

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

In the Matter of the Petition of)	
Level 3 Communications, LLC To Direct)	DTC No. 07-3
Neutral Tandem-Massachusetts, LLC To)	
Provide Notice To Its Customers Of The)	
Termination Of Certain Contract Arrangements)	
)	

**NEUTRAL TANDEM’S ANSWER
AND CROSS-PETITION AGAINST LEVEL 3 AND BROADWING**

On May 30, 2007, Level 3 Communications LLC filed its Petition to Direct Neutral Tandem-Massachusetts, LLC to Provide Notice to its Customers of the Termination of Certain Contract Arrangements (“Petition”) with the Department of Telecommunications and Cable (“DTC”). Pursuant to M.G.L. c. 159, §§ 12, 13, 14, 16 and 17, and any other statutes and regulations deemed applicable, Neutral Tandem, Inc. and Neutral Tandem-Massachusetts, LLC (collectively “Neutral Tandem”), by and through undersigned counsel, file this Cross-Petition against Level 3 Communications, Inc. and its subsidiaries, including Broadwing Communications, LLC (“Broadwing”) and Broadwing’s subsidiaries (collectively “Level 3”) (“Cross-Petition”), and Neutral Tandem’s Answer to Level 3’s Petition (“Answer”).

NEUTRAL TANDEM’S CROSS-PETITION

Neutral Tandem is the telecommunications industry’s only independent provider of “tandem transit” services. As a tandem transit provider, Neutral Tandem allows third party carriers to route calls to each other’s networks, even though they may not be directly interconnected with each other. Neutral Tandem provides the transiting link between originating carriers who need to direct call traffic from their end-users to terminating carriers, like Level 3,

whose end-users will receive the calls.¹ Neutral Tandem currently delivers tandem transit traffic to Level 3 for Level 3's end-users in the Commonwealth of Massachusetts on behalf of eight third-party originating carriers in the Commonwealth.

For over two years, Neutral Tandem and Level 3 have been interconnected in Massachusetts, and other states, pursuant to negotiated agreements. Level 3, however, informed Neutral Tandem that it was terminating the interconnection contracts that enabled Neutral Tandem to deliver tandem transit traffic to Level 3, because Level 3 did not believe the terms of those contracts were sufficiently advantageous to Level 3. To date, efforts to negotiate new agreements have been unsuccessful.

As its Petition makes clear, Level 3 has threatened to disconnect its current interconnections with Neutral Tandem as of June 25, 2007. Level 3 has demanded objectively unreasonable and discriminatory terms and conditions to continue to accept tandem transit traffic over those existing interconnections. Level 3's refusal to accept terminating traffic from Neutral Tandem on reasonable, nondiscriminatory terms and conditions evidences its attempt to impede the development of competition in the telecommunications service market in Massachusetts in violation of M.G.L. c. 159, §§ 12, 13, 14, 16 and 17.

Neutral Tandem therefore respectfully requests that the DTC order Level 3 to maintain its existing interconnection with Neutral Tandem in order to accept terminating traffic from Neutral Tandem on just, reasonable, and nondiscriminatory terms and conditions pursuant to M.G.L. c. 159, §§ 12, 13, 14, 16, and 17. In further support of its Cross-Petition, Neutral Tandem states as follows:

¹ As used in this Cross-Petition and Answer, "tandem transit" traffic refers to the intermediary switching of local and other non-access traffic that originates on the networks of one telecommunications provider, and the delivery of that traffic to the network of a second telecommunications provider located within the same local calling area.

BACKGROUND TO CROSS-PETITION

I. The Parties

1. Neutral Tandem, Inc. is a Delaware corporation and is registered to do business in Massachusetts. Neutral Tandem-Massachusetts, LLC is a Delaware limited liability company and is a telecommunications carrier in the Commonwealth authorized to provide local exchange and interexchange telecommunications services pursuant to its Statement of Business Operations. Like Verizon New England d/b/a Verizon Massachusetts (“Verizon”), Neutral Tandem provides “tandem transit” services to other competitive telecommunications carriers that use Neutral Tandem’s services to deliver traffic to the networks of other competitive telecommunications carriers with which they are not directly interconnected.

2. Neutral Tandem’s address and telephone number are:

Neutral Tandem, Inc.
One South Wacker
Suite 200
Chicago, IL 60606
(312) 384-8000
(312) 346-3276 (fax)

Neutral Tandem’s representatives to be served are:

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3. On information and belief, Level 3 is a Delaware limited liability company and is an authorized telecommunications carrier in Massachusetts pursuant to its Statement of Business Operations on file with the DTC.

4. On information and belief, Broadwing Communications, LLC is a Delaware limited liability company, is an authorized telecommunications carrier in Massachusetts pursuant to its Statement of Business Operations on file with the DTC, and is an indirect wholly owned subsidiary of Level 3.

II. Jurisdiction

5. The DTC has authority to hear Neutral Tandem's Cross-Petition pursuant to M.G.L. c. 159, § 12 which expressly grants the DTC "general supervision and regulation of and jurisdiction and control" over certain enumerated services "furnished or rendered for public use within the commonwealth." Those services include "the transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method of system of communication" M.G.L. c. 159, § 12(d).

6. Level 3 has unequivocally stated its intention to refuse to accept terminating traffic delivered to Level 3 by Neutral Tandem after June 25, 2007. The DTC has authority to inquire into Level 3's threatened service termination pursuant to M.G.L. c. 159, § 13, which grants it the power to "inquire into the rates, charges, regulations, practices, equipment and services of common carriers in this commonwealth . . . regarding any service of a kind subject to its jurisdiction." Charges made or demanded by a common carrier that are unjust or unreasonable are prohibited and declared unlawful. M.G.L. c. 159, § 17.

7. If the DTC concludes that Level 3's refusal to accept terminating traffic from Neutral Tandem without reciprocal compensation is "unjust, unreasonable, unjustly discriminatory, unduly preferential, in any wise in violation of any provision of law, or insufficient to yield reasonable compensation for the service rendered," the DTC has the power to determine "just and reasonable rates[.]" M.G.L. c. 159, § 14. The Department also has regulatory authority to correct unjust and unreasonable common carrier practices. M.G.L. c. 159, § 16.

