

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for interconnection with Level 3 Communications and request for expedited resolution, by Neutral Tandem, Inc.

DOCKET NO. 070127-TX

In re: Petition by 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  
ORDER NO. PSC-07-0698-FOF-TP  
ISSUED: August 27, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL WITHOUT PREJUDICE

BY THE COMMISSION:

I. Case Background

On February 26, 2007, Neutral Tandem, Inc. (Neutral Tandem) filed its First Petition for Interconnection with Level 3 Communications (Level 3) and Request for Expedited Resolution and/or Interim Relief. Neutral Tandem requests that we: (1) establish interconnection terms and conditions for the continued delivery by Neutral Tandem of tandem transit traffic to Level 3 and its subsidiaries; (2) resolve its Petition on an expedited basis; and (3) issue an interim order directing Level 3 not to block traffic terminating from Neutral Tandem over the parties' existing interconnections while its Petition is pending. On March 13, 2007, Level 3 filed its Corrected Response and Motion to Dismiss Neutral Tandem's Petition.

By Order No. PSC-07-0295-PCO-TX, issued April 6, 2007, Neutral Tandem's Request for Expedited Resolution and/or Interim Relief was denied.

On May 3, 2007, Order No. PSC-07-0392-PCO-TX (Procedural Order) was issued. The Procedural Order required the parties to file briefs on the legal issues (1-3a), as set forth in Attachment A of the Procedural Order. Additionally, pursuant to the Procedural Order, Oral Argument took place on May 24, 2007.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On July 5, 2007, Neutral Tandem filed its Motion for Leave to Amend Petition. Subsequently, on July 9, 2007, Neutral Tandem filed its Notice of Voluntary Dismissal of Petition for Interconnection with Level 3, without prejudice.

On July 11, 2007, Neutral Tandem filed its Second Petition for Interconnection with Level 3 Communications (Level 3) and Request for Expedited Resolution and/or Interim Relief (Petition). Docket No. 070408-TP was opened to address Neutral Tandem's Second Petition. On July 25, 2007, Level 3 filed its Response and Motion to Dismiss Neutral Tandem's Second Petition.

## II. Analysis and Decision

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>1</sup> Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>2</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>3</sup> Accordingly, Neutral Tandem can dismiss its petition as a matter of right, which is in accord with our past decisions.<sup>4</sup>

Therefore, we hereby acknowledge Neutral Tandem's Notice of Voluntary Dismissal of its First Petition for Interconnection with Level 3, without prejudice, in Docket No. 070127-TX. Additionally, because Neutral Tandem's Petition in Docket No. 070408-TP addresses the same issues that were to be addressed in Docket No. 070127-TX, we find it appropriate and efficient to merge the record in Docket No. 070127-TX into Docket No. 070408-TP.

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<sup>1</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

<sup>2</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

<sup>3</sup> Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

<sup>4</sup> See Order No. PSC-05-0724-FOF-TP, issued July 6, 2005, in Docket Nos. 040489-TP, In re: Emergency complaint seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs) and 040520-TP, In re: Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCI metro Access Transmission Services, LLC, and MCI WorldCom Communications, Inc; Order No. PSC-02-0857-FOF-TP, issued June 24, 2002, in Docket No. 011615-TP, In re: Complaint of KMC Telecom, Inc. for enforcement of interconnection agreement with Sprint-Florida, Incorporated; But see Order No. PSC-07-0297-FOF-SU, issued April 9, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. and Order No. PSC-96-0992-FOF-WS, issued August 5, 1996, in Docket No. 950758-WS, In Re: Petition for approval of transfer of facilities of Harbor Utilities Company, Inc., to Bonita Springs Utilities and cancellation of Certificates Nos. 272-W and 215-S in Lee County (voluntary dismissal cannot be utilized to divest the Commission as an adjudicatory agency of its jurisdiction granted to it by the legislature).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Neutral Tandem's Notice of Voluntary Dismissal of its First Petition for Interconnection with Level 3, without prejudice, in Docket No. 070127-TX is hereby acknowledged. It is further

ORDERED that the record in Docket No. 070127-TX shall be merged into Docket No. 070408-TP. It is further

ORDERED that Docket No. 070127-TX shall be closed. It is further

ORDERED that Docket No. 070408-TP shall remain open.

By ORDER of the Florida Public Service Commission this 27th day of August, 2007.



ANN COLE  
Commission Clerk

( S E A L )

AJT

**DISSENT**

Commissioner Nancy Argenziano:

Commissioner Argenziano dissents without comment from the majority's decision.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.