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07 AUG 13 PM 4:39  
COMMISSION  
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August 13, 2007

**VIA HAND DELIVERY**

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

**Docket No. 070408-TP - Petition of Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for Resolution of Interconnection Dispute with Level 3 Communications and Request for Expedited Resolution**

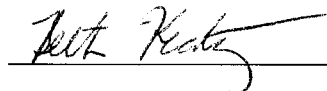
Dear Ms. Cole:

Enclosed for filing in the above-referenced Docket, please find an original and 15 copies of Neutral Tandem's Motion to Strike, or in the Alternative Response in Opposition to Level 3's Notice of Supplemental Filing.

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

- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL 3 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SGA \_\_\_\_\_
- SEC Enclosures
- OTH \_\_\_\_\_

Sincerely,



**Beth Keating**  
**AKERMAN SENTERFITT**  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32302-1877  
Phone: (850) 224-9634  
Fax: (850) 222-0103

DOCUMENT NUMBER-DATE

07106 AUG 13 5

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Neutral Tandem, Inc. and ) Docket No. 070408-TP  
Neutral Tandem-Florida, LLC )  
for Resolution of Interconnection Dispute ) Filed: August 13, 2007  
with Level 3 Communications and Request )  
for Expedited Resolution )

**NEUTRAL TANDEM, INC. AND NEUTRAL TANDEM-FLORIDA, LLC'S  
MOTION TO STRIKE OR IN THE ALTERNATIVE, RESPONSE IN OPPOSITION TO  
LEVEL 3'S NOTICE OF SUPPLEMENTAL FILING.**

Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC ("Neutral Tandem"), respectfully requests that Level 3 Communications, LLC's ("Level 3") argumentative and irrelevant notice of supplemental filing be stricken from the record in its entirety. In the alternative, Neutral Tandem requests that the Commission consider Neutral Tandem's response to Level 3's notice.

1. Level 3 has sought to introduce into the record pleadings filed by Neutral Tandem in other jurisdictions and correspondence between the parties, for the purpose of "debunking" assertions in Neutral Tandem's Petition. The Commission, however, has consistently rejected argumentative notices of supplemental authority pursuant to Rule 9.255, Florida Rules of Appellate Procedure.<sup>1</sup> For this reason alone, Level 3's notice should be stricken from the record.

2. In addition, Level 3 is seeking to introduce documents that are irrelevant to this proceeding and are not even precedent or *authority* in the broadest sense. Indeed, contrary to Level 3's assertions, Neutral Tandem's filings to dismiss Level 3's petitions in other states have

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<sup>1</sup> Although the Commission does not have any rules directly addressing the procedures for the filing of supplemental authority, the Commission has generally considered supplemental authority pursuant to Rule 9.255, which states that notices of supplemental authority "shall not contain argument." *See In re: Petition by BellSouth Telecomms., Inc. for arbitration of certain issues in interconnection agmt. with Supra Telecomms. and Info. Sys, Inc.*, Docket No. 001305-TP; Order No. PSC-02-0159, 2002 Fla. PUC LEXIS 82 (Feb. 1, 2002); *In re Petition for Approval of Transfer of Facilities of Harbor Utils. Co., Inc. to Bonita Spring Utils.*, Docket No. 950758-WS, Order No. PSC-97-028, at 4-5 (March 12, 1997).

DOCUMENT NUMBER-DATE

07106 AUG 13 5

no bearing on the substantial and immediate injury that will result to Neutral Tandem, its customers, and the PSTN in Florida if Neutral Tandem's Petition is denied.

3. Neutral Tandem is pursuing formal actions against Level 3 in eight states with the largest amount of traffic at risk. In May 2007, Level 3 filed petitions seeking to disconnect its existing facilities to Neutral Tandem in other states where the parties exchange a small amount of traffic. (Ex. A). Although Neutral Tandem continues to maintain that Level 3's attempt to unilaterally stop accepting traffic delivered by Neutral Tandem is both improper and unlawful, as a small company, Neutral Tandem is unable to expend the additional resources to engage Level 3 in litigation in every state, particularly where the parties exchange a small amount of traffic. As a result, Neutral Tandem was forced to re-direct the small amount of traffic being delivered in these states and move to dismiss Level 3's petitions as moot. Neutral Tandem's ability to re-direct a small amount of traffic with several months' notice has no bearing on the situation in Florida, where Neutral Tandem delivers the largest amount of traffic of any state to Level 3 on behalf of third party carriers: more than 60 million minutes of traffic per month.

4. Moreover, as discussed in more detail in Neutral Tandem's Petition, numerous commissions have already concluded that Level 3's activities both are anticompetitive and unlawful. For example, the Illinois Commerce Commission has found that Level 3's attempt to force carriers to deliver traffic through the incumbent LEC's tandem knowingly impeded the development of competition in Illinois.<sup>2</sup> In short, Level 3's strategy in filing to disconnect existing facilities is to harm competition in these states, to reduce network redundancy, and to deny carriers their tandem transit provider of choice. This is precisely the harm that Neutral Tandem is asking the Commission to prevent to the PSTN in Florida.

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<sup>2</sup> The Illinois Commission Opinion is attached as composite exhibit 9 to Neutral Tandem's Petition.


5. Level 3 also argues in its notice that Neutral Tandem's assertion of harm to its business is somehow influenced by Neutral Tandem's efforts to notify Level 3 that Neutral Tandem will be resuming its Initial Public Offering ("IPO"). To the contrary, Neutral Tandem's efforts to resume its IPO are irrelevant to whether Level 3 is attempting to disconnect its existing facilities with Neutral Tandem for the purpose of derailing Neutral Tandem's IPO or whether Level 3's actions materially impacted Neutral Tandem's IPO. Instead, Neutral Tandem's IPO is designed to allow it to expand its network and service offerings into more markets and to more carriers.

6. Level 3's supplemental filing is not pertinent to the issues before the Commission, and should therefore be stricken. In the alternative, Neutral Tandem requests that its response be considered.

WHEREFORE, for all of the foregoing reasons, Neutral Tandem respectfully requests that the Commission enter an order striking in its entirety Level 3's notice of supplemental filing, or, in the alternative, accept for consideration this filing as Neutral Tandem's response in opposition.

Respectfully submitted,

NEUTRAL TANDEM, INC.

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

*Attorney for Neutral Tandem, Inc.*

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

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

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 13th day of August, 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  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
ateitzma@psc.state.fl.us

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

By: \_\_\_\_\_



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

# **EXHIBIT A**

# LEBOEUF, LAMB, GREENE & MACRAE LLP

NEW YORK  
WASHINGTON, D.C.  
ALBANY  
BOSTON  
CHICAGO  
HARTFORD  
HOUSTON  
JACKSONVILLE  
LOS ANGELES  
PITTSBURGH  
SAN FRANCISCO

260 FRANKLIN STREET  
BOSTON, MA 02110-3173  
(617) 748-6800  
FACSIMILE: (617) 439-0341

E-MAIL ADDRESS: MEABH.PURCELL@LLGM.COM  
WRITER'S DIRECT DIAL: (617) 748-6847  
WRITER'S DIRECT FAX: (617) 897-9047

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AFFILIATED OFFICE  
BISHKEK  
ALMATY  
BEIJING

May 24, 2007

## BY HAND DELIVERY AND EMAIL

Secretary  
Department of Telecommunications and Cable  
One South Station  
Boston, MA 02110

Re: Petition of Level 3 Communications, LLC to Direct Neutral Tandem  
to Provide Notice to Customers of Termination of Contract

Dear Secretary:

On behalf of Level 3 Communication, LLC ("Level 3"), I am enclosing an original and nine (9) copies of the Petition of Level 3 to Direct Neutral Tandem – Massachusetts, LLC to Provide Notice to Its Customers of the Termination of Certain Contract Arrangements. Also enclosed is a check in the amount of \$100.00 for the filing fee. As indicated in the Petition, Level 3 respectfully requests expedited treatment of this matter, to avoid disruption of service to customers.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at 617 748-6847, or by email at [mpurcell@llgm.com](mailto:mpurcell@llgm.com).

