁰

By proposing to disconnect²¹ NT, Level 3 would impose upon NT, its 18 other CLEC customers, and all of their subscribers a discontinuation of service, as well as the *per se* impediments to competition complained of pursuant to Section 13-514. These impacts, along with the scheme of disparate treatment that would cause them, are contrary to the public interest.

Both the unreasonableness and the knowing intent elements of NT's Section 13-514 claims²² are apparent from the nature and timing of Level 3's actions. In seeking to impose its uneven arrangement, it signed the contract related to traffic originated by Level 3, and that same day gave notice to terminate the contract related to traffic to be terminated to Level 3. Level 3 also fails to reconcile its own interpretation of federal Section 251(a)—that either a direct or an indirect interconnection is required—with the FCC's requirement of a direct interconnection above a 200,000 minute per month threshold.²³ Furthermore, the impact of Level 3's threats on third-party CLECs not involved in the instant dispute, as well as their customers, amplifies the unreasonableness of Level 3's position.

¹⁹ *In the Matter of Interconnection Disputes with Verizon Virginia, Inc.*, DA 02-1731, CC 00-218, 00-249, 00-251, Memorandum Opinion and Order, ¶¶ 115-16 (rel. July 17, 2002).

²⁰ 220 ILCS 5/13-406 (emphasis added).

²¹ Under the facts of this case, we find no material distinction between the labels of "discontinuation" of service and "disconnection" of an existing interconnection point.

²² See 220 ILCS 5/13-514 *et seq.*

²³ For citations and discussion, see *supra* nn. 11 and 19.

Level 3 repeatedly complains that it is being made to provide a direct physical interconnection in perpetuity. Staff notes that, given the amount of traffic that NT transmits to Level 3 for termination, direct physical interconnection is required as a matter of federal law,²⁴ and, as a practical matter, is simply a condition of doing business in the market. We agree, although our holding is not that Level 3 must permanently maintain the exact status quo, but rather that Level 3 must comply with the law. This includes, but is not limited to, refraining from actions that discriminate against other telecommunications carriers or the public. Therefore, to the extent that Level 3 seeks to redefine its relationship with NT, it must do so without violating Section 13-514 or any other section of the Act, and without taking actions that are detrimental to the public interest. As applied to the facts of the instant case, this means that the direct interconnection between NT and Level 3 must remain intact.

Section 13-702

Section 13-702 prohibits discrimination or delay in receiving, transmitting, and delivering traffic with telecommunications carriers with whom "a physical connection may have been made."²⁵ NT and Level 3 were and still are directly, physically interconnected for the exchange of traffic, so the condition upon the applicability of Section 13-702 is satisfied.

NT complains that Level 3's threat to block traffic from NT violates this Section. NT also avers that the *per se* impediments to competition complained of pursuant to Section 13-514 are sufficient to establish "discrimination or delay" under Section 13-702. We agree.²⁶

Level 3 argues that Section 13-702 merely "requires Level 3 to receive traffic where there is an ongoing agreement for the exchange of traffic."²⁷ The scope of 13-702 is more broad than that advocated by Level 3, however. As discussed *supra*, Level 3's position would simultaneously impact NT adversely in its ability to serve its customers, and would foreclose from others the very arrangement that Level 3 uses for itself. The intent of this Section of the Act is the prohibition of discrimination or delay. Although Level 3 protests that there is no duty to maintain interconnection imposed by this Section, the discrimination flowing from Level 3's leveraging of the interconnection with NT is prohibited.

Finally, Level 3 advances the letter dated May 8, 2007, from Level 3 witness Baack to NT witnesses Wren and Saboo, to indicate the possibility of continued direct

²⁴ See *id.*

²⁵ See 220 ILCS 5/13-702.

²⁶ Compare *id.* ("discrimination or delay") with 220 ILCS 5/13-514(1) ("unreasonably refusing or delaying interconnections" ... "providing inferior connections"); 5/13-514(2) ("unreasonably impairing the speed, quality, or efficiency"); 5/13-514(6) ("unreasonably [imposing] a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers.")

²⁷ Level 3 Init. Br. at 14.

interconnection conditioned upon payment by NT per minute of traffic terminated. To the extent that Level 3 asserts that the letter comprises an offer, it contains language that violates Section 13-702 and, as a general matter, is illusory. The letter states that, if NT delivers traffic to Level 3, "and if Level 3 elects to terminate such traffic on [NT]'s behalf.... Level 3 reserves ... the right to terminate the acceptance and delivery of [NT]'s transit traffic."²⁸ Level 3, however, does not get to choose whether or not it will terminate traffic bound for its subscribers.²⁹ Level 3's position also is inconsistent with the law concerning reciprocal compensation, as discussed *infra*.

Reciprocal Compensation

Reciprocal compensation is a principle recognized in federal law. The Telecommunications Act of 1996 mandates that "[e]ach local exchange carrier has ... [t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."³⁰ This is a requirement of all LECs, not just ILECs.³¹ The FCC rules further clarify that:

a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier.³²

The evidence establishes that NT does not originate traffic. Furthermore, the rule does not impose reciprocal compensation obligations with respect to transiting the traffic.³³ In addition, this Commission previously has rejected attempts to impose reciprocal

²⁸ Level 3 ex. 1.1, ¶3 (emphasis added).

²⁹ See 220 ILCS 5/13-702 ("Every telecommunications carrier operating in this State shall receive, transmit and deliver, without discrimination or delay, [such traffic]." Level 3's letter dated May 8, 2007, implies the maintenance of the direct physical interconnection between NT and Level 3, thereby satisfying the condition for this Section of the Act to apply.); see also *MCI Tel. Corp.: Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ill. Bell Tel. Co.*, Docket 96-AB-006, 1996 Ill. PUC Lexis 706, at *38 (Dec. 17, 1996) ("The very essence of interconnection is the establishment of a seamless network of networks, and to develop fine distinctions between types of traffic, as Ameritech Illinois would have us do, will merely create inefficiencies, raise costs and erect barriers to competition.") In 1996, Illinois Bell Telephone Company was the only provider of transit service (see *id.* at *31), and the record of the instant case indicates that NT is the only independent provider of such service today. [See *supra* n.2 regarding Illinois Bell Telephone Company d/b/a AT&T Illinois ("AT&T"), f/k/a SBC Illinois, f/k/a Ameritech Illinois.]

³⁰ 47 U.S.C. 251(b)(5).

³¹ *Id.*

³² 47 C.F.R. 51.701(e).

³³ See *id.*

compensation on transit providers.³⁴ Therefore, NT is not obligated to pay reciprocal compensation to Level 3.

Level 3 argues that the use of a transit provider enables the CLEC originating the call "to hide behind the transit provider to avoid compensating the terminating carriers."³⁵ This argument is both logically flawed and contrary to the evidence. The fallacy in Level 3's argument is that the doubly-indirect "Type L" interconnection that it seeks, which features *two* transit providers (NT and AT&T), would exacerbate rather than ameliorate the problem that Level 3 alleges. Furthermore, NT asserts, both in its Complaint and in testimony, that it provides all signaling information and call detail necessary for Level 3 to bill the originating CLECs. Level 3 offered nothing to rebut NT's claim. Accordingly, NT demonstrated that Level 3 has the ability to collect reciprocal compensation from the originating CLECs, but apparently chooses not to do so. Level 3 may choose not to use the information to collect reciprocal compensation, but it then waives the reciprocal compensation otherwise due, and may not require NT to collect the same on its behalf.

