

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

REDACTED

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

**NEUTRAL TANDEM’S RESPONSES AND OBJECTIONS
TO THE COMMISSION STAFF’S FIRST SET OF INTERROGATORIES.**

Pursuant to Rule 1.340 of the Florida Rules of Civil Procedure and Rule 28-106.206, Florida Administrative Code, Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC (together “Neutral Tandem”) hereby responds to the Commission Staff’s first set of interrogatories, as follows:

GENERAL OBJECTIONS AND LIMITATIONS

A. Neutral Tandem objects to each and every interrogatory to the extent it is unduly burdensome, vague, ambiguous, overbroad, and/or lacking in the specificity required by the Florida Rules of Civil Procedure, and/or seeks information not reasonably calculated to lead to the admission of discoverable evidence.

B. Neutral Tandem objects to each and every interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, and any other applicable privilege or immunity.

C. Neutral Tandem reserves the right to revise and supplement these responses because discovery in this matter is ongoing and has not been completed.

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RESPONSES TO INTERROGATORIES

1. Please list the specific page(s) and section(s) of the July 6, 2004, contract between Level 3 and Neutral Tandem that indicate that this was a two-way agreement under which Level 3 was to begin purchasing services from Neutral Tandem.

Answer: Subject to and without waiving its general objections, Neutral Tandem respectfully refers Staff to the following sections of the July 6, 2004 Contract:

- Section 3.1, which states that “NTI will establish direct 2-way trunk connections for the delivery of combined Local Traffic and intraLTATA Toll Traffic....” (See p. 2 (emphasis added).)
- Section 4 which sets forth the terms and condition that will apply “[w]hen NTI delivers to Level 3 exchange traffic on an indirect basis originated by other carriers.” (See pps. 3-4.)
- Section 6 which sets forth the terms and conditions of the parties’ responsibilities “associated with termination of Level 3 transit traffic.” (See pps. 6-7.)

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Indeed, Level 3 admitted in its post-hearing briefs filed in the parallel proceeding pending before the Minnesota Public Utilities Commission that “the July 2004 agreement is a ‘two way’ agreement, covering traffic both originated and terminated by Level 3.” *E.g.* Level 3 Exceptions, at 9, filed in Minn. Pub. Utils. Comm’n Docket Nos. P5733/C-07-296 and P5733, 6403/M-07-354, *In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem* (filed Nov. 27, 2007).

2. a. Please list the specific page(s) and section(s) of the July 6, 2004, contract between Level 3 and Neutral Tandem that indicate that Neutral Tandem agreed to pay an interim credit that was specifically tied to Level 3's purchase of Neutral Tandem's services.

Answer: Subject to and without waiving its general objections, Neutral Tandem respectfully refers Staff to the following sections of the July 6, 2004 Contract:

- [REDACTED]

Further answering, Neutral Tandem refers Staff to the recent decision of the Minnesota Public Utilities Commission, in a similar proceeding between the parties, which adopted (with a few non-substantive changes), the proposed findings of an Administrative Law Judge ("ALJ") who concluded, after a full hearing on the merits, that "Neutral Tandem's arrangement with Level 3 did not require Neutral Tandem to pay Level 3 for terminating traffic on Level 3's network":

Neutral Tandem did agree to provide Level 3 with a transitional promotional credit on an interim basis. *However, that privately-negotiated arrangement was agreed to by Neutral Tandem in consideration of establishing a two-way business relationship with Level 3, under which it was contemplated that Level 3 would begin to originate traffic to Neutral Tandem for transit services. The promotional credit was designed to phase down to zero as Level 3's usage of Neutral Tandem's transit service increased.* When Neutral Tandem initially interconnected with Level 3, Level 3 lacked the technical ability to segregate and route local traffic, therefore it was unable to originate transit traffic to Neutral Tandem.

Docket Nos. P5733/C-07-296 and P5733, 6403/M-07-354, *In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem, Inc.*, Minn. Pub. Utils. Comm'n, ALJ Order at 7-8 (adopted by the Commission on February 28, 2008) (emphasis added) (hereinafter the "Minnesota ALJ Order").

b. Please explain specifically how the interim credit was tied to Level 3's purchase of Neutral Tandem's services.

Answer: Subject to and without waiving its general objections, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Notably, once this interim credit began to phase down to zero, because Level 3 began originating more traffic through Neutral Tandem, Level 3 canceled the July 6, 2004 Contract. Moreover, Neutral Tandem's February 2004 contract with Broadwing did not provide that Neutral Tandem would make *any payments* to Broadwing for terminating traffic. (Minnesota ALJ Order, at 7-8.) In addition, Neutral Tandem does not make any payment to any other carrier for terminating traffic. (*Id.*)

3. Please list the specific page(s) and section(s) of the July 6, 2004, contract between Level 3 and Neutral Tandem that indicate that the compensation to Level 3 was a “promotional credit.”

Answer: Subject to and without waiving its general objections, Neutral Tandem respectfully refers Staff to its response to Interrogatory Nos. 2(a) and 2(b).

