Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

Petition for Interconnection of Neutral Tandem, Inc. Pursuant to 47 U.S.C. § 201(a) and 332(c)(1)(B)	WC Docket No. 06-159

COMMENTS OF VERIZON WIRELESS

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Introduction and Summary

In its latest request for government-mandated connections with Verizon Wireless,[1] Neutral Tandem, dissatisfied with the term of the deal it cut when it agreed to the contract with Verizon Wireless in the first instance, asks the Federal Communications Commission ("FCC" or "Commission") to impose a new deal on the parties that would obligate Verizon Wireless to provide direct connection network arrangements. In essence, Neutral Tandem asks the Commission to reverse its considered and long-standing judgment that the public interest is served when commercial mobile radio service ("CMRS") carriers enter into contracts for direct connection on the basis they deem most efficient.

Given the repetitive and meritless nature of Neutral Tandem's filing, the Commission should dismiss it summarily. If the Commission addresses whether CMRS carriers should be required to connect directly to any party at all, it should do so in the pending intercarrier compensation proceeding, where the question of whether to order direct CMRS connection and how to deal with phantom traffic are now squarely raised. It makes no sense to deal with these issues in a piecemeal fashion.

In any event, Neutral Tandem's *Petition for Rulemaking* should fail under well-established Commission precedent. The Commission has already repeatedly determined that it does *not* serve the public interest to require CMRS providers to connect directly with third-party switches or even with each other, let alone with "middleman" tandem

[1] Petition for Interconnection of Neutral Tandem, Inc. Pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as Amended, WC Dkt. No. 06-159 (Aug. 2, 2006) ("*Petition for Rulemaking*").

providers such as Neutral Tandem so that those tandem providers can earn fees from providing indirect transport. Granting the *Petition for Rulemaking* would do nothing to further competition but, to the contrary, would force CMRS providers into inefficient transit arrangements that they would not enter into voluntarily, thus creating a government-guaranteed business plan for Neutral Tandem. And despite Neutral Tandem's threats, there is no danger of disruption to intercarrier traffic in this case. Verizon Wireless is sensitive to the need to ensure that all calls are completed and, for that reason, has voluntarily committed to maintain existing connections with Neutral Tandem for 90 days and to work with those carriers utilizing Neutral Tandem's services to reach the Verizon Wireless network in order to identify appropriate alternatives. Thus, to the extent there is any risk of disruption to other carriers, such a risk has been created solely by Neutral Tandem's actions.

For these reasons, the Commission should either summarily dismiss Neutral Tandem's *Petition for Rulemaking* or consider it in the context of the intercarrier compensation docket. Should the Commission reach the merits, the *Petition for Rulemaking* must be denied.

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I. BACKGROUND

A. Factual Background

Verizon Wireless is one of the largest providers of CMRS services in the United States. Like all carriers, Verizon Wireless enters into arrangements that permit it to exchange traffic with other carriers that originate traffic intended for Verizon Wireless customers (and vice versa). Traditionally, Verizon Wireless's predominant method for exchanging traffic has been to connect with the incumbent local exchange carrier ("ILEC") in each relevant service territory. This arrangement has allowed Verizon Wireless to exchange traffic directly with the ILEC and to connect indirectly with other carriers that purchase transit service from the ILEC in an efficient and cost-effective manner.

In recent years, Verizon Wireless has increasingly established direct connections with other carriers that originate traffic bound for Verizon Wireless customers. This increased reliance on direct connections stems primarily from the steadily increasing volume of traffic between Verizon Wireless customers and the customers of other carriers. Thus, Verizon Wireless today has direct connections with the other major wireless operators in most of its service territories, as well as some CLECs. Verizon Wireless is also working on the implementation of new, IP-based connection options, such as packet switching and transcoder free operations that bypass the circuit-switched network. These devices will enable carriers to exchange traffic in an efficient manner and will reduce the need for indirect connections through tandems, regardless of the provider.

Neutral Tandem is a relatively new commercial venture that provides an alternative to an ILEC's transit service. Neutral Tandem has no end user customers of its own; its customers are other carriers. It is therefore unnecessary for Verizon Wireless to have any connection with Neutral Tandem (whether direct or indirect) in order to complete calls to or from any Verizon Wireless end user. Verizon Wireless either has direct connections with all of Neutral Tandem's customers or can exchange traffic with Neutral Tandem's customers through transit arrangements, usually through the ILEC. Neutral Tandem is thus merely an alternative "middleman" between carriers that *already* have other means of exchanging traffic. Establishing a "direct" physical connection with Neutral Tandem does not establish direct interconnection with any carrier, and it is not necessary for any carrier to provide service in the marketplace.

Given Verizon Wireless's increasing reliance on direct interconnection arrangements, traffic requiring transit is now limited to overflow traffic from carriers having direct connections with Verizon Wireless and traffic to or from carriers exchanging low volumes of traffic with Verizon Wireless. That traffic can already reach Verizon Wireless through the existing ILEC transit service. Moreover, regardless of the direct connections Verizon Wireless puts in place with other carriers, Verizon Wireless must maintain direct connections to the ILEC tandem in any event, for a variety of reasons: (1) Verizon Wireless generally exchanges large amounts of traffic with the ILEC destined for the ILEC's end users; (2) Verizon Wireless needs the ILEC tandem connection for overflow traffic even if it has direct trunks to the ILEC and other carriers; and (3) many CLECs and other carriers are connected to the ILEC but not Neutral Tandem. Moreover, these large facilities are highly efficient, and receiving traffic from

Neutral Tandem does not enable Verizon Wireless to reduce the number of trunks in place with the ILEC on a "one-to-one" basis because of the need to accommodate peak and overflow traffic.

In the overwhelming majority of cases, it would not make business sense for Verizon Wireless to establish physical connections with a second transit provider such as Neutral Tandem. This is particularly true given that, contrary to Neutral Tandem's allegations, connecting directly to Neutral Tandem's switch imposes additional costs on Verizon Wireless. For example, it requires Verizon Wireless to establish and maintain a range of facilities, including switch ports, digital cross-connect ports, and echo cancellers. In addition, Verizon Wireless incurs increased operational costs associated with installing, operating, and maintaining the relevant facilities.