Finally, the per-minute surcharge proposed by Level 3 in its letter dated May 8, 2007, also is impermissible. It is little more than a thinly-veiled attempt to impose a reciprocal compensation-like obligation upon NT under a different label. Such charges have been disallowed in previous decisions.³⁶ We also reject Level 3's notion that such a charge is a market-based rate. Level 3 has provided nothing to substantiate such a label. In addition, the evidence of record demonstrates that NT pays 100% of the cost of the facilities of the interconnection, leaving no room for Level 3 to argue that there is any unrecovered or additional cost per minute for transited calls terminated on the Level 3 network.³⁷

Section 9-250

NT has requested that it be awarded interconnection on terms no less favorable than the terms upon which Level 3 and AT&T interconnect. Despite several repetitions of that refrain, the Level 3-AT&T interconnection agreement is not of record. It appears from NT's presentation throughout the case that what it seeks is direct interconnection with no liability to Level 3 for per-minute termination charges and no obligation to bill or collect reciprocal compensation from the originating carriers. NT states it already pays for 100% of the costs of the direct, physical interconnection, and there is nothing to

³⁴ *In re Verizon Wireless Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996*, 01-0007 ("...when one carrier transits traffic to another, the transiting carrier, by law, has no reciprocal compensation obligation (and no other payment obligation) to the termination carrier") (May 1, 2001) at 35; see also 04-0040 at 7-8.

³⁵ Level 3 Init. Br. at 30.

³⁶ See 01-0007 at 35, *supra* n. 34.

³⁷ While NT's payment of the entire cost of the facilities and electronics is evidence in its favor in the instant case, this should not be construed as a threshold or test requiring 100% payment by a similarly-situated complainant.

indicate that NT seeks a change thereto. As noted *supra*, NT has prevailed on the issues of interconnection and reciprocal compensation.

Level 3 disagrees that Section 9-250 allows the relief NT seeks. It notes that NT is barred from opting-in to particular clauses from an existing interconnection agreement, particularly one that is significantly different in scope and purpose.³⁸ Level 3 also argues that what NT really seeks is arbitration, but that the federal Telecommunications Act only has such procedures for disputes between a CLEC and an ILEC.³⁹ Staff generally agrees with the characterizations of Level 3 on this point.

At the outset, we concur with Level 3 and Staff that this case is not an arbitration within the meaning of Section 252 of the federal Telecommunications Act.⁴⁰ Furthermore, the "opt-in" provision for such interconnection agreements is similarly inapplicable.⁴¹ Section 9-250 does apply to the State law claims brought in this matter, however, and requires abatement of the violations.⁴²

NT argues that Section 9-250 is a basis for the Commission to impose its preferred agreement on Level 3, and it suggests that its Traffic Termination Agreement with Time Warner is a useful template. This approach is problematic for three reasons: it resembles a Section 252 arbitration; it is substantially similar to the opt-in approach just rejected; and, even if legally permissible, there is insufficient information of record to weigh whether such terms are genuinely appropriate to the relationship between NT and Level 3.

Instead, this Order imposes several mandates to abate the underlying violations, but ultimately leaves certain elements for further negotiation by the parties. These mandates are intended to confine the scope of the negotiation to just and reasonable charges and practices, thereby addressing the requirements of Section 9-250, without transforming the instant case into a federal Section 252 arbitration. By remaining limited, this approach also recognizes that the parties are in a better position than the Commission to craft the details of their business relationship, and it accords them some flexibility to do the same.

³⁸ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, Second Report and Order, FCC 04-164, ¶12 (rel. July 13, 2004). Level 3 also argues that NT reached a different arrangement with another ILEC, but that argument is, in essence, Level 3 attempting to opt in to a single payment term of an outside agreement. As such, that argument also must be rejected.

³⁹ See 47 U.S.C. 252(b).

⁴⁰ See generally 47 U.S.C. 252(b).

⁴¹ See 47 U.S.C. 252(i)

⁴² 220 ILCS 5/9-250. ("Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges ... or that the rules, regulations, contracts, or practices ... are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law ... the Commission shall determine the just, reasonable or sufficient rates [etc.] and shall fix the same by order").

Therefore, NT and Level 3 shall observe the following provisions in their business relationship. First, as discussed *supra*, Level 3 shall continue to accept a direct physical interconnection by which NT delivers traffic to Level 3 for termination until a further order from the Commission, and for at least as long as Level 3 maintains a direct physical interconnection by which it delivers traffic to NT for transiting.

Second, Level 3 shall not require NT to pay or collect reciprocal compensation for traffic not originated by NT.

Third, Level 3 shall not require NT to pay any fee or other compensation, either on a per-minute basis or otherwise, for traffic delivered to Level 3 for termination on the Level 3 network.

Fourth, NT shall continue to provide to Level 3 sufficient call detail such that Level 3 can bill the originating carrier for reciprocal compensation purposes.

Fifth, if the parties are unable to reach an agreement on a contract that sets forth the terms and conditions for their commercial relationship, the interconnection shall continue based upon the status quo in effect between the parties on January 30, 2007.⁴³

Remedies

NT seeks the following remedies: a declaration that Level 3 has violated Sections 13-514, 13-702, and 9-250 of the Act; an order requiring Level 3 to interconnect with NT on just, reasonable, and non-discriminatory terms and conditions no less favorable than those by which Level 3 accepts transit traffic from AT&T; attorneys fees and costs; and all further relief available under the Act.

Section 13-516 of the Act provides certain remedies for violations of Section 13-514,⁴⁴ including a cease-and-desist order,⁴⁵ damages,⁴⁶ and attorney's fees and costs.⁴⁷ Section 13-515(g) mandates an assessment of the Commission's own costs related to the case.⁴⁸

⁴³ Level 3 argues that Commission regulation of CLEC-to-CLEC interconnection is inconsistent with Section 252 of the federal Telecommunications Act. Separately, Level 3 argues that Section 252 does not apply to this proceeding—a point that no party contests. All of the alleged violations are of state statutes. Furthermore, interconnection was not an issue until Level 3 pursued an arrangement that was discriminatory against NT, 18 other CLECs, and their customers. It is Level 3's behavior, which is anti-competitive and contrary to the public interest, that is the primary interest of the Commission in this case.

⁴⁴ See generally 220 ILCS 5/13-516.

⁴⁵ 220 ILCS 5/13-516(a)(1).

⁴⁶ 220 ILCS 5/13-516(a)(3).

⁴⁷ *Id.*

⁴⁸ 220 ILCS 5/13-515(g).

By a preponderance of the evidence, NT has established that the conduct of Level 3 at issue in this dispute violates Sections 13-514(1), 13-514(2), 13-514(6), and 13-702, and, as such, is an impediment to competition and contrary to the public interest. There is no separately discernable violation of Section 9-250; instead, that Section requires certain attributes in the ongoing business relationship. The cease-and-desist order will be included, consistent with the findings herein, and will reflect the mandates set forth under Section 9-250. There will be no award of monetary damages at this time.⁴⁹

The remaining issue concerns the assessment of fees and costs. Illinois courts have stated that "it is well established that fee-shifting statutes are to be strictly construed and that the amount of fees to be awarded lies within the Commission's 'broad discretionary powers.'"⁵⁰ As noted, violations of Section 13-514 have occurred. NT therefore is entitled to an award of attorney's fees and costs⁵¹ based upon its litigation success.⁵²

NT did indeed establish violations by Level 3 of Sections 13-514(1), 13-514(2), and 13-514(6), as well as 13-702. NT was less clear in its arguments and evidence for its Section 9-250 claim, and ultimately the remedies sought by NT under this Section were denied in part. Following the model used most recently in the *Cbeyond* case,⁵³ the relative litigation success (for the sole purpose of assessing fees and costs) of NT is determined to be 80%, heavily weighted upon NT's prosecution of Sections 13-514(1), 13-514(2), 13-514(6), and 13-702.⁵⁴ Accordingly, Level 3 is assessed 80% of NT's attorney's fees and costs. Level 3 also is assessed 90% of the Commission's costs, consisting of all of its own half, and 80% of NT's half. NT is assessed the 10% balance of the Commission's costs, consisting of the remaining 20% of its half of the costs.

