

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
RICHARD M. ELLIS  
KENNETH A. HOFFMAN  
JOHN M. LOCKWOOD  
MARTIN P. McDONNELL  
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
MARSHA E. RULE  
GARY R. RUTLEDGE  
MAGGIE M. SCHULTZ  
GOVERNMENTAL CONSULTANTS  
JONATHAN M. COSTELLO  
MARGARET A. MENDUNI

April 11, 2008

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

**HAND DELIVERY**  
RECEIVED-FPSC  
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COMMISSION CLERK

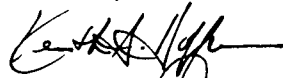
Re: Docket No. 070408-TP

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 Level 3's Notice of Filing Additional Supplemental Authority.

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** \_\_\_\_\_
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- SEC** \_\_\_\_\_
- OTH** \_\_\_\_\_

KAH/rl  
Enclosures  
cc: All Parties of Record  
level3\neutraltandem\coleapril 1108ltr

DOCUMENT NUMBER-DATE

02835 APR 11 08

FPSC-COMMISSION CLERK

**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

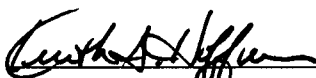
Filed: April 11, 2008

**LEVEL 3 COMMUNICATIONS, LLC'S NOTICE OF  
FILING ADDITIONAL SUPPLEMENTAL AUTHORITY**

Level 3 Communications, LLC ("Level 3"), by and through its undersigned counsel, hereby files the following as Supplemental Authority:

A copy of the Final Decision issued by the State of Connecticut, Department of Public Utility Control, on April 9, 2008, in Docket No. 07-02-29, Petition of Neutral Tandem, Inc. for an Interconnection Agreement with Level 3 Communications and Request for Interim Order, where the Connecticut Department of Public Utility Control granted Level 3's Motion to Strike Neutral Tandem's Complaint and, absent the negotiation of a commercial agreement between the parties, ordered Neutral Tandem to cease offering transit traffic service to its customers terminated on Level 3's facilities in Connecticut, allowing Neutral Tandem up to and until July 1, 2008 to make alternative service arrangements. This Final Decision is filed in support of Level 3's request for relief in this proceeding.

Respectfully submitted,



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Kenneth A. Hoffman, Esq.

Ken@reuphlaw.com

Martin P. McDonnell, Esq.

Marty@reuphlaw.com

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, Florida 32302

DOCUMENT NUMBER-DATE

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(850) 681-6788 (Telephone)  
(850) 681-6515 (Telecopier)

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Gregg Strumberger, Esq.  
Gregg.Strumberger@level3.com  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021-8869  
720-888-1780 (Telephone)  
720-888-5134 (Telecopier)

Attorneys for Level 3 Communications, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by Hand Delivery(\*) and Electronic Mail on April 11, 2008 to the following:

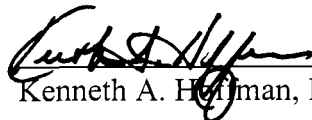
Beth Keating, Esq.  
Akerman Senterfitt  
106 East College Avenue  
Suite 1200  
Tallahassee, Florida 32302  
[beth.keating@akerman.com](mailto:beth.keating@akerman.com)

H. F. (Rick) Mann, Esq.(\*)  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[rmann@psc.state.fl.us](mailto:rmann@psc.state.fl.us)

Ronald Gavillet  
Executive Vice President and General Counsel  
Neutral Tandem, Inc.  
One South Wacker Drive, Suite 200  
Chicago, IL 60606  
[rongavillet@neutraltandem.com](mailto:rongavillet@neutraltandem.com)

John R. Harrington, Esq.  
Jenner & Block  
One IBM Plaza  
Chicago, IL 60611-7603  
[jharrington@jenner.com](mailto:jharrington@jenner.com)

Christopher M. Kise, Esq.  
Foley & Lardner, LLP  
106 East College Avenue  
Suite 900  
Tallahassee, FL 32301  
[ckise@foley.com](mailto:ckise@foley.com)

  
\_\_\_\_\_  
Kenneth A. Hoffman, Esq.