Very truly yours,



Meabh Purcell

cc: William P. Hunt, III  
Brian T. Fitzgerald, Esq



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

\_\_\_\_\_  
)  
In the Matter of the Petition of )  
Level 3 Communications, LLC to Direct )  
Neutral Tandem-Massachusetts, LLC )  
To Provide Notice to Its Customers )  
Of The Termination of Certain Contract )  
Arrangements )  
\_\_\_\_\_

DTC 07-

**PETITION OF LEVEL 3 COMMUNICATIONS, LLC**

Level 3 Communications, LLC ("Level 3"), by its undersigned counsel and pursuant to M.G.L. c. 159, §§ 12 and 13 and 220 C.M.R. 1.04, requests the Massachusetts Department of Telecommunications and Cable ("DTC")<sup>1</sup> on an expedited or emergency basis to: (1) direct Neutral Tandem - Massachusetts, LLC ("Neutral Tandem") to fulfill its obligations to the public-switched telephone network, its third-party carrier customers, and end-users by cooperating with Level 3 in an orderly migration process; (2) direct Neutral Tandem to notify its carrier customers of the termination of the contract pursuant to which Neutral Tandem delivers traffic from its carrier customers ("tandem transit traffic") to Level 3; (3) require Neutral Tandem to either route its customers' traffic via its own interconnection trunks with the incumbent local exchange carrier ("ILEC" – Verizon Massachusetts) or compensate Level 3 for the use of the Level 3 network; (4) in light of the exigent circumstances affecting customers, resolve this Petition on an expedited basis; and (5) grant such other relief as the DTC deems reasonable and necessary to

<sup>1</sup> Effective April 11, 2007, pursuant to House Bill 2034, the Massachusetts Department of Telecommunications and Energy (the "MDTE") was dissolved and divided into two separate departments; the Department of Public Utilities ("DPU") and the Department of Telecommunication and Cable ("DTC"). The DTC has oversight and jurisdiction relating to telecommunications and cable issues.

prevent irreparable injury to the public interest. In support of this Petition, Level 3 states as follows:

1. Level 3 is a Delaware limited liability company and an indirect, wholly-owned subsidiary of Level 3 Communications, Inc. Level 3 maintains its principal business office at 1025 Eldorado Boulevard, Broomfield, CO 80021. Level 3 provides high-quality voice and data services to carriers, internet service providers ("ISPs"), and other business customers over its IP-based network. In Massachusetts, Level 3 is a competitive local exchange carrier ("CLEC") authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to the Statement of Business Operations ("SBO") on file with the DTC.

2. Neutral Tandem is a limited liability company organized under the laws of the State of Delaware, and is a wholly owned subsidiary of Neutral Tandem, Inc., a privately held corporation. Neutral Tandem maintains its principal offices at Two North LaSalle Street, Suite 1645, Chicago, IL 60602. Neutral Tandem only provides tandem transit services to wireless, wireline and broadband companies. Neutral Tandem does not originate or terminate any telecommunications traffic. In Massachusetts, Neutral Tandem is authorized as a data local exchange carrier pursuant to its SBO on file with the DTC. Additionally, Neutral Tandem has adopted the terms of the interconnection agreement between AT&T Communications of New England, Inc. and Verizon Massachusetts, approved by the Department in DTE 98-35.

3. On July 6, 2004, Level 3 and Neutral Tandem entered into a negotiated, traffic exchange agreement pursuant to which Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3 (the "Agreement"). Pursuant to the Agreement, either party could terminate the agreement on thirty (30) days advance notice. On January 30, 2007, Level 3

provided written notice to Neutral Tandem that Level 3 would terminate the Agreement on March 2, 2007.<sup>2</sup> (A copy of that letter is attached as Exhibit A). Additional termination notices were provided for other Level 3 subsidiaries shortly thereafter.

4. Based upon its own analysis, Level 3 terminates approximately 9.5 million minutes of transit traffic each month from Neutral Tandem. Level 3 further believes that approximately 1.45 billion minutes of transit traffic are exchanged in the Commonwealth of Massachusetts by all carriers. Thus, the amount of traffic Neutral Tandem terminates to Level 3 represents about seven tenths (.07) of all transit traffic in Massachusetts.

5. During February, 2007, Level 3 and Neutral Tandem engaged in negotiations on several occasions in an effort to reach a new nationwide agreement. During these discussions, Level 3 extended the termination effective date of the existing network arrangements to March 23, 2007, to give the parties additional time to negotiate. At the conclusion of these discussions, the parties were unable to reach a mutually acceptable commercial agreement.

6. In early March, 2007, Level 3 unilaterally extended to June 25, 2007 the date on which it would no longer directly accept traffic from Neutral Tandem, although the pre-existing Agreement was not reinstated or formally extended. After that date, Level 3 will at all times continue to accept traffic from Neutral Tandem on an indirect basis. As a result of Level 3's voluntary action to extend the termination date of the existing traffic exchange arrangements,

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<sup>2</sup> Neutral Tandem has taken inconsistent positions on the time period required to transition from direct interconnection to indirect interconnection with Level 3. In testimony filed in other states, Neutral Tandem claimed that the time period required to unwind the direct interconnection is 180 days. In its Motion for Interim Relief Regarding Maintenance of Status Quo Pending Resolution of the Merits in the pending California proceeding, Neutral Tandem acknowledged that the time period necessary to move direct traffic to an indirect interconnection with Level 3 is 30 days, consistent with the Agreement and with Neutral Tandem's statements during contract negotiations. Neutral Tandem's litigation strategy demonstrates bad faith and Level 3 respectfully requests that the Department find that the time period required for Neutral Tandem to move the direct traffic to an indirect interconnection with Level 3 is no longer than the 30 day period provided under the Agreement.

Neutral Tandem has had a far longer period than provided under the Agreement to inform its customers of the changed circumstances and to allow them to take the appropriate steps to ensure that their traffic reaches Level 3's customers.<sup>3</sup> With responsible network planning, the calls originating from Neutral Tandem's carrier customers will be routed to Level 3 through other transit providers, most likely the ILEC. Instead of taking responsibility to inform its carrier customers of the termination of the Agreement (and the inability of Neutral Tandem and Level 3 to agree on a commercially negotiated successor agreement) so that alternate arrangements can be made, Neutral Tandem has filed complaints against Level 3 in eight states.<sup>4</sup> In contrast, Level 3 has demonstrated its willingness to work to assure that there are no interruptions of service associated with the termination of the agreements. Because of Neutral Tandem's obstructionist tactics and unwilling to notify its customers, Level 3 is compelled to bring this matter to the attention of the DTC.

7. Given the June 25, 2007 deadline, Level 3 respectfully requests that the DTC, on an expedited basis, direct Neutral Tandem to immediately notify its customers of the termination of the Agreement and the lack of a successor traffic exchange agreement and to take such other steps as are necessary to ensure uninterrupted service to customers.