8. If carried out, Level 3's threats to refuse Neutral Tandem's traffic after June 25, 2007 would have a substantial adverse effect on the ability of Neutral Tandem to provide services to the eight third-party carriers that utilize Neutral Tandem's tandem transit services in Massachusetts. Level 3's unilateral refusal to accept Neutral Tandem's traffic also could lead to call blockages for the end-user customers of the third party carriers.

III. The Nature of Neutral Tandem's Service

9. Incumbent local exchange carriers ("ILECs") no longer are the sole providers of telecommunications services to end-users. Rather, competitive local exchange carriers ("CLECs"), wireless carriers, and cable companies all provide these services as well.

10. In an era of multiple telecommunications providers, customers of one non-incumbent LEC carrier, such as a cable telephone provider, inevitably call customers of another non-ILEC, such as a wireless carrier. These companies must be able to route such calls to each other's networks, even though they may not be directly interconnected with each other.

11. Traditionally, the only way for these companies to obtain this service (known as "tandem transit" service) was to utilize the incumbent LECs' tandem transit services. In Massachusetts and elsewhere, ILECs such as Verizon are the principal providers of such transit services to competitive carriers.

12. Neutral Tandem is the telecommunications industry's only *independent* provider of tandem transit services. Neutral Tandem offers tandem transit services to CLECs, wireless carriers, and cable companies throughout Massachusetts, and in over 74 LATAs nationwide. Neutral Tandem provides these carriers with alternative means to indirectly interconnect and exchange local traffic with each other, without using the incumbent LECs' tandem transit services.

13. Neutral Tandem provides service to and/or has direct connections with nearly every major CLEC, wireless carrier, and cable provider in the United States. Neutral Tandem provides tandem transit service to eight different competitive carriers that originate traffic for termination in Massachusetts.

14. Through its competitive tandem transit services, Neutral Tandem seeks to provide carriers with lower per-minute transit charges, reduced port charges and nonrecurring fees, simpler network configurations, increased network reliability, improved quality of service, and traffic transparency. The availability of Neutral Tandem's tandem transit services gives

competitive carriers an alternative to dealing solely with incumbent LECs for these essential services.

15. Competitive tandem transit service also inherently builds redundancy into the telecommunications sector and infrastructure, which should allow for faster disaster recovery and provide more robust homeland security. Neutral Tandem's competitive tandem transit services also strengthen the redundancy and survivability of the public switched telephone network ("PSTN").

16. Apart from the public benefits associated with competition in the tandem transit business, Neutral Tandem provides significant benefits to competitive carriers that utilize Neutral Tandem's tandem transit service. These benefits include Neutral Tandem's willingness to pay for and manage -- through the use of diverse transport suppliers -- all of the transport connecting Neutral Tandem to the competitive carrier.

IV. The Parties' Dispute and Level 3's Threat to Block Neutral Tandem's Traffic

17. Neutral Tandem and Level 3 have been interconnected for over two years pursuant to a series of negotiated contracts. Specifically, Neutral Tandem delivers tandem transit traffic to Level 3 that has been originated by third party carriers, and accepts certain traffic originated by Level 3 for delivery to third party carriers, pursuant to a contract dated July 6, 2004 (the "Level 3 Contract").

18. Similarly, Neutral Tandem delivers tandem transit traffic from third party carriers to Level 3's subsidiary, Broadwing Communications, and accepts tandem transit traffic from Broadwing for delivery to third party carriers, pursuant to a February 2, 2004 contract (the "Broadwing Contract").

19. Neutral Tandem also accepts certain traffic originated by Level 3 for delivery to other carriers pursuant to a contract dated August 18, 2005 (the "Originating Contract"). Under

these three contracts, Neutral Tandem and Level 3 currently are interconnected in thirteen states, including Massachusetts, and Washington D.C.

20. The parties' various contracts renewed automatically on several occasions without incident. Indeed, Neutral Tandem and Level 3 entered into an amendment of the Originating Contract on January 31, 2007 (the "Originating Amendment") in order to provide Level 3 with more advantageous tandem transit pricing for traffic originated by Level 3. This was a continued attempt by Neutral Tandem to encourage Level 3 to utilize Neutral Tandem's services.

21. Within hours of signing the Originating Amendment, Level 3 sent a fax to Neutral Tandem stating its intention to terminate the Level 3 Contract effective March 2, 2007. (Ex. 1.) Level 3's fax was sent by the same Level 3 executive who just hours earlier had signed the Originating Amendment, yet the fax offered no explanation for Level 3's decision.

22. On February 14, 2007, Level 3 notified Neutral Tandem that it intended to terminate the February 2004 Broadwing Contract in addition to the July 2004 Level 3 Contract. (Ex. 2.) The February 14 letter stated that Level 3 would terminate both contracts effective March 23, 2007. (*Id.*) Level 3 has not, however, sought to terminate its August 2005 Contract, which was amended on January 31, 2007, under which Level 3 takes advantage of Neutral Tandem's transit service for delivering its originating traffic to other carriers.

23. On information and belief, by terminating the contracts under which Level 3 *received* tandem transit traffic, while at the same time renewing the contract under which Level 3 *originated* tandem transit traffic, Level 3 sought to deny its competitors the benefit of Neutral Tandem's competitive tandem transit services, while at the same time increasing Level 3's benefit by obtaining better terms from Neutral Tandem for Level 3's own originating traffic.

24. Nevertheless, in its February 14 letter, Level 3 claimed that the contracts were “not commercially balanced between the two parties” and that maintaining interconnection with Neutral Tandem under those contracts “is not a commercially reasonable or manageable option.” (*Id.*) The letter stated that Level 3’s goal was to “reach a single agreement with Neutral Tandem” prior to March 23 that would “supersede the current agreements” and “provide a single set of terms and conditions for the benefit of both parties.” (*Id.* at 2.)

25. In its February 14 letter to Neutral Tandem, Level 3 also threatened to “otherwise manage the traffic exchanged under” the parties’ February 2004 and July 2004 Contracts if the parties did not reach agreement on a new contract by March 23, 2007. (*Id.*) Level 3 further stated that it would attempt to “affect an orderly transition to mitigate any risks associated with Neutral Tandem customer traffic” if that occurred. (*Id.*)

26. On February 19, 2007, Neutral Tandem responded to Level 3’s letters. (Ex. 3.) Neutral Tandem reiterated its desire to work with Level 3 to arrive at mutually acceptable terms and conditions for interconnection. (*Id.*) Neutral Tandem also reminded Level 3 that it was obligated to interconnect with Neutral Tandem pursuant to the law of several states. (*Id.*) Neutral Tandem notified Level 3 that any refusal by Level 3 to interconnect with Neutral Tandem would violate these interconnection obligations. However, the parties have been unable to reach an agreement.