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL  
TEN FRANKLIN SQUARE  
NEW BRITAIN, CT 06051

DOCKET NO. 07-02-29 PETITION OF NEUTRAL TANDEM, INC. FOR AN  
INTERCONNECTION AGREEMENT WITH LEVEL 3  
COMMUNICATIONS AND REQUEST FOR INTERIM  
ORDER

April 9, 2008

By the following Commissioners:

Anthony J. Palermino  
Anne C. George  
John W. Betkoski, III

**DECISION**

DOCUMENT NUMBER-DATE

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EPSC-COMMISSION CLERK

## DECISION

### I. INTRODUCTION

#### A. BACKGROUND OF THE PROCEEDING

By petition received on February 28, 2007 (Petition), Neutral Tandem, Inc. (Neutral Tandem) requested the approval of the Department of Public Utility Control (Department) of an interconnection agreement and also requested that an interim Decision pursuant to §§16-247a, 16-247b and 16-247f of the General Statutes of Connecticut (Conn. Gen. Stat.) be issued. Specifically, Neutral Tandem requested that the Department establish interconnection terms and conditions for the continued delivery of tandem transit traffic from Neutral Tandem to Level 3 Communications LLC (Level 3) and issue an interim Decision directing Level 3 not to block traffic carried under existing interconnections while the Petition was pending.

#### B. CONDUCT OF THE PROCEEDING

In order to facilitate its investigation, the Department, on March 29, 2007, sought written comments from interested persons addressing the Petition, including but not limited to, the applicability of federal and Connecticut law relative to interconnection and commercial agreements as they apply to Neutral Tandem and Level 3 and the Department's authority in approving those agreements; the alternative administrative vehicles (e.g., tariffs) for interconnection and/or commercial agreements that the Department might employ to provide the terms and conditions for interconnection between Neutral Tandem and Level 3; the compensation arrangements for originating and terminating traffic over the Neutral Tandem and Level 3 networks in Connecticut; and the status of similar Neutral Tandem petitions filed in other states.

On March 30, 2007, Level 3 submitted a Motion to Strike Petition of Neutral Tandem (Motion to Strike). On April 24, 2007, the Department ruled that the public interest was best served by holding the Motion to Strike in abeyance until the final Decision in this proceeding, thus preserving all legal issues raised by Level 3 in its Motion to Strike, and allowing the docket to continue in parallel with proceedings in other states.

By Notice of Hearing dated April 25, 2007, a public hearing on this matter was convened at the Department's offices, Ten Franklin Square, New Britain Connecticut 06051 on May 7, 2007, at which time it was closed.

The Department issued its Decision in this matter on June 20, 2007. In that Decision, the Department determined that since Level 3 did not provide noncompetitive or emerging competitive services, Conn. Gen. Stat. §16-247b(b) did not apply. The Department also found that Conn. Gen. Stat. §16-247f did not apply because it merely provided for the classification of and tariffing requirements for telecommunications services, nor did it provide the regulatory or interconnection relief sought by Neutral Tandem.

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FPSC-COMMISSION CLERK

Additionally, while the Department recognized its role in this matter was minimal, it nonetheless encouraged the parties to negotiate a commercial agreement to resolve this issue. Consequently, the Department deferred ruling on the Petition, pending the continued negotiations between the parties. The parties were permitted until November 1, 2007, to conduct their negotiations and report the outcome of those negotiations to the Department.

By correspondence filed on November 6, 2007, as amended on November 12, 2007, Level 3 submitted its report on the parties' negotiations. By correspondence dated November 15, 2007 and December 5, 2007, Neutral Tandem provided its response to the Level 3 filings. In that correspondence, the parties in part, informed the Department that they were unable to satisfactorily negotiate a commercial agreement which would permit the continued delivery of tandem transit traffic.

The Department issued a draft Decision in this matter on January 18, 2008. All parties were afforded the opportunity to submit written exceptions and present oral argument concerning the draft Decision.

### **C. PARTIES**

The Department recognized Neutral Tandem-New York, 1 South Wacker Drive, Suite 200, Chicago, Illinois 60606; Level 3 Communications, LLC, 1025 Eldorado Boulevard, Broomfield Colorado 80021; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051 as parties to this proceeding.