4. Please list the specific page(s) and section(s) of the July 6, 2004, contract between Level 3 and Neutral Tandem that indicate Neutral Tandem's compensation to Level 3 was designed to phase down to zero as Level 3's usage of Neutral Tandem's transit service increased.

Answer: Subject to and without waiving its general objections, Neutral Tandem respectfully refers Staff to its response to Interrogatory Nos. 2(a) and 2(b).

5. Did the August 18, 2005, contract replace any part of the parties' July 6, 2004, contract? If so, please explain.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that the August 18, 2005 contract did not replace any part of the parties' July 6, 2004 contract.

6. Please explain how imposing an interim rate during the period pending a Commission decision in this proceeding, compromises the debate of any issue if the interim compensation amounts are held subject to refund?

Answer: Subject to and without waiving its general objections, Neutral Tandem states that the imposition of an interim rate pending a Commission decision compromises the debate by forcing the Commission to make premature findings concerning the merits of Neutral Tandem's Petition before it hears testimony from the parties' witnesses, reviews the evidence submitted by both sides, or receives full briefings on this issue.

Moreover, if the Commission imposes an interim rate, the interim decision would reward Level 3 for its admitted strategy of using the threat of disconnection as part of its "negotiating tool-kit." See Level 3's March 12, 2007 Motion to Dismiss, at 7. Although Level 3 has claimed that the payment was required under the parties' former contracts, there is no basis under which the Commission could impose an interim rate based on a contract that Level 3 admittedly and voluntarily terminated, and which has no bearing on the current proceeding. As noted by the Michigan Public Service Commission, after a full hearing on the merits in a similar dispute between Level 3 and Neutral Tandem, "[T]he rights and obligations under the properly terminated contracts are irrelevant to whether Neutral Tandem has a right to nondiscriminatory interconnection terms and conditions for delivering tandem transit traffic to Level 3." (Case No. U-15230, *In the matter of the complaint and request for emergency relief of Neutral Tandem, against Level 3*, Mich. Pub. Serv. Comm'n, Final Order, at 18 (issued Nov. 26, 2007) (hereinafter the "Michigan Order").)

Further answering, Neutral Tandem respectfully refers Staff to its responses to Interrogatory Nos. 7 and 13. Indeed, Neutral Tandem's answers to Interrogatory Nos. 7 and 13 demonstrate how the debate is compromised by the imposition of an interim rate pending a Commission decision.

7. If an interim compensation rate is imposed on Neutral Tandem for the pendency of this proceeding, what should be the effective date of the rate? Please explain why.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that there is no lawful basis to require Neutral Tandem to pay reciprocal compensation or any other discriminatory termination fee to Level 3 on an interim basis.

First, as Staff already recognized in this proceeding, Level 3 may not seek to collect reciprocal compensation from Neutral Tandem for traffic that Neutral Tandem is routing on behalf of other third party carriers:

Staff notes that the Commission has already established [in the *TDS Telecom Order*] 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.***

See Dec. 26, 2007 Revised Staff Rec., at 11 (emphasis added).

Staff's conclusion on this point has been affirmed by several state commissions that have addressed the issue in parallel proceedings between the parties in other states. For example, in Illinois, the Staff of the Illinois Commerce Commission recently warned Level 3 to cease billing Neutral Tandem for reciprocal compensation in violation of the Illinois Order (defined herein):

- “The Staff notes that the Commission has directed L3 not to attempt to do so, and accordingly L3 would be ***exceptionally ill-advised*** to attempt to take further steps of this nature. In any case, NT is under no obligation whatever to pay reciprocal compensation, regardless of whether L3 presents bills for payment.” (Ex. A, Staff of the Illinois Commerce Commission's Response to Level 3's Request for Reopening, at 9, filed in ICC Docket No. 07-0277, *Neutral Tandem, Inc. v. Level 3* (March 3, 2008) (emphasis added).)

Moreover, other states commissions have concluded:

- “Under 47 C.F.R. § 51.701(e), ... ‘carriers receive compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that *originates* on the network facilities of the other carrier... Imposing reciprocal compensation costs on the transit provider would be inconsistent with this federal regulation’.” (Docket No. 24844-U, *Petition of Neutral Tandem for Interconnection with Level 3 and Request for Emergency Relief*, Ga. Pub. Serv. Comm’n, Final Order, at 10-11 (August 27, 2007) (hereinafter the “Georgia Order”).
- “The evidence establishes that [Neutral Tandem] does not originate traffic. Furthermore, [47 C.F.R. § 57.101] does not impose reciprocal compensation obligations with respect to transiting the traffic... Therefore, [Neutral Tandem] is not obligated to pay reciprocal compensation to Level 3.” (Docket No. 07-0277, *Neutral Tandem v. Level 3*, Ill. Comm. Comm’n, Final Order, at 9-10 (July 10, 2007) (hereinafter the “Illinois Order”).)
- “The ALJ correctly found that those costs properly recovered through reciprocal compensation should not also be charged to Neutral Tandem, as they must be recovered from the originating carrier.” (Michigan Order, at 16).
- “Level 3 would not be entitled to charge Neutral Tandem any new fee to terminate calls to Level 3’s network Level 3 could seek reciprocal compensation from the originating carriers instead.” (Ex. B, Docket Nos. P5733/C-07-296 and P5733, 6403/M-07-354, *In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem*, Minn. Pub. Utils. Comm’n, Order Reaffirming Jurisdiction, Denying Disconnection, and Establishing Terms for Continued Connection, at 5 (issued March 20, 2008) (hereinafter the “Minnesota Order”).