27. On February 22, 2007, Level 3 responded to Neutral Tandem’s request for interconnection under state law. (Ex. 4.) Level 3 denied that it was required to interconnect with Neutral Tandem for the purpose of receiving tandem transit traffic from third party carriers’ networks. (*Id.*) Level 3 also reiterated its threat to effectuate the termination of the parties’ existing interconnection facilities as of March 23, 2007. (*Id.* at 2.) Specifically, Level 3 stated

that its termination of the parties' current interconnections could "materially impact the flow of traffic for [Neutral Tandem's] customers" and that there could be "interruptions of service associated with the termination of the agreements." (*Id.* at 2.)

28. Neutral Tandem responded to Level 3's February 22 letter on Monday, February 26. (Ex. 5.) Neutral Tandem notified Level 3 that its continued unwillingness to interconnect with Neutral Tandem on reasonable terms and conditions, as well as Level 3's continued threat to disrupt Neutral Tandem's service, constitute violations of its statutory obligations to accept terminating traffic on nondiscriminatory terms and conditions. Neutral Tandem requested that Level 3 remedy its violations by confirming that, in the event the parties have not established terms and conditions for continued interconnection by March 23, Level 3 would not disconnect the parties' existing interconnections. (*Id.*)

29. On March 8, 2007, Level 3 notified Neutral Tandem that it would extend its self-imposed deadline and would not terminate its current interconnection facilities with Neutral Tandem until June 25, 2007.

30. On May 8, 2007, Level 3 reiterated its intent to stop accepting tandem transit traffic from Neutral Tandem. It further stated that if Neutral Tandem continues to deliver traffic on behalf of third parties to Level 3 after June 25, 2007, Level 3 intends to charge Neutral Tandem a rate of \$.001 per minute for that terminating traffic. Level 3 has not provided any cost justification to support the demanded \$.001 per minute charge imposed on Neutral Tandem.

31. On May 30, 2007, Level 3 filed its Petition with the DTC.²

² Level filed an initial petition on May 24, 2007, but has indicated to the DTC that the May 30, 2007 petition "replaces Level 3's May 24, 2007 filing, which is being withdrawn."

V. Neutral Tandem's Attempts to Resolve This Dispute Through Negotiation

32. Neutral Tandem has attempted to negotiate with Level 3 to maintain the parties' current interconnection. Neutral Tandem has met with representatives from Level 3 on multiple occasions in an attempt to resolve these disputes. Several senior executives from Neutral Tandem traveled to Level 3's Colorado headquarters for an in-person meeting on February 16, 2007. Neutral Tandem also has had multiple telephone and e-mail exchanges with Level 3 to try to negotiate mutually agreeable interconnection terms.

33. However, the parties have been unable to reach agreement. From Neutral Tandem's perspective, a significant impediment which stands in the way of the parties resolving this dispute has been Level 3's continued insistence that Neutral Tandem pay Level 3 "reciprocal compensation" when Neutral Tandem delivers to Level 3 tandem transit traffic from third party carriers. Level 3 demands "reciprocal compensation" from Neutral Tandem even though the traffic Neutral Tandem delivers to Level 3 is originated by end-users of the third party carriers. This would in effect force Neutral Tandem to become Level 3's clearinghouse, by collecting compensation from the carriers whose end-users originate the traffic that Neutral Tandem delivers to Level 3's network. Indeed, in its Verified Answer filed in response to a nearly identical complaint recently filed by Neutral Tandem in California, Level 3 "admits that in negotiations for a new contract, . . . it requested 'reciprocal compensation' from Neutral Tandem."³

34. Neutral Tandem does not believe that paying Level 3 "reciprocal compensation" is appropriate when Neutral Tandem, like Verizon, serves as a transit provider for third party carriers. Under its contracts with Level 3, Neutral Tandem passed to Level 3 the signaling

³ Level 3's Verified Answer, Cal. Pub. Util. Comm'n, ¶ 29 (Apr. 16, 2007).

information that Neutral Tandem received from the originating carrier, so that Level 3 could bill the originating carrier appropriate termination charges. Neutral Tandem has made clear to Level 3 that it is willing to continue providing such information to Level 3, just as Verizon provides to Level 3 when Verizon provides transit services to Level 3, so that Level 3 can seek appropriate compensation from the originating carrier. Further, Level 3 incurs no incremental costs to maintain a direct interconnection with Neutral Tandem.

35. Based upon Level 3's testimony in New York in a similar proceeding, Level 3 does not receive "reciprocal compensation" from incumbent LECs when the incumbent LEC provides tandem transit service and delivers third party carriers' traffic to Level 3's network. No other third party carrier in Massachusetts has demanded reciprocal compensation from Neutral Tandem for delivering transit traffic for termination by such third party carrier.

36. Thus, even though Level 3 will continue to receive the benefit of competitive tandem transit service (including lower rates) for traffic that it originates through Neutral Tandem pursuant to the Originating Amendment, Level 3 repeatedly has stated that it will begin refusing to accept tandem transit traffic Neutral Tandem delivers to Level 3 on behalf of third party carriers as of June 25, 2007.