CONCLUSION

Based on the foregoing, we find that:

⁴⁹ This is included for completeness pursuant to Section 13-516(a)(3). No damages were quantified in the Complaint. From the record, it appears that any such damages only would accrue if Level 3 were to actually disconnect NT, which it has not done to date.

⁵⁰ *Globalcom, Inc. v. Ill. Commerce Comm'n*, 347 Ill.App.3d 592, 618 (1st Dist. 2004).

⁵¹ 220 ILCS 5/13-516(a)(3) (the Commission "shall award" such fees and costs).

⁵² See *Globalcom, Inc. v. Ill. Commerce Comm'n*, 347 Ill.App.3d 592, 618 (1st Dist. 2004); *Cbeyond Commun's, LLP v. Ill. Bell Tel. Co.*, Dockets 05-0154/05-0156/05-05-0174 (cons.) (June 2, 2005), at 43-44; *Globalcom, Inc., v. Ill. Bell Tel. Co.*, Docket 02-0365 (Order on Rehearing, Dec. 11, 2002), at 50-51.

⁵³ See *Cbeyond Commun's, LLP v. Ill. Bell Tel. Co.*, Dockets 05-0154/05-0156/05-05-0174 (cons.) (June 2, 2005), at 43-45.

⁵⁴ See *id.* at 45. (Such award is an approximation of NT's litigation success. "Absolute precision regarding this quantification is simply not practicable.")

- (1) Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC own, control, operate, or manage, for public use, property or equipment for the provision of telecommunications services in Illinois and, as such, are telecommunications carriers within the meaning of Section 13-202 of the Act;
- (2) Level 3 Communications, LLC owns, controls, operates, or manages, for public use, property or equipment for the provision of telecommunications services in Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Act;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law; and
- (5) the remedies set forth above should be adopted to address the violations of Section 13-514 and 13-702 of the Public Utilities Act.

IT IS THEREFORE ORDERED that Level 3 Communications, LLC cease and desist from its threat to disconnect or otherwise disrupt the direct physical interconnection with Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC, by which Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC deliver traffic to Level 3 Communications, LLC.

IT IS FURTHER ORDERED that Level 3 Communications, LLC cease and desist from requiring Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC to pay or collect reciprocal compensation for traffic not originated by Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC, or to pay any fee or other compensation, either on a per-minute basis or otherwise, for traffic delivered to Level 3 Communications, LLC for termination on its network.

IT IS FURTHER ORDERED that Level 3 Communications, LLC cease and desist from any act discussed and found herein to violate Sections 13-514 or 13-702 of the Public Utilities Act.

IT IS FURTHER ORDERED that Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC shall continue to provide to Level 3 Communications, LLC sufficient call detail such that Level 3 can bill the originating carrier for reciprocal compensation purposes.

IT IS FURTHER ORDERED that, if the parties are unable to reach an agreement on a contract that sets forth the terms and conditions for their commercial relationship,

that the exchange of traffic shall continue based upon the status quo in effect between the parties on January 30, 2007.

IT IS FURTHER ORDERED that Level 3 Communications, LLC pay 80% of the attorney's fees and costs of Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC, as well as 90% of the Commission's costs incurred in this proceeding as prescribed by Sections 13-515 and 13-516 of the Public Utilities Act.

IT IS FURTHER ORDERED that Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC pay the remaining 10% of the Commission's costs incurred in this proceeding as prescribed by Section 13-515 of the Public Utilities Act.

IT IS FURTHER ORDERED that, subject to the provisions of Sections 10-113 and 13-515(d)(8) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

So ordered this 25th day of June, 2007.

Ian Brodsky,
Administrative Law Judge

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 20, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-C-0233 - Petition of Neutral Tandem - New York, LLC for
Interconnection with Level 3 Communications and
Request for Order Preventing Service
Disruption.

ORDER PREVENTING SERVICE DISRUPTION AND
REQUIRING CONTINUATION OF INTERIM INTERCONNECTION

(Issued and Effective June 22, 2007)

BY THE COMMISSION:

INTRODUCTION AND SUMMARY

We initiated this proceeding to consider a complaint in which Neutral Tandem, Inc. - New York LLC (Neutral Tandem) asks that we require Level 3 Communications LLC (Level 3) to continue direct interconnection with Neutral Tandem, while Level 3 asks us to require a migration plan for orderly divestiture of Neutral Tandem's customers in anticipation that we will allow Level 3 to discontinue the interconnection. The two firms established their present direct interconnection pursuant to a transport agreement and two termination agreements. Level 3 unilaterally has canceled the termination agreements, after fulfilling the notice requirements prescribed in the agreements.

In today's order we grant Neutral Tandem's requested relief provisionally by directing the parties to continue performing their respective obligations as if the canceled termination agreements remained in effect, pending the completion of a proceeding pursuant to Public Service Law (PSL) §97 if necessary to investigate the rates, charges, rules and

regulations under which the parties provide call transport and termination services to one another. We shall initiate the rate proceeding at our first regularly scheduled session after 90 days have elapsed from the date of this order, unless the parties execute a new termination agreement in the interim.

FACTUAL AND PROCEDURAL BACKGROUND

In New York and other states, Neutral Tandem maintains tandem switches which competitive local exchange carriers (CLECs) can use as an alternative to tandem switches owned by incumbent local exchange carriers (ILECs) such as Verizon New York Inc. Neutral Tandem provides this service to about 23 CLECs in New York. Level 3 or its affiliates likewise operate in New York and other states, as CLECs that transport local calls originated by their end-user customers and terminate local calls to those customers. Among telecommunications providers in the New York market, Neutral Tandem is unique in offering a competitive alternative to the ILEC's tandem switch, and in providing transport and termination services only to CLECs without having end-user customers of its own.

Until the controversy that led to this proceeding, Neutral Tandem and Level 3 had been handling local calls in New York pursuant to three interconnection agreements between them. Under the first, which may be described as a "transport agreement," local calls that are originated by Level 3's end-user customers and routed through Level 3 can be directed to Neutral Tandem's tandem switch (instead of Verizon's) and thence to a CLEC. An economic incentive for Level 3 to use this arrangement is that Neutral Tandem offers Level 3 the transport service at a lower price than Verizon's.

The other two interconnection agreements, initially executed in 2004, are described herein as "termination agreements" and govern calls in the opposite direction. That is,

the termination agreements specify terms whereby calls originating from a CLEC¹ and routed to Neutral Tandem's tandem switch can be directed to Level 3 (here again, bypassing the Verizon tandem switch) and thence to Level 3's end-user customers. One of the termination agreements with Neutral Tandem was executed by Level 3; the other was executed by Broadwing Communications LLC, and was inherited by Level 3 when it acquired Broadwing. For Level 3, the economic attraction of the termination agreements has been that Neutral Tandem pays Level 3 compensation for calls governed by the agreements. Verizon, in contrast, would be under no similar obligation to Level 3 if the calls in question were handled by Verizon rather than Neutral Tandem; instead, under that scenario, Level 3 would be compensated only if it made the effort to collect reciprocal compensation from the originating CLECs.