B. Procedural History

Neutral Tandem first contacted Verizon Wireless in writing in December 2003 to sell Verizon Wireless on the "value" of its service. Two months later, Neutral Tandem again contacted Verizon Wireless, then claiming that it was entitled to direct connections under the Communications Act. When business negotiations did not yield the result NT wanted after a little more than two months, Neutral Tandem filed its first Accelerated Docket request.[2] The parties' business negotiations subsequently yielded a commercial agreement on August 18, 2004, without Bureau mediation. Neutral Tandem then withdrew its Accelerated Docket request.

Under the parties' contract, Verizon Wireless agreed to establish direct physical connections with Neutral Tandem in three cities: Chicago, Detroit, and New York.

[2] Neutral Tandem, Inc.'s Request for Mediation and Accelerated Docket Treatment with Verizon Wireless (May 14, 2004) (on file with the FCC Enforcement Bureau).

During the course of the agreement, however, the parties experienced a number of operational difficulties and had several disputes. For example, in violation of the terms of its tariffs, which are incorporated into the Agreement, Neutral Tandem sent Verizon Wireless traffic from carriers that did not have agreements in place to exchange traffic with Verizon Wireless, and indeed actively solicited such carriers to send traffic to Verizon Wireless through Neutral Tandem. Disputes over these and related issues led to the Neutral Tandem's second Accelerated Docket request,[3] which the Commission denied.[4] During the pendency of that request, Neutral Tandem also attempted to make its business relationship with Verizon Wireless part of the Verizon/MCI merger review process.[5] The Commission declined to include any mention of Neutral Tandem's claims in the Verizon/MCI merger approval order.[6]

As a result of the difficult business dealings with Neutral Tandem, the disputes that the parties encountered over the delivery of unauthorized traffic by Neutral Tandem, and other market developments,[7] Verizon Wireless determined that renewal of the two

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[3] Neutral Tandem, Inc.'s Request for Mediation and Accelerated Docket Treatment with Verizon Wireless (May 12, 2005) (on file with the FCC Enforcement Bureau).

[4] Letter from Lia B. Royle, Market Disputes Resolution Div., Enforcement Bureau, FCC to Jonathan E. Canis, Kelley Drye & Warren LLP and Bradford E. Barry, Wilmer Cutler Pickering Hale and Dorr LLP, (Dec. 6, 2005) ("Dec. 6 Enforcement Bureau Letter") (on file with the FCC Enforcement Bureau).

[5] *See* Letter from Patrick J. Donovan, Counsel for Neutral Tandem Inc., to Marlene Dortch, Secretary, FCC, WC Dkt. No. 05-75 (Oct. 14, 2005).

[6] *In re: Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005)

[7] For example, Neutral Tandem itself decided not to expand the arrangement in Detroit after the Michigan Public Service Commission lowered ILEC transit rates, making it harder for Neutral Tandem to compete in that market. In New York, most of the traffic being routed over Neutral Tandem's system came from Cablevision. Verizon Wireless and Cablevision are now in the process of establishing a direct connection, making any tandem arrangement between the companies (other than for overflow) soon to be superfluous and vastly diminishing the utility of the Neutral Tandem service in that market.

year Master Service Agreement between the companies was not justified as a business matter. As a result, Verizon Wireless terminated that agreement by submitting notice to Neutral Tandem in accordance with the agreement's terms.[8] In order to ensure that termination of the agreement did not disrupt any carrier traffic, Verizon Wireless voluntarily offered to keep the connections in place for 90 days so that Neutral Tandem's customers could make alternative arrangements (if necessary) in order to keep sending traffic to Verizon Wireless's network.[9]

Rather than work with Verizon Wireless to ensure that its customers will not experience any difficulty in continuing to send traffic to Verizon Wireless, Neutral Tandem elected to file this most recent attempt to get the Commission to intervene in this contractual matter and order Verizon Wireless to establish connections with the Neutral Tandem's middleman service. The instant *Petition for Rulemaking* simply rehashes the issues that Neutral Tandem raised in its prior filings, including the rejected 2005 request for Accelerated Docket treatment and Neutral Tandem's *ex parte* in the Verizon/MCI merger. After filing the *Petition for Rulemaking*, Neutral Tandem sought injunctive relief,[10] asking the Commission essentially to reinstate the terminated contract pending

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[8] *See* Letter from John Cuddy, Senior Counsel, Verizon Wireless Legal and External Affairs to Neutral Tandem (July 14, 2006) (Attachment A to Opposition of Verizon Wireless to Motion for Interim Order, Dkt. No. 06-159 (Aug. 24, 2006) ("Verizon Wireless Opposition")) ("Cuddy Letter"). Neutral Tandem does not dispute that the contract was properly terminated, nor is there any dispute over the terms of the contract itself. Even if there were such disputes, however, it is well settled that the Commission "is not the proper forum for the adjudication of private contractual disputes." *In re Airtouch Paging, Inc.*, Order, 14 FCC Rcd 9658, 9660 ¶ 5 (1999) (collecting cases).

[9] *See* Cuddy Letter.

[10] Petition for Interconnection of Neutral Tandem, Inc. Pursuant to 47 U.S.C. § 201(a) and 332(c)(1)(B), Dkt. No. WC 06-159 (filed Aug. 17, 2006) ("*Motion for Interim Order*").

the outcome of this proceeding, even though Neutral Tandem fails to allege the violation of any existing Commission rule or regulation.[11]

II. THE COMMISSION SHOULD SUMMARILY DISMISS NEUTRAL TANDEM'S THIRD REQUEST FOR DIRECT CONNECTION.

As an initial matter, Neutral Tandem recently made the claim, without any support, that the Commission could grant its *Petition for Rulemaking* prior to the expiration of the comment cycle.[12] It is axiomatic that in order to establish a rule, the Commission must follow the procedures set forth in the Administrative Procedure Act. Shortcutting these procedures would be arbitrary and capricious.[13] The Commission also would violate its own rules by issuing a decision before the close of the reply comment period.[14]

The record in this proceeding will demonstrate that the Commission should dismiss the *Petition for Rulemaking*. Section 1.401 of the Commission's Rules provides