Significantly, in its recent 10-K filing with the SEC, Level 3 admitted it is able to receive reciprocal compensation from originating carriers and that it had been able to secure “increasing amounts” of reciprocal compensation during 2007:

Level 3 receives compensation from other carriers when it terminates traffic originating on those carriers’ networks. . . . The Company earns the majority of its reciprocal compensation revenue from providing managed modem services. The Company also began to receive increasing amounts of reciprocal compensation from its voice services during 2007.

(A copy of the 10-K is attached hereto as Exhibit C.) As a result, Level 3’s attempt to demand this compensation from both the transiting and originating carriers is an impermissible attempt to receive double compensation.

Second, Level 3 has not offered any other lawful basis for which it could seek double recovery of its costs to terminate traffic from both Neutral Tandem and the originating carriers. Level 3's claim that interim compensation is required under the July 6, 2004 Contract, a contract that Level 3 voluntarily terminated, is specious at best. Neutral Tandem anticipates that Level 3 likely will raise a new argument that pursuant to Section 11.3 of the July 6, 2004 Contract, Level 3 continues to be entitled to payment under the-now terminated contract. Leaving aside that Level 3 cannot credibly make this argument after not asserting this purported interpretation for more than six months after it terminated the contract, Level 3's position clearly misreads the contract. As Neutral Tandem's witnesses will make clear, in Section 11.3, the parties only agreed that their obligation to pay for services performed before the contract was terminated continued after the contract was terminated.

Nor is there any basis on which Level 3 could lawfully demand this interim transport usage fee from Neutral Tandem once Level 3 terminated the July 6, 2004 agreement. Notably, Neutral Tandem's February 2004 contract with Broadwing did not provide that Neutral Tandem would make any payments to Broadwing for terminating traffic, and Neutral Tandem does not make *any* payment to any other carrier for terminating traffic. And despite Level 3's claims to be offering a service, in the parallel proceedings in other states, Level 3 admitted that its connection to Neutral Tandem is not a "service" for which Level 3 is entitled to any compensation:

Moreover, the interconnection arrangement between Level 3 and Neutral Tandem does not constitute a service regulated by the Commission. Level 3 does not tariff an interconnection arrangement for transit providers to interconnect with it.

E.g. Level 3 Petition for Review, at 15-16, filed in ICC Docket No. 07-0277, *Neutral Tandem. v. Level 3* (filed July 2, 2007). To the extent Level 3 provides any service in connection with the

terminating traffic, it provides that service to the originating carrier, thus entitling it to receive reciprocal compensation from the originating carrier.

Notably, numerous other states commissions, after a full evidentiary hearing on the merits, have concluded that it is unlawful for Level 3 to demand that Neutral Tandem pay it a termination charge to maintain the existing connection between the parties, and have required that Level 3 provide interconnection on non-discriminatory terms:

- “[T]he rights and obligations under the properly terminated contracts are irrelevant to whether Neutral Tandem has a right to nondiscriminatory interconnection terms and conditions for delivering tandem transit traffic to Level 3.” (Michigan Order, at 18.)
- “[T]he per-minute surcharge proposed by Level 3 in its letter dated May 8, 2007, also is impermissible. It is little more than a thinly-veiled attempt to impose a reciprocal compensation-like obligation upon NT under a different label.... We also reject Level 3’s notion that such a charge is a market-based rate....” (Illinois Order, at 10.)
- “Level 3’s argument that it is entitled to earn a profit on the interconnection with Neutral Tandem should be rejected.... Level 3 is requesting that it be paid an adder in exchange for complying with its lawful obligation as a certified local exchange company. There is no basis for the position that Level 3 is owed money for complying with its lawful obligations.” (Docket No. 24844-U, *Petition of Neutral Tandem for Interconnection with Level 3 and Request for Emergency Relief*, Ga. Pub. Serv. Comm’n, Order Denying Level 3’s Petition for Rehearing, at 9 (December 27, 2007).)
- “In the current case, it appears that Level 3 has sought to ‘hold out’ in an effort to secure a portion of the revenues that NT receives from routing calls across its connection with Level 3. Whatever the merits of this negotiating practice in other circumstances, the record shows that it is inconsistent with the public convenience.” (Minnesota Order, at 14).

