

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem, Inc., Against Level 3 Communications, LLC

ISSUE DATE: May 9, 2007

DOCKET NO. P-5733/C-07-296

In the Matter of the Application of Level 3 Communications, LLC, to Terminate Services to Neutral Tandem, Inc.

DOCKET NO. P-5733, 6403/M-07-354

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On March 6, 2007, Neutral Tandem, Inc., and its subsidiaries (collectively, Neutral Tandem) filed a complaint against Level 3 Communications, LLC, and its subsidiaries (collectively, Level 3), alleging, among other things, that Level 3 improperly threatened to disconnect service with Neutral Tandem. Neutral Tandem sought expedited proceedings on the matter. The Commission assigned this matter to Docket No. P-5733/C-07-296.

On March 20, 2007, Level 3 denied that it planned to discontinue service with Neutral Tandem before securing Commission approval, and asked the Commission to dismiss the complaint.

On March 22, 2007, Level 3 filed an application for Commission approval to discontinue service to Neutral Tandem. The Commission assigned this matter to Docket No. P-5733, 6403/M-07-354.

On April 5, 2007, Neutral Tandem filed reply comments opposing Level 3's request to dismiss its complaint in Docket No. P-5733/C-07-296, proposing to consolidate that docket with Docket No. P-5733, 6403/M-07-354, asking the Commission to address both matters on an expedited basis, and proposing that the Commission refer the matters to the Minnesota Office of Administrative Hearings (OAH) to conduct a contested case proceeding to resolve disputed factual matters.

On April 17, 2007, Level 3 filed a copy of an order addressing a similar dispute between Level 3 and Neutral Tandem in another state.

On April 26, 2007, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Background**

A telephone carrier's routing computers (called "switches") play a variety of roles in the operation of the telecommunications network. A "local switch" (or "end office switch") serves all of a carrier's customers within a certain geographic area. When someone in that area calls someone else in the same area, the local switch can connect the call directly. A call to someone in a different geographic area, however, must be routed from one local switch to another. An intermediate computer called a "tandem switch" can facilitate this connection by serving as a central clearing-house for routing calls between local switches (or even between other tandem switches).

To permit the customers of one carrier to call the customers of another carrier, federal law requires the carriers to interconnect their networks.<sup>1</sup> But each carrier must compensate the others for any service rendered to complete calls from the carrier's customers.<sup>2</sup>

Incumbent carriers such as Qwest Corporation operate most of the tandem switches. Competing carriers may use these tandem switches, but must compensate the incumbents for the use. However, competitive carriers may elect to buy tandem services from a third party instead.

Level 3 is a competitive local service provider. Neutral Tandem is a third party provider of tandem services for calls originating and terminating within the same local calling area. Neutral Tandem has contractual relationships with seventeen local service providers, including Level 3. According to Level 3, the contract between Level 3 and Neutral Tandem permits either party to terminate their relationship with 30 days notice.

### **II. Positions of the Parties**

#### **A. Neutral Tandem**

Neutral Tandem complains that Level 3 is seeking inappropriate payments from Neutral Tandem as a condition for continued service. Moreover, Neutral Tandem complains that in furtherance of this effort, Level 3 threatened to disconnect service in a manner that would interrupt service for Minnesota ratepayers. Neutral Tandem asks the Commission to do the following:

- Consolidate the two dockets noted above.
- Bar any disconnection until the Commission has determined if doing so would impair the public convenience, as required by Minnesota Statute § 237.12.

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<sup>1</sup> 47 U.S.C. § 251(a)(1).

<sup>2</sup> 47 U.S.C. § 251(b)(5).

- Refer this matter to the Minnesota Office of Administrative Hearings (OAH) for a contested case proceeding.
- Find that a disconnection between Level 3 and Neutral Tandem would impair the public convenience.
- Establish just and reasonable terms for continuing the interconnection between the parties.

## **B. Level 3**

In response to Neutral Tandem's complaint, Level 3 states that it is merely exercising its right to terminate the contractual relationship between the parties as provided in the parties' contract. Level 3 denies that it would discontinue service with Neutral Tandem before the Commission determined whether doing so would impair the public convenience; consequently Level 3 denies that Neutral Tandem has a basis for complaint.