On January 31, 2007, the parties executed a newly negotiated transport agreement. Later that day, Level 3 notified Neutral Tandem that Level 3 intended to discontinue negotiations on a new termination agreement and cancel one of the two preexisting termination agreements, viz., the one executed by Level 3. Shortly thereafter, Level 3 gave notice that it also would cancel the termination agreement executed by Broadwing. Without examining any negotiating positions undisclosed by the parties, the record is clear that a primary obstacle to negotiation of a new termination agreement has been the issue whether Level 3 should continue to receive compensation directly from Neutral Tandem (as Level 3 contends) or should be relegated to its right of reciprocal compensation from the CLECs (as Neutral Tandem contends).

In accordance with the cancellation provisions in each of the termination agreements, Level 3 gave Neutral Tandem 30 days' notice of its intent to cancel. The later of the two

¹ For the present discussion, a CLEC in the situation governed by the termination agreement can be said to "originate" the calls in question--in the sense that the call originates on that CLEC's network--although of course the call initially originates from an end user.

resulting expiration dates was March 23, 2007, which Level 3 then extended voluntarily (as to both termination agreements) through June 25, 2007 to allow time for a hearing and decision in this expedited proceeding. Meanwhile, both parties have continued to operate in accordance with the terms of the newly executed transport agreement and the preexisting, but canceled, termination agreements.

The parties' numerous filings to the Commission or the assigned Administrative Law Judge have included, most notably, Neutral Tandem's complaint and petition in which it seeks an order requiring interconnection and preventing service disruption; Level 3's motions to dismiss the complaint and compel Neutral Tandem to prepare a migration plan in anticipation of dismissal;² and prefiled testimony by both parties, which was examined in an evidentiary hearing.

ARGUMENTS AND CONCLUSIONS

Jurisdiction

The threshold question, broadly stated, is whether we have jurisdiction to grant Neutral Tandem's request for direct interconnection with Level 3. If not, then our obligation to ensure the continuity of safe and adequate service would require that we direct Neutral Tandem to implement an orderly migration plan as Level 3 proposes. For the following reasons, however, we conclude that the requisite jurisdiction to grant Neutral Tandem's requested relief is established by the PSL and is not preempted by the Telecommunications Act of 1996.

According to Neutral Tandem, its role as a transiting provider entitles it to direct interconnection with a CLEC such as Level 3 by operation of 16 NYCRR 605.2(a)(2), which provides that "interconnection into the networks of telephone corporations shall be provided for other public or private networks." In

² Consistently with the determinations in today's order, we formally deny Level 3's dismissal motion, which the Administrative Law Judge previously denied by informal ruling.

response, Level 3 correctly observes that Rule 605.2(a)(2) never has been relied upon to require that a CLEC offer direct interconnection to an entity such as Neutral Tandem (as distinguished from an end user). Level 3 emphasizes that, if it ended the termination agreements at issue and ended Neutral Tandem's direct interconnection under those agreements, Neutral Tandem nevertheless would remain interconnected to Level 3 indirectly via the Verizon tandem. Therefore, Level 3 argues, the interconnection requirement in Rule 605.2(a)(2) would continue to be satisfied.

As Neutral Tandem points out, however, we unquestionably have the authority to interpret our rules in a manner that "is not irrational or unreasonable."³ Thus, Level 3's objection that Neutral Tandem's proposed interpretation is novel begs the question whether Rule 605.2(a)(2) may reasonably be read to require direct interconnection between Level 3 and Neutral Tandem, should we determine that direct interconnection would be a "just, reasonable, adequate, efficient and proper" practice within the meaning of PSL §97(2) and a "suitable" connection method as required by §97(3). The question must be answered affirmatively. Under Level 3's theory, the regulation's silence regarding "direct" interconnection would implicitly prevent our requiring anything more than indirect interconnection through the Verizon tandem, even though the regulation does not expressly preclude our requiring a direct interconnection. Thus, instead of construing Rule 605.2(a)(2) conventionally, i.e., as an implementation of statutory authority, Level 3's interpretation perversely would transform the rule into a constraint on our statutory authority to require direct interconnection in any instance where Level 3 refuses to offer it.

Moreover, given Level 3's theory that Rule 605.2(a)(2) requires interconnections only indirectly and only between a CLEC and the originating end users, Neutral Tandem is correct that it is self-contradictory for Level 3 to reject the notion of a

³ Ass'n of Cable Access Producers v. PSC, 1 AD3d 761, 763, 767 NYS2d 166, 168 (3d Dept. 2003).

mandatory direct interconnection between Neutral Tandem and Level 3, as that is precisely the configuration that creates, between Level 3 and originating end users, the "indirect interconnection" supposedly prescribed (according to Level 3) by Rule 605.2(a)(2).

The argument over Rule 605.2(a)(2) points to a more basic consideration, namely the scope of our authority pursuant to the statute from which any rule or ratemaking decision must be derived. Neutral Tandem properly invokes several relevant PSL provisions applicable to Level 3 as a telephone corporation (a characterization undisputed by Level 3). Thus, Neutral Tandem says, it must be granted direct interconnection with Level 3 pursuant to the requirement in PSL §91 that a telephone corporation provide such "facilities as shall be adequate and in all respects just and reasonable." Neutral Tandem cites also our responsibility to exercise "general supervision" over all telephone companies and facilities (PSL §94(2)); to ensure that rates are not "unjust, unreasonable or unjustly discriminatory or unduly preferential or in anywise in violation of law" (PSL §97(1)); to require just and reasonable rules, regulations, and practices, and adequate, efficient, proper, and sufficient equipment and service (PSL §97(2)); and to require suitable connections or transfers at just and reasonable rates (PSL §97(3)).

Assuming for the moment that nothing in the Telecommunications Act of 1996 preempts us from granting the relief sought by Neutral Tandem, and that direct interconnection between Neutral Tandem and Level 3 is shown to be necessary for the effective provision of telephone service (as contemplated in, e.g., the cited provisions of PSL §§ 91, 97(2), and 97(3)), Level 3 has provided no plausible basis for its claim that the requested relief would exceed our statutory authority. On the contrary, the PSL provisions cited above are designed to vest us with plenary jurisdiction comprehensive enough to include supervision of the terms and conditions of interconnection for

transport and termination services, to the extent consistent with federal law.⁴

As noted, Level 3 misinterprets Rule 605.2(a)(2) as an implied prohibition against our requiring that Level 3 provide Neutral Tandem direct connection, as distinguished from indirect interconnection through the Verizon tandem. In a related argument, Level 3 says the Telecommunications Act of 1996 preempts any state statute or regulation that otherwise might authorize us to order Level 3 to offer direct interconnection. Level 3 argues that the 1996 Act, like Rule 605.2, bars us from requiring direct interconnection because the Act, in 47 USC §251(a)(1), provides that every carrier has a duty to "interconnect directly or indirectly with other carriers" (emphasis added). Accordingly, says Level 3, the Federal Communications Commission (FCC) has described indirect interconnection as "a form of interconnection explicitly recognized and supported by" the 1996 Act.⁵ Level 3 further notes that Rule 605.2(a)(2) antedates the 1996 Act, as if to imply that the rule cannot be reconciled with the 1996 regulatory framework.

That the 1996 Act recognizes indirect interconnection does not imply that the Act forecloses direct interconnection when the latter is more appropriate. The network configuration contemplated in the Act is one that provides the originating CLEC and its end users the opportunity to choose their preferred routing based on consideration of all relevant factors such as cost, reliability, and efficiency. As Level 3 itself, has argued to the Federal Communications Commission (FCC), "it is always the option of the carrier with the financial duty for transport [i.e., the originating CLEC] to choose how to transport its

⁴ As an illustration of our exercise of such jurisdiction, Neutral Tandem cites Case 00-C-0789, Omnibus Interconnection Proceeding, Order Establishing requirements for the Exchange of Local Traffic (issued December 22, 2000).