Third, after full evidentiary hearings in other states, Level 3 has failed to establish evidence of any purported costs that it suffers from connecting to Neutral Tandem which Level 3 is not already entitled to recover from the originating carriers. Unlike when Level 3 interconnects with the ILEC for receipt of transit traffic, where the ILEC requires Level 3 to share in the costs of transporting traffic, Neutral Tandem pays 100% of the transport costs of delivering transit traffic on behalf of third party carriers to Level 3’s switch sites for termination,

including the cost to provide “interconnection equipment” or electronics at Level 3’s switch site. The necessary “interconnection equipment” includes a fiber distribution panel, fiber optic terminals, and DSX-3 panels. Neutral Tandem also incurs daily costs to supervise, monitor, and maintain this equipment. Neutral Tandem monitors these facilities 24 hours a day, seven days a week through its national Network Operations Center located at its headquarters in Chicago. (Minnesota ALJ Order, at 22.) A diagram illustrating how Neutral Tandem’s interconnection with Level 3 actually reduces Level 3’s costs is attached as Exhibit D.

The only cost to Level 3 to establish connectivity with Neutral Tandem that it would not otherwise incur if it only connected directly with the ILECs is the cost of a co-axial cable to cross-connect the Neutral Tandem provided DSX-3 panel to the Level 3 DSX-3 panel and the one-time test and turn-up of the trunks. This cross-connect is illustrated in the chart attached as Exhibit D. This cost is *de minimis*. Although Level 3 is responsible for maintaining and installing these switch ports, Level 3 is not required to install any additional switch ports than if the traffic was delivered by ILECs alone. After all, Level 3 receives the same total amount of terminating traffic, regardless of whether the traffic is delivered by the ILECs or Neutral Tandem.

In short, as multiple commissions have found following full evidentiary hearings on the merits, Neutral Tandem already pays 100% of the costs to deliver transit traffic to Level 3, including all costs associated with the facilities used to deliver that traffic:

- “The evidence of record demonstrates that NT pays 100% of the cost of the facilities of the interconnection, leaving no room for Level 3 to argue that there is any unrecovered or additional cost per minute for transited calls terminated on the Level 3 network.” (Illinois Order, at 10).
- “The Commission is not persuaded that direct interconnection has been or will be a significant cost to Level 3[.]” (Michigan Order, at 11.)

- “Level 3’s cost to route calls to, and receive calls from, the twelve other CLECs that had contracted with Neutral Tandem would be less than its cost to accomplish the same tasks via Qwest’s network. This was due in part to the fact that Neutral Tandem bore the full cost of installing and maintaining the fiber-optic cable and related electronics.” (Minnesota Order, at 4.)

Lastly, by granting Level 3’s requested interim relief, the Commission would be authorizing Level 3 to demand a payment that other state commissions, following a full hearing on the merits, have concluded is discriminatory and anti-competitive:

- “Both federal and state law discourage discrimination in the provision of utility service. While Level 3 argues that the terms under which it receives traffic from Qwest cannot be compared to the terms under which it receives traffic from Neutral Tandem, this argument was thoroughly considered and rejected by the ALJ. Carriers may not exploit the quirks of interconnection agreements to evade their duty to act in a nondiscriminatory manner. Consequently, the Commission will direct Level 3 to refrain from imposing tandem-based fees on Neutral Tandem that it does not impose on other tandem service providers.” (Minnesota Order, at 17.)
- “That AT&T is an ILEC and Neutral Tandem is a CLEC does not by itself constitute a reasonable basis for discriminating between the two providers.... Level 3 concedes that the transit service provided by Neutral Tandem is ‘essentially the same’ as the transit service AT&T provides.... If the calls from Neutral Tandem’s carrier customers were transported to Level 3 using AT&T as a transit provider, Level 3 would not receive reciprocal compensation from AT&T and would not be given any better or additional information about the originating carrier.” (Georgia Order, at 9.)
- “Neutral Tandem has a right to request direct interconnection and Level 3 must negotiate for that direct interconnection on terms and conditions that are not unduly discriminatory to Neutral Tandem.” (Michigan Order, at 11.)

Further answering, Neutral Tandem respectfully refers Staff to its Responses to Interrogatory Nos. 9 and 13.

8. Level 3 states that its recommended interim rate is the effective rate owed by Neutral Tandem to Level 3 under the July 6, 2004, contract.

- a. If Level 3's recommended interim rate is imposed on Neutral Tandem during the pendency of this proceeding, should Level 3, in accordance with the July 6, 2004, contract provisions, be required to use Neutral Tandem's transit services and compensate Neutral Tandem for those services? Please explain your answer.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that it is *not* asking the Commission to order Level 3 to originate any traffic through Neutral Tandem or otherwise become a customer of Neutral Tandem. (*See* Neutral Tandem Pet., at 20.) Level 3 continues to have the opportunity to originate traffic to Neutral Tandem either pursuant to the terms of the January 18, 2005 contract between Level 3 and Neutral Tandem, as amended on January 31, 2007, or pursuant to Neutral Tandem's tariff in Florida, as applicable. The fact that Neutral Tandem is not seeking to require Level 3 to originate any traffic through Neutral Tandem or use Neutral Tandem's services underscores why it would be inappropriate to attempt to revive selective portions of the July 6, 2004 contract that Level 3 terminated.

- b. If affirmative, what is the appropriate interim compensation rate that should be imposed on Level 3? Please explain the basis for the interim rate.