8. In the event that Neutral Tandem's customers cannot complete the steps to route the traffic to Level 3 via an alternative provider by June 25, 2007, Level 3 requests that the DTC order Neutral Tandem to route its customers' traffic over its existing interconnection arrangements with the ILEC. In addition, if Neutral Tandem terminates traffic to Level 3 after

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<sup>3</sup> It is important to note that, as the calls in dispute are directed to Level 3's customers, Level 3 has no incentive for the calls to fail.

<sup>4</sup> Complaints are pending in New York, Georgia, Florida, Illinois, Michigan, Minnesota, Connecticut and California. As of the date of this filing, no decisions have been issued.

June 25, 2007, Level 3 requests that the DTC order Neutral Tandem to pay Level 3 \$0.001 per minute of use as compensation for the use of Level 3's network. This rate reflects the rate Level 3 intends to charge Neutral Tandem for use of the Level 3 network after June 25, 2007, and which has been communicated to Neutral Tandem in a letter dated May 8, 2007. (A copy of this letter is attached as Exhibit B). Level 3 also respectfully requests that the DTC require Neutral Tandem to post a bond to ensure that Level 3 does not suffer financial harm in the event Neutral Tandem refuses to pay for terminating traffic to Level 3. Neutral Tandem has shown a willingness to use the regulatory process to attempt to delay the impact of the termination of the commercial agreements and Neutral Tandem should not be allowed to benefit from that delay. Therefore, the posting of a bond is appropriate in this matter.

9. Inquiries or copies of any correspondence, orders, or other materials pertaining to this Petition should be directed to:


Meabh Purcell, Esq.  
Brian T. FitzGerald, Esq.  
LeBoeuf, Lamb, Greene & MacRae LLP  
260 Franklin Street  
Boston, MA 02110  
Tel: (617) 748-6847  
Fax: (617) 897-9047  
Email: mpurcell@llgm.com

and

William P. Hunt, III  
Vice President of Public Policy  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Tel: (720) 888-2516  
Fax: (720) 888-5134  
Email: Bill.Hunt@Level3.com

For the reasons stated above, Level 3 submits that the public interest, convenience and necessity will be furthered by expeditious DTC approval of Petitioner's requests as described herein.

Respectfully submitted,

By: 

Meabh Purcell, Esq.  
LeBoeuf, Lamb, Greene & MacRae LLP  
260 Franklin Street  
Boston, MA 02110  
Tel: (617) 748-6847  
Fax: (617) 897-9047  
Email: mpurcell@llgm.com

Date: May 24, 2007

114892



January 30, 2007

NTI Communications, Inc.  
Two North La Salle, Suite 1615  
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 8, 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 720-888-3796.

Sincerely,

Scott E. Beer, Vice President  
Carrier Relations

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



May 8, 2007

Mr. Rian Wren  
Chief Executive Officer  
Neutral Tandem, Inc.  
One South Wacker, Suite 200  
Chicago, IL 60606

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

RE: Termination of Transit Traffic Delivered to Level 3 Communications, LLC ("Level 3")

Dear Sirs:

On January 30 and on February 14, 2007, Level 3 advised Neutral Tandem, Inc. ("Neutral Tandem") of the lawful termination of 2 agreements between Level 3 and Neutral Tandem which contained economic and other terms for Level 3's termination of Neutral Tandem transit traffic. Each agreement was terminable on 30 days' notice. Notwithstanding the termination provisions of each agreement, Level 3 unilaterally decided to continue to accept and terminate Neutral Tandem's transit traffic until June 25, 2007, so as to permit Neutral Tandem to notify its customers of the discontinuance of traffic routing to Level 3 via Neutral Tandem. Neutral Tandem had nearly 6 months to prepare for, plan and complete any activities relating to the termination of our previous business arrangements.

Since that time, Neutral Tandem has admitted that it has taken no such steps. Further, it appears from Neutral Tandem's conduct that it does not intend to take any actions to migrate traffic or otherwise to perform steps to prepare its customers for their ability to terminate traffic to Level 3. Instead, Neutral Tandem's sole strategy has been to sue Level 3 to compel continued delivery of service by Level 3.

This letter is to advise you that, commencing on June 25, 2007, if and to the extent that Neutral Tandem, Inc. ("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 all other rights available to it under applicable law, including the right to terminate the acceptance and delivery of Neutral Tandem's transit traffic.

The nationwide rate that we propose, on a blended basis, represents a significant discount to the ILEC transit rates otherwise available to Neutral Tandem or its customers. In addition, we note that Neutral Tandem will be able to recover these fees from the originating carrier pursuant to terms and conditions in Neutral Tandem's relevant state tariffs or the Master Services Agreement



Mr. Rian Wren  
Mr. Surrendra Saboo  
May 8, 2007  
Page 2 of 2

contained as part of Neutral Tandem's S-1 filing. Of course, it is up to Neutral Tandem as to whether it will seek any recovery from its customers. Level 3 is not asking Neutral Tandem to act as a clearinghouse with respect to compensation that might be owed by originating carriers, but instead is assessing a market based charge for the use of a terminating network by a transiting provider.

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.

Sincerely,



Sara Baack  
Senior Vice President  
Wholesale Markets Group

---

cc: Mr. John Harrington  
Jenner & Block  
3300 N. Wabash Avenue  
Suite 4700  
Chicago, IL 60611



WILLIAMS MULLEN

May 18, 2007

**VIA OVERNIGHT DELIVERY**

O. Ray Bourland, Executive Secretary  
State of Maryland Public Service Commission  
William Donald Schaefer Tower  
6 St. Paul Street, 16th Floor  
Baltimore, MD 21202-6806

**RE: PETITION OF LEVEL 3 COMMUNICATIONS, LLC TO DIRECT NEUTRAL  
TANDEM-MARYLAND, LLC TO PROVIDE NOTICE TO ITS CUSTOMERS  
IF THE TERMINATION OF CERTAIN CONTRACT ARRANGEMENT**

Dear Mr. Bourland:

Please find enclosed for filing is an original and fourteen (14) copies of the above referenced Petition. A copy of the Petition has been filed through the Commission's online filing system.

Please date-stamp and return the extra copy of this filing in the enclosed self-addressed, stamped envelope. Questions regarding this filing may be addressed to the undersigned at 703-760-5200.

Sincerely,

Brian McDermott  
Michael Fleming

Attorneys for Level 3

Enclosure

*A Professional Corporation*

VIRGINIA • WASHINGTON, D.C. • LONDON

8270 Greensboro Drive, Suite 700 McLean, VA 22102 Tel: 703.760.5200 Fax: 804.783.6507 or 703.748.0244  
www.williamsmullen.com

**BEFORE THE MARYLAND  
PUBLIC SERVICE COMMISSION**

\_\_\_\_\_  
)  
IN THE MATTER OF )  
THE PETITION OF )  
)  
LEVEL 3 COMMUNICATIONS, LLC )  
)  
TO DIRECT )  
NEUTRAL TANDEM-MARYLAND, LLC ) Docket No. \_\_\_\_\_  
TO PROVIDE NOTICE TO ITS )  
CUSTOMERS OF THE TERMINATION )  
OF CERTAIN CONTRACT )  
ARRANGEMENTS )  
\_\_\_\_\_ )

**PETITION**

Level 3 Communications, LLC (“Level 3”), by its undersigned counsel, petitions the Maryland Public Service Commission (“Commission”) to: (1) direct Neutral Tandem-Maryland, LLC (“Neutral Tandem”) to notify its carrier customers of the termination of the contract pursuant to which Neutral Tandem delivers traffic from its carrier customers (“tandem transit traffic”) to Level 3; (2) require Neutral Tandem to either route its customers’ traffic via trunks which do not require the use of Level 3’s network (such as through Neutral Tandem’s own interconnection trunks with Verizon-Maryland (“Verizon”)) or compensate Level 3 to the extent Neutral Tandem continues to utilize Level 3’s network; (3) consider and resolve this matter on an expedited schedule; and (4) grant such other relief as the Commission deems reasonable and necessary. In support, Level 3 provides the information outlined below.