⁵ In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4740 (¶125) (rel. March 3, 2005).

traffic," as among "direct interconnection . . . via its own facilities, [via] the terminating carrier's facilities, or via the facilities of a third party."⁶

In this proceeding, however, as we have noted regarding Level 3's interpretation of Rule 605.2(a)(2), Level 3's interpretation of the 1996 Act would perversely transform the options assured the originating CLEC under 47 USC §251(a)(1) into a supposed power on Level 3's part to dictate that the originating CLEC cannot choose direct interconnection with Level 3. And, just as in its mistakenly restrictive interpretation of Rule 605.2(a)(2), Level 3 would read out of the 1996 Act the option of direct interconnection between Neutral Tandem and Level 3 even though such direct interconnection results in "indirect interconnection," which Level 3 says the Act requires, between Level 3 and originating CLECs' end users. Because Level 3's reading of §251(a)(1) would enable Level 3 to compel these results in disregard of the principle that originating CLECs may choose how to route their traffic, Level 3 errs in asserting that §251(a)(1), properly construed, preempts our requiring direct interconnection between by Neutral Tandem and Level 3 pursuant to the PSL and Rule 605.2(a)(2).

Indeed, the 1996 Act not only allows us to require direct interconnection, as discussed; the Act also affirmatively preserves our obligation to do so, when effective provision of service requires it, as part of our role in supervising interconnection arrangements under PSL §§ 91, 94, and 97. According to 47 USC §251(d)(3)(A), federal regulation must not prevent a state commission from establishing interconnection requirements otherwise consistent with the Act. Thus, even though indirect interconnection may, in the proper circumstances, satisfy a general duty of interconnection established in §251(a)(1), the Act does not preclude our requiring direct interconnection when that option is more reasonable and therefore is necessary for the discharge of our obligations under state

⁶ Reply Comments of the Missoula Plan Supporters, CC Docket No. 01-92 (February 1, 2007), p. 26.

law.⁷ Similarly, to the extent consistent with the Act, 47 USC §261(b) authorizes the enforcement of preexisting state regulations (such as Rule 605.2(a)(2), insofar as applicable); and §261(c) authorizes us to impose new requirements for furtherance of competition in the provision of exchange access. As noted below, a major benefit of direct interconnection between Neutral Tandem and Level 3 is that it promotes such competition. Thus, 47 USC §§ 251 and 261 provide further assurance that we can act consistently with federal law in requiring the parties to maintain their present interconnection.

Network Design and Public Policy Objectives

Having determined that 47 USC §251(a)(1) does not limit our statutory authority to require that Level 3 continue providing Neutral Tandem direct interconnection, the next issue is whether such a requirement would serve the interests entrusted to us under the PSL. In other proceedings, the Commission or our staff already has answered that question in the affirmative, and Level 3 has not persuasively demonstrated the contrary in this case.

Direct interconnection between Neutral Tandem and Level 3 enables Neutral Tandem to maintain its independent tandem switch as a viable alternative to Verizon's. The availability of an independent tandem in turn furthers the development of facilities-based competition among wireless, cable, and landline telephony, by offering the providers of all such services an economically advantageous alternative to the Verizon tandem. According to Level 3, the volume of traffic it receives from Neutral Tandem is insufficient to make direct interconnection with Neutral Tandem a more cost-effective configuration, as

⁷ The 1996 Act recognizes that we may need to decide how interconnections should be structured in the course of rate arbitration between an ILEC and a CLEC. 47 USC §§ 252(c), (d). Although this case does not involve an ILEC, it involves a similarly inseparable interrelationship between the reasonableness of interconnection methods and the reasonableness of the rates charged for those interconnections.

compared with receiving the same traffic indirectly from Neutral Tandem through the Verizon tandem. However, the record shows that Neutral Tandem sends Level 3 a volume of traffic about 180 times greater than the DS-1 level, and we have found the latter sufficient to justify maintenance of dedicated transport capacity on the part of a terminating CLEC such as Level 3.⁸

For originating CLECs, the ability to choose the more cost effective tandem service, as between Neutral Tandem's and Verizon's competing services, creates an opportunity for cost savings and optimum efficiency. The resulting mitigation of the CLECs' cost of service tends to enhance competition among CLECs, minimize the costs recovered through end users' rates, and encourage additional investment in facilities-based services, consistently with the similar objectives we have cited in supporting the principles of open network architecture and comparably efficient interconnection.⁹

In addition, the redundancy resulting from alternative tandem switching options enhances the diversity and reliability of the public switched telephone network. These objectives have consistently been recognized on several occasions, particularly as a response to lessons of the September 11, 2001 attacks and Hurricane Katrina.¹⁰ While Level 3 disputes the benefits of redundancy on the basis that Neutral Tandem's tandem switch is just as vulnerable as other CLECs' facilities sharing the same physical location with Neutral Tandem's, even an arrangement where Neutral Tandem and CLECs collocate provides clear diversity

⁸ Case 00-C-0789, supra, Order Establishing Requirements for the Exchange of Local Traffic (issued December 22, 2000).

⁹ See, e.g., Case 88-C-004, Interconnection Arrangements, Open Network Architecture, and Comparably Efficient Interconnection, Opinion No. 89-28 (issued September 11, 1989), at pp. 7-8.

¹⁰ Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless, WC Docket No. 06-159, Reply Comments of NYSDPS (filed September 25, 2006); Case 03-C-0922, Telephone Network Reliability, Order Instituting Proceeding (issued July 21, 2003); DPS Staff White Paper (issued November 2, 2002).

and reliability advantages as compared with relying only on an ILEC's tandem switch maintained solely at the ILEC's location.

Conversely, denial of the relief sought by Neutral Tandem would create potential impediments to competition, by enhancing Level 3's capacity to act as a bottleneck between its end users and CLECs if the CLEC chooses Neutral Tandem's tandem switch over Verizon's. While Level 3 argues that any interference with originating CLECs' access through Neutral Tandem to Level 3's end users would violate Level 3's own business interests, Neutral Tandem has shown that Level 3 has allowed incoming traffic to be disrupted in analogous situations in the past. Level 3's potential bottleneck function becomes an ever greater concern insofar as Level 3 may seek to provide tandem switch service in competition with Neutral Tandem.

Remedies

The final question--albeit the primary one, evidently, in the parties' negotiations--is whether to credit Level 3's argument that, even if the public policy benefits of the present network configuration are more substantial than Level 3 concedes, they cannot justify an order compelling Level 3 to offer Neutral Tandem a termination agreement under which Level 3 serves Neutral Tandem free of charge. A corollary issue is Neutral Tandem's claim that Level 3, by insisting on payment, is attempting to extract terms that would be discriminatory or potentially anticompetitive. We view these claims as arguments that address neither the scope of our jurisdiction nor the merits, from a policy standpoint, of requiring direct interconnection pursuant to our authority under PSL §§ 97(2) and (3). Rather, they implicate only the question of just and reasonable pricing under §97, which is a conventional ratemaking issue to be resolved through the ratemaking process prescribed in PSL §97(1). It is for that reason that we will initiate a rate proceeding if the parties do not negotiate a new agreement.