In support of its own petition, Level 3 argues that the interconnection between Level 3 and Neutral Tandem does not affect the public convenience. According to Level 3, discontinuing service with Neutral Tandem would not stop calls from being completed; rather, the calls would simply be routed through a different tandem switch (presumably, a switch owned by an incumbent telephone company) instead of Neutral Tandem's switch. If certain routes will need to be augmented to facilitate the exchange of telecommunications traffic, Level 3 asks Neutral Tandem to identify those routes. Level 3 pledges to work with all carriers to ensure that there is sufficient capacity to transmit calls to Level 3's customers.

In sum, Level 3 asks the Commission to do the following:

- Dismiss Neutral Tandem's complaint.
- Ask the Minnesota Department of Commerce (the Department) to investigate this matter, if required by Minnesota Statutes § 237.12, subdivision 2.
- Direct Neutral Tandem to notify its customer carriers of the impending disconnection with Level 3 so that all parties may begin any required network modifications.
- Authorize Level 3 to discontinue service with Neutral Tandem.
- Find that Commission rules do not prohibit Neutral Tandem from discontinuing service before giving its customers 60 days notice or, in the alternative, vary the rules to require only 45 days notice.

Level 3 opposes referring these matters to the OAH, arguing that a contested case proceeding would needlessly delay the resolution of this case. According to Level 3, delay favors Neutral Tandem at the expense of Level 3. And Level 3 argues that the Commission does not need the record of a contested case proceeding to determine that a disconnection will not harm the public convenience; if the Commission feels that it needs further record development, it should refer the matter to the Department for investigation.

### **C. The Department**

The Department supports Neutral Tandem's proposal to consolidate the dockets and refer this matter to the OAH for a contested case proceeding. Because the Department has not previously examined the operations of competitive tandem service providers, the Department has relatively little expertise to bring to an investigation of this issue. In particular, factual claims about the consequences of Level 3's proposed disconnection remain in dispute. Given the depth of investigation that might be required, the Department sees no advantage in refraining from referring the matter to the OAH for record development.

### **III. Commission Action**

#### **A. Jurisdiction, Consolidation and Referral for Contested Case Proceedings**

The Commission has jurisdiction over the provision of intrastate telecommunications services in Minnesota pursuant to Minnesota Statutes Chapters 216A and 237, including in particular Minnesota Statutes §§ 237.16, 237.081, 237.461, 237.462, and 237.74. In addition, both Level 3 and Neutral Tandem cite Minnesota Statutes § 237.12, subdivision 2, for the proposition that a local service provider may not discontinue a physical connection with another provider until the Commission determines that doing so would not impair the public convenience.

The Commission finds that it cannot resolve the issues raised by the parties on the basis of the record before it. The Commission is persuaded that those issues turn on specific facts that are best developed in formal evidentiary hearings. In the interest of administrative efficiency, the Commission will consolidate the two dockets and refer them to the OAH for a contested case proceeding.

#### **B. Issues to be Addressed**

The ultimate issue is whether the Commission should authorize Level 3 to disconnect service with Neutral Tandem, and if not, what terms should govern their continued interconnection. The resolution of these issues turns on numerous sub-issues and facts yet to be developed.

The parties may also raise and address other issues relevant to this matter.

#### **C. Procedural Outline**

##### **1. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

## 2. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minnesota Statutes §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minnesota Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's site on the World Wide Web at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minnesota Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minnesota Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minnesota Rules, part 1400.5900 should be directed to Lillian Brion, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2213; or Jeanne Cochran, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-2106.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minnesota Statutes § 14.60, subdivision 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **3. Parties and Intervention**

The current parties to this case are the Department, Level 3 and Neutral Tandem. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **4. Prehearing Conference**

Judge Luis will convene a prehearing conference on May 24, 2007, at 9:00 a.m. at the office of the Minnesota Public Utilities Commission, 121 7<sup>th</sup> Place East, St. Paul, Minnesota, 55101, in the Small Hearing Room. Directions to the Commission's offices can be found at the Commission's site on the World Wide Web at [www.puc.state.mn.us/about/directions.htm](http://www.puc.state.mn.us/about/directions.htm).

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

### **D. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minnesota Statutes §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

**E. *Ex Parte* Communications**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minnesota Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

**ORDER**

1. Finding jurisdiction over these matters, the Commission hereby consolidates the dockets herein and refers the issues to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

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OAH Docket No.

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Richard C. Luis, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401-2138; (612) 349-2542.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_