



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

October 23, 2007

Helgi C. Walker
202.719.7349
hwalker@wileyrein.com

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Ex Parte Letter, In re Petition of Neutral Tandem for an Order
Establishing Interconnection, WC Docket No. 06-159***

Dear Ms. Dortch:

This letter responds to a number of the various, erroneous claims that Neutral Tandem has made in this docket. First, there is no record support for Neutral Tandem's repeated attempts to portray Verizon Wireless's decision to cease doing business with Neutral Tandem as a result of Verizon Wireless's affiliation with Verizon and, even if there were, it would provide no logical basis for the broad mandate that Neutral Tandem has sought. Second, Neutral Tandem's attempts to cloak itself in the mantle of "national security" by pointing to alleged redundancy benefits offered by its system must fail. Neutral Tandem's arguments are based on fundamental misstatements about the way that wireless networks are set up and organized. Third, contrary to Neutral Tandem's claims, the Commission cannot act in this proceeding without taking into account the issue of compensation. Finally, if the Commission were to mandate direct connection (which it should not do), it must allow a requirement that a requesting carrier agree to a reasonable volume commitment in order to request direct connections and make clear that wireless carriers may negotiate reasonable terms and conditions of such connections.

I. VERIZON WIRELESS'S DECISION TO TERMINATE THE CONTRACT WAS UNRELATED TO ITS AFFILIATION WITH VERIZON

Neutral Tandem and other commenters in this proceeding have repeatedly suggested that the reason that Verizon Wireless elected to lawfully terminate the contract between the two companies is that Verizon Wireless wished to drive traffic away from an "independent" tandem provider, such as Neutral Tandem, and onto

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tandems owned by Verizon, with whom Verizon Wireless is affiliated.¹ Beyond vague insinuations, Neutral Tandem has not offered any evidence that would allow the Commission to conclude that wireless carriers that are affiliated with ILECs have improper motivations to discriminate against third party tandem providers. This is a radical claim, and the record on this point is far too thin for the Commission to draw any such conclusions. Neutral Tandem has certainly offered no quantitative evidence demonstrating that any such improper incentives are a problem with which the Commission must deal.

Indeed, Neutral Tandem's theory regarding Verizon Wireless's motivations is affirmatively contradicted by the facts that are in the record. As Verizon Wireless has demonstrated,² Verizon is *not* the ILEC in two of the three geographic areas (Detroit and Chicago) where the companies did business, which are the subject of this petition. In the third area (New York), the majority of the traffic that Neutral Tandem delivers is being moved onto direct connections between Verizon Wireless and Cablevision and thus is not destined for any Verizon Communications tandems. In short, in *none* of the three areas where the companies have done business will Verizon's ILEC tandems receive a material increase in traffic from Verizon Wireless's decision to terminate its voluntary contract with Neutral Tandem.

Moreover, as Neutral Tandem concedes, it has been able to negotiate a voluntary agreement with Cingular (now AT&T Wireless). If wireless carriers that are affiliated with ILECs did indeed have incentives to favor incumbent tandems over third-party tandem providers, it would be logical to expect that AT&T Wireless would also terminate its contracts with Neutral Tandem. Not only has AT&T Wireless not terminated these contracts, AT&T has filed in support of Neutral Tandem's position.³ The fact that two similarly situated entities like AT&T Wireless and Verizon Wireless take such radically different views on the desirability of working with Neutral Tandem belies any claim that Verizon Wireless is motivated by improper incentives that stem from its affiliation with an ILEC.

¹ See, e.g., Comments of McLeodUSA at 1.

² Verizon Reply Comments at 7-9.

³ AT&T Reply Comments.

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At the very least, there is nothing in the record to support using the affiliation between Verizon Wireless and Verizon as justification for a broad-based order granting Neutral Tandem the right to a direct connection everywhere Verizon Wireless operates, as Neutral Tandem has requested.⁴ Verizon's ILEC operations have a limited footprint. If the Commission decides, contrary to the evidence, that Verizon Wireless is driven by a desire to benefit the LEC, the proper relief could extend no farther than those areas where there is some sort of affiliation between Verizon Wireless and the LEC that owns the tandem. It would be arbitrary and capricious to apply a "solution" that is predicated on affiliation to areas where there simply is no affiliation.⁵

II. NEUTRAL TANDEM MISREPRESENTS THE SUPPOSED "BENEFITS" TO NETWORK SURVIVABILITY OFFERED BY ITS BUSINESS MODEL

Neutral Tandem has made a number of erroneous claims related to network reliability, attempting to tie its business interests to concerns about emergency and disaster preparedness.⁶ No network is invulnerable, and no carrier, including Neutral Tandem, could have prevented the network impacts of September 11, 2001 or as a result of Hurricane Katrina. Despite Neutral Tandem's claim that it adds

⁴ 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") 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).