In a rate case, as in negotiations, relevant considerations might include (among other things) whether

Level 3's access to reciprocal compensation from CLECs is an adequate substitute for direct payments from Neutral Tandem; whether the parties' transport and termination agreements should be considered independently or in combination when assessing the reasonableness of the rates they establish relative to the obligations and benefits they confer on each party; and, if the agreements are to be considered in combination, whether the terms established in the present transport agreement should be modified so that the agreements collectively will yield results that are just and reasonable overall.¹¹ As long as such considerations have yet to be examined in a future phase of this proceeding, it would be premature to determine whether any particular level of compensation (or the absence of compensation) renders a termination agreement unreasonable as Level 3 claims.

The parties have offered conflicting testimony regarding the extent, if any, to which cancellation of the present direct interconnection would disrupt traffic currently routed to Level 3 through Neutral Tandem. According to Neutral Tandem, an orderly transition would require six months. Level 3 seems to assert that a nearly instantaneous transition could be managed through the use of emergency facilities that link the Verizon tandem to Level 3, and adds that any disruption would be the product of Neutral Tandem's own failure to anticipate an adverse decision in this proceeding.

We find that the risk of disruption has been demonstrated sufficiently that an order requiring immediate cancellation of the present interconnection would not be consistent with the sound exercise of our supervisory authority under the PSL. Moreover, cancellation would be unreasonably disruptive under the best of circumstances because our objective at this stage of the proceeding is to initiate further

¹¹ A full rate proceeding, if any, also would be the more appropriate forum in which to consider (if necessary) the allegations that certain rates and practices are discriminatory or otherwise improper, as the parties have discussed in a series of late, unauthorized pleadings filed May 23, 2007 and subsequently.

negotiations and thus obviate a contested rate proceeding. It would make little sense to suspend the present interconnection in anticipation that it will be reinstated as soon as the terms and conditions of a new termination agreement have been established.

Accordingly, we are directing the parties to continue operating in accordance with their preexisting transport and termination agreements, provided however that payments pursuant to those agreements after the date of this order will be subject to adjustment, by reparation, credit, or refund,¹² should we find at the conclusion of a rate proceeding that such payments were insufficient or excessive. By postponing the commencement of a rate proceeding until our first session 90 days after issuance of today's order, we intend to provide the parties a reasonable opportunity to negotiate new rates and thus avoid the resource expenditure that would result from a litigated rate case.

Although Level 3 proposes that we direct Neutral Tandem to pay an interim rate of \$0.0007 per minute of use for termination service, that rate would be inconsistent with the objectives of today's order because it avowedly is designed to encourage Neutral Tandem to stop offering tandem switching service. Instead, by letting interim rates remain at the same level that the parties themselves negotiated at arms' length in the preexisting agreements, we ensure that the rates will be sufficiently reasonable as a proxy, subject to retrospective adjustment, for permanent rates subsequently established in a rate case. As should be obvious from the foregoing discussion, we have not thereby determined that a permanent termination agreement would be inherently unreasonable either if it exempted Neutral Tandem from any payment, or if it required that Neutral Tandem pay a rate different from the amount payable under the preexisting agreements.

¹² See PSL §113(1).

The Commission orders:

1. Neutral Tandem, Inc. - New York LLC (Neutral Tandem) and Level 3 Communications LLC (Level 3) are directed to maintain their current interconnections with each other in accordance with the transport agreement and the termination agreements described in this order.

2. Order Clause 1 above will remain in effect, and the rates prescribed therein will remain in effect subject to adjustment for the period from the date of this order until the later of (a) the execution of a termination agreement to replace the canceled agreements under which Neutral Tandem and Level 3 currently operate, or (b) completion of a rate proceeding to consider the parties' rates for transport and termination services.

3. This proceeding is continued but, upon completion, shall be closed in the Secretary's discretion.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary



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

DOCKET NO. 24844-U: Petition of Neutral Tandem Inc. for Interconnection with Level 3 Communications and Request for Emergency Relief: Consideration of Staff's Recommendation. (Shaun Rosemond, Dan Walsh)

I. Background

On March 2, 2007, Neutral Tandem, Inc. ("Neutral Tandem") petitioned the Georgia Public Service Commission ("Commission") to: "(1) establish interconnection terms and conditions for the continued delivery by Neutral Tandem of tandem transit traffic to Level 3 Communications, Inc. and its subsidiaries (collectively "Level 3"); and (2) issue an interim order on an expedited basis directing Level 3 not to block traffic terminating from Neutral Tandem over the parties' existing interconnections while this Petition is pending, so as to avoid disrupting the delivery of calls." (Neutral Tandem Petition, p. 1) (footnotes omitted).

At its April 3, 2007 Administrative Session, the Commission adopted a Procedural and Scheduling Order. Consistent with the Procedural and Scheduling Order, Level 3 filed its Response to Petition, Motion to Dismiss Petition and Motion for Migration Plan ("Response") on April 6, 2007. On May 3, 2007, the Commission held a hearing on the Petition, and received testimony and evidence from expert witnesses sponsored by both Neutral Tandem and Level 3.

II. Summary of Staff's Recommendation

Staff recommends that the Commission order Level 3 to interconnect directly with Neutral Tandem provided that Neutral Tandem pays Level 3's reasonable costs of interconnection. Neutral Tandem should not be required to pay reciprocal compensation or an additional fee to Level 3 as a condition of the direct interconnection. The Commission is not preempted from requiring Level 3 to interconnect directly with Level 3. Level 3 is obligated under O.C.G.A. § 46-5-164(a) to permit reasonable interconnection with Neutral Tandem. Given that Neutral Tandem is a transit provider, direct interconnection is necessary for interconnection to be reasonable. Under the condition that Neutral Tandem pays all of Level 3's reasonable costs of interconnection, direct interconnection is reasonable for Level 3 as well. Level 3 does not require AT&T to pay reciprocal compensation when it transports traffic that originates on the network of another provider. There is not a reasonable basis for Level 3 to discriminate between Neutral Tandem and AT&T with regard to the provision of transit service.

The reasoning behind Staff's conclusions is set forth in more detail below.

III. Positions of the Parties

A. NEUTRAL TANDEM

Neutral Tandem complains that Level 3 refuses to interconnect directly with it unless Neutral Tandem pays Level 3 reciprocal compensation for traffic that originates on the networks of a carrier customer of Neutral Tandem and terminates on Level 3's system, or if Neutral Tandem collects the reciprocal compensation payment from the carrier customer and passes it on

to Level 3. Neutral Tandem charges that Level 3's refusal to directly interconnect with it absent this condition violates the Georgia Telecommunications and Competition Development Act of 1995 ("State Act") O.C.G.A. § 46-5-160 *et seq.*, which requires local exchange companies to allow for reasonable interconnection and prohibits local exchange companies from discriminating in the provision of interconnection services. (See, O.C.G.A. § 46-5-164(a) and (b)). Neutral Tandem states that Level 3 directly interconnects with AT&T as a tandem traffic provider, and therefore, should directly interconnect with Neutral Tandem.

B. LEVEL 3

Level 3 rebuts the Petition with the following arguments:

- 1) The State Act is preempted by the Federal Telecommunications Act of 1996 ("Federal Act"), 47 U.S.C. 251 *et seq.*
- 2) State Act only requires "reasonable" interconnection. It does not require direct interconnection.
- 3) AT&T is an incumbent local exchange company ("ILEC"), and Neutral Tandem is not. Therefore, a reasonable basis exists for treating the two providers differently.
- 4) Neutral Tandem is not providing an "interconnection service" as defined in the State Act; therefore the State Act cannot be construed to prohibit discrimination against it.
- 5) Cost recovery arrangements proposed by Level 3 were intended to defray delivery costs borne by Level 3 as a result of the direct interconnection.

