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VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless, Inc. Pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as Amended

Dear Ms. Dortch:

On behalf of Neutral Tandem, Inc. ("Neutral Tandem"), enclosed please find an original and four (4) copies of Neutral Tandem's Petition for Interconnection with Verizon Wireless, Inc. Pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as Amended.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please do not hesitate to contract us if you have any questions regarding this filing.

Respectfully submitted,

Russell M. Blau
Jeffrey R. Strenkowski

Counsel for Neutral Tandem, Inc.

Enclosures

cc: Service List
Michelle Carey (FCC)
Thomas Navin (FCC)
Charon Phillips (Verizon Wireless)

CERTIFTCATE OF SERVICE

I hereby certify that, on this 2nd day of August, 2006, an original and four copies of Neutral Tandem's Petition for Interconnection with Verizon Wireless, Inc. were filed with the Federal Communications Commission. A copy of the Petition was hand delivered to the party listed below with an asterisk (*), and sent via postage prepaid, first-class mail to the other party listed below.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Petition of Neutral Tandem, Inc.	)	
for Interconnection with Verizon	)	Docket No. _____
Wireless, Inc. Pursuant to Sections	)	
201(a) and 332(c)(1)(B) of the	)	
Communications Act of 1934, as Amended	)	
_____	)	

PETITION OF NEUTRAL TANDEM, INC. FOR INTERCONNECTION WITH VERIZON WIRELESS, INC. PURSUANT TO SECTIONS 201(A) AND 332(C)(1)(B) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

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Dated: August 2, 2006

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Summary

Neutral Tandem, Inc. ("Neutral Tandem") petitions the Commission to order Verizon Wireless to establish direct physical connections and through routes with Neutral Tandem, pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (the "Act"). Neutral Tandem has been involved in an ongoing dispute for over two years with Verizon Wireless concerning such direct connection. Specifically, Neutral Tandem respectfully requests that the Commission require Verizon Wireless to establish a connection, adequate for the relevant level of traffic, in all markets served by both Verizon Wireless and Neutral Tandem, for terminating traffic from Neutral Tandem (and Neutral Tandem's customers) within sixty (60) days of request by Neutral Tandem, and to terminate such traffic within thirty (30) days of notice from Neutral Tandem that the connection with Neutral Tandem is operational. Such timeframes have previously been agreed to by Verizon Wireless and Neutral Tandem in a voluntarily negotiated agreement, and are therefore clearly reasonable.

The connections requested by Neutral Tandem are "necessary or desirable in the public interest" because they will promote: (1) tandem competition and all the attendant benefits of such competition; and (2) network reliability, diversity, and disaster recovery for both Verizon Wireless, all carriers terminating traffic to Verizon Wireless, and the PSTN; and be economically efficient and result in lower costs to the users of telecommunications service, thus permitting Neutral Tandem's carrier customers to exchange traffic with Verizon Wireless more economically and more reliably.

This Petition also demonstrates that the Commission may lawfully satisfy the hearing requirement under § 201(a) of the Act by conducting a restricted hearing "on the papers" limited to the two parties to the dispute. The Petition also provides Neutral Tandem's proposed procedural schedule for such a proceeding.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Petition of Neutral Tandem, Inc.	)	
for Interconnection with Verizon	)	Docket No. _____
Wireless, Inc. Pursuant to Sections	)	
201(a) and 332(c)(1)(B) of the	)	
Communications Act of 1934, as Amended	)	
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PETITION OF NEUTRAL TANDEM, INC. FOR INTERCONNECTION WITH VERIZON WIRELESS, INC. PURSUANT TO SECTIONS 201(A) AND 332(C)(1)(B) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

I. Introduction

Neutral Tandem, Inc. ("Neutral Tandem"), by its undersigned counsel, hereby petitions the Commission to order Verizon Wireless to establish direct physical connections and through routes with Neutral Tandem, pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (the "Act"). Neutral Tandem has been involved in an ongoing dispute with Verizon Wireless concerning such direct connection, and petitions the Commission for resolution of these disputes. Specifically, Neutral Tandem respectfully requests that the Commission require Verizon Wireless to establish a connection, adequate for the relevant level of traffic, in all markets served by both Verizon Wireless and Neutral Tandem, for terminating traffic from Neutral Tandem within sixty (60) days of request by Neutral Tandem, and to terminate such traffic within thirty (30) days of notice from Neutral Tandem that the connection with Neutral Tandem is operational.

This Petition demonstrates that the connections requested by Neutral Tandem are "necessary or desirable in the public interest" because they will promote network reliability, diversity,

and disaster recovery; be economically efficient and result in lower costs to the users of telecommunications service; and will permit Neutral Tandem's carrier customers to exchange traffic with Verizon Wireless more economically and more reliably.

This Petition also demonstrates that the Commission may lawfully satisfy the hearing requirement under § 201(a) of the Act by conducting a restricted paper hearing that: (1) is limited to the two parties to the dispute; and (2) is conducted entirely "on the papers." This Petition also provides support for Neutral Tandem's proposed procedural schedule, incorporated herein at Section III.B.