VI. Level 3's Self-Contradictory Assertions Regarding the Basis for its Effort To Terminate Interconnection With Neutral Tandem

37. Level 3 has, on more than one occasion, made public statements that are contrary to positions it has taken in connection with this dispute. For example, in the Reply Comments of the Supporters of the Missoula Plan On Their Phantom Traffic Proposal, which was signed by Level 3's Vice President for Public Policy, William Hunt, and filed with the Federal Communications Commission ("FCC") in January 2007, Level 3 argued that its proposal "reflects the more reasoned approach of establishing rules, which are enforceable pursuant to

established [FCC] enforcement procedures, affirming that the terminating compensation is paid by originating carriers to terminating carriers and requiring transit providers to pass through call detail information they receive to terminating carriers.”⁴

38. Similarly, in the Reply Comments of the Missoula Plan supporters, which included Level 3, filed with the FCC in February 2007, Level 3 stated that “it is always the option of the carrier with the financial duty for transport [*i.e.*, the originating carrier] to choose how to transport its traffic to the terminating carrier’s [network]; direct interconnection to the [network] via its own facilities, use of the terminating carrier’s facilities, or via the facilities of a third party.”⁵ In fact, Level 3 itself has argued strenuously that tandem transit carriers should be entitled to direct interconnection in order to deliver other carriers’ originating traffic to terminating carriers, and that terminating carriers (in this case Level 3 itself) should recover their costs from the originating carriers, not the intermediate carriers.⁶

39. In a letter Level 3 submitted in February 2007 to the FCC in support of Time Warner Cable’s request for a declaratory ruling that CLECs may obtain interconnection under Section 251 of the 1934 Communications Act, Level 3 argued in favor of broad interconnection rights for wholesale telecommunications carriers.⁷ Each of these public assertions by Level 3 is inconsistent with Level 3’s position in this dispute.

⁴ See *Reply Comments of the Missoula Plan Supporters in Support of Their Phantom Traffic Plan*, at 11-12, filed in CC Docket No. 01-92 (Jan 5, 2007). Neutral Tandem is aware that the DTC filed comments in opposition to the Missoula Plan but does not construe those comments as evidencing any opposition to the ability of transiting carriers to directly interconnect with terminating carriers.

⁵ See *Reply Comments of the Missoula Plan Supporters in Support of the Missoula Plan*, at 26, filed in CC Docket No. 01-92 (Feb. 1, 2007).

⁶ *Id.*

⁷ See *Ex Parte Letter in Support of Petition of Time Warner Cable for Declaratory Ruling that CLEC May Obtain Interconnection under Section 251 of the Comm. Act of 1934, as Amended, to Provide Wholesale Telecomm. Svcs. to VOIP Providers*, WC Docket No. 06-55, Letter at 4 (filed February 13, 2007) (Ex. 6 attached hereto).

40. Level 3's assertions that it seeks to terminate its interconnections with Neutral Tandem because of cost concerns are belied by the facts. Neutral Tandem pays 100% of the cost to transport tandem transit traffic to Level 3's network on behalf of third party carriers. Incumbent LECs, on the other hand, require Level 3 to share in the cost of the incumbent LEC delivering tandem transit traffic to Level 3. Moreover, in order to accept incumbent LEC tandem transit traffic, Level 3 must incur expenditures for establishing connectivity with multiple incumbent LEC switch locations, as opposed to a single point of connectivity with Neutral Tandem, for which, as noted above, Neutral Tandem bears all costs. Connectivity with Neutral Tandem also provides Level 3 with significant redundancy benefits.

41. Level 3's demands for unsupported and discriminatory payments from Neutral Tandem, in the absence of any underlying costs, appear to be motivated by improper and unlawful motives aimed at causing Neutral Tandem harm. Level 3 has stated its intention to begin providing tandem transit services and compete with Neutral Tandem in that market. In a March 14, 2007 letter to Neutral Tandem, Mr. John Ryan, Level 3's Senior Vice President and Assistant General Counsel, stated "Level 3 has made no secret of its intentions to offer its own competitive transit services" (Ex. 7 attached hereto, at 4) On January 22, 2007, Neutral Tandem announced that it had filed a registration statement with the SEC in connection with a proposed Initial Public Offering ("IPO") of its stock. In the press release announcing its IPO, Neutral Tandem said that it anticipated using the net proceeds from the IPO to fund the continued expansion of its business.

42. Within a few days of Neutral Tandem's IPO announcement, Level 3 contacted Neutral Tandem and requested that the parties amend their August 2005 Contract – the agreement by which Neutral Tandem accepts traffic *originated* by Level 3 for delivery to other

carriers – and that the amendment had to be executed very quickly. Neutral Tandem accommodated Level 3's request, and the parties entered into an amendment of the August 2005 Contract on January 31, 2007, in order to provide Level 3 with more advantageous pricing for the traffic Level 3 originated to Neutral Tandem for delivery to other carriers.

43. Also on January 31, 2007, less than 10 days after Neutral Tandem announced its IPO, and only a few hours after Level 3 obtained the more advantageous pricing for the traffic Level 3 originated to Neutral Tandem, Level 3 sent Neutral Tandem notice of Level 3's intent to terminate certain of the parties' interconnection agreements effective March 2, 2007.

44. Against the backdrop of: (a) Level 3's stated intention to compete with Neutral Tandem for tandem transit services, (b) Neutral Tandem's IPO announcement, and (c) the suspicious timing of Level 3's contract termination notice, Level 3's motivation for threatening to terminate interconnection with Neutral Tandem and for demanding compensation from Neutral Tandem when it demands none from Verizon appears to be aimed at causing Neutral Tandem harm. Level 3 wants to compete against a financially weaker Neutral Tandem. Level 3 may have believed it could accomplish that goal by impacting Neutral Tandem's IPO, while obtaining for itself the benefits of lower transit traffic rates.

BASIS FOR COMPLAINT

I. Massachusetts Law Requires Level 3 to Accept Terminating Traffic From Neutral Tandem On Nondiscriminatory, Just, and Reasonable Terms.

45. As discussed above, Neutral Tandem and Level 3 have been interconnected for over two years pursuant to negotiated contracts. Under the parties' contracts, Level 3 pays Neutral Tandem for tandem transit services when Level 3 is the originating carrier, *i.e.*, the carrier whose end-user originates the call that Neutral Tandem delivers to other carriers' networks. When Level 3 is the terminating carrier, *i.e.*, the carrier whose end-user receives the

call from another carrier's customer, Level 3 does not pay Neutral Tandem for that service. Instead, the originating carrier compensates Neutral Tandem for that service.

46. As also noted above, during the parties' negotiations aimed at resolving the current disputes, Level 3 repeatedly took the position that Neutral Tandem should be required to pay Level 3 "reciprocal compensation" when Level 3 is the terminating carrier, *i.e.*, when Neutral Tandem transits traffic to Level 3 originating from a third party carrier's network. Level 3 thus seeks to collect reciprocal compensation from Neutral Tandem and compensation from the carriers whose end-users originate the traffic that Neutral Tandem transits to Level 3's network.