⁵ In addition, as we have previously explained, a direct interconnection mandate in the context of wireless carriers would be a dramatic departure from past precedent under Section 201(a), which would be rationally unexplainable given the high level of competition in the wireless market that the Commission has repeatedly observed in numerous other proceedings. *See* Verizon Wireless Comments at 11-14; Verizon Wireless Reply Comments at v, 1-2. And Section 332 does not provide any statutory basis for the mandate. *See id.* at 2-3.

⁶ *See, e.g.,* Ex Parte Letter from Rian Wren to Commissioner Tate (October 11, 2007) ("October 11th Letter").

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“significant and real redundancy” to the public switched network,⁷ that is simply not the case. Nor should the Commission be persuaded by Neutral Tandem’s assertion without citation that it “has been found to reduce the risk of such a tandem bottleneck by increasing tandem capacity and adding route diversity.”⁸

Neutral Tandem mischaracterizes the reliability and survivability benefits associated with its service in three particular ways. First, Neutral Tandem suggests that its presence adds a useful layer of diversity to the network. However, absent separate connecting facilities, additional switches like those employed by Neutral Tandem do little to promote network survivability. Second, Neutral Tandem has mischaracterized the way in which Verizon Wireless’s network connects with ILEC tandems. The company has a far more diverse set of network connections than Neutral Tandem has portrayed in its filings to the Commission, and to the extent Verizon Wireless does rely on ILEC tandems, such reliance is the result of sound judgment and good network planning. Third, Neutral Tandem’s suggestion that its indirect connections have just as positive an effect on network survivability as do direct connections between carriers is belied by its own filings. Direct connections between carriers, which allow traffic to be exchanged without going through a central chokepoint such as Neutral Tandem’s switch, are vastly superior in terms of network survivability.

Neutral Tandem’s mischaracterizations of the benefits its switches provide in terms of network survivability are a particularly troubling aspect of Neutral Tandem’s effort to convince the Commission to grant its Petition for Interconnection and Motion for Interim Order. The Commission should pay no heed to Neutral Tandem’s misstatements, and should deny Neutral Tandem’s Petition.

A. The Benefits of Diversity Vary Depending on Type.

Verizon Wireless has extensive experience in dealing with external threats to network reliability. In particular, Verizon Wireless was directly affected by both the September 11, 2001 attacks and Hurricane Katrina. In the company’s experience, it is the facilities that connect switches, and not the switches

⁷ Neutral Tandem Reply Comments at 2.

⁸ October 11th Letter at 1.

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themselves, that are the main point of network vulnerability. Neutral Tandem provides only switches, and does not provide any connecting facilities. Instead, Neutral Tandem typically purchases services from a competitive local exchange carrier (“CLEC”) to connect its switches to Verizon Wireless.

Three practical examples illustrate that, contrary to Neutral Tandem’s claims, the addition of a redundant tandem provider does little, standing alone, to improve Verizon Wireless’s already robust network survivability. First, the attached diagram demonstrates the manner in which Neutral Tandem and Verizon Wireless are connected in New York. In New York, Neutral Tandem uses an unprotected, single cable entrance facility from AT&T Local Services to connect to Verizon Wireless’s Mineola, New York Mobile Switching Center (“MSC”).⁹

Second, Neutral Tandem makes a great deal of the fact that it uses nearly 40 different fiber carriers nationwide.¹⁰ However, a diverse source for leased fiber does not necessarily translate into physical diversity where the path taken by the facilities is the same. In Chicago, for example, the physical path into the Verizon Wireless MSC is the same for AT&T ILEC and Neutral Tandem. To the extent that this is true elsewhere, Neutral Tandem does not provide the transport and facility diversity that it proclaims.

Third, as the attached diagram also demonstrates, Verizon Wireless leases facilities from the Verizon ILEC (“Verizon”) and Cablevision Lightpath to connect its cell sites to its switches, as well as to connect directly to Verizon’s tandems and end offices and to Cablevision’s point of presence (“POP”). In contrast to the Neutral Tandem facilities described above, the SONET rings that Verizon Wireless leases are physically diverse, meaning that a cut in any single cable will not disable these connections. Moreover, if there were a disabling, catastrophic loss at one of these SONET rings, Verizon Wireless service that is dependent on those rings would be affected, and connection to Neutral Tandem would provide no added survivability. Indeed, in some instances Neutral Tandem’s traffic actually rides on these very SONET rings and, thus, if any Verizon Wireless SONET ring were

⁹ An unprotected entrance facility lacks the “self-healing” capability of a more robust SONET connection, meaning that a single cut in this cable would completely disable this direct connection.