A. Background on Neutral Tandem

Neutral Tandem offers competitive tandem switching and transit services in over 40 LATAs nationwide. It is the industry's only independent tandem services provider, offering neutral intercarrier transit and tandem-switched access services between competitive carriers.[1] Among other services, Neutral Tandem provides CLECs, wireless carriers, and cable companies alternative means to interconnect and exchange traffic without using incumbent LEC transit and tandem-switched access services. Neutral Tandem provides service to, and/or has direct connections with, nearly every major CLEC, CMRS and cable provider. Through its competitive tandem switching and transit services, the Company provides diversity, redundancy, efficiency, and increased reliability to the public switched telephone network ("PSTN"). Competitive tandem switching also inherently builds redundancy into the telecommunications sector and infrastructure, which, in turn, allows for faster disaster recovery and provides more robust homeland security.

[1] "Transit" 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 or MTA. "Tandem-switched access" refers to the routing of switched access, usually interLATA, traffic between the network of an interexchange provider or other service provider, on the one hand, and the end office of the originating or terminating local service provider, on the other.

Apart from the public benefits associated with competition in the tandem switching and transit service businesses and the increased redundancy for the PSTN, Neutral Tandem provides significant benefits to its carrier customers, including 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 services also helps level the playing field by increasing competitive carriers' leverage with ILECs.

B. Background on the Dispute

As an integral part of providing intercarrier transit and tandem switched services, Neutral Tandem establishes direct trunk connections, typically at DS3 or multiple DS3 capacities, between its customers and the carriers to whom they wish to terminate traffic. Neutral Tandem installed its first tandem facility in Chicago in late 2003, and within three months of turning up service in that Metropolitan Statistical Area, Neutral Tandem's customers were originating approximately 10-20 million minutes per month terminating to Verizon Wireless customers. That significant volume of traffic compelled Neutral Tandem to seek a direct trunk to the Verizon Wireless network so that the traffic could be transmitted to Verizon Wireless in an efficient, direct manner versus through the ILEC tandem. On February 23, 2004, Neutral Tandem sent a written Request for Interconnection to Verizon Wireless, requesting the establishment of a direct trunk connection to Verizon Wireless' switches. Neutral Tandem has at all times made clear to Verizon Wireless that the trunking arrangement is to carry large quantities of traffic originating from Neutral Tandem's customers to the Verizon Wireless network, and that Neutral Tandem would bear all costs for such connections – Verizon Wireless would not become a customer of Neutral Tandem, and Neutral Tandem would impose no recurring or nonrecurring charges on

Verizon Wireless. Verizon Wireless summarily refused to directly interconnect with Neutral Tandem and its carrier customers.

On May 14, 2004, Neutral Tandem filed with the FCC's Enforcement Bureau a Request for Mediation and Accelerated Docket Treatment under § 208 of the Act, alleging that Verizon Wireless' refusal to establish direct interconnection trunks violated §§ 201(a), 332(c)(1)(A), and 202 of the Act. After several months of mediation, the parties agreed to resolve the dispute and on August 18, 2004 executed a Master Services Agreement ("MSA") drafted by Verizon Wireless designed to resolve Neutral Tandem's request for direct terminations that specifically stated:

> The terms of this Agreement will apply to *all markets served by both parties*, including, but not limited to, Illinois, New York, California, Florida, Wisconsin, Ohio, Minnesota, Michigan, Connecticut, and Indiana.[2]

And that,

> Verizon Wireless agrees that it will: ... (c) establish a connection for terminating traffic from [Neutral Tandem] within sixty (60) days of a request of [Neutral Tandem], and terminate traffic within thirty (30) days of notice from [Neutral Tandem] that the connection with [Neutral Tandem] is operational; (d) add additional facilities to sufficiently trunk the network for traffic volumes; ....[3]

Within two months, Verizon Wireless began to violate the terms of that agreement by refusing to allow Neutral Tandem to establish adequate direct trunk facilities to Verizon Wireless in New York. Verizon Wireless subsequently advised Neutral Tandem that it had a highly restricted interpretation of its obligations under the MSA, arguing that the agreement only applied to three cities, and did not require Verizon Wireless to establish direct trunk connections anywhere else.[4] On or about July 17, 2006, Verizon Wireless gave notice of termination of the

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[2] *See* Master Service Agreement, at 1 (emphasis supplied).

[3] *See id.*, at 2.

[4] After seven months of continued negotiations to resolve these renewed disputes, on May 12, 2005 Neutral Tandem once again filed with the Enforcement Bureau a Request for Mediation and Accelerated

Master Service Agreement and demanded that Neutral Tandem remove within 90 days even the limited trunk connections that it had established with Verizon Wireless pursuant to that contract.