1. Level 3 is a Delaware limited liability company and an indirect, wholly-owned subsidiary of Level 3 Communications, Inc. Level 3 maintains its principal business office at 1025 Eldorado Boulevard, Broomfield, CO 80021. Level 3 provides high-quality voice and data

services to carriers, ISPs, and other business customers over its IP-based network. In Maryland, Level 3 is authorized to provide competitive local exchange, interexchange, switched access, and special access telecommunications services pursuant to authority granted by the Commission in ML#s 59966, 60683, and 60934, TE-2636 issued March 25, 1998.<sup>1</sup>

2. Upon information and belief, Neutral Tandem is a limited liability company organized under the laws of the State of Delaware, and is a wholly owned subsidiary of Neutral Tandem, Inc., a privately held corporation. Neutral Tandem maintains its principal offices at Two North LaSalle Street, Suite 1645, Chicago, IL 60602. Neutral Tandem provides only tandem transit services to wireless, wireline and broadband companies. Neutral Tandem does not originate or terminate any telecommunications traffic. In Maryland, Neutral Tandem is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to the Commission's Letter Order dated January 19, 2005, ML #95408, Case No. TE-7746. Additionally, Neutral Tandem has an interconnection agreement with Verizon-Maryland approved by the Commission by Letter Order dated May 17, 2006, ML #101209. Amendments to the Verizon-Neutral Tandem interconnection agreement were approved by Letter Orders dated May 17, 2006, ML #101211; February 22, 2007, ML #104391; and May 16, 2007, ML #105654.

3. On July 6, 2004, Level 3 and Neutral Tandem entered into a commercially negotiated, traffic exchange agreement pursuant to which Neutral Tandem delivers tandem

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<sup>1</sup> There are other Level 3 subsidiaries authorized to provide service in Maryland. WilTel Communications, LLC is authorized to provide and resell interexchange telecommunications services pursuant to authority granted by the Commission in ML#s 61993 & 62725, TE-2941 on August 5, 1998. WilTel Local Network, LLC is authorized to provide competitive local exchange services pursuant to authority granted by the Commission in ML#s 68721 and 69395, TE-4100 on December 15, 1999. TelCove Operations, Inc. is authorized to provide local exchange and interexchange telecommunications services pursuant to authorization granted in ML# 93195, TE-7430. Broadwing Communications, LLC is authorized to provide competitive local exchange and interexchange telecommunications services pursuant to authority granted by the Commission in ML#93904, TE-755, on September 1, 2004.

transit traffic from third party carriers to Level 3 for termination to Level 3 customers (“Level 3 Agreement”). Under the express terms of that agreement, either Level 3 or Neutral Tandem may terminate the agreement on 30 days advance notice. On January 30, 2007, Level 3 provided written notice to Neutral Tandem that the agreement would be terminated effective March 2, 2007. (A copy of that letter is attached as Exhibit A).

4. On February 14, 2007, Level 3 sent a letter to Neutral Tandem terminating a traffic exchange agreement between Level 3’s subsidiary Broadwing Communications and Neutral Tandem with a termination date of March 23, 2007 (“Broadwing Agreement”). This agreement allowed Neutral Tandem to terminate traffic from its carrier customers to Broadwing. In the same letter, Level 3 extended the termination date of the Level 3 Agreement to March 23, 2007. (A copy of that letter is attached as Exhibit B.)

5. Based upon its own analysis, Level 3 and Broadwing terminate approximately 4.9 million minutes of transit traffic each month from Neutral Tandem. Thus, the amount of traffic Neutral Tandem terminates to Level 3 represents a de minimis amount of all the tandem transit traffic in Maryland.

6. In February, 2007, Level 3 and Neutral Tandem engaged in negotiations on several occasions in an effort to reach a new agreement. At the conclusion of these discussions, the parties were unable to reach a mutually acceptable commercial agreement.

7. In early March, 2007, Level 3 extended to June 25, 2007, the date on which it would no longer directly accept traffic from Neutral Tandem. (Level 3 will continue to accept traffic from Neutral Tandem on an indirect basis.) The contract term was not extended. As a result of Level 3’s unilateral action, Neutral Tandem has had much more than its bargained-for time to inform its customers of the changed circumstances and to allow them to take the

appropriate steps to insure traffic reaches Level 3's customers. It is important to note that the calls in dispute here are being made to reach Level 3's customers. Thus, Level 3 has no incentive to see those calls fail. Level 3 is not in the business of preventing its customers from receiving calls. Level 3 believes that the calls originating from Neutral Tandem's carrier customers will instead be routed to Level 3 through other transit providers, most likely Verizon. Neutral Tandem has not taken these responsible steps (i.e., informing its customers of the termination of the Level 3 agreements so that alternate arrangements can be made), however, preferring instead to file complaints against Level 3 in eight states.<sup>2</sup> While Level 3 has indicated its willingness to work to assure that there are no interruptions of service associated with the termination of the agreements, Neutral Tandem has taken no discernible actions to address the needs of its customers. Consequently, Level 3 brings this matter to the attention of the Commission out of an abundance of caution and to ensure that Neutral Tandem makes the arrangements necessary to ensure uninterrupted service to customers.

8. Given the June 25, 2007 deadline, which Level 3 has already extended several times, Level 3 respectfully requests that the Commission direct Neutral Tandem to notify its customers of the termination of the tandem transit agreement and to take such other steps as are necessary to ensure uninterrupted service to its customers.

9. In the event that Neutral Tandem's customers cannot complete the steps to route the traffic to Level 3 via an alternative provider by June 25, 2007, Level 3 requests that the Commission order Neutral Tandem to route its customers' traffic over its existing interconnection arrangements with Verizon or such other arrangements as Neutral Tandem may arrange. Furthermore, if Neutral Tandem terminates traffic to Level 3 after June 25, 2007, Level

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<sup>2</sup> Complaints are pending in New York, Georgia, Florida, Illinois, Michigan, Minnesota, Connecticut and California. No decisions have been issued as of the date of this filing.

3 requests that the Commission order Neutral Tandem to pay Level 3 \$0.001 per minute of use as compensation for the use of Level 3's network. This rate reflects the rate Level 3 intends to charge Neutral Tandem for use of the Level 3 network after June 25, 2007, and which has been communicated to Neutral Tandem in a letter dated May 8, 2007. In addition, Level 3 respectfully requests that the Commission require Neutral Tandem to post a bond to ensure that Level 3 does not suffer financial harm in the event Neutral Tandem refuses to pay for terminating traffic to Level 3. Neutral Tandem has shown a willingness to use the regulatory process to attempt to delay the termination of the commercial agreements and it should not be allowed to benefit from that delay. Therefore, the posting of a bond is appropriate in this matter.

