

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

January 8, 2008

Docket No. 070408-TP – 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. (Deferred from 12/04/07 Conference; revised recommendation filed.)

Issue A: Should the Commission grant Neutral Tandem’s Request for Oral Argument?

Recommendation: No. Staff believes that Neutral Tandem’s Request for Oral Argument is untimely and should be denied. However, staff notes that Rule 25-22.0022(7)(b), Florida Administrative Code (F.A.C.), sets forth that regardless of whether a party has requested oral argument, the Commission can request oral argument on any issue to be decided by a dispositive motion or recommended order. Therefore, although staff believes Neutral Tandem’s Request for Oral Argument should be denied for lack of timeliness, staff believes the Commission does have the discretion, on its own Motion, to entertain oral argument on the issues addressed in staff’s recommendation.

DENIED, *All Commission, on its*
Commissioner, in their own motion, approved the requested
*request for Oral Argument. **

* CLK NOTE:
upon review of the transcript, a modification has been made.
1/29/08 - ac

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS’ SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures of majority commissioners]

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

00174 JAN-8 8

FPSC-COMMISSION CLERK

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Issue 1: Does the Commission have jurisdiction over Neutral Tandem’s Petition? If so, what is the source of the Commission’s authority?

Recommendation: Yes. Pursuant to §364.16(2), Florida Statutes, the Commission has authority to ensure that a CLEC provides access to and interconnection with its telecommunications service to any other provider of local exchange telecommunications service.

APPROVED

Issue 2: If the Commission has jurisdiction over Neutral Tandem’s Petition, does Neutral Tandem have standing to seek relief under §§364.16 and 364.162, Florida Statutes?

Recommendation: No. Staff does not believe Neutral Tandem’s delivery of transit traffic constitutes provision of local exchange telecommunications service for the purposes of §364.16(2), Florida Statutes. Furthermore, staff does not believe that under Florida law, Neutral Tandem qualifies as an agent for originating carriers. Accordingly, staff believes that Neutral Tandem lacks standing to seek relief under §§364.16 and 364.162, Florida Statutes.

While Neutral Tandem is not an agent under the legal definition, staff reiterates that the Commission has already held that (1) the originating carrier, not the terminating carrier, chooses how the originating call is routed to the end user; (2) the originating carrier is obligated to compensate the transit provider; (3) the originating carrier is responsible for delivering traffic to the transit provider in such a manner that it can be identified, routed, and billed; and, (4) the originating carrier, not the transit provider, should compensate the terminating carrier for terminating traffic to the end user. If an originating carrier believes that it is being adversely impacted by the actions of a terminating carrier, then the originating carrier is the appropriate party to file a letter of complaint or dispute with the Commission against the terminating carrier.

MOOT

Issue 3A: If the Commission has jurisdiction over Neutral Tandem’s Petition and determines that Neutral Tandem has standing to bring its Petition:

Can the Commission require direct interconnection between Level 3 and Neutral Tandem, for the purpose of terminating transit traffic from originating carriers, delivered by Neutral Tandem to Level 3?

Recommendation: If the Commission approves staff’s recommendation in Issue 2, this issue will be rendered moot.

MOOT

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Issue 4: Should the Commission grant Level 3's Motion to Dismiss?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 2, Level 3's Motion to Dismiss should be granted, ~~without prejudice~~, because Neutral Tandem lacks standing to seek relief under §§364.16 and 364.162, Florida Statutes.

DENIED, *staff is to work with the Chairman's office to set for hearing.*

Issue 5: Should this docket be closed?

Recommendation: Yes, if the Commission approves staff's recommendation in Issue 2, this docket should be closed.

The docket is to remain open.