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February 1, 2008

HAND DELIVERY

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

REDACTED

RECEIVED-FPSC
08 FEB -1 PM 2:53
COMMISSION CLERK

Re: Docket No. 070408-TP

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket on behalf of Level 3 Communications, LLC ("Level 3") are the original and fifteen copies of the redacted (public) version of Level 3's Motion for Interim Compensation Pending Final Agency Action.

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

CMP
COM
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Enclosures
cc: All Parties of Record
level3\neutraltandem\cole.january2808ltr

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FPSC-COMMISSION CLERK

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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 Filed: February 1, 2008

LEVEL 3 COMMUNICATIONS, LCC'S MOTION FOR INTERIM COMPENSATION PENDING FINAL AGENCY ACTION

Level 3 Communications, LLC ("Level 3"), pursuant to Rule 28-106.204, Florida Administrative Code, requests the Florida Public Service Commission ("Commission") to enter an Order requiring Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC (hereinafter referred to collectively as "Neutral Tandem") to compensate Level 3 for the direct interconnection services provided by Level 3 to Neutral Tandem for the purpose of completing local calls to Level 3's customers originated by the telecommunications companies, wireless carriers and Voice Over Internet Protocol ("VOIP") providers that are customers of Neutral Tandem. Level 3 requests that the Commission order Neutral Tandem to pay compensation to Level 3 effective and beginning on the date immediately after the lawful termination by Level 3 of its contractual arrangements with Neutral Tandem on March 23, 2007, at a rate of $[redacted] per minute of use ("MOU"), subject to true up, if applicable, upon final agency action by this Commission in this proceeding. This amount represents the effective rate owed by Neutral Tandem to Level 3 under the contract previously entered into between the parties. In support, Level 3 states:

A. INTRODUCTION

1. For nearly one year, Neutral Tandem has engaged in a classic scheme of regulatory arbitrage by "gaming" the system of practice before the Commission to postpone these

proceedings and continue its free use of Level 3's services. These practices have included voluntary dismissals and refiling of essentially the same petition, deferrals, untimely requests for oral argument, and most recently, an eleventh hour verbal allegation by Neutral Tandem's counsel that Neutral Tandem provides access to 911 services.

2. Neutral Tandem's counsel's new contention that it provides access to 911 services came as quite a surprise to Level 3 and the Commission. Neutral Tandem had never alleged in any of its three petitions that it provides access to 911 services. Commissioner Argenziano was clearly taken aback by this new contention as it was diametrically inconsistent with prior statements of Neutral Tandem's counsel. At the January 8 Agenda Conference, Commissioner Argenziano directly posed this inconsistency to Neutral Tandem's counsel:

> COMMISSIONER ARGENZIANO: I believe the last time I had asked if you provided 911 services, and the reason you got the outcome you did from me was because I think you said no.

Neutral Tandem's counsel, obviously concerned with the prospect of dismissal, assured Commissioner Argenziano that Neutral Tandem had not previously acknowledged at the May 24, 2007 Oral Argument that Neutral Tandem did not provide access to 911 service:

> MS. KEATING: Commissioner, let me - - yes, I went back and looked at that transcript, because I had a concern about what it was we said on that point. And I think we were very careful to say that we are not obligated to provide 911 service.

See excerpts from Transcript of January 8, 2008 Agenda Conference, attached hereto as Exhibit A, at pp. 32-33.

3. Once again, the transcript defies Neutral Tandem's representations to the Commission. The transcript of the May 24, 2007 Oral Argument confirms that Neutral Tandem

repeatedly advised Commissioner Argenziano and the Commission that it does not provide access to 911 services:

> COMMISSIONER ARGENZIANO: ... But it does say to me that the basic local telecommunications service provided by a competitive local exchange telecommunications company must include access to operator services, 911 services, and relay services for the hearing impaired.
>
> Do you provide those services?
>
> MR. HARRINGTON: Neutral Tandem does not provide the services that a CLEC serving end users provides to those end users.
>
> * * *
>
> COMMISSIONER ARGENZIANO: Just one more to that point, because while you are saying that you provide alternative services, where do you see that you are exempt from the must have provisions under certification, because that's what I'm not seeing? As an alternative local service it seems to me that you are still subject to the must have provisions under that statute.
>
> MS. KEATING: ... The providers of competitive local exchange service are the ones that are required to provide access to relay and access to 911. We are not saying that we do that.
>
> ... [W]hat we are saying is, yes, while we are certificated as a CLEC, we do not currently provide competitive local exchange services to end users which would then require us to provide 911 and relay.