10. Inquiries or copies of any correspondence, orders, or other materials pertaining to this Petition should be directed to:

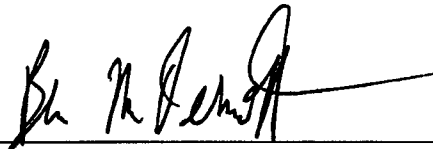
Brian McDermott  
Michael W. Fleming  
Williams Mullen  
8270 Greensboro Drive, Suite 700  
McLean, VA 22102  
Tel: (703) 760-5248  
Fax: (703) 748-0244  
Email: mfleming@williamsmullen.com

and

William P. Hunt, III  
Vice President of Public Policy  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Tel: (720) 888-2516  
Fax: (720) 888-5134  
Email: Bill.Hunt@Level3.com

For the reasons stated above, Petitioner submits that the public interest, convenience and necessity will be furthered by expeditious Commission approval of Petitioner's requests as described herein.


Respectfully submitted,

By:   
\_\_\_\_\_  
Brian McDermott  
Michael W. Fleming  
Williams Mullen  
8270 Greensboro Drive, Suite 700  
McLean, VA 22102  
Tel: (703) 760-5248  
Fax: (703) 748-0244

Counsel for Petitioner

Date: May 18, 2007

I hereby certify that I am a member of the Maryland Bar in good standing.

  
\_\_\_\_\_  
Brian McDermott



# **Exhibit A**



January 30, 2007

NTI Communications, Inc.  
Two North La Salle, Suite 1615  
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,

A handwritten signature in black ink, appearing to read "Scott E. Beer", written over a horizontal line.

Scott E. Beer, Vice President  
Carrier Relations

## **Exhibit B**



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 16<sup>th</sup>, 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.

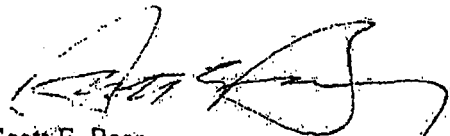
Our review of the various agreements between the acquired Level 3 companies and Neutral Tandem, including the agreement with Broadwing Corporation, has served to further highlight the current imbalance that exists between Neutral Tandem and the combined Level 3 companies. As such, pursuant to the Term Section of the MASTER SERVICE AGREEMENT between Neutral Tandem Inc. and Eocal 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 horizontal line.

Scott E. Beer  
Vice President, Carrier Relations

**VERIFICATION**

STATE OF COLORADO            )  
  )  
COUNTY OF BROOMFIELD    )

WILLIAM P. HUNT, of full age, being duly sworn, upon this oath deposes and says:

1. I am Vice President Public Policy for Level 3 Communications, LLC, Petitioner in the foregoing Petition, and in that capacity I am authorized to make this Verification on behalf of Level 3 Communications, LLC and its subsidiaries.

2. I have reviewed the within Petition and the statements contained therein are true and correct to the best of my knowledge, information and belief.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: Wm. P. Hunt  
William P. Hunt  
Vice President Public Policy  
Level 3 Communications, LLC

Sworn to and subscribed before me  
This 18th day of May, 2007.

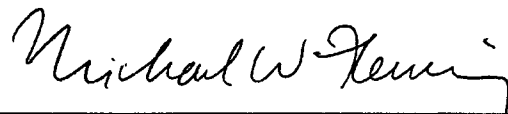
Teresa Montoya  
Notary Public  
My commission expires: 10-11-2010



CERTIFICATE OF SERVICE

I, Michael W. Fleming, hereby certify that on the 18<sup>th</sup> day of May, 2007, a copy of the foregoing Petition was mailed by United States first class mail, postage prepaid thereon, to the following:

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



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Michael W. Fleming

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2007 MAY 31 PM 2:46  
PUCO

Level 3 Communications, LLC	)	
	)	
and	)	
	)	
Broadwing Communications, LLC	)	
	)	
Complainants,	)	Case No. 07- <u>668</u> -TP-CSS
	)	
v.	)	
	)	
Neutral Tandem-Michigan, LLC	)	
	)	
Respondent.	)	

**COMPLAINT**

Level 3 Communications, LLC ("Level 3") and Broadwing Communications, LLC ("Broadwing") (collectively, the "Complainants"), file this Complaint against Respondent, Neutral Tandem-Michigan, LLC ("NT-M"), pursuant to Section 4905.26, O.R.C., and Rule 4901:9-01, O.A.C., and in support thereof state as follows:

**Parties**

1. Level 3 is a Delaware corporation, duly licensed to transact business in Ohio, and maintaining its principal place of business at 1025 Eldorado Blvd., Broomfield, Colorado 80021.

2. Level 3 is a "public utility" pursuant to Sections 4905.02 and 4905.03(A)(2), O.R.C., and is authorized to provide competitive local exchange and interexchange telecommunication services within Ohio pursuant to Certificate of Public Convenience and Necessity No. 90-9062 ("Certificate No. 90-9062").



3. Broadwing is a wholly-owned subsidiary of Level 3 and a Delaware limited liability company, duly licensed to transact business in Ohio.

4. Broadwing is a “public utility” pursuant to Sections 4905.02 and 4905.03(A)(2), O.R.C., and is authorized to provide competitive local exchange and interexchange telecommunication services within Ohio pursuant to Certificate of Public Convenience and Necessity No. 90-9107 (“Certificate No. 90-9107”).

5. NT-M is a Delaware limited liability company, duly licensed to transact business in Ohio, and maintaining its principal place of business at One South Wacker Street, Suite 200, Chicago, Illinois 60606.

6. NT-M is a “public utility” pursuant to Sections 4905.02 and 4905.03(A)(2), O.A.C., and is authorized to provide competitive local exchange and interexchange telecommunication services within Ohio under its Certificate of Public Convenience and Necessity No. 90-9283 (“Certificate No. 90-9287”).

7. NT-M is a wholly-owned subsidiary of Neutral Tandem, Inc. (“NTI”), a Delaware corporation, duly licensed to transact business in Ohio, and maintains its principal place of business at One South Wacker, Suite 200, Chicago, Illinois 60606.

#### **Applicable Law And Jurisdiction**

8. Section 4905.26, O.R.C., provides, in pertinent part, as follows:

**Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory,**

or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. Such notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

(Emphasis added).

9. Section 4905.22, O.R.C., provides as follows:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

(Emphasis added).

10. The Commission has jurisdiction pursuant to Sections 4905.26, 4905.05, and 4905.06, O.R.C.

#### Allegations

11. Level 3 LLC provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network. In Ohio, Level 3 LLC provides resold and facilities-based local exchange and interexchange telecommunication services pursuant to Certificate No. 90-9028.

12. Broadwing provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network. In Ohio, Broadwing provides resold and facilities-based local exchange and interexchange telecommunications services pursuant to Certificate No. 90-9107.

13. In Ohio, NT-M provides solely a wholesale tandem transit services to wireless, wireline, and cable companies pursuant to Certificate No. 90-9283. NT-M does not originate or terminate any telecommunications traffic.

14. NT-M has on file with the Commission negotiated interconnection agreements with the following incumbent local exchange carriers: (a) Verizon North, Inc.; (b) SBC Ohio (now AT&T Ohio); and (c) Cincinnati Bell Telephone Bell Telephone (collectively, the "ILECs").

15. NT-M has not filed, nor has this Commission approved, any traffic exchange agreements between NT-M and any other competitive local exchange carrier.

16. On July 6, 2004, Level 3 and NTI, on its own behalf and on behalf of its operating subsidiaries (hereinafter references to "NTI" shall include its subsidiary NT-M), entered into a commercially-negotiated traffic exchange agreement (the "Level 3 Agreement"), pursuant to which NTI delivers tandem transit traffic from third-party carriers to Level 3. A similar commercially-negotiated traffic exchange agreement (the "Broadwing Agreement") had been entered on February 2, 2004, by which NTI delivers tandem transit traffic from third-party carriers to Broadwing. The Level 3 Agreement and the Broadwing Agreement (collectively, the "Complainants' TE Agreements") each include a specific, bargained-for termination provision allowing either party to terminate the agreement upon thirty (30) days' advanced written notice to the other party.

