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September 15, 2006

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VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington D.C. 20554

Re: *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; In the
Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No.
01-92.

Dear Ms. Dortch:

This notice is to inform you that on September 14, 2006, Charon Phillips of Verizon Wireless and the undersigned had an *ex parte* meeting with Al Lewis, Victoria Goldberg, Jennifer McKee, Jay Atkinson, and Randy Clarke of the Pricing Policy Division of the Wireline Competition Bureau, and Jennifer Schneider and Jeremy Miller of the Competition Policy Division of the Wireline Competition Bureau.

The purpose of the meeting was to discuss the legal problems associated with Neutral Tandem's Motion for Interim Relief. The discussion centered on the points in the attached presentation. Because many of the questions that were discussed relate to matters at issue in the pending intercarrier compensation proceeding, we are submitting this filing in that docket as well.

Respectfully submitted,

Helgi C. Walker

Neutral Tandem's Motion for Interim Relief



September 14, 2006



Granting the Motion Would Prejudge the Merits

- **Granting the Motion Would Prejudge the Petition.**
 - While the Motion seeks relief beyond that in the Petition, the merits of NT's claims in the Motion and Petition are the same.
 - Contrary to NT's claims, FCC cannot simply grant the Petition now and short-circuit administrative procedures.
- **Granting the Motion Would Prejudge Issues in the Intercarrier Compensation Docket.**
 - Mandating direct connection between carriers (including CMRS carriers) and phantom traffic are already at issue in the Intercarrier Compensation docket.
 - The Missoula Plan, among others, addresses these issues.
 - Even an interim grant of relief could constrain FCC action generally on either topic.



The Motion is Procedurally Defective

- **The Motion Seeks Relief Beyond that in the Petition.**
 - The Petition asks for a prospective rule, as defined by the APA, effective from the date of FCC action.
 - The contract between the parties has expired, and the Motion asks for reinstatement of the contract prior to FCC action on the Petition.
 - The FCC has made clear that it is not the agency's role to intervene in matters of private contract.
 - Contrary to NT's claims, Verizon Wireless has never argued that the agreement could not have been extended, but instead has simply said that now that the contract has expired, there is no basis for the FCC to reinstate the contract.
 - With no contract, prior to any FCC action on the Petition there is no legal basis for requiring Verizon Wireless to establish direct connections with NT.
 - The FCC could not go back and impose an obligation at the conclusion of the proceeding that predated its order, because this would be retroactive rulemaking.
 - It is well-settled that interim relief unrelated to the relief sought in a petition cannot be granted.



The Motion Does Not Satisfy the Standard for Interim Relief

- **NT's Motion Fails Each Prong of the Four Part Test.**
 - A party must prove that a request for interim relief meets the four part standard used in federal courts:
 - A likelihood of success on the merits;
 - Irreparable injury to the requesting party;
 - A lack of substantial harm to other parties from a grant of relief; and
 - A grant satisfies the public interest.
 - NT cannot show that it meets *any* of these prongs, let alone all four.



The Motion Does Not Satisfy the Standard for Interim Relief

- **There Is No Likelihood of Success on the Merits.**
 - Granting the Petition would require the FCC to reverse its long-standing policy of allowing the market to govern CMRS connection arrangements.
 - There is no basis for reversing this policy; CMRS is robustly competitive, and all of the reasons the FCC refused to adopt a direct connection requirement continue to apply.
 - If there is no reason to require direct CMRS connections with each other or with resellers, there is certainly no reason to require direct connection with NT, which has no end-user customers and does not provide additional end-user competition.
 - Even if the Petition were granted, it would not provide NT with the relief it seeks here—renewal of the expired commercial arrangement with Verizon Wireless.



The Motion Does Not Satisfy the Standard for Interim Relief

- **NT Has Not Shown Irreparable Harm.**
 - Because there is no existing obligation between Verizon Wireless and NT, NT cannot as a matter of law suffer “irreparable harm” from a termination of the companies’ connections.
 - Any harm that might occur is not actionable, since the “harm” flows from the lawful termination of a voluntary commercial agreement that NT entered with its eyes open.
 - Even if a duty existed, NT has offered only speculative claims of harm, and has not provided concrete evidence that it will suffer any damage at all.
 - Bare allegations of harm are not sufficient to grant interim relief
 - “Competitive” harm is not a basis for interim relief, because it is simply a type of economic loss
 - Harm that can be quantified and redressed is not a basis for interim relief unless it threatens the very business of the movant; NT has made no such allegation, let alone showing, here
 - Loss of opportunities are not a basis for interim relief where, as here, the value of those lost opportunities could be easily calculated



The Motion Does Not Satisfy the Standard for Interim Relief

- **Verizon Wireless Would Suffer Harm from Grant of the Petition.**
 - Forced direct connection is itself a harm.
 - Contrary to NT's continued claims, forced direct connection will impose costs on Verizon Wireless in terms of extra facilities needed to handle NT's connections.
 - Forced direct connection will also impose opportunity costs on Verizon Wireless, which cannot use the ports devoted to NT for other, more efficient network arrangements, such as direct connections.
 - NT's claim that Verizon Wireless will need ports regardless to receive the traffic carried by NT misses the point entirely; this traffic can either traverse more efficient direct connections or go over ILEC tandems that Verizon Wireless needs to maintain anyway.
 - Reinstating the agreement would require Verizon Wireless to continue receiving traffic for which it cannot receive compensation.



The Motion Does Not Satisfy the Standard for Interim Relief

- **Granting the Motion is Not in the Public Interest.**
 - The FCC has routinely found that the public interest is not served by interfering with the CMRS market and mandating direct connections.
 - Contrary to NT's claims, there is no danger to the termination of traffic.
 - NT has no customers of its own.
 - Some NT traffic from Cablevision will shortly be moved to direct connections in New York.
 - To the extent that NT customers exchange sufficient traffic, Verizon Wireless would be willing to establish additional direct connections.
 - Transit via the ILEC tandems will not be affected.
 - Verizon Wireless has voluntarily offered an additional 90 days to ease the transition; NT has pursued government intervention rather than taking action to ensure its customers do not experience difficulties.
 - NT's extravagant claims of delays in ILEC provisioning of alternate facilities are unsupported.



The Motion Does Not Satisfy the Standard for Interim Relief

- **Granting the Motion is Not in the Public Interest (cont).**
 - NT's assertions that it provides greater network security are unsupported; direct connections over alternate paths are far more beneficial, and to the extent NT collocates with ILECs, any increased reliability or survivability is minimal.
 - NT's claim that increasing MOUs require alternative tandem providers is logically flawed; as MOUs increase, direct connections between carriers become more practical.
 - NT's service does not increase network efficiency; ILEC tandem service provides benefits for small traffic volumes, but NT serves fewer customers and serves as a duplicative layer on top of existing ILEC services.