See Transcript of May 24, 2007 Oral Argument, at pp. 48, 59-60, attached hereto as Exhibit B. Neutral Tandem's repeated admissions that it does not provide access to 911 services at the May 24, 2007 Oral Argument are consistent with more recent sworn testimony provided by Neutral Tandem's Executive Vice President and Chief Operating Officer who testified under oath in

proceedings before the Illinois Public Service Commission that Neutral Tandem does not provide 911 service.

4. The Commission must stop Neutral Tandem's gamesmanship and require Neutral Tandem to compensate Level 3 for the interconnection service it is providing. The Commission should ensure that Neutral Tandem is not rewarded for its procedural tactics and delays. Through this Motion, Level 3 requests the Commission to order Neutral Tandem to pay Level 3 for the interconnection services provided to Neutral Tandem dating back to the day after the termination of the contracts between the parties. Justice and fairness demand no less.

B. BACKGROUND.

5. On February 26, 2007, Neutral Tandem filed its first Petition with this Commission pursuant to Sections 364.16(2) and 364.162, Florida Statutes, requesting the Commission to require Level 3 to maintain its direct interconnection with Neutral Tandem and to allow for the establishment by the Commission of the rates, terms and conditions of such interconnection pursuant to a state arbitration.

6. On March 7, 2007, Level 3 voluntarily agreed to continue to accept and terminate Neutral Tandem's transit traffic until June 25, 2007, to allow the Commission sufficient time to rule on Level 3's Motion to Dismiss. Level 3 also asked the Commission to place Neutral Tandem on notice of the need to prepare for, plan and complete any activities and actions necessary to terminate the parties' previous business arrangements. See copy of letter dated March 7, 2007, from Level 3's counsel to Commission Staff Counsel, attached hereto as Exhibit C.

7. Neutral Tandem has continually refused to take any such steps to unwind the parties' business arrangements. Therefore, on May 8, 2007, Level 3 notified Neutral Tandem of its intent to charge Neutral Tandem a rate of $0.001 per MOU if Neutral Tandem chose to continue to send traffic to Level 3 via direct interconnection. See copy of letter dated May 8, 2007 from Sara Baack of Level 3 to Rian Wren and Surendra Saboo of Neutral Tandem, attached hereto as Exhibit D.

8. Although Neutral Tandem continues to send traffic to Level 3 via direct interconnection, it has refused all requests to pay for its continued use of Level 3's services.

9. At the January 8, 2008 Agenda Conference, the Commission considered a Revised Staff Recommendation addressing Level 3's Motion to Dismiss Neutral Tandem's Petition. After hearing from the parties, the Commission determined that it has jurisdiction over Neutral Tandem's Petition. On the issue of standing, Neutral Tandem's counsel alleged for the first time in this proceeding that Neutral Tandem has "911 connectivity." See Exhibit A, at pp. 32. Based on the above statement of counsel (and not on the pleadings as required by law), the Commission decided not to adopt the Revised Staff Recommendation on the issue of standing and suggested that Neutral Tandem may have standing to bring this action. See Exhibit A, at p. 76. As such, the Commission decided not to dismiss Neutral Tandem's Petition as final agency action at the January 8, 2008 Agenda Conference pending further information on Neutral Tandem's eleventh hour contention that it provides access to 911 service and whether the provision of access to 911 service to another carrier would confer standing. For the record, Neutral Tandem did not challenge Level 3's factual statements at the January 8, 2008 Agenda Conference that Neutral Tandem does not provide directory assistance, operator services, relay services to the hearing impaired, or telephone numbers to end user consumers.

10. Toward the conclusion of the January 8 Agenda Conference discussion, the Commissioners raised the issue of how to address the status quo, i.e., whether Level 3 should be required to maintain the direct interconnection with Neutral Tandem pending further proceedings in this docket and Level 3's position that it should be compensated for the use of its network pending final agency action. As reflected in the attached transcript from the January 8, 2008 Agenda Conference, the Chairman and other Commissioners who addressed this issue agreed that Level 3 should be compensated for the use of its network pending final agency action in this proceeding. As emphasized by Chairman Carter and Commissioner Argenziano:

> CHAIRMAN CARTER: ... I am uncomfortable with trying to maintain authority over a company to provide a service that they are not being compensated for when that is what they are in the business for. That makes me uncomfortable.
>
> Commissioners? Commissioner Argenziano.
>
> COMMISSIONER ARGENZIANO: I have the same discomfort because I don't know any company that we should be forcing them to provide a service without compensation....
>
> * * *
>
> COMMISSIONER CARTER: My concern, and, Commissioners, when we went down this road I said it is all about the money, and it seems like we are right back at that point. You know, we're saying we wanted to go and look at these issues, and I want to look at these issues, and I want to give the Commissioners and opportunity to do that, but I really don't think that we should be in the business of mandating something to a company without them being compensated for it. That strikes me as being inherently unfair.