Answer: Subject to and without waiving its general objections, Neutral Tandem refers Staff to its response to Interrogatory No. 8(a).

9. If it is determined that the “status quo” be maintained during the pendency of this proceeding, please explain how a letter of credit satisfies the “status quo.”

Answer: Subject to and without waiving its general objections, Neutral Tandem states that the issuance of a letter of credit does not maintain the status quo as it currently exists. As set forth in more detail in Neutral Tandem’s Response to Interrogatory No. 7, in 2007, Level 3 admittedly terminated the July 6, 2004 contract between the parties pursuant to which Level 3 was entitled to receive a promotional credit from Neutral Tandem. It is noteworthy that Level 3 now seems to complain that it does not have the benefit of the agreement *it* unilaterally terminated.

In addition, Level 3 is seeking to impose this termination fee for *all* traffic delivered to Level 3 by Neutral Tandem on behalf of other carriers, even though only *one* of the traffic exchange agreements between the parties contained a promotional, usage transport recovery fee. Again, Neutral Tandem’s February 2004 contract with Broadwing did not provide that Neutral Tandem would make *any payments* to Broadwing for terminating traffic, and Neutral Tandem does not make any payment to any other carrier for terminating traffic.

As Neutral Tandem made clear in its Opposition to Level 3’s Motion for Interim Compensation, Neutral Tandem has made the offer to set forward a letter of credit *solely* to alleviate any concerns that if the Commission ultimately determines that the continued interconnection between the parties must be conditioned on a discriminatory payment from Neutral Tandem, that the payment obligation would be satisfied by Neutral Tandem. As set forth in more detail in its Response to Interrogatory No. 11, although Neutral Tandem is confident that the Commission will determine that it is not appropriate to require Neutral Tandem to make any payments to Level 3, Neutral Tandem believes that this letter of credit would be more than adequate to compensate Level 3 for any payments found to be owed.

10. If the Commission denies Level 3's request for interim compensation, but orders Neutral Tandem to re-route traffic to Level 3 by another means pending the outcome of this proceeding:
- a. Please explain how this would affect Neutral Tandem and its originating carriers both from an economic standpoint as well as a network efficiency standpoint.

Answer: If the Commission orders Neutral Tandem to re-route traffic to Level 3 by another means, the order would irreparably harm Neutral Tandem, its originating carrier customers, consumers throughout Florida, and the reliability and redundancy of the public switched telecommunications network ("PSTN").

Economic Harm to Neutral Tandem and Other Carriers Throughout Florida:

First, as set forth in response to Interrogatory 10(b), an order requiring Neutral Tandem to re-route traffic to Level 3 by another means pending the outcome of the proceeding would essentially require Neutral Tandem's originating carrier customers to re-route their traffic to Level 3 via the tandems of the incumbent LEC. The approximately twelve third party originating carriers would be required to spend significant time and resources to re-direct their traffic away from Neutral Tandem and towards the tandem switches of ILECs. In addition, the carriers would be forced to pay more for call completion, including higher transiting rates, higher port charges and transport costs and other recurring fees. Ultimately, these higher costs will be passed down to the carrier's end-users.

Second, as set forth in more detail in Neutral Tandem's Response to Interrogatory No. 10(d), forcing the re-routing of the more than **65 million** minutes of traffic delivered by Neutral Tandem on behalf of other carriers to Level 3 per month will have negative effects on Neutral Tandem's business. The interim relief would therefore hinder the transformation of the tandem transit services market in Florida from a monopoly to a competitive market, and will result in the loss of the traditional benefits of competition: lower cost, increased service, unique features, and

neutrality. Neutral Tandem's competitive tandem service promotes the continued development of intermodal, facilities-based competition in Florida, by providing an independent tandem transit service to facilitate the efficient exchange of calls between all types of telecommunications providers. Without the presence of competitive transit services, the ILECs can effectively chill local competition since they otherwise have exclusive control over the main pathway through which competitive carriers exchange traffic.

The harm resulting from an interim order requiring Neutral Tandem to re-route traffic to Level 3 has been recognized by every other state commission to address the issue, as follows:

- “For originating CLECs, the ability to choose the more cost effective tandem service, as between Neutral Tandem’s and Verizon’s competing services, creates an opportunity for cost savings and optimum efficiency. The resulting mitigation of the CLECs’ cost of service tends to enhance competition among CLECs, minimize the costs recovered through end users’ rates, and encourage additional investment in facilities-based services, consistently with the similar objectives we have cited in supporting the principles of open network architecture and comparably efficient interconnection.” (Case No. 07-C-0233, *In re Petition of Neutral Tandem for Interconnection with Level 3*, N.Y. Pub. Serv. Comm’n, Order Preventing Service Disruption and Requiring Continuation of Interim Connection, at 10 (June 22, 2007) (hereinafter the “New York Order”).)
- “[T]he ALJ found that severing the connection would result in increased telecommunications costs. These costs would take many forms. Some of the costs would be direct: In the absence of a physical connection between Neutral Tandem and Level 3, Neutral Tandem’s other clients would need to route calls to Level 3 via Qwest’s tandem which costs more.... [R]etaining the connection [also] would be consistent with the goal of ‘promoting customer choice’ by offering CLECs... greater choices in how to route calls to Level 3.... For the foregoing reasons, the Commission finds that the public convenience -- and sound public policy -- requires that Neutral Tandem retain the public connection between their systems.” (Minnesota Order, at 12, 15.)
- “.... For the public policy goals cited to in Neutral Tandem’s brief and as discussed herein, requiring Level 3 to interconnect directly with Neutral Tandem is necessary to further competition.... First, the transit service offered by Neutral Tandem offers a competitive option to the incumbent local exchange company (‘ILEC’) for other carriers. Second, Neutral Tandem’s service improves the reliability of the system by providing redundancy. Third, the investment that Neutral Tandem has made in Georgia enhances economic development throughout the state.” (Georgia Order, at 5.)