## **II. DEPARTMENT ANALYSIS**

Neutral Tandem has requested that the Department (1) establish interconnection terms and conditions for the continued delivery of tandem transit traffic to Level 3 Communications,<sup>1</sup> and (2) issue an interim order directing Level 3 not to block traffic terminating from Neutral Tandem over the parties' existing interconnections while the Petition is pending.<sup>2</sup>

Level 3 disagreed arguing that Neutral Tandem sought to alter the existing interconnection methodology between non-dominant competitive local exchange carriers (CLEC). Specifically, Level 3 maintained that Neutral Tandem had requested the Department to mandate, without any legal basis, that CLECs must directly, rather than indirectly interconnect with each other on rates, terms and conditions mandated by the Department, rather than through commercial negotiations, including requiring each CLEC to perform the termination function without any compensation from the directly interconnected CLEC. Level 3 also maintained that Neutral Tandem sought to directly interconnect with Level 3. Additionally, Level 3 claimed that other CLECs would then be indirectly interconnected with Level 3 via the voluntary tandem transit service function being offered by Neutral Tandem. Level 3 further claimed that if Neutral Tandem was

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<sup>1</sup> Tandem transit traffic refers to the intermediary switching of local and other non-access traffic that originates and terminates on the networks of different telecommunications providers within a local calling area. Petition, p. 1.

<sup>2</sup> *Id.*

given the right to demand direct interconnection, then every CLEC would be allowed to demand the same treatment from every other CLEC.<sup>3</sup>

Consequently, Level 3 concluded that the fundamental legal issue raised by the Petition was whether the Department had the statutory authority to and should (1) compel a CLEC to directly interconnect with another CLEC, and (2) require Level 3 to transport and terminate transit traffic without adequate compensation.<sup>4</sup>

The Department continues to believe that Conn. Gen. Stat. §16-247a proffers only a series of legislative principles and goals to facilitate the development of telecommunications competition in the state. Thus, the Department's role in adjudicating this issue is limited. In particular, the Department lacks the necessary statutory authority to decide this issue that the other states cited by Neutral Tandem and Level 3 appear to possess.<sup>5</sup>

For example, the Florida Public Service Commission (FPSC) has jurisdiction over CLEC interconnection issues.<sup>6</sup> Specifically, §364.16(2) of the Florida statutes requires each "competitive local exchange telecommunications company shall provide access to, and interconnection with to any other provider of local exchange telecommunications services requesting such access." That statute also requires the FPSC to "vote" to set nondiscriminatory rates, terms and conditions within 120 days of a petition for such action. In Georgia, all local exchange companies are required to permit reasonable interconnection with other certificated local exchange companies.<sup>7</sup> Georgia law defines a local exchange company as a telecommunications company authorized to provide local exchange service.<sup>8</sup> Similarly, in Michigan, if two or more telecommunications providers are unable to agree on an issue relating to a regulated telecommunications service, then either provider may file an application with the Michigan Public Service Commission (MPSC) to resolve the matter.<sup>9</sup> The MPSC is then charged with resolving disputes between providers including those issues pertaining to interconnection.<sup>10</sup> Lastly, the New York Public Service Commission (NYPSA) has the authority and has asserted jurisdiction over the interconnection of the Neutral Tandem and Level 3 networks by virtue of Public Service Law §97. Specifically, interconnection into the networks of telephone corporations must be provided for other public or private networks.<sup>11</sup>

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<sup>3</sup> Level 3 Motion to Strike, pp. 1 and 2.

<sup>4</sup> *Id.*, p. 2.

<sup>5</sup> June 20, 2007 Decision, p. 5.

<sup>6</sup> See §364.16(2) of the Florida Statutes.

<sup>7</sup> O.C.G.A. §46-5-164(a).

<sup>8</sup> O.C.G.A. §46-5-162(10). Local exchange companies are further classified as Tier 1 and Tier 2. Tier 1 companies are those with two million or more access lines within Georgia holding a Certificate of Public Convenience and Necessity (CPCN). Tier 2 companies are those with less than two million access lines within Georgia holding a CPCN. *Id.*

<sup>9</sup> MCL 484.2204. Telecommunications service providers are defined in part as a person or entity providing a telecommunication service. MCLS §750.219a(6)(c).

<sup>10</sup> MCL 484.2305.

<sup>11</sup> 16 NYCRR §605.2 NY CLS Pub Ser §2(17) defines a telephone corporation as every corporation owning, operating or managing any telephone line or part of telephone line used in the conduct of the business affording telephone communication for hire.