See Exhibit A, at pp. 82-84.

C. LEVEL 3'S REQUEST FOR INTERIM COMPENSATION

11. Level 3 hereby requests that the Commission order Neutral Tandem to pay Level 3 compensation for the use of Level 3's Interconnection Services, effective March 24, 2007, at the rate of $[redacted] per MOU consistent with the "Level 3 Contract." [1] Under the Level 3 Contract, the parties agreed that Neutral Tandem would compensate Level 3 when it delivered to Level 3 via direct interconnection, tandem transit traffic originated by Neutral Tandem's third-party carrier customers. In exchange for Level 3's provision of interconnection services, **Neutral Tandem paid Level 3** according to a complex formula that included Neutral Tandem paying a per minute rate of $[redacted]. Unfortunately, this formula created a complex and impractical method of compensation. Hence, one of the primary reasons Level 3 sought to terminate the Level 3 Contract and negotiate a new agreement was to create a more concise compensation arrangement between the parties. Considering the complexities of the formula, Level 3 proposes an interim rate of $[redacted] per MOU which reflects the actual effective rate paid by Neutral Tandem to Level 3 under the prior agreement ($[redacted].)

12. Level 3 does not assert at this time that $[redacted] per MOU should be the final rate of compensation paid by Neutral Tandem for the interconnection services provided by Level 3. In fact, if the Commission orders the parties to maintain direct connectivity, the Commission may and should find that Level 3 should be compensated at a rate higher than $[redacted] per MOU

[1] The "Level 3 Contract" is the Traffic Exchange Agreement dated July 6, 2004, between Level 3 and Neutral Tandem, a copy of which was filed under confidential cover in this proceeding on March 8, 2007. Under the Level 3 Contract, Neutral Tandem delivered tandem transit traffic originated by Neutral Tandem's third party carrier customers to Level 3 for delivery and termination.

for the services it provides to Neutral Tandem. However, Level 3 believes that $[redacted] per MOU is a fair and reasonable rate, for purposes of interim compensation, and can be trued-up to a higher rate (if so ordered by the Commission) if Neutral Tandem's Petition is not dismissed due to lack of standing.

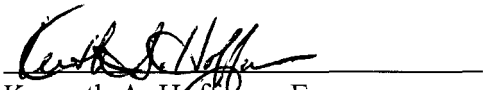
13. Level 3 emphasizes once again to the Commission that it has thus far voluntarily agreed to maintain the direct interconnection for almost seven months beyond the original cut-off date, to allow the Commission a reasonable amount of time to rule on the legal issues of jurisdiction and standing. However, considering Neutral Tandem's continued gaming of the regulatory process, it is no longer reasonable for Level 3 to continue providing interconnection services to Neutral Tandem for free a **service that Neutral Tandem is reselling to its carrier and VOIP customers for significantly more that $[redacted] per MOU**.

14. If Level 3 is to continue to maintain the service during the pendency of this proceeding, it should be fairly compensated. Neutral Tandem is being compensated by its customers. Yet, Level 3 is not being compensated by Neutral Tandem. Level 3 asks the Commission to put an end to this practice. The establishment of an interim compensation rate by the Commission will set an appropriate signal in the market and will put an end to Level 3's subsidization of Neutral Tandem's profits. Level 3 asks the Commission to require Neutral Tandem to compensate Level 3 for the use of Level 3's interconnection services pending final agency action in this proceeding. Specifically, Level 3 requests that the Commission order Neutral Tandem to pay Level 3, effective March 24, 2007, compensation at the rate of $[redacted] per MOU. Alternatively, if the Commission denies Level 3's request for interim compensation, the Commission should order Neutral Tandem to re-route traffic to Level 3 via indirect means

during the pendency of this proceeding - - something Neutral Tandem has done voluntarily and without disturbance to the public switched network in several other states.

