

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

Dated: April 9, 2008

REDACTED

**LEVEL 3 COMMUNICATIONS, LLC'S
RESPONSES TO STAFF'S
FIRST SET OF INTERROGATORIES (NOS. 1-13)**

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1. Describe how Level 3's recommended confidential interim rate was developed from the July 6, 2004, Traffic Exchange Agreement between Level 3 and Neutral Tandem.

Response: Under the Traffic Exchange Agreement dated July 6, 2004 (the "July 2004 Agreement") Neutral Tandem agreed to pay Level 3 an Interim Transport Charge. The charge was determined through a formula that included Level 3 billing Neutral Tandem a per minute rate of [REDACTED]. Neutral Tandem then reduced the charge by certain transport costs they incurred to transport calls to Level 3. According to the last month in which Neutral Tandem properly paid Level 3, the rate of [REDACTED] (which is the rate requested by Level 3 as Interim Compensation) reflects the effective rate paid by Neutral Tandem to Level 3 under the formula [REDACTED] per minute of use, minus transport costs claimed by Neutral Tandem.) The compensation provisions of the July 2004 Agreement remain in effect and Neutral Tandem remains legally obligated to continue payment under Sec. 11.3 of the Agreement which expressly survives the termination of the Agreement.

2. 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 interim compensation prior to the conclusion of this proceeding. Please explain specifically why or how Level 3 needs interim compensation prior to the conclusion of this proceeding.

Response: Under the terms of the July 2004 Agreement, the Parties agreed in Section 11.3 that "[i]n the case of the expiration or termination of this Agreement for any reason, each of the Parties shall be entitled to payment for all services performed and expenses accrued or incurred after such expiration or termination." Since Neutral Tandem continues to terminate traffic to Level 3, it is obligated to compensate Level 3 for those services.

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3. Please explain why Level 3 believes the effective date for an interim compensation rate, if any, should be March 24, 2007.

Response: The July 2004 Agreement and the Broadwing Agreement were terminated on March 23, 2007 and although Level 3 is (during the pendency of this proceeding) continuing to provide the same services it did to Neutral Tandem under the prior agreement, Neutral Tandem has refused to compensate Level 3 for any services provided after March 23, 2007 despite its contractual obligations. The Parties' prior negotiated agreement and tenets of basic fairness, justice and unjust enrichment all mandate Neutral Tandem to compensate Level 3 if Neutral Tandem chooses to continue its use of Level 3 services.

4. Neutral Tandem has stated that it is prepared to post a \$50,000 letter of credit or similar guarantee to address the interim period prior to a Commission final decision.

- a. Is such a letter of credit sufficient to provide adequate security to Level 3 during the pendency of this proceeding?

Response: No.

- b. If a letter of credit is not sufficient to address the interim period prior to a Commission final decision, please explain specifically why not.

Response: A letter of credit is not sufficient because Section 11.3 of the July 2004 Agreement requires "[i]n the case of the expiration or termination of this Agreement for any reason, each of the Parties shall be entitled to payment for all services performed and expenses accrued or incurred after such expiration or termination." Neutral Tandem is contractually obligated to make payments to Level 3 and a letter of credit would effectively rewrite that contract provision and allow Neutral Tandem to continue to get free service from Level 3. As the Commissioners recognized in oral argument, it is not fair to require Level 3 to provide service for free.¹ If Neutral Tandem is unwilling to live by its contractual obligations or fairly pay for services consumed, it should cease using Level 3's services for free (services that Neutral Tandem continues to resell for profit).

- c. If a letter of credit in a larger amount would be sufficient to address the interim period, please indicate that amount and explain in detail why a larger amount would be appropriate.

Response: No. Neutral Tandem's strategy of abusing the regulatory complaint process in order to receive a free ride should not continue.

5. Explain the compensation arrangements between Level 3 and Neutral Tandem under the July 6, 2004, contract,

¹ See Transcript from January 8, 2008 Agenda Conference in Docket No. 070408-TP, at pp. 82-84.

- a. for traffic transited by Neutral Tandem and terminated on Level 3's network?

Response: Under the July 2004 Agreement, Neutral Tandem agreed to pay to Level 3 a per minute Usage Sensitive Transport Recovery Charge for all third-party traffic sent to Level 3 for termination. These rates provided for a per minute rate of [REDACTED], less the cost of certain facilities on Neutral Tandem's side of the Point of Interconnection and are further detailed in Confidential Exhibit 1. The total payment Neutral Tandem was liable for was then capped at a percentage of revenue that Neutral Tandem received from its customers. The rate that Neutral Tandem agreed to pay Level 3 for interconnection service was not a "promotional rate," but acknowledged that Level 3 should be compensated if the amount of traffic exchanged between the parties was imbalanced (with much more traffic flowing from Neutral Tandem to Level 3). If the traffic eventually came into balance, the agreement accounted for that by lowering (and potentially eliminating) the rate paid by Neutral Tandem to Level 3. However, since that balance never materialized (in fact the traffic is now purely unidirectional traffic to the sole benefit of Neutral Tandem), Neutral Tandem should still, under the July 2004 Agreement, be paying Level 3 at the Tier 1 [REDACTED] rate structure. The plain language of the Agreement shows that this compensation arrangement was not limited in time but was only limited by the traffic ratio which was never reached. The plain language of Section 11.3 of the July 2004 Agreement also clearly obligates Neutral Tandem to continue paying for the traffic it is sending to Level 3 in Florida.