47. Level 3's efforts to force Neutral Tandem to pay "reciprocal compensation" are inappropriate and violate M.G.L. c. 159, § 17. Under its contracts with Level 3, Neutral Tandem passed to Level 3 signaling information that Neutral Tandem received from the originating carrier, so that Level 3 could bill the originating carrier appropriate termination charges. Neutral Tandem has made clear to Level 3 that it is willing to continue providing such billing information, so that Level 3 can seek appropriate compensation from the originating carrier.

48. Level 3's request for "reciprocal compensation" from Neutral Tandem also is inconsistent with both state and federal law. Level 3 does not receive reciprocal compensation from Verizon when Verizon acts as the tandem transit carrier and delivers third party carriers' traffic to Level 3's network. As set forth above, Level 3 does not even incur any incremental costs by receiving traffic from Neutral Tandem as opposed to Verizon.

49. Requiring Neutral Tandem to pay Level 3 compensation for receiving and terminating traffic that originates from the networks of third party carriers, when Level 3 does not receive such compensation from Verizon for the same traffic and Level 3 has not provided a

cost study that justifies differential treatment, discriminates against Neutral Tandem, in violation of M.G.L. c. 159, § 17.

50. It also would violate the requirement that reciprocal compensation payments are to be made by the carrier that originates the traffic. Level 3's legal obligation to accept terminating traffic from Neutral Tandem is consistent with the calling-party's-network-pays principle adopted by the FCC.⁸ Neutral Tandem's customers, third party originating carriers, have selected Neutral Tandem as their tandem transit provider to deliver calls from their end-users to Level 3's end-users. They, not Level 3, have the right to determine how their calls are routed because they, not Level 3, bear the responsibility for paying the calls' costs.

51. Level 3's continued receipt of terminating traffic from Neutral Tandem on nondiscriminatory terms is also in the public interest. Neutral Tandem provides the sole alternative to the tandem transit services offered by Verizon in Massachusetts. Consequently, Neutral Tandem provides third party carriers with a critical competitive alternative. This results in more efficient delivery of traffic, by allowing originating carriers to select the most cost-efficient route for delivery of their calls to Level 3. Competition for tandem transit services exerts downward pressure on transit charges, while fostering market competition and entry into the telecommunications industry.

52. The FCC long has recognized the substantial benefits of competition in the market for tandem switching services:

By further reducing barriers to competition in switched access services, our actions will benefit all users of tandem switching.... Our actions also should promote more efficient use and deployment of the country's telecommunications networks, encourage technological innovation, and exert downward pressure on access charges and long distance rates, all of which should contribute to economic

⁸ See 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.701(e).

growth and the creation of new jobs. In addition, these measures should increase access to diverse facilities, which could improve network reliability.⁹

53. In addition, competitive tandem switching capacity builds redundancy into the telecommunications transport and switching infrastructure. Lack of tandem capacity is a recurring problem in numerous tandem offices throughout the country. Indeed, in several markets, incumbent LEC tandem capacity has been reported to be exhausted.

54. As a result, several carriers have asked Neutral Tandem to accept overflow traffic to and from the incumbent LECs' tandems, because the competitive carriers are unable to obtain sufficient trunk capacity. Continued deployment of Neutral Tandem's offerings will decrease the level of tandem congestion at incumbent LEC tandems, thereby diminishing the threat of tandem exhaustion.

55. Moreover, lack of tandem redundancy directly impacts homeland security and disaster recovery. As noted by the FCC, the impact of Hurricane Katrina illustrated the importance of building network redundancy in tandem switches:

[M]ore than 3 million customer phone lines were knocked out in Louisiana, Mississippi, and Alabama following Hurricane Katrina. ... Katrina highlighted the dependence on tandems and tandem access to SS7 switches. The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. *Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution.*¹⁰

56. Neutral Tandem does not collocate with Verizon and utilizes four transport providers to transit traffic into Massachusetts. Neutral Tandem's operations thus facilitate

⁹ Expanded Interconnection with Local Tel. Co. Facilities, Transport Phase II, 9 FCC Rcd. 2718, ¶ 2 (rel. May 27, 1994).

¹⁰ Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks Effect of Hurricane Katrina on Various Types of Communications Networks, FCC Docket No. 06-83, at 8 (2006) (emphasis added).

transport redundancy and tandem redundancy, both of which the FCC found would have been extremely helpful in response to Hurricane Katrina.

57. Granting the relief requested herein thus will result in enhanced competition to the benefit not only of Neutral Tandem, but also to the competitive service providers that use Neutral Tandem's tandem transit services, as well as those providers' end-user customers.¹¹

58. Thus, Neutral Tandem requests that the DTC order the parties to adopt the following general interconnection terms:

- Level 3 should be ordered to maintain interconnection with Neutral Tandem for the purpose of receiving tandem transit traffic originated by third party carriers and delivered to Level 3's network by Neutral Tandem; and
- The terms for interconnection between Level 3 and Neutral Tandem should be no less favorable than the terms in place between Level 3 and Verizon for the delivery of transit traffic from Verizon to Level 3, including that Neutral Tandem will not be required to make any payments to Level 3 for the delivery of tandem transit traffic originated by third party carriers.
- To facilitate Level 3's ability to bill originating third party carriers for tandem transit traffic, Neutral Tandem will pass all signaling information received from originating third party carriers to Level 3.

59. To be clear, Neutral Tandem is *not* asking the DTC to order Level 3 to originate any traffic through Neutral Tandem or otherwise become a customer of Neutral Tandem. To the contrary, Neutral Tandem merely seeks an order directing Level 3 to comply with its obligation under Massachusetts law to interconnect Neutral Tandem for the purpose of *receiving* tandem transit traffic originated by third party carriers and delivered to Level 3 by Neutral Tandem on

¹¹ Notably, Level 3 itself has argued in favor of broad interconnection rights for wholesale telecommunications carriers. See, e.g., *Ex Parte Letter in Support of Petition of Time Warner Cable for Declaratory Ruling that CLEC May Obtain Interconnection under Section 251 of the Comm. Act of 1934, as Amended, to Provide Wholesale Telecomm. Svcs. to VOIP Providers*, WC Docket No. 06-55, Letter at 4 (filed February 13, 2007) (Ex. 6).

nondiscriminatory and reasonable terms.¹² Upon adoption of the nondiscriminatory interconnection terms set forth above, Neutral Tandem and Level 3 should be able to enter into a new agreement promptly.¹³

60. On May 18, 2007, Staff of the Illinois Commerce Commission filed testimony from Principal Policy Advisor Jeffrey Hoagg regarding a parallel complaint filed by Neutral Tandem against Level 3 pending before the Illinois Commerce Commission. Mr. Hoagg concluded, among other things, that: (a) Neutral Tandem's Illinois complaint "has merit"; (b) the Illinois commission can and should, where necessary, review interconnection and traffic exchange agreements between CLECs to ensure that such agreement are consistent with the public interest and do not violate provisions of any applicable statutes or regulations; (c) the calling-party's-network-pays principle applies not only in the ILEC context but in CLEC-to-CLEC interconnection arrangements; and (d) rejected Level 3's position that it is reasonable to demand compensation from Neutral Tandem for terminating traffic generated by third party originating carriers.