Accordingly, Neutral Tandem has no alternative but to seek a Commission order requiring interconnection. This process has been used extensively by the Commission over a period of more than 30 years to establish "through routes" pursuant to § 201(a) of the Act. The Commission has not used this procedure recently, however, and so the issue of the appropriate procedures for handling such a proceeding has arisen in this dispute. Therefore, Neutral Tandem proposes a set of procedures for the conduct of this proceeding in Section III of this Petition.

II. The Interconnection Sought by Neutral Tandem is in the Public Interest

Neutral Tandem respectfully submits that the physical interconnection and direct trunk "through routes" to Verizon Wireless sought by Neutral Tandem are in the public interest. Interconnection with Verizon Wireless will promote network reliability and disaster recovery, and thus will promote homeland security. More specifically, the establishment of direct connections between Neutral Tandem and Verizon Wireless as an independent route for the termination of traffic will add network redundancy into Verizon Wireless' network, as well as the PSTN at large.[5] The provision of these separate facilities will establish new and alternate network paths, building redundancy and resiliency into the PSTN in the event of an outage or overcapacity situation.

Docket Treatment under § 208 of the Act. The Bureau denied this request on December 6, 2005, and has advised Neutral Tandem that it believes that § 208 procedures do not apply to requests for direct connection governed by § 201(a). Although Neutral Tandem believes that the Enforcement Bureau is being overly cautious in this regard, it is filing this Petition to permit the Commission to reach the merits of the dispute promptly without being tied up in procedural uncertainty.

[5] The harm to Neutral Tandem in its failure to obtain direct connections to Verizon Wireless is exacerbated in Verizon ILEC territories because Verizon has taken the position that Neutral Tandem may not resell transit services to its carrier customers for the delivery of traffic to Verizon Wireless in those areas.

Further, direct connections between Neutral Tandem and Verizon Wireless will result in more efficient delivery of traffic by allowing other carriers to select the most cost-effective route for delivery of their calls to Verizon Wireless. It will also promote increased competition in the provision of transit services, which will improve service quality, decrease rates for telecommunications services, which in turn will foster retail market competition and entry in the competitive telecommunications industry.

As noted above, Neutral Tandem is an independent provider of tandem services to third-party service providers that desire to terminate traffic with other service providers, including Verizon Wireless and other CMRS carriers. Neutral Tandem provides third-party carriers a competitive alternative to the existing ILEC tandem, thereby increasing the options and reducing the costs for transiting traffic for other carriers. As such, increased deployment of Neutral Tandem's offerings will decrease the level of tandem congestion at ILEC tandems, thereby diminishing the threat of tandem exhaustion and the intercarrier disputes such concerns generate.[6] Tandem competition exerts downward pressure on transit and access charges and thus on local (including wireless) and long distance rates. As noted by the Commission as early as 1994, in the *Tandem-Switching Order*:

> 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 growth and the creation of new job opportunities. *In addition, these measures should increase access to diverse facilities, which could improve network reliability.*[7]

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[6] *See, e.g., Core Communications v. Verizon Maryland, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd. 7962 (2003).

[7] *See Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II*, 9 FCC Rcd. 2718, ¶2 (rel. May 27, 1994) (emphasis added).

The public interest would also be served by Neutral Tandem's request for direct connection as competitive tandem switching inherently builds redundancy into the telecommunications sector and infrastructure, which, in turn, allows for faster disaster recovery and provides more robust homeland security. Accordingly, a grant of Neutral Tandem's request for interconnection will result in enhanced competition in the interstate market for tandem-switched telecommunications services, to the benefit of not only Neutral Tandem, but to all competitive service providers that use Neutral Tandem's services, and their respective customers.

The Commission has found that network interconnectivity is such a compelling public interest under Sections 201(a) and 332(c)(l)(B), that the Commission is mandated to commence proceedings when it receives interconnection requests. "We read Section 332(c)(l)(B) of the Communications Act ... together with Section 201(a) to mean that the Commission *is required* to respond to requests for interconnection with proceedings to determine whether it is necessary or desirable in the public interests to order interconnection in particular cases."[8]

The Commission has repeatedly stated that the public interest is served by unrestricted interconnectivity among telecommunications carriers, including CMRS carriers. "[W]e believe that the interconnectivity of mobile communications networks promotes the public interest because it enhances access to all networks, provides valuable network redundancy, allows for greater flexibility in communications, and makes communications services more attractive to consumers. It is one further step toward a ubiquitous 'network of networks.'"[9] Further, the Commission has

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[8] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services,* Notice of Proposed Rulemaking, 10 FCC Rcd. 10666, 10685-86 (1995) ("*CMRS NPRM*") (internal citations omitted).

[9] *Id.* at 10681, ¶ 128. The Commission further noted that "[t]he record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act." *Developing a Unified Intercarrier Compensation Regime,* Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, at ¶ 125 (rel. March 3, 2005) ("*Intercarrier Compensation FNPRM*"). The Commission went on to solicit specific data and comment concerning the role of transit functions in a competitive market, and on whether a competitive market currently exists for tandem switching and transiting. *Id.* at ¶¶ 126-133.

notified CMRS carriers that it will require interconnection when the public interest demands it. "[W]e remind all CMRS providers from whom interconnection is sought, that they are common carriers subject to the basic commands of Sections 201 and 202 of the Communications Act."[10] In so stating, the Commission explicitly reminded CMRS carriers of their interconnection obligations under the Act.