As evidenced above, the authority afforded to these states is much broader than that provided to the Department. Review of those states' laws clearly indicates that the respective public service commissions have the authority to resolve CLEC-to-CLEC interconnection disputes. These states' authority differs from Connecticut in that the Department may only address interconnection issues pertaining to the state's telephone companies (i.e., The Southern New England Telephone Company d/b/a AT&T Connecticut and Verizon New York, Inc.).<sup>12</sup> Since Neutral Tandem and Level 3 are not telephone companies as defined by state statute, the Department cannot adjudicate this issue.

The Department is of the opinion that the optimum resolution of this issue is through the commercial agreement process and the parties are encouraged again to continue their negotiations. Nevertheless, there is no agreement at the present time. Therefore, absent a commercial agreement, Neutral Tandem should, no later than June 30, 2008, cease offering transit traffic service for calls terminating to Level 3 and make arrangements for the alternative transport of this traffic by other carriers. Neutral Tandem should also begin informing its transit traffic customers that terminate calls on Level 3 facilities that it will no longer directly interconnect with Level 3 and advise them that they should make the necessary arrangements so that their traffic is properly routed and terminated. Neutral Tandem should begin notifying its customers as soon as practical, but no later than May 30, 2008. Level 3 may not begin terminating Neutral Tandem's service before July 1, 2008, so that the affected Neutral Tandem transit traffic customers are afforded a sufficient opportunity to make alternative service arrangements.

By ruling in this matter, the Department essentially grants Level 3's Motion to Strike. The Department encourages a commercial agreement between the parties, or in the event of a failure to agree, to administer arrangements for customer transition.

### **III. CONCLUSION AND ORDERS**

#### **A. CONCLUSION**

The Department does not possess the statutory authority to address CLEC-to-CLEC interconnection disputes; such disputes should be addressed through a commercial agreement process. Accordingly, Neutral Tandem and Level 3 are encouraged to continue negotiating a commercial agreement that provides for the termination of this traffic while addressing their respective interests. In the event that such an agreement is not reached, Neutral Tandem should make the necessary arrangements to ensure that its customers' traffic is properly carried and terminated at their appropriate destinations.

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<sup>12</sup> A "telephone company" is among the list of companies included in the definition of a "public service company" (Conn. Gen. Stat. § 16-1(a)(4)), and thus may charge rates for noncompetitive and emerging competitive services only in accordance with traditional regulation pursuant to Conn. Gen. Stat. §16-19 or alternative regulation pursuant to Conn. Gen. Stat. §16-247k.

**B. ORDERS**

For the following orders, please submit an original and eight copies of the requested material, identified by Docket Number, Title, and Order Number, to the Executive Secretary.

1. In the event that a commercial agreement between the parties is not negotiated, Neutral Tandem shall, as soon as practical, but no later than May 30, 2008, begin notifying its customers whose traffic is terminated on Level 3 facilities that it will no longer directly interconnect with Level 3.
2. In the event that a commercial agreement between the parties is not negotiated, Neutral Tandem shall, no later than June 30, 2008, cease offering tandem transit traffic service for customers' traffic that terminates on Level 3 facilities in Connecticut.
3. In the event that a commercial agreement between the parties is not negotiated, Neutral Tandem shall, no later than August 1, 2008, inform the Department of the date by which it ceased offering transit traffic service to customers' calls terminated on Level 3 facilities in Connecticut.
4. In the event that a commercial agreement between the parties is not negotiated, Level 3 shall not terminate service to Neutral Tandem before July 1, 2008.
5. In the event that a commercial agreement between the parties is not negotiated, Level 3 shall, no later than August 1, 2008, inform the Department of the date by which it ceased offering service to Neutral Tandem.

**DOCKET NO. 07-02-29 PETITION OF NEUTRAL TANDEM, INC. FOR AN  
INTERCONNECTION AGREEMENT WITH LEVEL 3  
COMMUNICATIONS AND REQUEST FOR INTERIM  
ORDER**

This Decision is adopted by the following Commissioners:

Anthony J. Palermino

Anne C. George

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

*Louise E. Rickard*

\_\_\_\_\_  
Louise E. Rickard  
Acting Executive Secretary  
Department of Public Utility Control

April 10, 2008

\_\_\_\_\_  
Date