17. On January 30, 2007, Level 3 provided written notice to NTI that the Level 3 Agreement would be terminated on March 2, 2007. On February 14, 2007, written notice was provided on behalf of Broadwing to NTI that the Broadwing Agreement would be terminated on March 23, 2007. The February 14, 2007 notice also extended the termination effective date of

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the Level 3 Agreement to March 23, 2007. NTI does not dispute that Level 3 and Broadwing lawfully terminated the Complainants' TE Agreements.

18. In Ohio, Level 3 terminates approximately 7.6 million minutes of transit traffic each month from NT-M; Broadwing terminates approximately 1.7 minutes of transit traffic each month from NT-M. Based on information and belief, approximately 3.3 billion minutes of transit traffic are exchanged in Ohio by all carriers. As a result, the amount of traffic that NT-M terminates to the Complainants represents about three-tenths (0.3) of a percent of all tandem transit traffic in the state.

19. In February and March of 2007, Complainants engaged in negotiations with NTI in an effort to reach a single, comprehensive, nationwide agreement. At the conclusion of those discussions, however, the parties were unable to reach a mutually acceptable replacement agreement.

20. In early March of 2007, the Complainants extended the date on which they would no longer accept traffic via a direct network connection from NTI to June 25, 2007. (Complainants will continue to accept traffic from NTI and its carrier customers on an indirect basis.) The term of the Complainants' TE Agreements was not extended. As a result of this action, NTI has had more than the 30 days bargained-for in the Complainants' TE Agreements to inform its customers of the changed circumstances, and to allow its customers to take appropriate steps to ensure that their originating traffic reaches the Complainants' customers.

21. The calls in this dispute are destined to customers of the Complainants. The Complainants have no incentive to see those calls fail and do not wish for their customers to be prevented from receiving calls. The Complainants believe that the calls originating from NTI's carrier customers may successfully be routed to the Complainants through other transit

arrangements, so long as reasonable steps are taken by NTI. NTI has not taken these responsible steps (i.e. informing its customers of termination of the Complainants' TE Agreements so that arrangements can be made), and has instead chosen only to file complaints against Level 3 in a number of states.<sup>1</sup> While the Complainants have indicated their willingness to work to ensure that there are no disruptions of service associated with the termination of the agreements, NTI has taken no discernable actions to address the needs of its customers. Consequently, the Complainants initiate this proceeding to bring this matter to the attention of the Commission, and ask the Commission to order NT-M to notify its customers and make the arrangements necessary to ensure uninterrupted service to its customers.

22. The refusal of NT-M to take appropriate steps in response to the pending termination of the Complainants' TE Agreements in order to avoid a possible disruption in service represents a failure to furnish necessary and adequate service as required by Section 4905.22, O.R.C.

#### **Requested Relief**

23. The Complainants respectfully request that the Commission:
- a. Find that the Complainants have stated reasonable grounds for their Complaint;
  - b. Find that NT-M's failure to inform its customers of the termination of the Complainants' TE Agreements is an unreasonable, unjust, and insufficient practice affecting or relating to its services as a telecommunication services provider, and a violation of its responsibility and duty under Section 4905.22, O.R.C., to furnish necessary and adequate service;

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<sup>1</sup> Complaints are pending in New York, Georgia, Florida, Illinois, Michigan, Minnesota, Connecticut, and California. No final decisions have been issued as of the date of this filing.

- 
- c. Order NT-M to notify its customers of the termination of the Complainants' TE Agreements, and to take such other steps as are necessary to ensure uninterrupted service to customers;
  - d. In the event that NT-M's customers cannot complete the steps to route the Complainants' traffic via an alternative provider by June 25, 2007, order NT-M to route its customer's traffic over its existing interconnection arrangements with the ILECs;
  - e. If NT-M terminates traffic to the Complainants after June 25, 2007, order NT-M to pay the Complainants \$0.001 per minute of use as compensation for the use of the Complainants' network;
  - f. Order NT-M to post a bond to ensure that Complainants do not suffer financial harm in the event that NT-M refuses to pay for terminating traffic to the Complainants; and
  - g. Order any and all such other relief as the Commission deems appropriate.

Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC

BROADWING COMMUNICATIONS, LLC

By:   
David A. Turano (0025819)  
SHOEMAKER, HOWARTH & TAYLOR, LLP  
471 East Broad Street, Suite 2001  
Columbus, Ohio 43215  
(614) 232-0426  
(614) 280-9675 (fax)  
Email: [dturano@midohiolaw.com](mailto:dturano@midohiolaw.com)

Gregg Strumberger  
Regulatory Counsel  
Level 3 Communications, LLC  
1025 Eldorado Blvd.  
Broomfield, CO 80021  
(720) 888-1780  
(720) 888-5134 (fax)  
Email: [gregg.strumberger@level3.com](mailto:gregg.strumberger@level3.com)

Date: 05/31/07

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

LEVEL 3 COMMUNICATIONS, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. _____
	)	
NEUTRAL TANDEM, INC. AND	)	
NEUTRAL TANDEM-ILLINOIS, LLC,	)	
	)	
Respondents.	)	
	)	

**PETITION FOR DECLARATORY RULING**

Level 3 Communications, LLC (“Level 3” or “Petitioner”), pursuant to Section 196 of the Wisconsin Statutes and PSC §2.07, submits this Petition seeking a declaratory ruling that Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC (collectively and individually “Neutral Tandem” or “Respondents”) must notify their carrier-customers that a direct transport route to Level 3 will not be available after June 25, 2007, or on a date set by the Commission. Level 3 states as follows in support of its Petition.

**NATURE OF THE PETITION**

Level 3 and Neutral Tandem had a commercial agreement for the exchange of traffic from Neutral Tandem’s originating carrier-customers to Level 3 (the “Level 3 Agreement”). The traffic exchange occurs through a one-way direct interconnection arrangement between the parties’ facilities in Chicago, Illinois. While the parties are not directly interconnected in Wisconsin, Neutral Tandem provides transit services to carriers in Wisconsin using a direct interconnection arrangement in Chicago. Neutral Tandem delivers to Level 3 local traffic originated on the networks of Neutral Tandem’s customers in Wisconsin, and destined to



telephone numbers assigned to Level 3's end users located in Wisconsin. This traffic exchange occurs in Chicago, not Wisconsin.

By letter dated January 30, 2007, Level 3 advised Neutral Tandem of its intent to terminate the Level 3 Agreement, effective March 2, 2007. After further discussions reached an impasse, Level 3 later advised Neutral Tandem that it intended to terminate the commercial agreement effective March 23, 2007. There is no dispute that Level 3 properly terminated the Level 3 Agreement in accordance with the terms of the Agreement. Level 3 later unilaterally extended the date for termination of the interconnection facilities until June 25, 2007.

Subsequent to the termination of the agreement, Neutral Tandem brought complaint proceedings before several state public service commissions seeking an order compelling Level 3 to directly (versus indirectly) interconnect with Neutral Tandem. Neutral Tandem alleged, *inter alia*, that because its customers (other telecommunications companies) would need additional time to configure their interconnection arrangements with other carriers (*i.e.* AT&T) to route traffic to Level 3.