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[11] *See generally* Verizon Wireless Opposition. In an *ex parte* notice filed on September 6, 2006, Neutral Tandem referred to the "written submission" that Neutral Tandem filed on August 31. *Neutral Tandem's Petition for Interconnection with Verizon Wireless,* WC Dkt. No. 06-159, Letter from Russell M. Blau, Counsel to Neutral Telecom, to Marlene Dortch, Secretary, FCC (Sept. 6, 2006). This self-described "written submission" contains a number of arguments that reply to the points made in the Verizon Wireless Opposition. *Neutral Tandem's Petition for Interconnection with Verizon Wireless,* WC Dkt. No. 06-159 (Aug. 31, 2006) ("Neutral Tandem August 31 Filing"). However, Section 1.45(d) of the Commission's Rules provides that, in the context of a request for interim or temporary relief, "[r]eplies should not be filed and will not be considered." 47 C.F.R. § 1.45(d). To the extent that Neutral Tandem's August 31 Filing seeks to reply to Verizon Wireless's Opposition, Verizon Wireless respectfully requests that the Commission disregard Neutral Tandem's filing. However, where necessary, Verizon Wireless has provided in these Comments a response to the allegations made in the Neutral Tandem August 31 Filing.

[12] Neutral Tandem August 31 Filing at 16.

[13] *See Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 325 (5th Cir. 2001) ("The APA requires federal agencies that conduct informal rulemaking to give notice of a proposed rule and consider public comment on it. This process allows 'interested persons an opportunity to participate' in the rulemaking process through the submission of written comments. An agency's failure to comply with the APA requirements 'leads in the direction of arbitrary decision-making.'") (internal citations omitted).

[14] *See* 47 C.F.R. §1.415(c) (requiring a reasonable time for reply comments to be filed); 47 C.F.R. §1.425 (requiring the Commission to consider all relevant comments before taking final action).

that "[p]etitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner."[15] Neutral Tandem's most recent attempt to persuade the FCC to intervene on its behalf in the competitive market for connection is repetitive, frivolous, and plainly does not warrant consideration by the Commission, and should thus be dismissed.

As explained above, this is at least the third time that Neutral Tandem has petitioned the Commission for the creation of a supposed right to direct connection with Verizon Wireless. In addition, Neutral Tandem attempted to import this issue into the merger between Verizon and MCI and sought the same right in the context of "interim" relief in this proceeding, bringing to five the number of instances in which Neutral Tandem has sought, without success, to drag the FCC into this matter. Furthermore, the Commission already has found, on numerous occasions, that requiring direct connections by CMRS carriers is not in the public interest,[16] and it has also been directly presented with the issue that Neutral Tandem raises in the more broadly applicable intercarrier compensation docket.[17] Accordingly, based on the record in this proceeding, the Commission should deny the *Petition for Rulemaking* as repetitive, frivolous, and/or not worthy of consideration by the Commission.

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[15] 47 C.F.R. § 1.401(e).

[16] *See* Section IV, *infra.*

[17] *See* Section III, *infra.*

III. ANY CONSIDERATION OF THE ISSUES PRESENTED BY NEUTRAL TANDEM'S *PETITION FOR RULEMAKING* SHOULD OCCUR IN THE INTERCARRIER COMPENSATION DOCKET.

With its *Petition for Rulemaking*, Neutral Tandem asks the Commission to engage in a wasteful and duplicative proceeding. To the extent that the FCC believes that there is a need to consider altering its long-standing policy and require CMRS carriers to connect directly with other carriers even where such direct connection is not economically viable and would raise consumer costs—which, as explained below, is not warranted on the merits[18]—the intercarrier compensation docket is the proper forum for such consideration.

The question whether CMRS providers must provide direct connections to any requesting party has vast policy ramifications that affect not just the parties to the instant dispute but all CMRS carriers. Neutral Tandem has portrayed its *Petition for Rulemaking* as being limited to the issue whether Verizon Wireless must provide direct connections to Neutral Tandem,[19] but the implications of any Commission order granting the *Petition for Rulemaking* would be far broader than Neutral Tandem would have the agency believe. A requirement that Verizon Wireless connect with Neutral Tandem would, as matter of logic but also agency precedent, amount to the imposition of a general duty on CMRS carriers to directly connect with other carriers, something the Commission has routinely rejected in the past and something that would have far-reaching effects on the relationships between CMRS and other carriers.

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[18] *See* Section IV, *infra.*

[19] *See* Neutral Tandem August 31 Filing at 7.

Indeed, the Commission itself acknowledged the breadth of the interests at stake here by rejecting Neutral Tandem's request that the *Petition for Rulemaking* be considered in a "quasi-adjudicatory" fashion (with participation restricted solely to Neutral Tandem and Verizon Wireless),[20] and instead putting the matter out for general public notice and comment. The Commission should dismiss the *Petition for Rulemaking* and instead utilize the pending intercarrier compensation proceeding to consider whether to reverse its longstanding policy and mandate that CMRS carriers directly connect to requesting parties, even where as in this case there is no business justification for doing so. First, the question of direct CMRS connection is inextricably intertwined with other interconnection duties, and these questions are best considered in relation to each other, as the Commission has indicated in the intercarrier compensation reform proceeding. Considering CMRS connection in isolation runs the risk of prejudging one piece of the complex intercarrier compensation puzzle, thereby limiting the Commission's flexibility in designing new compensation structures and arriving at a compensation policy that makes sense as a whole.

Second, unlike the *Petition for Rulemaking*, which may not attract the attention of all parties who have an interest in the outcome of the question of direct CMRS connection, there is no doubt that the relevant stakeholders are actively participating in consideration of intercarrier compensation reform. Moreover, the fact-specific nature of

[20] *Petition for Rulemaking* at 15-16. In its August 31 Filing, Neutral Tandem claims to "Set[] the Record Straight" by arguing that it did not file a petition for rulemaking. Neutral Tandem August 31 Filing at 8. This is simply false. While Neutral Tandem's *Petition for Rulemaking* requested that the Commission restrict the proceeding to Verizon Wireless and Neutral Tandem, the *Petition for Rulemaking* itself explicitly requested that the Commission engage in a rulemaking proceeding. *Petition for Rulemaking* at 15-16. Even if the Commission had elected to restrict the proceeding to Verizon Wireless and Neutral Tandem, an FCC order *mandating* direct connection between a CMRS carrier and other entities would go against years of FCC policy and would invite a raft of similar petitions from other entities seeking the benefit of connection without the burden of market-based negotiation.

the *Petition for Rulemaking* makes it unsuitable for considering the wide range of potential concerns that mandating direct CMRS connections might raise, whereas the intercarrier compensation docket is broad in its factual scope.