IV. Staff's Recommendation

Staff recommends that the Commission order Level 3 to interconnect directly with Neutral Tandem provided that Neutral Tandem pays all of Level 3's reasonable costs of interconnection. Neutral Tandem should not be required to pay or pass on reciprocal compensation payments to Level 3. Staff responds to the arguments raised by Level 3 as follows:

1. *Preemption*

The Eleventh Circuit recently explained:

[T]he Supreme Court has identified three types of preemption: (1) express preemption; (2) field preemption; and (3) conflict preemption. "Express preemption" occurs when Congress has manifested its intent to preempt state law explicitly in the language of the statute. If Congress does not explicitly preempt state law, however, preemption still occurs when federal regulation in a legislative field is so pervasive that we can reasonably infer that Congress left no room for the states to supplement it – this is known as "field preemption" or "occupying the field." And even if Congress has neither expressly preempted state law nor occupied the field, state law is preempted when it actually conflicts with federal law. "Conflict

preemption,” as it is commonly known, arises in two circumstances: when it is impossible to comply with both federal and state law and when state law stands as an obstacle to achieving the objectives of the federal law.

Cliff v. Payco General American Credits, Inc., 363 F.3d 1113, 1122 (11th Cir. 2004) (citations omitted). The fundamental question is the intent of Congress, as revealed in the language of the statute as well as the structure and purpose of the statute. *Id.* See also United Parcel Service, Inc. v. Flores-Galarza, 318 F.3d 323, 334 (1st Cir. 2003).

Every preemption analysis “start[s] with the assumption that the historic police powers of the states are not superceded by federal law unless preemption is the clear and manifest purpose of Congress.” Cliff v. Payco, 363 F.3d at 1122 *citing* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947); *see also* Maryland v. Louisiana, 451 U.S. 725, 746 (1981). This presumption also requires that any preemptive effect that is found to exist must be given a narrow application. Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996). The power to pre-empt state law is “an extraordinary power... that we must assume Congress does not exercise lightly.” *Id.*; Gregory v. Ashcroft, 501 U.S. 452, 460 (1991). The presumption against preemption is particularly appropriate where Congress has legislated in a field that has traditionally been regulated by the States, such as local telephone service. Louisiana Pub. Serv. Comm’n v. FCC, 476 U.S. 355 (1986).

It does not appear that Level 3 is alleging express preemption of the State Act, and Staff is not aware of any provision in the Federal Act that provides that states are so preempted. The second type of preemption is field preemption, which as explained above, exists when federal regulation is so pervasive that Congress left no room for states to supplement it. Again, it is unclear as to whether Level 3 is asserting field preemption. Regardless, the express preservation in Section 261 of state authority to implement state regulations that are non inconsistent with federal regulations defeats any such argument.

Level 3 does assert “conflict” preemption in this instance. Level 3 claims that it is permitted under Section 251(a)(1) of the Federal Act to interconnect indirectly. (Level 3 Response, p. 5). Level 3 characterizes Neutral Tandem’s Petition as “an impermissible attempt to circumvent the federally-mandated interconnection process . . .” *Id.* Level 3 argues that construing O.C.G.A. § 46-5-164 to require Level 3 to interconnect directly with Neutral Tandem would conflict with its obligations under the Federal Act to interconnect directly or indirectly. (Level 3 Brief, pp. 9-10).

Level 3 also argues that the Federal Act indicates Congressional intent to displace state regulatory authority to allow state commissions to mandate CLEC to CLEC direct interconnection. (Level 3 Brief, p. 13). Level 3 argues that the premise of the Federal Act is to leave CLEC to CLEC interconnection to the market. *Id.* at 14. Neutral Tandem argues that Section 251(a)(1) does not specify which party has the choice of direct or indirect interconnection or the circumstances of the interconnection. (Neutral Tandem Brief, p. 11). Neutral Tandem also argues that state authority to impose requirements that foster local interconnection and local competition is preserved by Section 261 of the Federal Act. *Id.* at 17,

citing to Michigan Bell Tel. Co. v. MCIMetro Access Transmission Serv., Inc., 323 F.3d 348 (6th Cir. 2003). Neutral Tandem contends that its infrastructure investment provides valuable redundancy and resiliency to the Georgia telecommunications network. *Id.* at 21. Neutral Tandem also states its position would honor the “cost causer pays” principle. *Id.* at 22. In addition, Neutral Tandem argues that its presence provides a competitive alternative to AT&T as the transit traffic provider. *Id.* at 24.

Staff does not agree with Level 3’s position that a decision that required it to directly interconnect with Neutral Tandem would conflict with the Federal Act. The first step in the analysis is to determine the obligations of CLECs under the Federal Act to interconnect. Section 251(a)(1) requires all local exchange carriers to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” Level 3’s apparent position is that this statutory provision is satisfied if a LEC agrees to do either. However, the statute does not say that the party from whom interconnection is being requested is permitted to demand its preferred form of interconnection and limit the type of interconnection to which the requesting party is entitled.

Further, as discussed above, Section 261(b) and (c) preserve state authority to enforce or impose requirements on telecommunication carriers that are necessary to further competition, provided the requirement is not inconsistent with the Federal Act or FCC regulations to implement the Act. For the public policy goals cited to in Neutral Tandem’s brief and discussed herein, Staff concludes that requiring Level 3 to interconnect directly with Neutral Tandem is necessary to further competition. In Michigan Bell, the Sixth Circuit found that as long as state regulations do not prevent carriers from taking advantage of Sections 251 and 252 of the Federal Act, state regulations are not preempted. 323 F.3d at 358-59. For the reasons discussed above, Staff does not believe that requiring Level 3 to interconnect directly with Neutral Tandem would not prevent a carrier from taking advantage of Section 251 or 252.

A review of the case law relied upon by Level 3 in its case for preemption reveals that the authority does not apply to the relief sought in this case. For example, in Wisconsin Bell v. Bie, 340 F.3d 441 (7th Cir. 2003), the seventh circuit found preemption where a state tariff required the ILEC to state a reservation price. The Court concluded that the Federal Act’s arbitration procedure was interfered with by the state requirement that effectively mandated that negotiations begin at the reservation price listed in the tariff. 340 F.3d at 445. The Court also found that the tariff would result in appeals being filed in state court as opposed to federal court as required in the Federal Act for appeals of state commission decisions under Section 252. *Id.* at 445. Neither of those circumstances is present in this dispute. The Federal Act neither sets forth the detailed process for CLEC to CLEC arbitrations that it does for ILEC to CLEC arbitrations, nor does it require state commission decisions on CLEC to CLEC interconnection be appealed to federal court.

In Pacific Bell v. Pac-West Telecomm., 325 F.3d 1114 (9th Cir. 2003), the ninth circuit found a general rulemaking inconsistent with the Federal Act because it changed the terms of “applicable interconnection agreements” and contravened the provision that agreements have the force of law. 325 F.3d at 1127. An order requiring Level 3 to interconnect directly with Neutral Tandem under the terms set forth in Staff’s recommendation would not change the terms of

applicable interconnection agreements or contravene the Federal Act's provision that agreements have the force of law.

Level 3 also relies upon the decision in MCI v. Illinois Bell, 222 F.3d 323 (7th Cir. 2000). (Level 3 Brief, p.11). However, the language cited to in Level 3's brief is from the Court's discussion of whether the state has waived its Eleventh Amendment immunity by participating in the Federal Act's scheme. It is not discussing the issue of preemption. The question of state regulations that are necessary to further telecommunications competition and are not inconsistent with the Federal Act were not before the Court so there is no analysis of what type of state regulation would survive preemption.