61. On June 4, 2007, Staff of the Illinois Commerce Commission filed an initial brief on the merits of Neutral Tandem's complaint against Level 3 in that proceeding.¹⁴ In its brief, Staff recommended that the Illinois Commerce Commission find in Neutral Tandem's

¹² This arrangement is similar to the April 20, 2005 Traffic Termination Agreement between Neutral Tandem and various Time Warner Telecom entities. The agreement between Neutral Tandem and Time Warner provides a model for appropriate terms and conditions of one-way interconnection between a tandem transit provider and a terminating carrier. (Ex. 8.)

¹³ Ironically, as noted above, Level 3 signed the Originating Amendment on the same day it notified Neutral Tandem that it was terminating the Level 3 Contract. Level 3 thus seeks to benefit from the competitive tandem transit services (including lower transit rates and improved service) provided by Neutral Tandem for its own originating traffic, while denying those same benefits to other competitive carriers, by refusing to receive tandem transit traffic Neutral Tandem delivers from other third party carriers.

¹⁴ See Docket No. 07-0277, *Neutral Tandem, Inc. v. Level 3 Communications, LLC*, Illinois Commerce Commission, *Initial Brief of the Staff of the Illinois Commerce Commission* (June 4, 2007) (Ex. 9).

favor because, among other reasons, “Neutral Tandem is, as a matter of law, not liable to pay reciprocal compensation to Level 3 for traffic originated by third-party CLECs.”¹⁵ In addition, Staff stated that “Level 3’s conduct is clearly unreasonable inasmuch as its grievance here -- failure to receive adequate compensation for use of its network -- is of its own making, and its threat of unilateral disconnection . . . indicates a greater interest in commercial advantage than the maintenance of uninterrupted exchange of traffic that should be of primary importance to all carriers in a network of interconnected networks.”¹⁶

62. On June 8, 2007, Illinois Staff filed a reply brief stating, among other things, that “the lack of consistency and principle, pursuit of self-interest and indeed blatant hypocrisy in Level 3’s position are obvious, and palpable.”¹⁷

II. The DTC Should Not Allow Level 3 to Disrupt the Flow of Traffic Over the PSTN in Massachusetts.

63. Level 3 has notified Neutral Tandem and the DTC that it plans to disconnect its existing interconnections with Neutral Tandem on or after June 25, 2007. If that occurs, it is possible that end-users in Massachusetts could experience service deprivation and call blockage.

64. Specifically, if Neutral Tandem’s existing interconnections with Level 3 are removed, the third party carriers that currently use Neutral Tandem’s services would have to seek to augment their interconnection trunks with Verizon in order to seek to terminate this traffic indirectly to Level 3. These alternative routes may not have sufficient capacity to send all of the blocked traffic.

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 5.

¹⁷ See Docket No. 07-0277, *Neutral Tandem, Inc. v. Level 3 Communications, LLC*, Illinois Commerce Commission, Reply Brief of the Staff of the Illinois Commerce Commission (June 8, 2007) (Ex. 10).

65. 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.

66. Notably, Level 3 has shown in the past that it will follow-through on threats to disrupt service to other carriers' end-users. For example, in October 2005, Level 3 apparently blocked internet users of Cogent Communications from accessing the internet for three days during a compensation dispute between the parties.¹⁸ As a result of Level 3's conduct in that dispute, its President apologized to both Level 3's and Cogent's customers.¹⁹ Yet even now, Level 3 candidly acknowledges that it views blocking traffic as "a critical part of the negotiating toolkit[.]"²⁰ Such a practice by Level 3 violates the prohibition against unjust or unreasonable practices by common carriers under M.G.L. c. 159, § 16. The DTC should not abdicate its regulatory oversight over the PSTN at the behest of a carrier such as Level 3, which has an unfortunate history of using the blocking of traffic as a negotiating tactic in the past, and makes no secret of its willingness to do so again.

REQUESTED RELIEF

67. Under M.G.L. c. 159, § 17, Level 3 has an obligation to accept terminating traffic from Neutral Tandem on nondiscriminatory and reasonable terms through its existing interconnection with Neutral Tandem. Sections 12, 13, 14, and 16 also grant the DTC authority to order Level 3 to maintain its interconnection with Neutral Tandem for the purpose of accepting terminating traffic on nondiscriminatory, just and reasonable terms.

¹⁸ See Arshad Mohammed, *Internet Access Dispute Cut off Some Businesses*, Washington Post, Oct. 14, 2005, at D04; Jeff Smith, *Level 3, Cogent Resolve Dispute; Feud Disrupted Internet Traffic*, Rocky Mountain News, Oct. 29, 2005, at 3C (Ex. 11).

¹⁹ *Id.*

²⁰ Level 3's Corrected Mot. to Dismiss and Resp. to Pet. of Neutral Tandem, Florida Pub. Serv. Comm'n, at 7.

68. Level 3's obligation to accept terminating traffic from Neutral Tandem is also consistent with the long-standing principle embraced by the FCC that the originating carrier -- not the terminating carrier -- has the power to determine the most cost-effective and efficient call route.

69. Continued interconnection between Neutral Tandem and Level 3 also furthers the policy goals of competition, as well as network redundancy and reliability, and homeland security and disaster recovery.

