

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

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

**SECOND PREHEARING ORDER**

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

A Prehearing Conference was held before Administrative Law Judge Richard C. Luis at 9:30 a.m. on May 31, 2007, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Appearances:

Gregory Merz and Lesley Lehr, Attorneys at Law, Gray, Plant, Mooty, Mooty & Bennett, 80 South Eighth Street, Suite 500, Minneapolis, Minnesota 55402, and Greg L. Rogers, Director, State Regulatory Affairs, Level 3 Communications, LLC, 1025 Eldorado Boulevard, Broomfield, Colorado 80021, appeared on behalf of Level 3 Communications, LLC (Level 3).

William E. Flynn, Attorney at Law, Lindquist & Vennum, PLLP, 80 South Eighth Street, Suite 4200, Minneapolis, Minnesota 55402, and John R. Harrington, Attorney at Law, Jenner & Block, LLP, 330 North Wabash, Suite 4700, Chicago, Illinois 60611, appeared on behalf of Neutral Tandem, Inc. (Neutral Tandem).

Lillian Brion, Rates Analyst, participated on behalf of the Commission staff.

Discussion was held among the participants concerning the proposed schedule, the suitability of bifurcating this proceeding, and various procedural issues.

**Bifurcation of Issues**

1. The First Prehearing Order in this matter was issued on June 7, 2007. One issue that had been discussed was Level 3's request that the issues

raised in the disconnection petition be considered separately from the issues in Neutral Tandem's complaint. Neutral Tandem filed a memorandum on the issue on June 6, 2007. This Order addresses the bifurcation request.

### **Level 3's Position**

5. In its filings before the Prehearing Conference, Level 3 included a Memorandum requesting that this matter be bifurcated to first address the disconnection issue.<sup>1</sup> Level 3 quotes the Commission's Order for Hearing as recognizing the primacy of the disconnection issue as follows:

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.<sup>2</sup>

6. Relying on the Commission's framing of the issues, Level 3 asserts that:

The Commission recognized that whether Level 3 should be authorized to disconnect service with NTI [Neutral Tandem] represents the primary issue for decision. In order to determine this issue, the Commission must determine whether the public convenience requires the continued connection. Only if the answer is "yes" to the first issue does NTI's request to establish terms and conditions of interconnection ripen.<sup>3</sup>

7. Level 3 maintains that the bifurcation of issues will lead to economy and efficiency by avoiding "a voluminous factual record . . . [that would] require the resolution of many complex factual and legal issues."<sup>4</sup> No assessment was provided regarding the anticipated size of the record or relative complexity of the issues in the Neutral Tandem complaint.

### **Neutral Tandem's Position**

8. Neutral Tandem noted that these proceedings were joined by the Commission for resolution in a single contested case proceeding, over Level 3's

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<sup>1</sup> Level 3 Communications, LLC's Memorandum Regarding Proposed Scope of the Contested Case Proceeding filed May 29, 2007 (Level 3 Memorandum)

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4061521> ).

<sup>2</sup> Commission Notice and Order for Hearing, at 4

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4052544> ).

<sup>3</sup> Level 3 Memorandum, at 2.

<sup>4</sup> *Id.* at 7.

objection.<sup>5</sup> Adopting this approach, Neutral Tandem maintains, would result in a waste of both time and resources for the conduct of two separate proceedings.<sup>6</sup>

9. In addition to the foregoing arguments, Neutral Tandem noted that these identical issues are being litigated in other states. Four evidentiary hearings have been held on these issues in other jurisdictions. Neutral Tandem maintains that there is no undue burden imposed by hearing the two groups of issues together.<sup>7</sup>

### **Analysis**

10. The first round of testimony has been filed in this matter. Each party has identified two witnesses to this point in the proceeding. None of testimony filed to date is unduly lengthy. To adjust the schedule to address the issues presented in this matter on different hearing dates is inefficient, particularly since the issues to be addressed are not likely to require extraordinary amounts of hearing time.

Based on all of the files and proceedings of the matter, the Administrative Law Judge makes the following:

### **ORDER**

Level 3's request to bifurcate the issues in this proceeding is **DENIED**.

Dated this 21<sup>st</sup> day of June, 2007.

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Angie D. Threlkeld, RPR CRR  
Shaddix and Associates  
Transcript Prepared

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<sup>5</sup> Neutral Tandem's Response, at 4  
(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4205886> ).

<sup>6</sup> Id. at 4-5.

<sup>7</sup> Id. at 5-6.