2. *Reasonable Interconnection*

Level 3 also argues that the State Act only requires reasonable interconnection; it does not require direct interconnection. (Level 3 Response, p. 11). However, whether "direct" or "indirect" interconnection is reasonable in a given instance is a determination for the Commission.

Neutral Tandem is a provider of transit services. Its carrier customers use its service to transport calls that originate on one of their networks and terminate on the network of another. AT&T also provides transit services and is interconnected directly with the other telecommunications companies as a result of its historic position in the market. It would not serve any purpose for a carrier to transport a call originating on its network through Neutral Tandem if that call still must be transported through AT&T in order to terminate on Level 3's system. The carrier would simply use AT&T as the transit provider and exclude Neutral Tandem from the process. Therefore, indirect interconnection is not a reasonable option for Neutral Tandem. Under the condition that Neutral Tandem pays all of Level 3's reasonable costs for interconnection, Level 3 is not harmed by the Staff's recommendation. Level 3 does not have a reasonable basis for refusing direct interconnection under such circumstances.

Given Neutral Tandem's function as a transit provider and including the condition that Neutral Tandem pay Level 3's reasonable costs, Staff recommends that the Commission order that direct interconnection is necessary for reasonable interconnection in this instance.

3. *Unreasonable Discrimination*

Neutral Tandem has charged that Level 3 is unreasonably discriminating against it in violation of O.C.G.A. § 46-5-164(b). The basis for this charge is that Level 3 will not interconnect directly with Neutral Tandem unless Neutral Tandem pays it reciprocal compensation or some other fee in addition to its costs, when a comparable payment is not required from AT&T as a condition of direct interconnection with Level 3. Level 3 responds that AT&T's ILEC status provides a reasonable basis for the disparate treatment. Specifically, Level 3 states that it receives other services and benefits from direct interconnection with AT&T. (Level 3 Brief, p. 28). Level 3 also points out that AT&T may be required to provide transit services as a result of its historically derived ubiquitous network. *Id.*

That AT&T is an ILEC and Neutral Tandem is a CLEC does not by itself constitute a reasonable basis for discriminating between the two providers. There has to be a distinction that provides a reason for treating the two differently in this instance. The fact that AT&T became in effect a default transit service provider as a result of its ubiquitous network is not a reasonable basis for Level 3 to refuse as favorable terms and conditions from another transit service provider. The fact that AT&T provides other services to Level 3 that have nothing to do with transit traffic is not a reasonable basis to refuse to interconnect directly with another transit provider. If the calls from Neutral Tandem's carrier customers were transported to Level 3 using AT&T as a transit provider, Level 3 would not receive reciprocal compensation from AT&T and would not be given any better or additional information about the originating carrier.

A reasonable objection by Level 3 would be if there were costs related to directly interconnecting with Neutral Tandem that Neutral Tandem was not willing to cover. There was conflicting record evidence on this issue. Staff recommends that Neutral Tandem be required to pay for all reasonable costs of the direct interconnection.

Finally, Staff recommends that the Commission find it has authority to order direct interconnection regardless of whether there is unreasonable discrimination.

4. *Interconnection Service*

Level 3 argues that Neutral Tandem is not providing an interconnection service because it does not originate or terminate telecommunications service. (Level 3 Brief, pp. 26-27). Because O.C.G.A. § 46-5-164(b) only applies to the provision interconnection services, Level 3 argues that Neutral Tandem is not entitled to the relief that it seeks. *Id.* at 26.

Level 3 is correct that Neutral Tandem does not originate or terminate telecommunications service. However, that does not mean that Neutral Tandem does not provide an interconnection service. O.C.G.A. § 46-5-162(8) defines "interconnection service" to mean "the service of providing access to a local exchange company's facilities for the purpose of enabling another telecommunications company to originate or terminate telecommunications service." The definition does not require that the LEC originate or terminate a call. Neutral Tandem's service meets the definition of "interconnection service" because it provides access to a LEC's facilities for the purpose of enabling another company to originate or terminate telecommunications service.

O.C.G.A. § 46-5-164(b) provides that "The rates, terms, and conditions for such interconnection services shall not unreasonably discriminate between providers . . ." The prohibition against unreasonable discrimination applies to the service offered by Neutral Tandem.

5. *Cost Recovery*

Level 3 states that the cost recovery arrangements were intended to defray delivery costs borne by Level 3 from the traffic sent to it by Neutral Tandem. (Response, p. 18). As mentioned above, Staff recommends Neutral Tandem be ordered to pay all reasonable costs of direct interconnection. In connection with any uncollected amounts from incoming calls, again, Level 3 is not placed in any worse position as a result of its interconnection with Neutral Tandem. That is, Neutral Tandem will provide Level 3 with the same information that AT&T will provide if the calls are transited over AT&T's network.

Page 1

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

ADMINISTRATIVE SESSION

Hearing Room 110
244 Washington Street
Atlanta, Georgia

Tuesday, June 19, 2007

The administrative session was called to order at
10:00 a.m., pursuant to Notice.

PRESENT WERE:

ROBERT B. BAKER, JR., Chairman
CHUCK EATON, Vice Chairman
ANGELA E. SPEIR, Commissioner
H. DOUG EVERETT, Commissioner
STAN WISE, Commissioner

Strandenburg & Hasty
435 Cheek Road
Monroe, Georgia 30655

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P R O C E E D I N G S

1
2 CHAIRMAN BAKER: Good morning, everyone. This is
3 the June 19, 2007 administrative session.

4 We will take up first today our Utilities Division
5 agenda with the consent items first. Is there any consent
6 agenda item that any Commissioner wishes to have held or
7 moved to the regular agenda?

8 (No response.)

9 CHAIRMAN BAKER: All right, seeing no response, is
10 there any objection to approving the Utilities consent
11 agenda?

12 (No response.)

13 CHAIRMAN BAKER: Seeing or hearing no response,
14 it's approved unanimously by the Commission.

15 (Commissioner Speir, Everett, Baker, Wise and
16 Eaton present and voting.)

17 CHAIRMAN BAKER: We now move on to our regular
18 agenda items, beginning with R-1.

19 MR. ROSEMOND: Good morning, Commissioners.

20 Item R-1 is Docket Number 24844-U, it's Petition
21 of Neutral Tandem for Interconnection with Level 3
22 Communications and Request for Emergency Relief:
23 Consideration of staff's recommendation.

24 Staff recommends approval of its recommendation as
25 proposed in last Thursday's Telecommunications Committee

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1 meeting.

2 CHAIRMAN BAKER: All right, any questions for Mr.
3 Rosemond on this item?

4 (No response.)

5 CHAIRMAN BAKER: Any questions on this item?

6 (No response.)

7 CHAIRMAN BAKER: Is there any objection to
8 approving staff's recommendation?

9 (No response.)

10 CHAIRMAN BAKER: Seeing or hearing no objection,
11 it's approved unanimously by the Commission.

12 (Commissioner Speir, Everett, Baker, Wise and
13 Eaton present and voting.)

14 COMMISSIONER WISE: Mr. Rosemond, Mr. Bowles, Mr.
15 Walsh; thank you for a good job on this docket -- clearly
16 written, well explained and could be held up as a document
17 for around the country.

18 CHAIRMAN BAKER: All right. Item R-2.

19 MR. WACKERLY: Good morning, Commissioners.

20 Item R-2 is Docket Number 15326-U, Notice of
21 Proposed Rulemaking to revise existing Commission Rule 515-
22 7-5 Universal Service Fund: Consideration of Notice of
23 Proposed Rulemaking.

24 On June 6, 2006, the Commission approved a
25 stipulation in Docket Number 15326-U between staff, the