- “Level 3 would impose upon NT, its 18 other CLEC customers, and all of their subscribers a discontinuation of service, as well as the *per se* impediments to competition complained of pursuant [to Illinois law]. These impacts, along with the scheme of disparate treatment that would cause them, are contrary to the public interest.” (Illinois Order, 10.)
- “Adopting Level 3’s position could simultaneously create extra costs for Neutral Tandem’s CLEC customers and have a severe negative effect on the transit provider’s business. The only manner in which competitive tandem transit service will have a market is if the requesting providers have the right to request direct interconnection on a reasonable, non-discriminatory basis.” (Michigan Order, at 13.)

Lastly, Dr. Saboo, Neutral Tandem’s Chief Operating Officer, with more than twenty years of experience in the industry, including engineering networks and routing traffic for several companies, including AT&T and Comcast, will testify in this proceeding that call blocking could result during the resulting re-direction of traffic. In Dr. Saboo’s significant experience, the third party carriers using Neutral Tandem’s service would have to augment their interconnection trunks (and incur new, additional expenses) with the ILEC in order to seek to terminate this traffic indirectly to Level 3. Their existing connections to the ILEC may not have sufficient capacity to carry all of the blocked traffic. This capacity shortage could result in the blockage of traffic destined for termination to Level 3 end-users.

In other words, some calls to Level 3 end-users from third party carriers may be blocked and receive a fast busy signal due to lack of trunk capacity. This could potentially result in call blocking for end-users of incumbent LECs attempting to reach Level 3 end-users through the tandems of incumbent LECs. Indeed, the Minnesota Commission determined that “some of the cost” of disconnecting the direct connection between Level 3 and Neutral Tandem “would take the form of the risk of blocked calls....” (Minnesota Order, at 12.)

Even if third party carriers were able to augment their trunk capacity, Level 3 may not have sufficient capacity to the ILEC tandem to receive the traffic by that route. Tandem

exhaustion is a recurring problem in several states. ILECs may not have the necessary excess capacity available to absorb the more than 65 million minutes of additional traffic destined for Level 3 each month.

This is not a hypothetical concern. For example, in the second quarter of 2006, Level 3 ran out of capacity to the ILEC tandem in the Chicago Market. Level 3 was unable to handle traffic from AT&T after SBC bought AT&T and moved AT&T's traffic to the SBC (Ameritech) tandem. As a result, traffic to Level 3 effectively was blocked. Neutral Tandem worked with AT&T and Level 3 to move the traffic back to Neutral Tandem's switches until Level 3 had the time to augment their trunks with SBC. It took Level 3 approximately four months to augment its trunks to finally be able to receive the AT&T traffic from SBC.

Harm to Network Efficiency:

Moreover, even a temporary re-routing of more than 65 monthly million minutes of traffic to Level 3 disregards the carriers' choice to use an alternate to the ILEC tandem for delivering their transited traffic, thus destroying any redundancy and efficiency the carriers sought to establish for the termination of their traffic to Level 3. Level 3's disconnection from Neutral Tandem would reduce third party carriers' network diversity and reduce the redundancy of the PSTN. Competitive tandem switching inherently builds redundancy into the telecommunications transport and switching infrastructure, which, in turn, provides diversity, efficiency, and increased reliability to the PSTN.

Moreover, Neutral Tandem does not collocate with the ILEC, choosing to rely instead on approximately 10 different transport providers in Florida, in order to promote increased redundancy and reliability to its customers. As Neutral Tandem's tandem is completely separate and diverse from the tandems of the incumbent LECs, Neutral Tandem provides greater

survivability and resiliency between carriers, by utilizing multiple competitive access provider facilities for physically diverse transmission and creating alternative routes for carriers to exchange local calls.

For these reasons, the New York Public Service Commission has found that Neutral Tandem's services provide redundancy and diversity in New York:

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

(New York Order, at 10-11 (emphasis added); *See also* Minnesota Order, at 15 (“Moreover, it is undisputed that severing the physical connection would reduce system redundancy. Level 3 offers caveats regarding the magnitude of the benefits provided by the redundancy, but Level 3 never denies that the connection provides an alternate path for routing calls, or that this alternate path provides system benefits.”).)

b. Please explain how Neutral Tandem would re-route the traffic in the interim.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that if the Commission orders Neutral Tandem, on an interim basis, to cease routing traffic to Level 3 in Florida, Neutral Tandem's carrier customers would be required to re-route their traffic through the tandems of the incumbent LEC in order to place calls to the end-users of Level 3.