WHEREFORE, for the foregoing reasons, Level 3 respectfully requests that the Commission grant this Motion and order Neutral Tandem to pay Level 3 compensation for the use of Level 3's network at the rate per minute described above pending final agency action in this proceeding. Alternatively, if the Commission denies this request, Level 3 requests that the Commission order Neutral Tandem to temporarily re-route traffic directed to Level 3 via other means pending final agency action in this proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by Electronic Mail and U. S. Mail on February 1, 2008 to the following:

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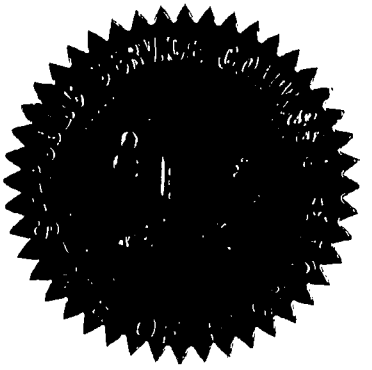
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070408-TP

In the Matter of:

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.
_____/



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PROCEEDINGS:	AGENDA CONFERENCE ITEM NO. 3
BEFORE:	CHAIRMAN MATTHEW M. CARTER, II COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Tuesday, January 8, 2008
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

MS. KEATING: Commissioner, thank you for your question. Without really getting back into the statutory interpretation question, I think, you know, you are aware from the pleadings that we don't agree that we have to be providing basic local exchange telecommunications services in order to be contemplated as an entity having a right to interconnect under the interconnection statute.

But, moving beyond that, even assuming that 364.337 applies to this company, you're having to assume certain facts regarding the nature of the service that Neutral Tandem provides in order to reach the conclusion that they don't provide this type of service.

It is true that this company, as we have acknowledged, does not provide service to end use residential customers, but this company does have enterprise customers and this company does have -- have to have 911 connectivity. I mean, that is something that I am aware of. They have to have 911 connectivity in order to enter into an interconnection agreement with BellSouth.

So there are certain assumptions that aren't in the record you really haven't had an opportunity to examine and debate, and yet you have to accept those assumptions in order to conclude that this company doesn't have standing.

COMMISSIONER ARGENZIANO: I believe the last time I had asked if you provided 911 services, and the reason you got

the outcome you did from me was because I think you said no. And that made me understand that the statute says you must provide a 911 services. So if you are telling me differently now, then that makes a difference. If you are providing what the statute indicates you must, then I'm bound by supporting. That is what I need to know.

MS. KEATING: Commissioner, let me -- yes, I went back and looked at that transcript, because I had a concern about what it was we said on that point. And I think we were very careful to say that we are not obligated to provide 911 service. I personally was not sure of that. It's a factual issue that really at that point had not arisen in the case.

I have since learned that the company is required by BellSouth before it will enter into an interconnection agreement to have 911 connectivity. So if an end use residential customer were to get onto Neutral Tandem's network directly right now, they could make a 911 call.

COMMISSIONER ARGENZIANO: To staff or to counsel, doesn't that meet the definition of a CLEC?

MR. TEITZMAN: Well, I think that takes us outside the context of what the dispute here is about.

COMMISSIONER ARGENZIANO: Don't confuse me, please. I'm trying to stick with that one statute, because my main problem was if you are not a CLEC, meaning that you must provide what the statute says in order to be a CLEC. So if it

precise guidance as to whether to go ahead and quote, order this to keep going on, but I think it will be an issue. And maybe the better course is to let it play itself out and then we can address it.

CHAIRMAN CARTER: When you say let it play itself out, Mr. Cooke, what exactly does that mean?

MR. COOKE: It means that Level 3 may choose to continue doing it voluntarily or they may not. They may appeal this or they may not.

CHAIRMAN CARTER: Okay. Commissioner Argenziano.

COMMISSIONER ARGENZIANO: I just wanted to make one correction. I said before that I believed that Neutral Tandem had standing. I would like to say they may have standing, and that is why with the additional information I wanted to dismiss. So I just wanted to make that correction.

MR. COOKE: Mr. Chairman, could we supplement that on my response? Mr. Teitzman has some potential authority.

CHAIRMAN CARTER: While you are thinking about supplementing that, be thinking about some language so we can bring this in for a landing.

Mr. Teitzman.