In setting this policy, the Commission also recognized two examples where CMRS carriers' refusals to interconnect would, at a minimum, be deemed suspect, and would likely be in violation of Section 201. The first example is when a CMRS carrier's refusal to interconnect would be economically inefficient, and would impose costs on the requesting carrier, or forego cost savings.

> [E]stablished industry representatives (cellular carriers, LECs, trade associations) have represented that when traffic volumes between CMRS systems justify direct connections, the industry will implement interconnection because it will make business sense to do so. The current record presents the Commission with no reason to believe that this will not be the case, and we fully expect all CMRS providers to behave in an economically rational manner and to implement direct and efficient network connections at reasonable costs when the opportunity and need arise.[11]

Yet, despite this expectation that CMRS carriers act in an economically and operationally rational manner—indeed NT's success in interconnecting with wireless carriers, including affiliates of ILECs, suggest they normally do—Verizon Wireless has rejected Neutral Tandem's request for direct trunk interconnection, despite the operational and economic advantages that such interconnection would afford. In its written and verbal communications with Verizon Wireless, Neutral Tandem made clear the advantages that Verizon Wireless would realize if it agreed to the direct trunking arrangement requested by Neutral Tandem. Specifically, Neutral

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[10] *CMRS NPRM,* 10 FCC Rcd. at 10685, ¶ 38.

[11] *Id.* at 10684-85, ¶ 37.

Tandem has repeatedly relayed the following points concerning its interconnection request to Verizon Wireless:

- Neutral Tandem will arrange for, and be responsible for, all the transport to the Verizon Wireless switch sites. There would be no out-of-pocket costs to Verizon Wireless.
- The engineering requirements for such terminating trunking are minimal.
- To the extent that the trunking would reduce the Verizon Wireless-bound traffic transited through the Verizon or other LEC tandems, it would reduce Verizon Wireless' interconnection traffic costs.
- The volume of Verizon Wireless-bound traffic generated by Neutral Tandem in Chicago alone is approximately 35 million minutes per month, a volume 125 times the amount that typically justifies direct trunking within industry practice. Such an amount eliminates any concern regarding port underutilization. In 12 cities where Neutral Tandem has deployed facilities for more than six months, the volumes of traffic that is bound for Verizon Wireless ranges from approximately 3 million minutes per month in Columbus, to at least 50 million minutes per month in New York. These volumes justify direct trunked interconnection in every case.
- Neutral Tandem will provide terminating transit reports, a useful source of information for network planning and bill verification purposes, which is not currently available from the major incumbent LECs, access to billing records (if Verizon Wireless wants to bill reciprocal compensation to any of the carriers Neutral Tandem is connected to), near real-time traffic utilization reports on all of the relevant trunk groups, and a central point of contact.

Moreover, direct trunking of large volumes of traffic is a common practice throughout the industry because it helps to reduce congestion on tandem switches and protects against tandem exhaust. In fact, it is the internal network engineering policy of Verizon Wireless' parent company, Verizon Communications, to require direct trunking around the tandem switch whenever a carrier exceeds one DS1 (1.455 Mbps) of capacity.[12] Although the Wireline Competition Bureau

[12] *See Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for the Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, 17 FCC Rcd. 27039, 27079-84 (Wireline Comp. Bur. 2002).

found that a less stringent requirement was reasonable,[13] the practice of direct trunking was nevertheless confirmed as a valid means of protecting against tandem exhaust. The Bureau expressly made this finding in the interconnection arbitration it conducted involving Verizon Communications in Virginia as requested by Verizon itself.[14] The fact that Verizon Wireless would reject a request for direct trunk interconnection that is clearly advantageous to it, and that comports with standard industry practices, including the network management practices of Verizon Wireless' parent company, strongly indicates that Verizon Wireless is acting in an unreasonable, economically inefficient, and anticompetitive manner.

Moreover, concern over tandem exhaust and redundancy is not academic. Tandem exhaust is a recurring problem in numerous tandem offices throughout Florida and in Atlanta and Los Angeles. This situation has lasted for years. Indeed, even Verizon has raised its concerns over tandem exhaust in comments before the Commission in the Intercarrier Compensation proceeding. The Commission quoted Verizon in its Intercarrier Compensation *FNPRM:* "[Incumbent LECs] explain that they limit the availability of [transit] services in order to prevent traffic congestion and tandem exhaust, and to encourage carriers to establish direct interconnection when traffic volumes warrant it."[15] These developments further illustrate the public interest benefits that Neutral Tandem's service offers to all telecom carriers, including Verizon Wireless. Without Neutral Tandem's built-in redundancy, many carriers face increased network costs and

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[13] The Bureau adopted Cox Communications' compromise proposal for the establishment of end office trunking when traffic levels exceeded three (3) DS1s, measured over a period of three months. *See id.*, 17 FCC Rcd. at 27085-86, ¶ 89.