The *Petition for Rulemaking* in fact raises a number of issues already before the Commission in the intercarrier compensation docket. On July 24, 2006, the National Association of Regulatory Utility Commissioners ("NARUC") Task Force on Intercarrier Compensation filed the "Missoula Plan" in the pending intercarrier compensation proceeding, which proposes a series of changes in the way in which intercarrier compensation is handled.[21] The Missoula Plan would require all carriers, including CMRS providers, to provide direct connection to requesting carriers at the "Edge" of their network,[22] and this includes tandem transit providers that can be either ILECs or competitive carriers.[23] The Missoula Plan thus squarely addresses the question that Neutral Tandem wishes to put before the Commission in this *Petition for Rulemaking,* and the disadvantages (and benefits, if any) of requiring indiscriminate direct connection by CMRS providers will be fully explored in comments on the Missoula Plan.

Consideration of the Neutral Tandem *Petition for Rulemaking* will also inevitably involve the issue of "phantom traffic," or traffic that is delivered to a carrier that the carrier cannot identify. Neutral Tandem's delivery of phantom traffic to Verizon Wireless's network, while at the same time failing to provide the call detail information

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[21] *See Ex Parte Presentation of NARUC Task Force*, CC Docket No. 01-92 (July 24, 2006) ("Missoula Plan").

[22] *Id.* at 11, 46. Verizon Wireless opposes the Missoula Plan and does not suggest that the Commission adopt all or part of this Plan. In accordance with the pleading cycle in the intercarrier compensation docket, Verizon Wireless intends to set forth its comments on the Missoula Plan on October 25, 2006.

[23] *Id.* at 49, 51.

required under the contract, was one of the reasons that Verizon Wireless elected to discontinue its business relationship with Neutral Tandem. The broader issue of how to deal with phantom traffic has been briefed in detail in the intercarrier compensation proceeding, and the Missoula Plan contains a proposal for resolving phantom traffic issues.[24] The risk of prejudging this issue serves as another reason to consider the issues raised by Neutral Tandem's *Petition for Rulemaking* in the docket on intercarrier compensation reform.

IV. IN ANY EVENT, NEUTRAL TANDEM'S *PETITION FOR RULEMAKING* LACKS ANY MERIT.

A. The Commission Has Already *Rejected* Similar Requests for Mandatory Direct Connection.

Should the Commission reach the merits of Neutral Tandem's *Petition for Rulemaking* in the instant docket, which for the reasons discussed above would be ill advised, it should find that the *Petition for Rulemaking* lacks any merit. The agency has already squarely determined that it is *not* in the public interest to require CMRS providers to connect directly with third-party switches or even with each other,[25] let alone with third-party tandem providers to enable them to earn fees from providing indirect transport.[26] In the *CMRS Interconnection Order*, the FCC held that market forces, rather

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[24] Missoula Plan at 9-10.

[25] *Interconnection and Resale Obligations Pertaining to Commercial Radio Services*, Fourth Report and Order, 15 FCC Red 13523, 13527, 13531-32, ¶¶ 19-22 (2000) ("*CMRS Interconnection Order*").

[26] Neutral Tandem attempts to create inconsistency where none exists by pointing to Verizon's comments in response to Time Warner's Petition for Declaratory Ruling. *See* Neutral Tandem August 31 Filing at 10. Contrary to Neutral Tandem's claim, *id.* at 10, Verizon Wireless has never argued that Neutral Tandem is barred from seeking direct connection under Section 201(a) because it has no end-users, and Neutral Tandem's claim that Verizon Wireless seeks in this proceeding to draw a distinction between wholesale and retail providers is a mischaracterization. Neutral Tandem is free to file the instant *Petition for Rulemaking*. However, the Commission must according to Section 201(a) determine whether the public interest merits direct connection in each particular case. The facts surrounding the Time Warner Petition, which seeks interconnection with a rural incumbent LEC, *see* Petition of Time Warner Cable for

than regulatory intervention, should determine where and when CMRS carriers directly connect with other carriers.[27]

Four primary rationales underpinned the FCC's decision to refrain from imposing direct connection obligations on CMRS carriers. Each of those rationales continues to apply with equal or greater force, and neither the *Motion for Interim Order* nor the *Petition for Rulemaking* offer any attempt to explain why the Commission should change course now and require Verizon Wireless to provide a connection to a transit provider such as Neutral Tandem.

First, the Commission noted that there was no logic to imposing a "specific form of interconnection" on CMRS providers, because the FCC has never regulated CMRS providers as "dominant carriers."[28] Second, the Commission observed that there has been "steady growth of competition in CMRS markets" and found that "imposing a new interconnection obligation on facilities-based CMRS providers is not required to overcome competitive barriers."[29] This competition has continued to flourish since the release of the *CMRS Interconnection Order*, as the Commission's has routinely noted in

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Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, WC Docket No. 06-55 (Mar. 1, 2006), and the Neutral Tandem *Petition for Rulemaking*, which seeks connection with a CMRS carrier, are entirely different. The Commission has already decided that mandating direct connections between CMRS carriers would not be in the public interest because of the robustly competitive nature of the CMRS industry. The facts involved in Neutral Tandem's *Petition for Rulemaking* make clear that forcing a direct connection arrangement on Verizon Wireless would intrude into the public interest. In contrast, there is a strong public interest in promoting wireline competition in the rural areas covered by the Time Warner Petition, since wireline competition in these areas has been slow to take hold.

[27] *CMRS Interconnection Order* at 13534 ¶ 28.

[28] *Id.* at 13531 ¶ 20.

[29] *Id.*

its annual competition reports.[30] This rationale is thus even more compelling today, where far more competition exists than when the Commission issued the *CMRS Interconnection Order*. In fact, that very growth in competition proves the wisdom of the Commission's decision not to intervene in CMRS connection arrangements.