WHEREFORE, for the reasons set forth herein, Neutral Tandem, Inc. and Neutral Tandem-Massachusetts, LLC respectfully requests that the DTC:

1) Find that Level 3's request for unreasonable terms and conditions of interconnection violates M.G.L. c. 159, § 17, and order Level 3 (including its affiliate, Broadwing) to accept terminating traffic from Neutral Tandem on just, reasonable, and nondiscriminatory terms and conditions pursuant to M.G.L. c. 159, §§ 12, 13, 14, and 16; and

2) Award Neutral Tandem the relief requested herein and all relief the DTC may deem just and reasonable.

ANSWER TO PETITION

On May 30, 2007, Level 3 filed the Petition requesting that the DTC (1) direct Neutral Tandem to cooperate with Level 3 "in an orderly migration process"; (2) direct Neutral Tandem to notify its customers of Level 3's termination of certain contract arrangements between Level 3 and Neutral Tandem; (3) require Neutral Tandem to either route its customers' traffic via trunks that do not use Level 3's networks (for example, through Neutral Tandem's interconnection with Verizon) or compensate Level 3; (4) resolve Level 3's requests on an expedited basis; and (5) grant other relief the DTC deems appropriate. Each of Level 3's requests is meritless and unsupported by Massachusetts and federal law. As set forth in Neutral Tandem's Cross-Petition

herein, Neutral Tandem has the right to interconnect with Level 3 on nondiscriminatory terms and conditions for the purpose of terminating tandem transit traffic to Level 3.

In further answer to the Petition, Neutral Tandem hereby states as follows:

¶ 1: On information and belief, Neutral Tandem admits that Level 3 is a Delaware limited liability company headquartered in Broomfield, Colorado; that Level 3 provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network; and that Level 3 is a CLEC authorized to provide resold and facilities-based local exchange and interexchange telecommunications services in Massachusetts pursuant to the Statement of Business Operations on file with the DTC.

¶ 2: Neutral Tandem admits that Neutral Tandem-Massachusetts, LLC is a Delaware limited liability company and a wholly-owned subsidiary of Neutral Tandem, Inc, and that Neutral Tandem, Inc. is a Delaware corporation with its principal place of business at Two North LaSalle Street, Suite 1645, Chicago, Illinois 60602. Neutral Tandem further admits that it provides tandem transit services to wireless, wireline, and broadband companies; that it does not originate or terminate any telecommunications traffic; and that it provides third-party interconnection services to competitive carriers via tandem switches, which allow wireline, wireless, and broadband phone providers to exchange traffic between carrier networks without direct connections and provides an alternative to using tandem switches provided by the incumbent local exchange carrier. Neutral Tandem admits that it is authorized as a data local exchange carrier pursuant to its Statement of Business Operations on file with the DTC. Neutral Tandem admits that it has adopted the terms of the interconnection agreement between AT&T Communications of New England, Inc. and Verizon Massachusetts, approved by the Department's predecessor in DTE 98-35.

¶ 3: Neutral Tandem admits that on July 6, 2004, Level 3 and Neutral Tandem entered into traffic exchange agreement pursuant to which Neutral Tandem delivered tandem transit traffic from third party carriers to Level 3. Neutral Tandem admits that Level 3 and Neutral Tandem entered into another agreement, dated February 2, 2007, pursuant to which Level 3's subsidiary, Broadwing, purchased Neutral Tandem's transit services and was required to make certain payments to Neutral Tandem. Neutral Tandem admits that, under the terms of those agreements, Level 3 or Neutral Tandem could terminate the agreements on thirty (30) days advance notice. Neutral Tandem further admits that, on January 30, 2007, Level 3 provided notice to Neutral Tandem that it intended to terminate the July 6, 2004 agreement on March 2, 2007, and that on February 14, 2007, Level 3 provided notice to Neutral Tandem that it intended to terminate the February 4, 2004 agreement on March 23, 2007. Neutral Tandem denies any remaining allegations contained in Paragraph 3.²¹

²¹ Neutral Tandem denies the allegation in Level 3's Petition (¶ 3, FN 2) that it has taken "inconsistent positions" in "bad faith" regarding the amount of time Neutral Tandem's customers will need to rearrange their networks to deliver traffic to Level 3 without using Neutral Tandem's tandem service. Neutral Tandem has consistently taken the position that it may take up to six months for third party carriers to rearrange their networks. In California, Neutral Tandem filed a motion for interim relief in which it requested that the California Public Utility Commission "order Level 3 to maintain the current direct interconnection arrangement for thirty (30) days after the Commission issues a final resolution on the merits of Neutral Tandem's Complaint." Neutral Tandem explained why its request for thirty days in that motion is entirely consistent with its position that migration may take up to six months days as follows:

"Ms. Baack [Level 3's executive and witness] has represented that Level 3 will allow interconnections to remain in place beyond the termination deadline, if the originating carriers request additional time to re-configure their networks. See Case No. 07-C-00233, *In re Petition of Neutral Tandem - New York, LLC for Interconnection with Level 3 Commc'ns*, Tr. of 4/12/07 Evidentiary Hearing, at 240-41. Neutral Tandem believes that thirty days is sufficient for the nineteen third party carriers to provide this notification to Level 3. As long as Level 3 abides by that commitment, Neutral Tandem does not see any likelihood that the services of the third party carriers would be disrupted."

See Case No. 07-03-008, *Neutral Tandem California, LLC v. Level 3 Communications, LLC, Direct Testimony of Rian Wren Submitted on Behalf of Neutral Tandem California, LLC*, at 32-33 (filed 5/25/07).

¶4: Neutral Tandem lacks sufficient information at this time regarding Level 3 “own analysis” and “belief” to admit or deny the allegations contained in Paragraph 4. Neutral Tandem admits that, in May 2007, it delivered approximately 9.4 million minutes of traffic to Level 3 and approximately 4.4 million minutes of traffic to Broadwing in the Commonwealth of Massachusetts. Neutral Tandem lacks sufficient information at this time to admit or deny the remaining allegations contained in Paragraph 4, and therefore denies them.

¶5: Neutral Tandem admits that in February 2007, Neutral Tandem and Level 3 engaged in negotiations to reach new agreements, Level 3 extended the termination effective date to March 23, 2007, and, to date, efforts to negotiate a new agreement have been unsuccessful. Answering further, from Neutral Tandem’s perspective, a significant impediment which stands in the way of the parties reaching a new agreement has been Level 3’s continued insistence that Neutral Tandem pay Level 3 “reciprocal compensation” when Neutral Tandem delivers to Level 3 tandem transit traffic from third party carriers. Neutral Tandem denies any remaining allegations contained in Paragraph 5.