[14] In that arbitration, Verizon advocated that to reduce tandem congestion, carriers should establish direct end office connections at levels which meet or exceed the DS1 threshold. *See id.* at 27084-86. Of course, Neutral Tandem's arrangements would reduce tandem congestion in markets where it offers its alternative services.

[15] *Intercarrier Compensation FNPRM*, ¶ 122 & n.348.

service delays in critical markets and all carriers would be more exposed in the event of a network impacting emergency or crisis.

The second example in which the Commission has found that a CMRS carrier's refusal to interconnect would merit special scrutiny is when the CMRS carrier is affiliated with an ILEC. In detailing this example, the Commission recognized that ILEC-affiliated CMRS carriers may have an incentive to act in an economically irrational manner in order to secure a competitive advantage for ILEC owners or affiliates.

> [T]he Commission stands ready to intercede in the event a CMRS provider refuses a reasonable request to interconnect. We will be particularly vigilant in policing, where they exist, any efforts by CMRS providers to deny interconnection in order to gain an unfair competitive advantage. For example, we would find LEC investment in, and affiliation with, the party denying interconnection an important factor in assessing whether such denial was motivated by an anticompetitive animus. Unlike independent CMRS carriers, LEC-affiliated CMRS carriers may have a unique incentive to deny interconnection so as to keep CMRS-to-CMRS traffic interconnected through the local exchange landline network, and to continue to collect CMRS interconnection charges from both sets of CMRS providers through their access charge structure. Such LEC ownership interests may play an important role in assessing whether a denial of interconnection is a reasonable business decision or a form of anticompetitive conduct intended to raise rivals' costs of doing business and hence hinder competition.[16]

This remarkably prescient statement states precisely the issue Neutral Tandem now brings before the Commission. As noted above, Verizon Wireless gains nothing for itself by refusing to directly connect to Neutral Tandem. Doing so only forgoes cost savings. Yet the value of such refusal to its parent company, Verizon Communications, is self-evident. The tandem transit service provided by Neutral Tandem directly competes with the historically monopoly tandem transit services offered by Verizon Communications and the other ILECs. Direct connection between Verizon Wireless and Neutral Tandem in New York, for example,

[16] *CMRS NPRM,* 10 FCC Rcd. at 10687 (footnotes omitted).

will facilitate the ability of IXCs, CLECs, and independent CMRS carriers to bypass the Verizon Communications tandem and obtain more efficient and cost effective service from a competitive carrier. By refusing interconnection with Neutral Tandem, in violation of the MSA termination agreement signed by the two parties, Verizon Wireless was clearly protecting the interests of its ILEC parent, which along with its ILEC brethren, currently provides tandem transit services on a monopoly basis in its service territory.

Further, Verizon Wireless already accepts transit traffic from Verizon and other ILECs throughout the country, and has not sought to block such traffic or deny interconnection with those carriers due to the fact that those ILECs pass third-party traffic to Verizon Wireless for termination. As such, Verizon Wireless' failure to permit Neutral Tandem to establish direct interconnection for the termination of transit traffic, at Neutral Tandem's expense, clearly discriminates unreasonably against Neutral Tandem in relation to how Verizon Wireless behaves towards ILECs and RBOCs.

Once again, the Commission's earlier statements foretold such anticompetitive conduct: "If costs of indirect interconnection through the LEC were higher than direct CMRS-to-CMRS interconnection, however, some potential might exist for CMRS providers to raise their rival's costs by denying direct interconnection, or increasing the price of direct interconnection to the price charged by the LEC for indirect connection."[17] Simply stated, Verizon Wireless' refusal to establish a direct trunk connection to Neutral Tandem forces Neutral Tandem's customers to pay tandem switching and transport charges to the ILEC, foreclosing cost savings such carriers could enjoy through a competitive alternative to this monopoly service, and eliminates redundancy and tandem competition benefits within the PSTN. This imposition of duplicative and unnecessary

[17] *Id.* at 10682-86 (footnotes omitted).

costs for ILEC services negates the value proposition of the Neutral Tandem service, raises the cost of interconnection to Verizon Wireless' CMRS rivals, and is profoundly anticompetitive.