Third, the Commission found that a direct connection requirement "would raise a number of technical issues relating to possible potential for degraded service to CMRS consumers, controversies about the type and quality of interconnection that would have to be provided, or both."[31] That would be no less a concern with granting the *Petition for Rulemaking*. Indeed, the disputes between Verizon Wireless and Neutral Tandem that arose under the companies' now terminated agreement, concerning the required number of direct trunks and which carriers' traffic Verizon Wireless is obligated to terminate, are just a few of the types of controversies that a direct connection regulatory requirement would likely engender. Finally, the Commission reasoned in the *CMRS Interconnection Order* that imposing connection requirements by administrative fiat would require compensation, and determining the relevant costs "involves a substantial administrative

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[30] *See, e.g., Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908, 15911 ¶ 2 (2005) (noting that "97 percent of the total U.S. population lives in counties with access to three or more different operators offering mobile telephone service, the same level as in the previous year, and up from 88 percent in 2000, the first year for which these statistics were kept."); *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, 20609-11 ¶¶ 23-28, 20683-88 ¶¶ 211-21 (2004).

[31] *CMRS Interconnection Order* at 13532 ¶ 21.

burden."[32] As a result, the Commission ruled that the public interest did not support requiring CMRS providers to connect directly to third-party switches.[33]

The Commission has also unfailingly rejected other proposals to require CMRS providers to establish direct connections to an intervening switch. For example, in the *CMRS Order on Reconsideration*, the agency denied a request under Sections 201 and 332 for direct connections with a third-party switch because the *CMRS Interconnection Order* had already determined "that there was not right to mandatory interconnection and [that] the proposals were not in the public interest"). [34] In *Cellnet v. New Par, Inc.*, the Commission dismissed complaints because, among other reasons,"[t]he Commission has recently held that (1) Sections 201 and 332 do not require mandatory interconnection between CMRS networks and resellers' switches and (2) that resale switch interconnection is not required by the public interest."[35] Similarly, in *Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, Inc.*, the Commission noted that the parties agreed that the *CMRS Interconnection Order* disposed of complainant's claims under Sections 201, 251 and 332 of the Act and accordingly dismissing those claims.[36]

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[32] *Id.* at 13532 ¶ 22.

[33] The Commission also declined to impose a direct interconnection requirement between CMRS carriers in the *CMRS Interconnection Order*. *CMRS Interconnection Order* at 13534 ¶¶ 28-29. The Commission explained that direct connections were not necessary to exchange traffic because carriers can rely on a tandem for indirect interconnection and that "[i]n view of the growth of competition in the CMRS market . . . we continue to believe that the best way of achieving interconnection is through voluntary private agreements." *Id*. at 13534 ¶ 28.

[34] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*., 16 FCC Rcd 10009, 10012 ¶ 7 (2001) ("*CMRS Order on Reconsideration*").

[35] *Cellnet Communications, Inc. v. New Par, Inc.*, Order, 15 FCC Rcd 13814, 13817 ¶ 8 (2000).

[36] *Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, Inc*., Memorandum Opinion and Order, 16 FCC Rcd 22887, 22888 ¶ 2 n.4 (2001) ("*Cellexis Order*").

B. **The Commission Should Reject the *Petition for Rulemaking* Because Direct Connection With Neutral Tandem Would Not Be Efficient.**

Neutral Tandem claims that cases cited by Verizon Wireless involving resellers are inapposite to its *Petition for Rulemaking*, without explaining why this would be the case.[37] Section 201(a) requires the Commission to consider the public interest, and the same public interest analysis that led the Commission to reject a direct connection obligation for CMRS carriers in the cited cases applies even more forcefully in this case, and thus dictates that the Commission should also reject Neutral Tandem's *Petition for Rulemaking*.

If requiring direct CMRS-to-CMRS connections is not in the public interest, then requiring direct physical connections with a third-party traffic middleman like Neutral Tandem certainly is not. In sharp contrast to a direct connection between CMRS providers, a connection with Neutral Tandem does not permit carriers to directly exchange traffic. Neutral Tandem provides service to no end users, and there is thus no need to connect with Neutral Tandem (whether directly or indirectly) at all in order to terminate customer traffic. Unlike with other CMRS carriers, a direct path to Neutral Tandem's facilities would thus not enhance overall network efficiency, and it is unnecessary for any carrier to provide service in the marketplace. Neutral Tandem simply seeks to insert itself as an alternative tandem between carriers that actually provide service to end users—in other words, to collect fees as a middleman. Thus, Neutral Tandem does not create the direct connection between carriers that the Commission noted could be more efficient in some circumstances. Instead, Neutral Tandem simply duplicates existing indirect connections.

[37] Neutral Tandem August 31 Filing at 9.

The Commission has determined that requiring direct connections between CMRS carriers with end users is not in the public interest because such connections can and should be accomplished through market mechanisms. It would make no sense to reverse this ruling and impose a regulatory requirement for direct physical connections with an unnecessary intermediary. Indeed, to the extent that carriers must utilize scarce port resources to connect with Neutral Tandem equipment, Neutral Tandem's presence may *discourage* carriers from establishing efficient, direct interconnection arrangements with one another.

In its *Petition for Rulemaking*, as it has done in past pleadings before the Commission, Neutral Tandem entirely ignores the clear holdings in the Commission's *CMRS Interconnection Order* and instead focuses on the NPRM leading to that decision.[38] Even leaving aside that the *Order* is controlling, Neutral Tandem grossly mischaracterizes the NPRM, which also rejected imposing mandatory connection requirements on CMRS carriers. While the *Petition for Rulemaking* notes the NPRM's observation that interconnectivity of mobile networks is generally beneficial,[39] as with prior pleadings Neutral Tandem simply ignores the Commission's conclusion *in the same paragraph* that those benefits are best "realized primarily through private negotiations and arrangements" rather than "the regulatory process."[40] Neutral Tandem's repeated attempts to rely on an NPRM to support a mandatory connection obligation when both that NPRM and the subsequent Order expressly rejected such an obligation, and its

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[38] *See, e.g., Petition for Rulemaking* at 11, *citing Interconnection and Resale Obligations pertaining to Commercial Radio Services*, Second Notice of Propose Rulemaking, 10 FCC Rcd 10666 (1995) ("*CMRS Interconnection NPRM*").

[39] *Petition for Rulemaking* at 7.

[40] *CMRS Interconnection NPRM* at 10681 ¶ 28.

insistence on continuing to make these arguments even after Verizon Wireless has pointed out this critical flaw, speaks volumes about the weakness of Neutral Tandem's position.