There are at least two alternative paths to direct interconnection. Calls originated by a Wisconsin end user destined to Level 3 can be routed by the originating carrier to AT&T for completion to Level 3, or originating carriers can route calls through Neutral Tandem, then through AT&T, for completion to Level 3. Either route will allow calls to be completed. Level 3 notified Neutral Tandem on several occasions that it would remove the direct interconnection facility with Neutral Tandem after June 25, 2007. Level 3 believes that end user calls will be unaffected by this action because originating carriers, as well as Neutral Tandem, are physically interconnected with Level 3 through AT&T Wisconsin, which can route traffic destined to Level 3.

Notwithstanding these notices, Neutral Tandem testified that it has not notified its customers that a direct transport route to Level 3 will not be available after June 25, 2007. If Neutral Tandem is unable to provide a different route to its customers, then Neutral Tandem should notify its customers so they can program their originating switches to route traffic destined to Level 3 via some means other than through Neutral Tandem (*i.e.* through AT&T or some other transit provider.)

Level 3 brings this action seeking Commission intervention to permit Level 3 to discontinue the direct physical interconnection with Neutral Tandem on five (5) days notice provided under Chapter 165.052 of the Wisconsin Administrative Code, while at the same time ensuring that telephone calls originated by Wisconsin end users destined to Level 3's customers in Wisconsin will not fail. Level 3 requests that the Commission order Neutral Tandem to advise its customers that the direct transport route from Neutral Tandem to Level 3 will not be available after June 25, 2007 so originating carriers can take appropriate action to program their switches to route traffic to Level 3.

#### **I. PARTIES TO PETITION**

1. Level 3 is a Delaware corporation headquartered at 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Level 3 is certificated to operate in several states, including Wisconsin, and provides an array of services to its enterprise customers, including Internet Protocol services, voice over Internet Protocol ("VoIP") services, broadband transport, collocation and managed modem services, in the State of Wisconsin. Level 3 also offers voice and dial-up internet service providers ("ISPs") the ability to access the public switched telephone network ("PSTN").

2. On information and belief, Neutral Tandem is certificated as an Alternative Telecommunications Utility, per s. 196.01(1d)(f), within the State of Wisconsin and is subject to

Section 196 of the Wisconsin Statutes. On information and belief, Neutral Tandem provides tandem transit service for telecommunications carriers.

## **II. JURISDICTION**

3. The Public Service Commission of Wisconsin (“Commission”) has jurisdiction over Level 3 and Neutral Tandem under Section 196.02 of the Wisconsin Statutes which gives the Commission “jurisdiction to supervise and regulate every public utility in [Wisconsin] and to do all things necessary and convenient to its jurisdiction.” Wisc. Stat. §196.02(1). Neutral Tandem and Level 3 are classified as public utilities under Section 196.01(5)(a)(2) of the Wisconsin Statutes.

4. The Commission has jurisdiction over Neutral Tandem pursuant to Section 196.03(1) which requires public utilities to “furnish reasonably adequate service and facilities.” Wisc. Stat. §196.03(1).

5. Commission jurisdiction over this Complaint is proper pursuant to section 196.30 of the Wisconsin Statutes, which permits a public utility to file a complaint with the Commission “on any matter affecting its own product or service.” Wisc. Stat. §196.30.

6. The Commission has jurisdiction over this complaint by virtue of Section 196.37, which authorizes the Commission to take action if it determines that a company’s “practice, act or service is . . . insufficient . . . otherwise unreasonable . . . or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained.” Wisc. Stat. §196.37(a).

## **III. STATEMENT OF FACTS**

### **A. COMMERCIAL CONTRACTS BETWEEN LEVEL 3 AND NEUTRAL TANDEM**

7. Level 3 entered into traffic exchange agreements with Neutral Tandem on July 6, 2004 with an initial expiration on July 5, 2005. The agreement provided that unless terminated

by either party, it would continue on a month-to-month basis until terminated by either party upon 30-day written notice.

8. As part of integration activities resulting from Level 3's purchase of six other carriers in the last year and a half, Level 3 evaluated its interconnection and traffic exchange agreements as well as all agreements pursuant to which Level 3 procured services from third parties. In this review, Level 3 determined that it would not renew the agreements upon their expiration.

9. Level 3 learned during the integration process that neither Level 3 nor Neutral Tandem managed the contracts well. The Level 3 Agreement initially covered three markets, but did not include Wisconsin where the parties agreed to exchange traffic.

10. Even though there was no agreement for the exchange of Wisconsin-originated traffic, the parties expanded their exchange of traffic through "order creep". The companies are exchanging traffic in 17 states. This was particularly true of traffic originated in Wisconsin. Some time after the execution of the Level 3 Agreement, Neutral Tandem began delivering "local transit traffic"<sup>1</sup> originating in Wisconsin to Level 3's Gateway in Chicago. This compelled Level 3 to transport its traffic to its customers from Chicago, rather than from a point of interconnection in Wisconsin.

11. Moreover, the terms under which Neutral Tandem provided compensation to Level 3 were based on a complicated formula that only Neutral Tandem could calculate, inhibiting transparency to Level 3 and making billing difficult. Level 3 was forced to engage considerable time and effort to perform augments on its network to support a contract with

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<sup>1</sup> By definition, "transit traffic" is local exchange traffic, or traffic originating in one carrier's local exchange and destined to a telephone number that is, according to the Local Exchange Routing Guide, associated with the same local exchange.

Neutral Tandem that had grown far beyond the original commercial boundaries contemplated in the contract.

**B. TERMINATION OF THE PARTIES' COMMERCIAL AGREEMENTS**

12. On January 30, 2007, Level 3 sent a termination notice to Neutral Tandem indicating that it intended to terminate the Level 3 agreement on March 2, 2007. On February 14, 2007, Level 3 sent a second notice to Neutral Tandem indicating that it would extend the termination of the Level 3 contract to March 23, 2007. Level 3 extended the termination date to align it with the termination date of another contract terminated by Level 3 for its Broadwing affiliate. Broadwing traffic is not part of this matter.

13. On March 14, 2007, Level 3 informed Neutral Tandem that it would extend the termination date for physical interconnection to June 25, 2007. In that letter, Level 3 stated that it was taking action "so as to allow Neutral Tandem (and its customers, if necessary) sufficient time to prepare for disconnection" of the direct interconnection between Neutral Tandem and Level 3. Level 3 also reiterated its opinion that each company "has a responsibility to inform our customers of the pending disconnection of transit termination service."

14. The termination of the Level 3 Agreement was made in accordance with the terms and conditions of the Agreement. Neutral Tandem agrees that the termination was procedurally correct.

**C. LEVEL 3 MADE NUMEROUS ATTEMPTS TO NEGOTIATE A NEW COMMERCIAL AGREEMENT WITH NEUTRAL TANDEM**

15. In February 2007, Level 3 and Neutral Tandem began discussions in an effort to develop a new commercial agreement to govern the exchange of traffic between the companies. In a February 22, 2007 letter regarding those discussions, Level 3 reiterated its goal of reaching an agreement with Neutral Tandem, but expressed its expectation that Neutral Tandem was "or

will be shortly, advising customers of the termination of our agreement and making appropriate plans for alternative routing of traffic.” Level 3 further noted that “[i]f termination is likely to materially impact the flow of traffic for your customers, please let us know and we can work with you and your impacted customers to assure that there are no interruptions of service associated with the termination of the agreements.” Level 3 also expressed its preference that the parties would reach “an appropriate and mutually beneficial commercial arrangement” and reiterated its hope that “rational business discussions can lead to a commercial agreement that is beneficial to both parties.”