The fact that Verizon Wireless is foregoing effective interconnection and cost savings, and the fact that Verizon Wireless' refusal of Neutral Tandem's interconnection request provides an unfair competitive advantage to Verizon Wireless' parent company, clearly demonstrate that Verizon Wireless is in violation of Sections 201 and 332 of the Communications Act. Conversely, establishment of the direct trunking arrangements that Neutral Tandem seeks will expand interconnectivity among various networks, promote competition, add redundancy to the PSTN thereby benefiting homeland security and disaster recovery, and provide alternative services to IXC, CLEC and CMRS carriers that previously had no options available to them. As such, such direct trunking arrangements would serve the public interest.[18]

As noted above, Neutral Tandem respectfully requests that the Commission require Verizon Wireless to establish a connection, adequate for the relevant level of traffic, in all markets served by both Verizon Wireless and Neutral Tandem, for terminating traffic from Neutral Tandem within sixty (60) days of request by Neutral Tandem, and to terminate such traffic within thirty (30) days of notice from Neutral Tandem that the connection with Neutral Tandem

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[18] As noted by AT&T in comments previously filed with the Commission:

> Section 251(a) of the 1996 Act requires all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c)(2) also requires ILECs to provide interconnection with "any requesting telecommunications carrier ... for the transmission and routing of telephone exchange service and exchange access." *Neither Section 251(a) nor Section 251(c)(2) contains any provisions relieving terminating carriers of their obligation to interconnect with another telecommunications carrier simply because that telecommunications carrier does not directly serve end user customers.*

Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55, Comments of AT&T, at 2 (filed Apr. 10, 2006) (emphasis added).

is operational. Further, Neutral Tandem requests that the Commission require Verizon Wireless to provide additional capacity as necessary to accommodate the relevant level of traffic within thirty (30) days notice by Neutral Tandem. As noted previously, such timeframes are reasonable, as they have already been voluntarily agreed to by Neutral Tandem and Verizon Wireless in the MSA.[19]

III. The Wireline Competition Bureau Has Authority to Conduct an Expedited, Restricted Proceeding to Establish a Through Route Pursuant to Section 201(a) of the Act

It is axiomatic that the Commission is vested with broad discretion to select the most efficient procedures in conducting its regulatory business.[20] This reflects the mandate of § 4(j) of the Act, which states that "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."[21]

Under the provisions of Section 201(a), the Commission may order the establishment of direct connections "after opportunity for hearing[.]"[22] No specific procedure for these hearings is dictated by the statute, however. Indeed, the Supreme Court has held that the term "hearing" is sufficiently broad to be satisfied by exclusive reliance on written comments.[23] Consistent with that precedent, the Commission has determined that a § 201(a) hearing need not be an "on-the-record" hearing. For example, in *CPI Microwave*, the Commission determined that

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[19] *See* Master Service Agreement, at 2. Verizon Wireless acknowledged that these timeframes are reasonable given that it agreed to them in the MSA. Further, these timeframes are reasonable because this request will not lead to net new traffic since Verizon Wireless is already receiving this traffic from the ILECs in the relevant markets.

[20] *See, e.g., SEC v. Chenery Corp.*, 332 U.S. 194 (1947); *NLRB v. Wyman-Goodman Co.*, 394 U.S. 759 (1969); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974).

[21] 47 U.S.C. § 4(j).

[22] *AT&T v. FCC*, 292 F.3d 808 (D.C. Cir. 2002).

[23] *See U.S. v. Florida East Coast Ry.*, 410 U.S. 224 (1973) (distinguishing "after hearing" from "on-the-record after hearing").

> [b]ecause of the significant public interest factors that may be involved in assuring timely program transmission services to the public, we believe the matters complained of herein should be resolved as expeditiously as possible... Under the circumstances, it appears that this controversy can be resolved upon submission of written comments and reply comments without the necessity for evidentiary hearings, recommended decision, initial decision, or tentative decision.[24]

The fact that this dispute has already been extensively briefed by both parties during the pendency of Neutral Tandem's request for mediation before the Enforcement Bureau, and the fact that the questions of fact and law are narrowly circumscribed, a paper proceeding is an optimally efficient means of hearing this Petition.

An interconnection order, because it will have prospective effect, is classified as a "rule" under the Administrative Procedures Act.[25] This, however, does not constrain the Commission's procedural options, because the APA allows agencies to adapt rulemaking procedures to the situations before them. In particular, publication of notice of proposed rulemaking in the *Federal Register* is not required where the persons subject to the proposed rule have been personally served (as Verizon Wireless has been with this Petition); and the Commission may select the most appropriate means of allowing affected parties to participate, which may include "submission of written data, views, or arguments with or without opportunity for oral presentation." 5 U.S.C. §§ 553(b), (c).

The Commission has experience with other types of rulemaking proceedings of limited applicability, such as broadcast channel assignment dockets, which are conducted as adversarial proceedings among the affected parties rather than public comment rulemakings. This procedure

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[24] *Joint Petition of CPI Microwave, Inc., and Midwestern Relay Co. for an Order to Show Cause with Respect to American Telephone and Telegraph Co., Illinois Bell Telephone Co., and Southwestern Bell Telephone Co.*, 49 FCC 2d 778 (1974).