MR. TEITZMAN: I was just going to add that at the very least there are some allegations that if Level 3 was to cut off Neutral Tandem, there could be some problems with connection of calls. And under just those allegations I think

MR. COOKE: Well, we originally started talking about maintaining the interconnection. In other words, the ability to connect between the different CLECs, and I think I got comfortable with authority to do that. In other words, because of the public welfare aspects of it, so that would be without compensation. Now, whether that is fair or not is a different question.

CHAIRMAN CARTER: That doesn't give me warm and fuzzies.

MR. COOKE: I am uncomfortable getting into trying to write a contract with these parties in these circumstances.

CHAIRMAN CARTER: I understand that, but I'm uncomfortable with trying to maintain authority over a company to provide a service that they are not being compensated for when that is what they are in the business for. That makes me uncomfortable.

Commissioners? Commissioner Argenziano.

COMMISSIONER ARGENZIANO: I have the same discomfort because I don't know any company that we should be forcing them to provide a service without compensation, and it looks like Ms. Keating is trying to chomp at the bit here to say something, and maybe it is something helpful.

CHAIRMAN CARTER: One moment. Commissioner Skop first and then Ms. Keating.

COMMISSIONER SKOP: Thank you, Mr. Chair.

And, again, I share that concern. If we are going to maintain the status quo, you know, somebody should have compensation, not just compensation for the service provided. In the absence that we can't go in and reresurrect a dead legally terminated contract, and I guess there has been like bilateral allegations, perhaps some performance bond or some sort of bond would be appropriate that they would post that would address that issue. I don't know, but this is getting messier by the moment.

CHAIRMAN CARTER: Ms. Keating.

MS. KEATING: Thank you, Mr. Chairman.

Commissioner Skop actually beat me to the punch. That was going to be an alternative that I suggested. You know, the Commission at the end of the -- if you proceed to hearing, that can be one of your considerations is whether it's appropriate to apply retroactive payment. And if you want to secure that payment, you can ask the company to post a bond to secure further provision of service for the duration of this proceeding. And it is my understanding that Neutral Tandem would be willing to post such a bond.

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Let's go back for a minute for my sake for learning in this instance. I don't know what normally happens when a company like Neutral Tandem -- you have to provide your lines for Neutral Tandem. Are they normally

compensated? And the argument is there is an underlying argument that Neutral Tandem thinks that they shouldn't even have to pay compensation, right? And then Level 3 has the argument, yes, you should. So maybe I could get a little bit of background from staff right now as to what normally happens. I mean, how does a company provide services and not get compensated for it?

MR. TEITZMAN: The principles set forth by this Commission that I was -- I usually wouldn't ask a question of one of the other parties, but the question I have is and the principles set forth by the Commission is are they receiving any payments from the originating carriers? I don't know the answer to that, but that would be the standard protocol, like we discussed, that the originating carrier pays for the transit traffic.

CHAIRMAN CARTER: My concern, and, Commissioners, when we went down this road I said it is all about the money, and it seems like we are right back at that point. You know, we're saying we wanted to go and look at these issues, and I want to look at these issues, and I want to give the Commissioners an opportunity to do that, but I really don't think that we should be in the business of mandating something to a company without them being compensated for it. That strikes me as being inherently unfair.

COMMISSIONER EDGAR: Mr. Chairman.

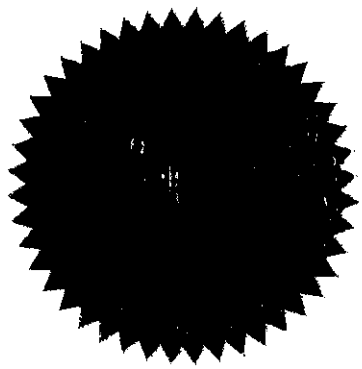
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070127-TX

In the Matter of:

PETITION FOR INTERCONNECTION WITH LEVEL 3 COMMUNICATIONS AND REQUEST FOR EXPEDITED RESOLUTION, BY NEUTRAL TANDEM, INC.

_____/



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PROCEEDINGS:	ORAL ARGUMENT
BEFORE:	CHAIRMAN LISA POLAK EDGAR COMMISSIONER MATTHEW M. CARTER, II COMMISSIONER KATRINA J. MCMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Thursday, May 24, 2007
TIME:	Commenced at 9:30 a.m. Concluded at 11:22 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

FLORI[redacted] COMMISSION

MR. HOFFMAN: No, I do not. I think if Neutral Tandem files the appropriate documentation showing that they have the managerial and financial and technical capability to provide basic local exchange telecommunications services, then they are entitled to have a placeholder like a number of other companies with certificates at the Commission.