16. In a February 26, 2007 letter response to Level 3’s February 22 letter, Neutral Tandem did not state whether it had taken any steps to notify its customers of the impending termination of the agreements. Instead, Neutral Tandem threatened that “any attempt by Level 3 to contact Neutral Tandem’s customers concerning this dispute would constitute unlawful interference” with Neutral Tandem’s business relationships and that it would “seek all available redress from Level 3 in the event Level 3 attempts to interfere with Neutral Tandem’s business relationships.”

**D. NEUTRAL TANDEM HAS ALTERNATIVE METHODS OF ROUTING TRAFFIC TO LEVEL 3**

17. Level 3 is directly interconnected with AT&T pursuant to an interconnection agreement executed in accordance with Section 251(c) of the federal Telecommunications Act (the “Act”), 47 U.S.C. § 251(c).

18. Neutral Tandem is directly interconnected with AT&T Communications pursuant to an interconnection agreement<sup>2</sup> approved by the Commission, pursuant to Section 252(e) of the

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<sup>2</sup> Wisconsin Public Service Commission Order Approving Interconnection Agreement between Wisconsin Bell, Inc., d/b/a SBC Wisconsin and Neutral Tandem-Illinois, LLC, Docket 05-TI-1086, July 26, 2004.

Act, 47 U.S.C. § 252(e)(2)(A). *See Application for Approval of the Interconnection Agreement Between Wisconsin Bell, Inc., d/b/a SBC Wisconsin and Neutral Tandem-Illinois, LLC*, Docket No. 05-TI-1086.

19. Upon information and belief, facilities-based carriers and wireless providers that use Neutral Tandem's services are directly interconnected with AT&T Communications pursuant to interconnection agreements executed in accordance with Section 251(c) of the Act, 47 U.S.C. §251(c).

20. As an incumbent local exchange carrier ("ILEC"), AT&T is required by federal law to provide transit service that allows originating carriers and Neutral Tandem to route traffic that is destined to Level 3 and its customers through AT&T. Consequently, Neutral Tandem or any of its carrier-customers are indirectly interconnected with Level 3, and can exchange traffic with Level 3 by routing traffic through AT&T. Calls originated by an end user in Wisconsin destined to Level 3 can be routed by the originating carrier to AT&T for completion to Level 3. In the alternative, originating carriers can route calls through Neutral Tandem, then through AT&T, for completion to Level 3. Either routing will allow calls to be completed to Level 3.

21. Under either of the call-routing methods described in the foregoing paragraph, Neutral Tandem and originating carriers can route telephone calls destined to Level 3 by programming call-routing tables to route traffic through an alternative carrier, such as AT&T.

22. Upon information and belief, having adequate capacity in place, it would take each of Neutral Tandem's carrier-customers less than one (1) hour to reprogram their switches to route traffic according to the default routing contained in the Local Exchange Routing Guide, which would have traffic destined to Level 3 be transited by AT&T.

23. Neutral Tandem testified in other state commission proceedings that it has not notified its carrier-customers that a direct transport route to Level 3 will not be available after June 25, 2007. Neutral Tandem is refusing to take action to ensure that calls destined to Level 3 will be routed properly.

24. Neutral Tandem is refusing to notify its carrier-customers that a direct transport route to Level 3 will not be available after June 25, 2007 to frustrate Level 3's desire to discontinue the direct transport route into Level 3's network.

25. Pursuant to its tariff on file with the Commission, Neutral Tandem was required to notify its carrier-customers of any changes affecting its service. Specifically, the tariff states:

#### 3.1.10 Notification of Service-Affecting Activities

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

26. It is an unjust and unreasonable practice for Neutral Tandem to not notify its carrier-customers the direct transport route from Neutral Tandem to Level 3 will not be available after June 25, 2007.

27. By failing to give notice to its carrier-customers that as of June 25, 2007, Neutral Tandem would not be able to directly route traffic to Level 3, Neutral Tandem violated Section 3.1.1 of its Wisconsin Tariff, in violation of Section 196.03(1) of the Wisconsin Statutes.

28. Section 196.03(1) requires Neutral Tandem "furnish reasonably adequate service and facilities." Wisc. Stat. §196.03(1).



29. Neutral Tandem failed to furnish reasonably adequate service and facilities, in violation of Section 196.03, when it also failed to notify its carrier-customers that as of June 25, 2007, the direct transport route from Neutral Tandem to Level 3 would no longer be available.

30. Section 196.37(2) provides that:

(2) If the commission finds that any . . . practice, act or service is unjust, unreasonable, insufficient . . . or otherwise unreasonable or unlawful or that any service is inadequate . . . the commission shall determine and make any just and reasonable order relating to a . . . practice, act or service to be furnished, imposed, observed and followed in the future.

31. Neutral Tandem acted unjustly and unreasonably, in violation of §196.37(2), when it failed to advise its carrier-customers of potential changes to its service offering, that the direct transport route from Neutral Tandem to Level 3 would not be available as of June 25, 2007.

32. The Commission should declare that Neutral Tandem's practices, acts, or services are insufficient and otherwise unreasonable, in accordance with Section 196.37, when it failed to notify its carrier-customers that as of June 25, 2007, Neutral Tandem could not directly route traffic to Level 3.

33. By failing to give notice to its carrier-customers that as of June 25, 2007, Neutral Tandem would not be able to directly route traffic to Level 3, Neutral Tandem violated Section 3.1.1 of its Wisconsin Tariff and Section 196.37 of the Wisconsin Statutes.

34. The Commission should declare that Neutral Tandem's actions as alleged in the foregoing Petition are unjust and unreasonable practices, in violation of Wisconsin Statutes, and declare that Level 3 may, pursuant to Chapter 165.052, discontinue the direct exchange of traffic with Neutral Tandem on five (5) days notice.

#### IV. PRAYER FOR RELIEF

Wherefore, for each of the foregoing reasons, Level 3 Communications, LLC respectfully requests that the Commission enter judgment on the Petition in favor of Level 3 and against Neutral Tandem, and that the Commission further order the following:

- a. Order Neutral Tandem to take all appropriate steps to notify its carrier-customers that a direct transport route to Level 3 will not longer be available as of June 25, 2006, or on a date to be set by the Commission;
- b. Declare that Level 3 may discontinue the direct exchange of traffic upon five (5) days notice to Neutral Tandem pursuant to Chapter 165.052 of the Wisconsin Administrative Code;
- c. Grant such other and further relief as the Commission may deem just and proper, including reasonable attorneys fees and costs incurred by Level 3 in bringing this action.

Dated: June 21, 2007

Respectfully submitted,

Level 3 Communications, LLC

/s/ Henry T. Kelly  
By: One of its Attorneys

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**AFFIDAVIT OF APPLICANT**

I, William P. Hunt, III, Vice-President of Public Policy for Level 3 Communications, LLC, having been duly sworn and deposed, hereby states as follows:

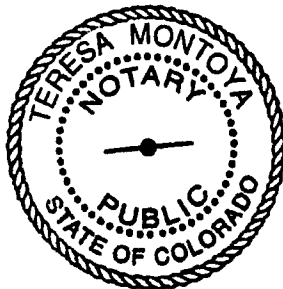
I have reviewed the foregoing Petition, and the information and representations contained therein are true and correct to the best of my knowledge and belief.

  
William P. Hunt, III  
Vice-President of Public Policy

Sworn to me, the undersigned  
Notary Public on this  
21 day of June 2007

State of Colorado  
County of Broomfield

  
Notary Public



My Commission Expires:

10-11-2010