[25] "'[R]ule' means ... an agency statement of general *or particular* applicability and future effect designed to implement, interpret, or prescribe law or policy ...." 5 USC § 551(5) (emphasis added).

has been used particularly in addressing petitions for interconnection pursuant to § 201(a) of the Act.[26] Indeed, in 1980, the Commission amended § 1.1207 of its *ex parte* rules to treat rulemakings involving "competing claims to a valuable privilege" as restricted proceedings, explaining that this classification "will be limited to FM and TV channel assignment proceedings *and other proceedings deemed quasi-adjudicatory in nature*."[27] This long and consistent line of precedent establishes that the Commission is empowered to establish a restricted, adversarial rulemaking proceeding in response to a Neutral Tandem Petition for Interconnection, and that such a proceeding would be an optimally efficient means of addressing such petition.

A. The Proceeding Should Be Limited to the Two Parties Involved in the Dispute

The Commission has an established history of conducting adversarial (or "quasi-adjudicatory") rulemaking proceedings that are party-specific. In *Offshore Telephone*, the

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[26] *See, e.g., Petition of Offshore Telephone Pursuant to Section 201(a) of the Communications Act of 1934, as amended, for Establishment of Charges for Through Interstate Communications Service and Division of Such Charges With South Central Bell Telephone Co. and American Telephone and Telegraph*, 68 FCC 2d 63 (1978); *Mobile Marine Radio, Inc. v. South Central Bell Telephone Co.*, 63 FCC 2d 266 (1977); *Peoples Telephone Cooperative, Inc. v. Southwestern Bell Telephone Co. and General Telephone Co. of the Southwest*, 62 FCC 2d 113 (1976); *Joint Petition of CPI Microwave, Inc., and Midwestern Relay Co. for an Order to Show Cause with Respect to American Telephone and Telegraph Co., Illinois Bell Telephone Co., and Southwestern Bell Telephone Co.*, 49 FCC 2d 778 (1974); *ITT World Communications Inc. Petition under Section 201(a) of the Communications Act of 1934 for Connection With RCA Global Communications, Inc. to Enable ITT World Communications Inc. to Provide Telex and Message Telegraph Services to Guam*, 42 FCC 2d 228 (1973); *Application of Medical-Dental Bureau, Inc. Pursuant to Section 201(a) of the Communications Act of 1934, as amended, for Establishment of Physical Connection Between Its Facilities and Those of Ohio Bell Telephone Co.*, 22 FCC 2d 53 (1970); *American Telephone & Telegraph Co., et al. Offer of Facilities for Use by Other Common Carriers*, 47 FCC 2d 660 (1974); *Matanuska Telephone Assoc., Inc., Western Union Int'l., Inc. Pursuant to Section 201(a) of the Communications Act of 1934, as Amended, for Establishment of Physical Connections Between Its Proposed Facility at Twelvemile, Alaska, and the Existing Toll Center at Anchorage, Alaska and RCA Alaska Communications, Inc. Pursuant to Section 201(a) of the Communications Act of 1934, as Amended, for Establishment of Physical Connections Between the Terminus of the Proposed Microwave Facilities at Anchorage, Alaska, and the Facilities of the Anchorage Telephone Utility*, 20 FCC 2d 405 (1969); *Petition of Tri-City Telephone Co., Schenectady, NY Pursuant to Section 201(a) of the Communications Act of 1934, As Amended, For Establishment of Physical Connection Between Its Facilities and Those of the New York Telephone Co.*, 20 FCC 2d 674 (1969).

[27] *See Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings*, 78 FCC 2d 1384 (1980) at ¶ 36 (emphasis added).

Commission ordered, *inter alia,* "that Offshore Telephone Company, South Central Bell Telephone Company and American Telephone and Telegraph Companies are parties to this proceeding" and "that the Chief, Hearing Division, Common Carrier Bureau, shall participate as a party...."[28] Similarly, in *CPI Microwave, Inc.*, the joint petitioners filed an Order to Show Cause which sought to establish reasonable and non-discriminatory terms for physical interconnection with AT&T, Illinois Bell, and Southwestern Bell.[29] The Commission determined that "*the pleading filed by CPI and MRC constitutes a petition for interconnection under Section 201(a) of the Act*" and that "sufficient grounds exist for the institution of an investigation and hearing...pursuant to Section 201(a) of the Act."[30] The Commission expressly determined the matter to be a "restricted rulemaking" and ordered the designated parties (as opposed to "interested parties") to file comments.[31] Specifically, the Commission ordered that "CPI Microwave, Inc. and Midwestern Relay Company, and Western Telecommunications, Inc. are made parties to this proceeding and that a Trial Staff of the Common Carrier Bureau shall participate and be separated to the extent indicated in Section 1.1209(d) of the Commission's rules."[32]

In *Application of Medical-Dental Bureau,* the Commission designated a complaint as a petition for interconnection under § 201(a), and designated Ohio Bell Telephone Co. and Medical-Dental Bureau as "parties" to that proceeding.[33] Likewise, in *ITT World Communications*, the Commission ordered an investigation into establishing interconnection between RCAGC's

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[28] *Offshore Telephone*, 66 FCC 2d at 186, ¶¶ 9-10.

[29] *CPI Microwave, Inc., supra.*

[30] *Id.* at ¶ 5 (emphasis added).