¶6: Neutral Tandem admits that in March 2007, after Neutral Tandem had filed petitions before other state utility commissions²² to require Level 3 to fulfill its statutory obligation to continue to accept terminating traffic from Neutral Tandem, Level 3 unilaterally decided that it would begin refusing to accept tandem transit traffic Neutral Tandem delivers to Level 3 on behalf of third party carriers as of June 25, 2007. Neutral Tandem admits that the July 6, 2004 and February 2, 2004 agreements were not reinstated or formally extended. Neutral Tandem denies the remaining allegations contained in Paragraph 6.

²² Neutral Tandem admits that it currently has complaints against Level 3 pending in New York, Georgia, Florida, Illinois, Michigan, Minnesota, Connecticut and California, and subsequent to the filing of Level 3’s Petition before the DTC, has filed against Level 3 a petition in Indiana, a cross-petition in Washington D.C., and a counterclaim in New Jersey.

Answering further, Level 3's assertion that Neutral Tandem must inform its customers of Level 3's threatened termination of service ignores the substantive issues discussed in Neutral Tandem's Cross-Petition, and simply presumes that Level 3 will prevail in this dispute. As detailed above, Neutral Tandem has a right to deliver traffic to Level 3 for termination on just, reasonable, and nondiscriminatory terms and conditions, and therefore is under no obligation to inform its customers of Level 3's decision to cancel the parties' previous contracts. Additionally, disruption of the connections already established between Level 3 and Neutral Tandem will undoubtedly lead the carriers using Neutral Tandem's services to question Neutral Tandem's viability in the market. Removal of termination capability to Level 3 will also clearly harm other third-party carriers, and will undoubtedly cause the loss of goodwill they have for Neutral Tandem. Carriers 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, likely will blame Neutral Tandem, not Level 3, for the inconvenience and expense they would suffer from having their traffic destined for Level 3 disrupted. These third-party carriers 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. Level 3 should not be permitted to dictate unilaterally when and what Neutral Tandem communicates to its customers. Accordingly, Neutral Tandem is under no obligation at this time to inform its customers of Level 3's unlawful refusal to maintain its existing interconnection with Neutral Tandem for the purpose of accepting terminating traffic from Neutral Tandem on nondiscriminatory terms as required by law.

¶ 7: Neutral Tandem denies the allegations contained in Paragraph 7. Answering further, for the reasons set forth in its response to Paragraph 6 which Neutral Tandem incorporates herein, Neutral Tandem states that the DTC should reject Level 3's self-serving request that the DTC, "on an expedited basis, direct Neutral Tandem to immediately notify its customers" of the termination of the contracts between the parties.

¶ 8: Neutral Tandem denies the allegations contained in Paragraph 8. Answering further, Level 3's request that the DTC require Neutral Tandem to route its current traffic "over its existing interconnection arrangements with the ILEC," compensate Level 3 to the extent Neutral Tandem utilizes Level 3's network at a rate of \$.001 per minute, and post a bond "to ensure that Level 3 does not suffer financial harm" lacks merit and should be rejected by the DTC.

Level 3 essentially requests that Neutral Tandem transit all of its traffic through a second tandem transit provider, Verizon, in order to have the traffic terminated to Level 3's network. Routing traffic through two tandems for normal calling transport is a waste of tandem switching capacity and negates the benefits of network survivability and redundancy, as discussed above in Neutral Tandem's Counterclaim. Forcing Neutral Tandem to deliver traffic through the incumbent LEC's tandem would negate the purpose for which its connection with Verizon was created. Neutral Tandem connects with Verizon solely to provide its customers with diverse and reliable facilities and routings in case one of the customer's connections with Neutral Tandem is temporarily cut. Neutral Tandem has used its connection with Verizon for this purpose only to provide third party carriers using its tandem transit services with a highly reliable service to end-user customers, and to promote its ability to respond to disaster recovery. The connection therefore 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. Routing through Verizon destroys the redundancy benefits provided by Neutral Tandem as well as the competitive benefits.

Similarly, Level 3's request that the DTC order Neutral Tandem to compensate Level 3 for terminating transit traffic and post a bond is decidedly unreasonable and discriminatory. Level 3 does not receive compensation from Verizon for terminating the same transit traffic when Verizon delivers transit traffic to Level 3's network. Moreover, under FCC policy and absent a specific agreement to the contrary, the originating carrier is responsible for costs associated with traffic that terminates to Level 3. Level 3's demand for compensation from Neutral Tandem runs afoul of the calling-party's-network-pays principle.

There is also no legal basis, and Level 3 cites none, for Level 3's request that the DTC require Neutral Tandem post a bond or pay Level 3 \$.001 per minute to terminate calls originated by third parties and delivered as transit traffic by Neutral Tandem to Level 3 for termination. As Level 3 alleges in its Petition, Level 3 has purportedly terminated the agreements under which Neutral Tandem delivered traffic to Level 3, as well as to Level 3's Broadwing subsidiary. If this is so, there is no contractual basis for Level 3 unilaterally to impose any such rate. Instead, Level 3 is entitled to seek compensation from the originating carriers who originate calls for termination to Level 3, not from Neutral Tandem who is merely the transit service provider. Level 3 also fails to identify any tariff that would allow it unilaterally to impose a rate on Neutral Tandem for delivering transit traffic. Even if such a tariff existed, by Level 3's own admission, it is not seeking to impose such a rate on ILECs when they deliver transit traffic to Level 3. Thus, Level 3's application of any tariff against Neutral Tandem, even if one existed, would be unlawful.

¶ 9: Neutral Tandem denies that “the public interest, convenience and necessity will be furthered by expeditious DTC approval of [Level 3’s] requests as described herein.” To the contrary, the public interest will be furthered by the DTC’s expeditious dismissal of Level 3’s Petition which, for the reasons stated herein and in Neutral Tandem’s Cross-Petition against Level 3 and Broadwing, is contrary to the law of the Commonwealth. The remainder of Paragraph 9 does not assert any allegations and thus no response is necessary.

WHEREFORE, for the reasons herein and the reasons set forth in Neutral Tandem’s Cross-Petition, Neutral Tandem respectfully requests that the DTC deny Level 3’s Petition.

Respectfully submitted,

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