There is simply no need for the government to create, by regulatory fiat, a business opportunity where the market dictates that one does not exist. The creation of government entitlement to direct connection with CMRS carriers whenever Neutral Tandem desires is not pro-competitive but, to the contrary, would be inefficient because it would require the establishment of alternative indirect transit mechanisms where it is not necessary or where volumes are too low to justify the dedicated facilities required.

As it has in its prior pleadings, Neutral Tandem claims that the Commission should not rely on the market here because Verizon Wireless is allegedly acting "irrationally" and has "reject[ed] a request for direct trunk interconnection that is clearly advantageous to it,"[41] claiming that Verizon Wireless has violated the Commission's expectation that "when traffic volumes between CMRS *systems justify direct connections*, the industry will implement interconnection because it will make business sense to do so."[42] But the Commission clearly was referring to direct CMRS interconnection, and Verizon Wireless has in fact entered into such direct interconnection agreements with other CMRS carriers precisely because it "make[s] business sense to do so." By contrast, the physical connections that Neutral Tandem seeks would establish only *indirect* connections between Verizon Wireless and other CMRS carriers, and are thus duplicative of existing ILEC tandem arrangements.

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[41] *Petition for Rulemaking* at 10.

[42] *Petition for Rulemaking* at 8, *quoting CMRS Interconnection NPRM* at 10684-85 ¶ 37 (emphasis added).

Although Neutral Tandem attempts in a recent filing to trim the scope of its request for the right to interconnect with Verizon Wireless to a request for connection "*only* where traffic volumes justify it,"[43] that is not what the *Petition for Rulemaking* itself seeks.[44] In its August 31 Filing, Neutral Tandem claims that an overall increase in the number of Minutes of Use ("MOUs") justifies an FCC order supporting its business model.[45] In fact, as MOUs have grown, carriers have sought to establish direct connections with one another, as shown by the Verizon Wireless/Cablevision agreement, and by the fact that Verizon Wireless now directly connects with every other major wireless provider. Tandem services are not more in demand with increased MOUs; instead, these services only have utility where the MOUs exchanged between carriers are small enough that a direct connection cannot be justified. In any event, Neutral Tandem fails to provide any standard for measuring the necessary volume of traffic. This only shows that marketplace negotiations are the best gauge of what levels of traffic warrant alternative transit arrangements.

In its August 31 Filing, Neutral Tandem lists a number of efficiencies that may be gained from the use of indirect connection through a tandem.[46] While it is true that *ILEC tandem service* offers these benefits, Neutral Tandem does not and cannot explain why its redundant, duplicative facilities promote efficiency when they are layered on top of those existing ILEC tandem facilities. Moreover, as the Commission has noted previously, the

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[43] Neutral Tandem August 31 Filing at 7 (emphasis in original).

[44] *See Petition for Rulemaking* at i (asking FCC to 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*") (emphasis added).

[45] Neutral Tandem August 31 Filing at 3.

[46] *Id.* at 13.

creation of a government mandate would also embroil the agency in a variety of complex issues related to setting technical standards and proper compensation for forced connections.[47] Thus, increased transport and transaction costs mean that creating a regulatory mechanism for forced connection threatens to create *higher* – not lower – prices for wireless phone customers, contrary to Neutral Tandem's claim.

Advances in technology are also increasingly making tandem providers superfluous. There is a growing availability of IP-based interconnection options for CMRS providers. These devices are more efficient at handling and exchanging traffic, and will reduce the need for indirect connections through tandems, whether provided by an ILEC or an alternative middleman like Neutral Tandem. While there is generally no need for the Commission to intervene in a competitive market such as the one for CMRS service, it would be particularly inappropriate for the FCC to do so now on behalf of Neutral Tandem, whose business plan (which is centered on using legacy technology) may be overtaken by new innovations and developments if the market is left to develop on its own.

For all of these reasons, there is no justification for the Commission to intervene on behalf of a specific competitor. It is well established that "[t]he role of the Commission is not to pick winners or losers . . . but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers."[48] Here, Neutral Tandem asks (once again) for the government to intervene and grant the company by fiat what it has been unable to secure through arms-length negotiation in a

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[47] *See* Section IV.A, *supra.*

[48] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, 24014 ¶ 2 (1998).

competitive marketplace. By staying its hand and allowing the CMRS market to grow into one of the most vibrant and competitive telecommunications markets in the world, the FCC has already fulfilled is obligation to "ensure that the marketplace is conducive to investment, innovation and meeting the needs of consumers."[49] Neutral Tandem offers no reason for the Commission to abandon its long-standing policy of competitive neutrality in order to guarantee the company's business plan.

C. <u>There Is No Other Rationale to Support the *Petition for Rulemaking*.</u>

In the face of the precedent against Commission intervention in mandating particular types of connection on CMRS providers, Neutral Tandem offers not a single case where the Commission has in fact granted the relief it seeks against a CMRS provider. Instead, it relies on FCC quotes that acknowledge the general desirability of increasing access to diverse facilities[50] and promoting universal interconnectivity.[51] However, there is no merit to these or any other of Neutral Tandem's arguments in support of its *Petition for Rulemaking*.

Since the 1994 order that Neutral Tandem cites, the Commission has determined that in the CMRS context it is the *market*, not government regulation, that will best encourage access to diverse facilities and promote universal connectivity. Moreover, no connectivity will be lost as a result of the termination of the agreement, given that Verizon Wireless still connects directly with many of the carriers that Neutral Tandem serves and indirectly with other carriers through the ILEC tandem. Verizon Wireless

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[49] *Id.*

[50] *Petition for Rulemaking* at 6, citing *Expanded Interconnection with Local Telephone Company Facilities*, Third Report and Order, 9 FCC Rcd 2718, 2718 ¶ 2 (1994).

[51] *Petition for Rulemaking* at 7, citing *CMRS Interconnection NPRM*, 10 FCC Rcd at 10681 ¶ 128 (1995).

must maintain its connections with ILECs because of the large amount of traffic destined for ILEC end users, to accommodate overflow traffic, and because there are many carriers that are connected to ILEC tandems that are not connected to Neutral Tandem.