My only point, Commissioner McMurrian, is that to trigger the operation of this interconnection statute they have to be a real CLEC; and a real CLEC, according to the legislature, provides local basic service.

CHAIRMAN EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: That goes to my point. In looking at the statutes under the certification language it does say that -- and I wasn't sure that it was issued, the certificate, wrongly or in error. But it does say to me that the basic local telecommunications service provided by a competitive local exchange telecommunications company must include access to operator services, 911 services, and relay services for the hearing impaired.

Do you provide those services?

MR. HARRINGTON: Neutral Tandem does not provide the services that a CLEC serving end users provides to those end users. We respectfully believe that the definitions have a different application in this context. And Ms. Keating actually will address that issue, Commissioner and Madam Chair,

standing is expressly conferred. We also believe -- I'm sorry.

CHAIRMAN EDGAR: Thank you.

MR. HARRINGTON: I'm sorry, Madam Chair.

CHAIRMAN EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Just one more to that point, because while you are saying that you provide alternative services, where do you see that you are exempt from the must have provisions under certification, because that's what I'm not seeing? As an alternative local service it seems to me you are still subject to the must have provisions under that statute.

MR. HARRINGTON: I understand. And thank you, Madam Chair and Commissioner, Ms. Keating will address that issue. Thank you.

MS. KEATING: I think this gets actually -- Commissioner, Madam Chairman --

CHAIRMAN EDGAR: Yes.

MS. KEATING: I think this actually gets to the question that Mr. Hoffman responded to, and I think he responded entirely correctly. Neutral Tandem is certificated as a competitive local exchange provider. They do not provide service to end use customers, and that is a fact. The providers of competitive local exchange service are the ones that are required to provide access to relay and access to 911. We are not saying that we do that.

What we are saying is that we are a provider of local exchange telecommunications services as it is set forth in 364.16. And I know it sounds like a matter of semantics and slightly different terms here and slightly different terms there, but under statutory interpretation the use by the legislature of different phrases and difference terms is intended to be given some level of meaning. And what we are saying is, yes, while we are certificated as a CLEC, we do not currently provide competitive local exchange services to end users which would then require us to provide 911 and relay. Is that responsive?

COMMISSIONER ARGENZIANO: I know what you're saying, but it doesn't make sense to me statutorily. If I have to adhere to the statutes, what I see is that in order -- in my opinion, and I don't mean to be derogatory, for the certification you don't fit the certification requirements. So it's hard for me to look at you as, you know, as being certified without having the must haves as everybody else who has to be certified, even given the alternative services that you provide and the legislature has intended to accommodate those. But I don't see an exemption from the must have provisions in the statute, so I'm just having a real difficult time. Thank you.

CHAIRMAN EDGAR: Commissioner Carter.

COMMISSIONER CARTER: Thank you, Madam Chairman. I

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March 7, 2007

VIA HAND DELIVERY

Adam Teitzman, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

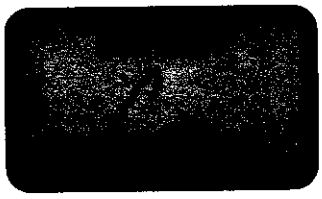
Re: Docket No. 070127-TX

Dear Mr. Teitzman:

Our firm represents Level 3 Communications, LLC ("Level 3"), the Respondent in the above-referenced docket. The docket was opened in response to a Petition for Interconnection filed by Neutral Tandem, Inc. ("Neutral Tandem").

The purpose of this letter is to assure Staff that Level 3 is committed to making every reasonable effort to assure the continuous flow of affected traffic pending the disposition of Neutral Tandem's Petition. Although Level 3 does not concede and by this letter does not waive any argument concerning the Commission's lack of jurisdiction over Neutral Tandem's Petition under the Florida Statutes cited by Neutral Tandem, Level 3 will file and serve its Response to Neutral Tandem's Petition on or before March 12, 2007, pursuant to Rule 25-22.0365, Florida Administrative Code. As required by that rule, Level 3 will demonstrate why, in addition to the Commission's lack of jurisdiction, expedited procedures are not appropriate for the processing of Neutral Tandem's Petition.

Level 3 has recently reached an agreement with Neutral Tandem to extend the effective date of Level 3's termination of the Level 3 Contract and the Broadwing Contract, as those traffic exchange agreements are described in Neutral Tandem's Petition, for a period of 90 days, up to and ending on June 25, 2007. Level 3's agreement to extend the termination date an additional 90 days is intended to help insure an orderly migration process and further supports Level 3's position that expedited procedures are not necessary or appropriate under Rule 25-22.0365.