- b. for traffic originated by Level 3 and transited by Neutral Tandem?

Response: The July 2004 Agreement was superseded by an August 18, 2005 Master Service Agreement ("August 2005 Agreement") for the purpose of setting the terms, rates and conditions for traffic which Level 3 originated and chose to send to Neutral Tandem for transit to the terminating third-party. Under the August 2005 Agreement, Level 3 was to pay between [REDACTED] and [REDACTED] for transit traffic in various cities in Florida. The August 2005 Agreement has been properly terminated between the parties and Level 3 no longer sends any traffic to Neutral Tandem in Florida for transiting to a third-party carrier.

6. Does Level 3 receive compensation from any other transit provider for which it terminates traffic originating by a third-party? If yes, please indicate those transit providers Level 3 receives compensation from terminating traffic originated by a third-party.

Response: The request by Neutral Tandem for free one-way interconnection service from Level 3 is unique and Level 3 does not connect with any other company that sends traffic to Level 3 without any compensation or other quid-pro-quo. For example, although Level 3 forgoes compensation from the ILEC for transit traffic, it is willing to do so because that traffic is a relatively minimal part of the traffic

flowing between the parties and because Level 3 receives many counterbalancing benefits under that agreement.

It is very important to recognize that the relationship that Level 3 has with the ILEC and the relationship that Neutral Tandem proposes to force upon Level 3 are very different. Level 3's agreement with the ILEC covers a broad, multifaceted relationship that governs a wide variety of business and regulatory matters between the interconnecting parties, including, but not limited to, terms relating to exchange of traffic, performance intervals, unbundled network elements, 911 trunking, collocation, reciprocal compensation, establishment of interconnection points, etc. Terms relating to the manner in which Level 3 handles transit traffic to its telephone numbers is a very small component of the broad relationship between Level 3 and the ILEC. Moreover, the interconnection between Level 3 and the ILEC carries a variety of traffic types flowing between Level 3 and the ILEC in both directions and the ILEC compensates Level 3 for much of the traffic it sends to Level 3. Conversely, Neutral Tandem simply wants Level 3 to connect and accept transit traffic with no compensation or other quid-pro-quo. Level 3 receives absolutely no benefit from connecting with Neutral Tandem. It would be irresponsible for Level 3 – or any other company – to enter into an agreement where it was obligated to provide a valuable service to another company without receiving any compensation of any sort. This principle is recognized on an on-going basis in the July 2004 Agreement negotiated by the parties.

7a. Does Level 3 receive adequate call detail information from Neutral Tandem, including the originating telephone number, for it to bill originating carriers for call termination?

Response: Neutral Tandem's argument that Level 3 should seek compensation from Neutral Tandem's originating carrier customers is an irrelevant red herring and should be dismissed by the Commission. Neutral Tandem has a valid contractual obligation to pay Level 3 the Usage Sensitive Transport Recovery Charge detailed in the July 2004 Agreement. Level 3 is not seeking to recover "reciprocal compensation" from Neutral Tandem. Even if it were feasible for Level 3 to recover reciprocal compensation from the originating carriers, reciprocal compensation is only designed to cover the cost of transport and termination. Level 3 incurs additional expense and resource expenditure to maintain and support a separate interconnection network with Neutral Tandem. The way Neutral Tandem makes money is by obtaining interconnection service from companies like Level 3 and then reselling that capability to originating carriers at a substantial mark-up. The value of Level 3's service to Neutral Tandem exceeds the costs incurred by Level 3 to provide that service—just as the value and price of the service provided by Neutral Tandem to its customers exceeds the costs incurred by Neutral Tandem. Neutral Tandem's transit service is more marketable and valuable if Neutral Tandem's third party carrier customers can also originate calls to Level 3 numbers. It is neither fair, reasonable nor in the public interest to force Level 3 to subsidize the profits of Neutral Tandem. Open, competitive markets should not prohibit Level

3 from recovering the value of the service it provides to Neutral Tandem through appropriate prices just as Neutral Tandem does with its customers.

- b. If the response to (a) is no, please list the specific information not provided by Neutral Tandem that Level 3 needs to bill originating carriers for call termination.
- c. If the response to (a) is yes, does Level 3 bill originating carriers for call termination? If no, please explain why not.

Response: Neutral Tandem's argument that Level 3 should seek compensation from Neutral Tandem's originating carrier customers is irrelevant to the question of whether Neutral Tandem should compensate Level 3 for building and maintaining an interconnection network for the sole purpose of accepting one-way traffic for the financial gain of Neutral Tandem. As discussed above, Neutral Tandem is contractually obligated to pay Level 3 pursuant to the terms of Section 11.3 of the July 2004 Agreement between the parties as well as according to the tenets of fairness, justice and unjust enrichment.