While Neutral Tandem attempts to justify mandatory connections with its service on the basis of disaster preparedness,[52] direct connections are also superior to redundant tandem arrangements of the kind that Neutral Tandem demands in promoting network survivability in the event of natural or man-made disasters. This is because a distributed network that relies on direct connections has fewer central points of vulnerability than a network that has key points through which large amounts of traffic flow. In addition, to the extent that Neutral Tandem is collocating its facilities with ILEC tandems, any additional benefit from redundancy is minimal, since both Neutral Tandem and ILEC facilities would be vulnerable to the same disasters.

In addition, Neutral Tandem claims that its facilities increase redundancy and therefore network reliability.[53] However, Neutral Tandem fails to provide any facts supporting this claim—for example, demonstrating how its network in fact provides enhanced reliability to networks in each of the three markets where it demands direct connection. Again, to the extent that Neutral Tandem's facilities share the same physical space as ILEC equipment, any increase in overall network security, redundancy, or survivability is negligible.

There is also no merit to Neutral Tandem's suggestion that Verizon Wireless has elected to terminate the agreement because such termination benefits Verizon Wireless's

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[52] *See* Neutral Tandem August 31 Filing at 11.

[53] *Petition for Rulemaking* at 10-11.

"parent," Verizon.[54] As an initial matter, while Verizon holds a controlling interest in Verizon Wireless, Verizon is not Verizon Wireless's "parent." Verizon Wireless is a joint venture in which Verizon and Vodafone Plc are partners. But even aside from this point, Neutral Tandem is once again unable to show how Verizon Wireless's decision not to renew the contract with Neutral Tandem benefits Verizon. Neutral Tandem offers nothing more than innuendo to suggest that Verizon would benefit by a cessation of the relationship between Verizon Wireless and Neutral Tandem. Indeed, as Neutral Tandem concedes, the business arrangement that Neutral Tandem asks the Commission to force Verizon Wireless to continue covers only three cities, Detroit, Chicago and New York, and in only one of those cities is Verizon the incumbent carrier and thus even arguably able to pick up additional tandem traffic from an end to this relationship.

Further, using Neutral Tandem's own figures, only 1 million of the 60 million minutes of use that it claims are being routed to Verizon Wireless are in the New York market. In New York, much of the traffic delivered by Neutral Tandem came from Cablevision. Cablevision and Verizon Wireless have recently reached the terms of a contract that will provide for direct interconnection, which in the near future will remove traffic from Neutral Tandem's network but not to an ILEC tandem. The fact that Verizon Wireless will move the Cablevision traffic to a direct connection belies any notion that Verizon Wireless is engaged in a scheme to shift traffic away from Neutral Tandem and onto the ILEC's tandems. Indeed, this arrangement, and others like it, will do much more to "facilitate the ability of IXCs, CLECs and independent CMRS carriers to bypass the

[54] *Petition for Rulemaking* at 11.

Verizon Communications tandem and obtain more efficient and cost effective service"[55] than any agreement with Neutral Tandem would.

Finally, Neutral Tandem's makeweight allusions to unreasonable discrimination can be disregarded.[56] Neutral Tandem claims that it is unreasonable for Verizon Wireless to provide direct connections to ILEC tandems but decline to provide direct connections to Neutral Tandem. However, differential treatment is only a concern if the parties are similarly situated.[57]

Here, Neutral Tandem cannot argue that its service is similarly situated to those provided by the ILECs, simply because the ILECs provide much broader connectivity than Neutral Tandem does. Nor can Neutral Tandem point to the existence of direct trunks with originating carriers (including ILECs) as evidence of discrimination against Neutral Tandem. The quantity of traffic is irrelevant to the Section 202 analysis. "[I]t is the purpose of a technical configuration, not the configuration itself, that is relevant in determining functional equivalence."[58] Verizon Wireless establishes direct links with other providers of end-user service, including ILECs, for the purpose of either receiving traffic from those carriers' customers, or terminating traffic to those carriers' customers. Neutral Tandem, however, has no end-user customers of its own.

Indeed, if the FCC accepted Neutral Tandem's claim that Section 202(a) requires a CMRS carrier to establish direct physical connections with every carrier carrying a

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[55] *Petition for Rulemaking* at 12.

[56] *Petition for Rulemaking* at 12-13.

[57] *See MCI Telecomms. Corp. v. FCC*, 842 F.2d 1296, 1303 (D.C. Cir. 1988) (A claim of discrimination under Section 202 requires a showing (1) that the services in question are "like"; (2) if they are, that the service are provided under different terms and conditions; and (3) that such differences are unreasonable.)

[58] *Cellexis Order*, 16 FCC Red at 22894 ¶ 19.

significant amount of traffic whenever it has direct connections with any carrier for any purpose, it would render meaningless other parts of the statutory scheme. Most significantly, it would nullify Section 201(a)'s requirement that the Commission can require physical connections only after an opportunity for a hearing and a public interest determination.[59]

D. Direct Connection With Neutral Tandem Would Impose Costs on Verizon Wireless.

Verizon Wireless has concluded that there is no business justification for extending the Neutral Tandem contract, and thus it does not make business sense to renew the companies' relationship. The parties' dealings have been fraught with difficulty, as Neutral Tandem has breached both the agreement between the parties and its own tariffs by delivering traffic to Verizon Wireless from carriers that Verizon Wireless does not have interconnection agreements with. Worse, even when these breaches have been brought to Neutral Tandem's attention, it has failed to correct them.

Neutral Tandem's August 31 Filing claims that the company "serves the exact same role" as ILEC tandems, but that it "provides better service" than the ILECs.[60] Neutral Tandem offers no explanation of what "better service" means in this context; ILECs typically provide excellent tandem service. In Verizon Wireless's experience, Neutral Tandem's business practices make the company harder to deal with than an ILEC tandem provider. Further, while Neutral Tandem may provide tandem service, it does not serve "the exact same role" as an ILEC, because with its smaller customer base Neutral

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[59] *AT&T Corp. v. FCC*, 292 F.3d 808, 812 (D.C. Cir. 2002).

[60] *Id.* at 12.

Tandem cannot replace any ILEC connections that Verizon Wireless currently has in place.