Although it is true that Neutral Tandem generally maintains direct connections with the ILEC tandem, it does so primarily to accommodate overflow traffic. Thus, in a situation where

the existing Neutral Tandem connections to terminating carriers like Level 3 are temporarily insufficient or otherwise disabled, Neutral Tandem can use alternate routing. The connection with the incumbent thus exists solely for emergency situations. This is just one of the ways that Neutral Tandem attempts to maintain the integrity of the PSTN and the service it provides to its customers. As a general rule, however, the connection is not sized to handle the massive amounts of day-to-day traffic that Neutral Tandem terminates to Level 3 on behalf of third party carriers.

Moreover, it simply makes no sense to route traffic from a terminating carrier to a transit carrier to another transit carrier and then to a terminating carrier.

This is true that such “double indirect interconnection” is technically possible. It is possible to exchange traffic in this manner, just as it is possible to drive from Chicago to Springfield by way of Toronto. The point is that both courses of action are self-evidently less efficient in terms of cost, time, and reliability. Moreover, no one who is simultaneously (a) concerned about cost, reliability and time; and (b) in his right mind, will actually do either.

(Ex. E, Reply Brief of the Staff of the Illinois Commerce Commission, at 4-5, filed in ICC Docket No. 07-0277, *Neutral Tandem, Inc. v. Level 3* (June 8, 2007) (emphasis in original). Indeed, as Level 3’s own paid consultant testified in Minnesota, “***Level 3 made that proposal [to accept double-indirect traffic from other carriers] only as a possible short-term fix until the third party carriers had rerouted the traffic.*** The proposal is technically feasible **but not a good long-term solution.**” (Ex. F, Excerpts of Timothy Gates Pre-Filed Reply Testimony, at 26-27, filed in Minn. Pub. Utils. Comm’n Docket Nos. P5733/C-07-296 and P5733, 6403/M-07-354, *In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem* (emphases added).)

- c Please indicate how long Neutral Tandem would need to accomplish the re-routing.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that the third party carriers might need six months just to coordinate a complete move of all the traffic currently routed to Level 3 on behalf of other carriers. Should disconnection occur, third party originating carriers utilizing Neutral Tandem's network will be required to reprogram all of their switches and rearrange their trunk capacity to re-route the traffic to incumbent LEC's switches. Moreover, for the volume of traffic and number of carriers involved in Florida, any augment to the ILEC tandems would involve a far more complex and time-consuming process than would otherwise be required to address the needs of a single carrier. The work could take up to six months and will cost the third party carriers significant time and resources.

- d. What true-up mechanism should be in place to ensure that Neutral Tandem is made whole if the outcome of the proceeding favors Neutral Tandem?

Answer: Subject to and without waiving its general objections, Neutral Tandem states if it is ordered to re-route traffic to Level 3 by another means, no true-up mechanism could ensure that Neutral Tandem is made whole. Nor is there any true-up mechanism that could rectify the harm to other non-party carriers and their Florida customers resulting from the forced re-routing of their traffic. For this reason, an interim ruling by the Commission on this ground likely would force Neutral Tandem to seek immediate review of the decision in Florida courts.

In addition, disruption of the connections already established between Level 3 and Neutral Tandem will undoubtedly lead the carriers using its services to question Neutral Tandem's viability in the market. Customers using Neutral Tandem's transit services who have their service disrupted, including the need to re-arrange facilities because of the loss of terminations to Level 3, will certainly blame Neutral Tandem, not Level 3, for the inconvenience

and expense they suffer from having their traffic destined for Level 3 disrupted. These third party carriers and other customers will perceive Neutral Tandem as unreliable and will undoubtedly share these opinions with other carriers and acquaintances in the telecommunications industry. This will impair Neutral Tandem's ability to attract new customers and retain its existing ones -- even those who were not disrupted.

To be sure, in several states, Neutral Tandem reluctantly made the business decision that to fight Level 3 on fifteen fronts at once simply was not economically sustainable, given that Neutral Tandem is a small company relative to the resources of Level 3, a multi-billion dollar enterprise that touts itself as one of the leading telecommunications companies in the world. Neutral Tandem was forced to permanently re-direct the small amount of traffic being delivered to Level 3 in eight states and move to dismiss Level 3's petitions as moot. However, this scenario is not comparable to an order by the Commission forcing Neutral Tandem's carrier customers to spend the finances and resources to re-route more than 65 million minutes of traffic each month on an *interim basis*, pending a resolution of the proceeding on the merits.

11. Please explain how a letter of credit is assurance that any payment obligation the Commission may ultimately decide will be satisfied.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that a letter of credit provides more than adequate assurance that any payment obligation will be met.