[31] *Id.* at ¶ 6.

[32] *Id.* at 13.

[33] *Application of Medical-Dental Bureau, Inc. Pursuant to Section 201(a) of the Communications Act of 1934, as amended, for Establishment of Physical Connection Between Its Facilities and Those of Ohio Bell Telephone Co.*, 22 FCC 2d 53 (1970).

telegraph message and telex system on Guam and ITTWC's telegraph message and telex system and made ITTWC and RCAGC "parties" to the proceeding.[34]

This established line of cases demonstrates that the Commission is fully empowered to conduct quasi-adjudicatory restricted paper hearings as party-specific proceedings. Due to the fact-specific nature of this dispute between Neutral Tandem and Verizon Wireless, this is clearly the optimally efficient means of hearing the Neutral Tandem Petition for Interconnection. Further, Neutral Tandem requests that the Commission exercise its discretion under 47 CFR § 1.1200(a) to designate this matter as a "restricted proceeding" for purposes of the *ex parte* rules.

B. Neutral Tandem's Proposed Procedural Schedule is Consistent with the Commission's Rules of Procedure

Neutral Tandem's proposed procedural schedule is generally consistent with the rules governing practice and procedure before the Commission. Accordingly, Neutral Tandem contends that the Commission is fully within its authority to adopt the following proposed timeline and procedures:

(1) Verizon Wireless shall file a responsive pleading within 30 days;[35]

(2) Neutral Tandem may file a reply to Verizon Wireless' response within 14 days thereafter;

(3) In the event that the initial pleadings reveal substantial disputes as to material issues of fact, the Commission may enter a procedural order permitting limited discovery on those specific issues for a period of no more than 60 days;[36]

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[34] *ITT World Communications Inc. Petition Under Section 201(a) of the Communications Act of 1934 for Connection with RCA Global Communications, Inc. to Enable ITT World Communications, Inc. to Provide Telex and Message Telegraph Services to Guam*, 39 FCC 2d 778 (1973).

[35] *See* 47 C.F.R. § 1.724 (an answer shall be filed within 20 days of service of a formal complaint). *See also* 47 C.F.R. § 1.45 (oppositions to any petition to be filed within 10 days). Neutral Tandem proposes this schedule to provide Verizon Wireless with every opportunity to address the issues raised by Neutral Tandem. Neutral Tandem certainly will not object to a more aggressive pleading schedule, should the Commission choose to adopt one.

[36] *See generally*, 47 C.F.R. § 1.729.

(4) If such discovery is permitted, Neutral Tandem shall file a closing brief on the designated factual issues one week after the close of the discovery window,[37] Verizon Wireless shall file a rebuttal brief within 14 days of Neutral Tandem's closing brief,[38] and Neutral Tandem may file a reply brief within 7 days following the filing of Verizon Wireless' rebuttal brief;[39]

(5) The Commission shall issue an Order resolving the dispute within 60 days from the date of the final pleading (or within 5 months from the filing date of Neutral Tandem's Petition for Interconnection).[40]

IV. Conclusion

WHEREFORE, Neutral Tandem requests that the Commission conduct an expedited proceeding to resolve the issues set forth above; and for the reasons stated herein, requests that the Commission order Verizon Wireless to permit direct connections by Neutral Tandem, at Neutral Tandem's expense, solely for the termination of traffic by Neutral Tandem and/or its customers to end users served by Verizon Wireless, at any Verizon Wireless switch to which Neutral Tandem (or its customers) has at least three DS1s' worth of traffic, within sixty (60) days of Notice from Neutral Tandem, terminate traffic over such connections within thirty (30) days after notice by Neutral Tandem that such facilities are operational, and add additional capacity to accommodate relevant traffic levels within thirty (30) days after notice by Neutral Tandem.

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[37] *See* 47 C.F.R. § 1.732(a) ("[t]he Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs...").

[38] *See id.* 47 C.F.R. § 1.732(d) provides for the concurrent filing of briefs by both parties in cases where discovery is involved. Neutral Tandem has suggested non-concurrent filings in order to provide each party with ample time to respond to the arguments raised by the other, but Neutral Tandem is prepared to proceed according to either schedule, at the Commission's preference.

[39] *See id.*

[40] There is no statutory deadline compelling the Commission to issue an order within this time frame. Neutral Tandem requests such an expedited issuance of an order as a matter of equity. Its dispute with Verizon Wireless has been unresolved for over two years. Part of this delay stems from the fact that the parties briefed, and the Enforcement Bureau considered, novel issues of procedure and precedent. The majority of the delay, however, is directly related to Verizon Wireless' demonstrable bad faith in the Enforcement Bureau-sponsored mediation process. In light of the fact that the law and facts of this case have already been briefed extensively, we believe it reasonable that the Wireless Competition Bureau Staff can complete an order within the time requested. Of course, the normal constraints on the schedules of the Staff and the Commissioners will determine when it is practicable to issue a final order.

Respectfully submitted,

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