Unlike ILEC tandem providers, Neutral Tandem has also failed to deliver updated traffic reports to Verizon Wireless. This makes it difficult for Verizon Wireless to determine the volume and makeup of the traffic that Neutral Tandem is delivering, and renders it impossible for Verizon Wireless to approach those carriers that would be better served by direct connection arrangements.[61]

Moreover, contrary to Neutral Tandem's claims,[62] doing business with Neutral Tandem has imposed real and substantial costs on Verizon Wireless. In addition to receiving traffic delivered from carriers with no interconnection agreements, and therefore losing compensation that it might otherwise have obtained by establishing interconnection agreements with these carriers if they had been identified in updated traffic reports from Neutral Tandem, Neutral Tandem's connections have forced Verizon Wireless to install, maintain, and operate a range of facilities that impose costs on Verizon Wireless, including switch ports, digital cross-connect ports, and echo cancellers. Neutral Tandem's connections tie up ports that Verizon Wireless could use to directly interconnect with other carriers, and thus retard the ability of Verizon Wireless to enter into these more efficient arrangements.

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[61] Indeed, because Neutral Tandem would lose revenue if Verizon Wireless moved to direct interconnection with Neutral Tandem's customers, it is not in Neutral Tandem's financial interest to deliver such reports.

[62] As with all of the company's prior filings with the FCC, the August 31 Filing alleges that a connection with Verizon Wireless imposes no costs on Verizon Wireless. Neutral Tandem August 31 Filing at 12 (noting that other carriers pay the transit fees).

Neutral Tandem's claim that "Verizon Wireless will still need switch ports, one way or the other, to receive this traffic,"[63] misses the point entirely. Direct connection with other end-user providers, where feasible, is a far more efficient arrangement than a redundant tandem provider. Moreover, because Verizon Wireless must maintain its connections with ILEC tandems whether or not it also connects with Neutral Tandem, delivering smaller volumes of traffic over the ILEC facilities is generally more efficient than delivering small volumes of traffic over duplicative Neutral Tandem facilities.

Further, Neutral Tandem has proved very difficult to deal with on a business level. While Verizon Wireless was willing to work with Neutral Tandem, rather than negotiating reasonably with Verizon Wireless, Neutral Tandem has threatened or taken legal action at nearly every turn. A perfect example of this is Neutral Tandem's response to Verizon Wireless's offer to afford 90 days for carriers served by Neutral Tandem to make alternative arrangements—an offer that was not required by the contract Neutral Tandem had itself agreed to. Rather than contact Verizon Wireless to identify concerns with this proposal, Neutral Tandem chose the litigation route, filed its *Petition for Rulemaking*, and then requested an indefinite "standstill" arrangement. Verizon Wireless responded to this request by again committing to working with Neutral Tandem cooperatively to transition carriers to alternative routing arrangements. Neutral Tandem, however, failed to contact Verizon Wireless and instead filed yet another pleading, the *Motion for Interim Order*, with the Commission.

[63] Neutral Tandem August 31 Filing at 19.

E. Denial of Neutral Tandem's Petition for Rulemaking Creates No Threat to the Delivery of Intercarrier Traffic.

Because Neutral Tandem is not a carrier but merely an alternative transit provider, discontinuance of this business relationship—which in any event existed in only three cities—poses no threat to the public interest in the delivery of intercarrier traffic. Neutral Tandem has no end-user customers. The only traffic that Neutral Tandem handles is traffic generated by other carriers. In some instances, these carriers already have direct connections with Verizon Wireless. Where such direct connections do not exist but are justified by the volume of traffic, both Verizon Wireless and the carrier in question would benefit by establishing such a connection and bypassing Neutral Tandem's middleman service. To the extent that a carrier does not have and cannot justify a direct connection with Verizon Wireless, traffic will continue to flow over the ILEC's tandems, with which all carriers interconnect.

Verizon Wireless is sensitive to the need to ensure that all calls are completed, and for that reason has voluntarily committed to work with those carriers utilizing Neutral Tandem's services to reach the Verizon Wireless network in order to identify appropriate alternatives.[64] In order to help allay any difficulties with securing alternative network routing in those three markets where Verizon Wireless and Neutral Tandem *did* have a business agreement, Verizon Wireless has agreed to leave the connections in place for a full 90 days after termination of the agreement.[65] This should be more than enough

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[64] Neutral Tandem's *Petition for Rulemaking* contains a vague discussion of the threat of tandem exhaust in Florida, Atlanta, and Los Angeles. *Petition for Rulemaking* at 10. Verizon Wireless and Neutral Tandem, however, did not do business in any of these locations, making any concerns about tandem exhaust in these areas speculative and irrelevant.

[65] *See* Cuddy Letter. Verizon Wireless offered to leave these connections in place as a courtesy. Contrary to Neutral Tandem's claims, Neutral Tandem August 31 Filing at 17, Verizon Wireless has never said that the agreement between the parties could not have been extended, had the parties wished to do so. Rather,

time for Neutral Tandem's customers to make alternate arrangements to deliver their traffic to Verizon Wireless. On August 14, 2006, Verizon Wireless reiterated to Neutral Tandem that Verizon Wireless:

> continues to be willing to coordinate an orderly transition and thus to provide a 90-day period from the date of termination of the MSA before disconnecting these circuits, as the company has previously communicated to you. Verizon Wireless is sensitive to the need to avoid traffic disruption and, for that reason, commits to work with those carriers utilizing Neutral Tandem's services to reach the Verizon Wireless network in order to identify appropriate alternatives. Please immediately contact those carriers that will be affected by this transition to inform them of the need to re-point traffic, and please have them contact me if they would like to discuss any aspect of the transition or ways in which Verizon Wireless can help them to accomplish a smooth transition.[66]

To Verizon Wireless' knowledge, Neutral Tandem has taken no action whatsoever to advise its customers of the termination of the contract or of the need to prepare for alternative traffic arrangements during the voluntary 90-day period, as Verizon Wireless has offered to work with them to achieve.

Verizon Wireless has always maintained that the contract provided for a means of termination, which Verizon Wireless followed when it decided that extending the contract was not in the company's business interests. As Verizon Wireless explained in its Opposition to the Motion for Interim Order, now that the contract has expired there is no legal basis for the FCC to reinstate the contract. *See* Verizon Wireless Opposition at 17, 19.

[66] *See* Letter from Helgi Walker, Counsel to Verizon Wireless, to Russell Blau, Counsel to Neutral Tandem (August 14, 2006) (Attachment B to Verizon Wireless Opposition).

V. CONCLUSION

For the foregoing reasons, Neutral Tandem's *Petition for Rulemaking* should be rejected.

Respectfully Submitted,

/s/

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