The 90 day extension for termination of the traffic exchange agreements confirms Level 3's commitment to insure the mitigation of any potential disruption of traffic terminated to Level 3 through Neutral Tandem as a result of Level 3's lawful exercise of its termination rights under these traffic exchange agreements. In that regard, Level 3 believes that the Commission Staff's assistance and input into the development of an orderly migration plan would be of assistance to the parties and in the public interest. Accordingly, Level 3 hereby requests that the Commission Staff schedule and conduct a mediation attended by appropriate representatives of Level 3 and Neutral Tandem within the next 30 days to assist in the development of an orderly migration plan.

On behalf of Level 3, thank you for consideration of Level 3's request for mediation and I look forward to your response.

Sincerely,

Kenneth A. Hoffman

KAH/rl
cc: Beth Keating, Esq., via electronic mail
Gregg Strumberger, Esq., via electronic mail
Martin P. McDonnell, Esq.

level3/neutraltandem\teitzman.ltr

Level(3)
COMMUNICATIONS

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

Level 3 Comm[redacted]O 80021

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

Sara Baack
Senior Vice President
Wholesale Markets Group

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

MR. COOKE: Well, we originally started talking about maintaining the interconnection. In other words, the ability to connect between the different CLECs, and I think I got comfortable with authority to do that. In other words, because of the public welfare aspects of it, so that would be without compensation. Now, whether that is fair or not is a different question.

CHAIRMAN CARTER: That doesn't give me warm and fuzzies.

MR. COOKE: I am uncomfortable getting into trying to write a contract with these parties in these circumstances.

CHAIRMAN CARTER: I understand that, but I'm uncomfortable with trying to maintain authority over a company to provide a service that they are not being compensated for when that is what they are in the business for. That makes me uncomfortable.

Commissioners? Commissioner Argenziano.

COMMISSIONER ARGENZIANO: I have the same discomfort because I don't know any company that we should be forcing them to provide a service without compensation, and it looks like Ms. Keating is trying to chomp at the bit here to say something, and maybe it is something helpful.

CHAIRMAN CARTER: One moment. Commissioner Skop first and then Ms. Keating.

COMMISSIONER SKOP: Thank you, Mr. Chair.

And, again, I share that concern. If we are going to maintain the status quo, you know, somebody should have compensation, not just compensation for the service provided. In the absence that we can't go in and reresurrect a dead legally terminated contract, and I guess there has been like bilateral allegations, perhaps some performance bond or some sort of bond would be appropriate that they would post that would address that issue. I don't know, but this is getting messier by the moment.

CHAIRMAN CARTER: Ms. Keating.

MS. KEATING: Thank you, Mr. Chairman.

Commissioner Skop actually beat me to the punch. That was going to be an alternative that I suggested. You know, the Commission at the end of the -- if you proceed to hearing, that can be one of your considerations is whether it's appropriate to apply retroactive payment. And if you want to secure that payment, you can ask the company to post a bond to secure further provision of service for the duration of this proceeding. And it is my understanding that Neutral Tandem would be willing to post such a bond.

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Let's go back for a minute for my sake for learning in this instance. I don't know what normally happens when a company like Neutral Tandem -- you have to provide your lines for Neutral Tandem. Are they normally

compensated? And the argument is there is an underlying argument that Neutral Tandem thinks that they shouldn't even have to pay compensation, right? And then Level 3 has the argument, yes, you should. So maybe I could get a little bit of background from staff right now as to what normally happens. I mean, how does a company provide services and not get compensated for it?

MR. TEITZMAN: The principles set forth by this Commission that I was -- I usually wouldn't ask a question of one of the other parties, but the question I have is and the principles set forth by the Commission is are they receiving any payments from the originating carriers? I don't know the answer to that, but that would be the standard protocol, like we discussed, that the originating carrier pays for the transit traffic.

CHAIRMAN CARTER: My concern, and, Commissioners, when we went down this road I said it is all about the money, and it seems like we are right back at that point. You know, we're saying we wanted to go and look at these issues, and I want to look at these issues, and I want to give the Commissioners an opportunity to do that, but I really don't think that we should be in the business of mandating something to a company without them being compensated for it. That strikes me as being inherently unfair.