The letter of credit provides a guarantee that Neutral Tandem has set aside more than adequate funds to cover any Order by the Commission that the continued interconnection between the parties is subject to a condition that Neutral Tandem must pay Level 3 reciprocal compensation, or another discriminatory payment, if appropriate. Neutral Tandem is a strong, financially viable public company with substantial cash holdings and other assets. Neutral Tandem has made clear to Level 3 that it will satisfy the aforementioned payment obligation, if ordered to do so by the Commission, as a term and condition of the continued interconnection between the parties.

12. Please explain how a letter of credit provides Level 3 with adequate security in Florida during the period pending the outcome of this proceeding.

Answer: Subject to and without waiving its general objections, Neutral Tandem respectfully refers Staff to its response to Interrogatory No. 11.

13. On page 11 of Neutral Tandem's Response in Opposition to Level 3's Motion for Interim Compensation, Neutral Tandem states that Level 3 has not shown why or how it needs any interim compensation prior to the conclusion of this proceeding. Please explain what Neutral Tandem means that Level 3 has not shown "why or how it needs" any interim compensation.

Answer: Subject to and without waiving its general objections, Neutral Tandem states that because Level 3 is the party seeking relief from the Commission, before the Commission orders this relief, at minimum, Level 3 must a) explain why the interim relief is necessary to prevent harm to Level 3 or to the public; or b) offer some authority that supports its claim to be entitled to the interim relief. Level 3's Motion for Interim Compensation, however, does not provide any such explanation, nor could it.

At the outset, Level 3 cannot show *why* it somehow needs the interim compensation in order to continue operating its business. As a multi-billion dollar company, Level 3 cannot contend that the denial of its request for payments on an interim basis would harm its interests -- particularly when it would not receive any money from the incumbent LEC if the same traffic was routed to Level 3 by the incumbent on behalf of other carriers. Even assuming that the Commission ultimately determines that Level 3 is entitled to some discriminatory compensation to maintain the current interconnection with Neutral Tandem, in addition to the costs that Neutral Tandem already incurs to maintain the connection, Level 3 cannot provide any justification for why it would be harmed if it is required to wait until the proceeding is resolved to receive these payments. If the Commission eventually concludes that Neutral Tandem must, as a term and condition of its continued interconnection with Level 3, pay Level 3 reciprocal compensation or any other discriminatory termination fee, Neutral Tandem has made clear that it will comply with this Order and pay Level 3 any owed compensation.

More importantly, Level 3 failed to demonstrate *how* it has any lawful basis to demand that Neutral Tandem, a transiting carrier, pay Level 3 for Level 3's compliance with its

obligation to accept traffic delivered by Neutral Tandem on behalf of other carriers on nondiscriminatory terms and conditions. To the contrary, as set forth in more detail in Neutral Tandem's Responses to Interrogatory Nos. 6, 7 and 9, Level 3 has no lawful grounds to recover these payments.

Indeed, in Illinois, Level 3 has continued to invoice Neutral Tandem for terminating traffic -- even though the Illinois Commission had already ruled in a final decision that "[L3] shall [neither] require NT to pay or collect reciprocal compensation for traffic not originated by NT.. [nor] require NT to pay any fee or other compensation, either on a per-minute basis or otherwise, for traffic delivered to Level 3 for termination on the [L3] network." (Illinois Order, at 12.) The Staff of the Illinois Commission very recently noted that this conduct "constitutes another departure from good faith by Level 3" and that "[i]t appears... that NT has alleged, and supported, facts which, if ultimately proven, would constitute a willful and material violation of the Order by L3." (Ex. A, Staff of the Illinois Commerce Commission's Response to Level 3's Request for Reopening, at 8-10, filed in ICC Docket No. 07-0277, *Neutral Tandem, Inc. v. Level 3* (March 3, 2008).)

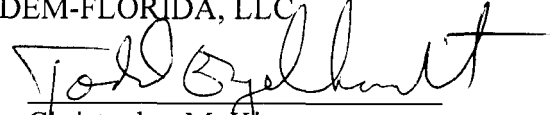
14. Neutral Tandem states in its Response in Opposition to Level 3's Motion for Interim Compensation that it is willing to submit a \$50,000 letter of credit to alleviate any concerns regarding its satisfying payment obligations if the Commission finds in Level 3's favor. What is the maximum letter of credit amount that Neutral Tandem is willing to submit to alleviate concerns regarding its ability to satisfy payment obligations upon final Commission action?

Answer: Subject to and without waiving its general objections, Neutral Tandem states that it would be willing to provide a letter of credit to Level 3 of up to \$100,000.00, solely to alleviate any concerns regarding its ability to satisfy payment obligations upon final Commission action. Indeed, this letter is more than ten times of the amount of credit posted by Neutral Tandem in Michigan, as a condition of the commission requiring Level 3 to maintain its connection with Neutral Tandem pending resolution of the dispute in that state, *without objection from Level 3*. (Ex. G, Case No. U-15230, *In the matter of the complaint and request for emergency relief of Neutral Tandem against Level 3*, Mich. Pub. Serv. Comm'n, Order Granting Rehearing on Request for Emergency Relief, at 3 (issued May 22, 2007).)

Respectfully submitted,

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