- 8. Level 3's alternative to imposing its recommended interim rate is for Neutral Tandem to re-route traffic during the pendency of this proceeding. Please explain the possible end-user impact of re-routing traffic for Neutral Tandem's originating carriers.

Response: Last year, Neutral Tandem decided to unilaterally terminate its interconnection with Level 3 in Indiana, New Jersey, Massachusetts, Ohio, Wisconsin and Maryland because traffic volumes in those states and revenues there from did not justify continued litigation with Level 3. To effectuate this rerouting, Neutral Tandem simply advised its customers that it would no longer be routing transit traffic to NPA-NXXs belonging to Level 3 and the originating carriers responded by rerouting that traffic to Level 3 via another transit provider. By Neutral Tandem's own account, this rerouting was accomplished in approximately one month and without any call failures. The only real reason Neutral Tandem does not want to have its Florida customers reroute Level 3 traffic is because of the high revenues it receives for routing that traffic to Level 3 in Florida.

- 9. Has Level 3 billed Neutral Tandem a rate of \$0.001 per MOU for terminating transit traffic since June 25, 2007?

Response: Level 3 initially issued some bills to Neutral Tandem at \$.001, but later re-billed those periods at the [REDACTED] rate that Neutral Tandem agreed to in the July 2004 Agreement. Hence, Level 3 has billed Neutral Tandem at a rate of [REDACTED] since March 24, 2007 pursuant to the July 2004 Agreement. Although Neutral Tandem continues to accept the services provided under the July 2004 Agreement, and the July 2004 Agreement still requires Neutral Tandem to pay Level 3 for those services, Neutral Tandem has failed to pay for any services provided after March 23, 2007.

10. Given that Level 3's recommended interim rate is based on the underlying provisions of the July 6, 2004, contract, should consideration also be given to the contract's provisions regarding Level 3 originating traffic using Neutral Tandem's transit services? If no, please explain why not.

Response: No. The July 2004 Agreement was superseded by an August 18, 2005 Master Service Agreement ("August 2005 Agreement") for the purpose of setting the terms, rates and conditions for traffic which Level 3 originated and chose to send to Neutral Tandem for transit to the terminating third-party. The August 2005 Agreement has been properly terminated between the parties and Level 3 no longer sends any traffic to Neutral Tandem in Florida for transiting to a third-party carrier. Hence, such provisions would have no effect on the compensation Neutral Tandem owes under the July 2004 Agreement.

11. Should Level 3 be required to use Neutral Tandem's transit services and compensate Neutral Tandem for those services during the interim period so the full effect of the July 6, 2004, agreement is in place pending final resolution by the Commission? If no, please explain why not.

Response: No. A carrier should not be required to purchase services from another carrier unless the parties can reach an economically viable arrangement. However, unlike Neutral Tandem, Level 3 doesn't expect to get a free ride. If Level 3 chooses to utilize the transit services of Neutral Tandem, Level 3 would be willing to compensate Neutral Tandem for the use of those services.

12. If an interim rate is imposed on Neutral Tandem and Level 3 is required to use Neutral Tandem's transit services and compensate Neutral Tandem for those services pending final resolution by the Commission, what is the appropriate compensation rate that should be imposed on Level 3? Please explain the basis for the interim rate.

Response: None. The Commission cannot force Level 3 to buy Neutral Tandem's originating services and Neutral Tandem has not asked the Commission to compel Level 3 to purchase Neutral Tandem's services. If the Commission were to set a rate, it must be reciprocal in order to ensure one party does not game this interconnection arrangement.

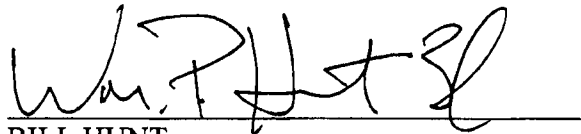
13. For traffic bound for Broadwing, would an interim compensation rate result in Broadwing being compensated by Neutral Tandem as well as being compensated by originating carriers? Please explain your answer.

Response: No. As discussed in Level 3's responses to Staff Interrogatories 6a-6b (above), the compensation for interconnection service that Level 3 seeks from Neutral Tandem is not related to any compensation it would receive from an originating carrier. Regardless, although Broadwing had (prior to its acquisition by Level 3) negotiated some agreements for compensation from originating carriers, Broadwing is no longer receiving the majority of such compensation.

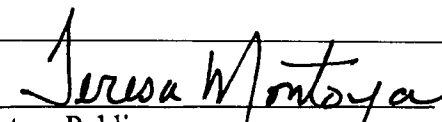
STATE OF COLORADO

COUNTY OF BROOMFIELD

BEFORE ME, the undersigned authority, personally appeared BILL HUNT, as Vice President-Regulatory and Public Policy, of Level 3 Communications, LLC, who is personally known to me and who did take an oath, did depose and say that he did prepare the foregoing Responses to Commission Staff's First Set of Interrogatories (Nos. 1-13), and that the same are true, accurate and correct to the best of his knowledge, information and belief.


BILL HUNT

SWORN TO AND SUBSCRIBED before me this 9th day of April, 2008.


Notary Public
Teresa Montoya
Typed, Printed or Stamped Name
My Commission Expires: 10-11-2010