COMMISSIONER EDGAR: Mr. Chairman.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070127-TX

In the Matter of:

PETITION FOR INTERCONNECTION WITH LEVEL 3 COMMUNICATIONS AND REQUEST FOR EXPEDITED RESOLUTION, BY NEUTRAL TANDEM, INC.
_____/

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A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS:	ORAL ARGUMENT
BEFORE:	CHAIRMAN LISA POLAK EDGAR COMMISSIONER MATTHEW M. CARTER, II COMMISSIONER KATRINA J. MCMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Thursday, May 24, 2007
TIME:	Commenced at 9:30 a.m. Concluded at 11:22 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

FLORI EXHIBIT B COMMISSION

MR. HOFFMAN: No, I do not. I think if Neutral Tandem files the appropriate documentation showing that they have the managerial and financial and technical capability to provide basic local exchange telecommunications services, then they are entitled to have a placeholder like a number of other companies with certificates at the Commission.

My only point, Commissioner McMurrian, is that to trigger the operation of this interconnection statute they have to be a real CLEC; and a real CLEC, according to the legislature, provides local basic service.

CHAIRMAN EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: That goes to my point. In looking at the statutes under the certification language it does say that -- and I wasn't sure that it was issued, the certificate, wrongly or in error. But it does say to me that the basic local telecommunications service provided by a competitive local exchange telecommunications company must include access to operator services, 911 services, and relay services for the hearing impaired.

Do you provide those services?

MR. HARRINGTON: Neutral Tandem does not provide the services that a CLEC serving end users provides to those end users. We respectfully believe that the definitions have a different application in this context. And Ms. Keating actually will address that issue, Commissioner and Madam Chair,

standing is expressly conferred. We also believe -- I'm sorry.

CHAIRMAN EDGAR: Thank you.

MR. HARRINGTON: I'm sorry, Madam Chair.

CHAIRMAN EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Just one more to that point, because while you are saying that you provide alternative services, where do you see that you are exempt from the must have provisions under certification, because that's what I'm not seeing? As an alternative local service it seems to me you are still subject to the must have provisions under that statute.

MR. HARRINGTON: I understand. And thank you, Madam Chair and Commissioner, Ms. Keating will address that issue. Thank you.

MS. KEATING: I think this gets actually -- Commissioner, Madam Chairman --

CHAIRMAN EDGAR: Yes.

MS. KEATING: I think this actually gets to the question that Mr. Hoffman responded to, and I think he responded entirely correctly. Neutral Tandem is certificated as a competitive local exchange provider. They do not provide service to end use customers, and that is a fact. The providers of competitive local exchange service are the ones that are required to provide access to relay and access to 911. We are not saying that we do that.

What we are saying is that we are a provider of local exchange telecommunications services as it is set forth in 364.16. And I know it sounds like a matter of semantics and slightly different terms here and slightly different terms there, but under statutory interpretation the use by the legislature of different phrases and difference terms is intended to be given some level of meaning. And what we are saying is, yes, while we are certificated as a CLEC, we do not currently provide competitive local exchange services to end users which would then require us to provide 911 and relay. Is that responsive?

COMMISSIONER ARGENZIANO: I know what you're saying, but it doesn't make sense to me statutorily. If I have to adhere to the statutes, what I see is that in order -- in my opinion, and I don't mean to be derogatory, for the certification you don't fit the certification requirements. So it's hard for me to look at you as, you know, as being certified without having the must haves as everybody else who has to be certified, even given the alternative services that you provide and the legislature has intended to accommodate those. But I don't see an exemption from the must have provisions in the statute, so I'm just having a real difficult time. Thank you.

CHAIRMAN EDGAR: Commissioner Carter.

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March 7, 2007

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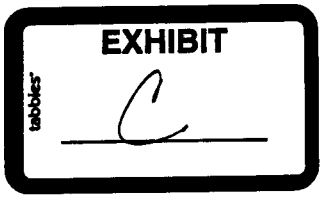

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KAH/rl
cc: Beth Keating, Esq., via electronic mail
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level3/neutraltandem\teitzman.ltr

Level(3)®
COMMUNICATIONS

May 8, 2007

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Chief Executive Officer
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Chicago, Il 60606

Mr. Surendra Saboo
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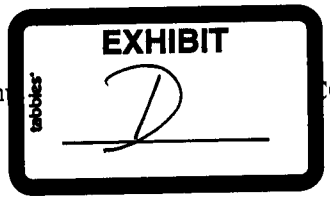

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