¹⁰ Neutral Tandem Reply Comments at 6.

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disabled so would Neutral Tandem's service be. Finally, if the Mineola MSC and Verizon tandems were not impacted, but the facilities to which Verizon Wireless's cell sites were connected went down, service would still be disrupted for calls to those cell sites. Diversity of parties connecting to Verizon Wireless does nothing to promote reliability in this situation.

B. Verizon Wireless Does Not Rely Excessively on ILEC Tandems.

Contrary to Neutral Tandem's suggestion in its reply comments that Verizon Wireless relies excessively on ILEC tandems, in Chicago, for example, Verizon Wireless has numerous direct connections to wireless and other carriers, and routes to multiple long distance carriers that Verizon Wireless uses as backup for local trunks to handle large traffic spikes. In New York, Verizon Wireless has 26,000 trunks to Verizon end offices and 15,000 direct connect trunks, mostly to other CMRS carriers and large CLECs. Neutral Tandem's diagram attached to its reply comments on its Petition does not provide an accurate picture of Verizon Wireless's network, because it fails to show all of these types of connections and the true diversity that Verizon Wireless has built into its network.

Even where Verizon Wireless relies on ILEC tandems, this is a sound practice based on years of experience with ILEC call management centers that are manned around the clock to handle call flows in emergency situations. Neutral Tandem's diagram also mischaracterizes Verizon Wireless's use of ILEC tandems, by suggesting that Neutral Tandem's switches replace ILEC tandems on a one-to-one basis. In fact, Verizon Wireless has connections to 13 tandems in the Chicago area, 7 in Detroit, and 19 in the New York area.¹¹ Failure at any one of these ILEC tandems would not necessarily bring down the entire geographic area, whereas failure at a Neutral Tandem switch would cut off all connectivity in a particular geographic area for those carriers originating traffic through Neutral Tandem, unless of course those carriers were also connected to an ILEC tandem for overflow.

¹¹ In this sense, the transition from Figure 1 to Figure 2 in Neutral Tandem's October 31, 2006 *ex parte* is also misleading because it implies that CLECs and CMRS providers connect to only one ILEC tandem in a geographic area via only one physical connection. *Id.* Verizon Wireless typically connects to several ILEC tandems within one geographic area and do so through SONET transport that is self-healing in the event of a disaster.

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C. **Direct Connection Between Carriers Adds Another Path for Network Routing and Is Therefore Superior to Indirect Connection Through Third-Party Switches for the Purpose of Network Reliability.**

Neutral Tandem also suggests that its practice of adding third-party tandem switches to the network is just as good, from the standpoint of improving network reliability, as adding additional direct connections between carriers. This is simply false. Direct connections between two carriers facilitate more reliable networks. Neutral Tandem's own white paper filed on October 31, 2006 confirms that direct connections that bypass LEC tandems add diversity.¹² Direct connection between two switches offers Verizon Wireless another way to deliver traffic, because calls between two carriers directly connected typically have three paths, first over the direct connection, second over indirect or tandem connections, and third via interexchange carrier connections. Without direct connection, fewer paths are available in the event of call blocking that can happen in times of major traffic congestion such as natural or man-made disasters.

III. **THE FCC CANNOT GRANT NEUTRAL TANDEM'S PETITION WITHOUT ADDRESSING THE ISSUE OF COMPENSATION**

Neutral Tandem claims that its "Petition involves interconnection, not compensation: Neutral Tandem has agreed to pay 100 percent of the cost of *delivering the traffic* to Verizon Wireless and Neutral Tandem is not proposing selling Verizon Wireless any services, so compensation is not at issue."¹³ There are two fundamental flaws with Neutral Tandem's claim.

First, even if it were clear that Neutral Tandem is committing to pay all of the direct costs that Verizon Wireless would incur as a result of establishing direct connections with Neutral Tandem (including staff and engineering time, equipment

¹² Letter of Russell M. Blau, on behalf of Neutral Tandem, to Marlene H. Dortch, Secretary, Docket No. 06-159 (filed Oct. 31, 2006).

¹³ Neutral Tandem March 16, 2007 Ex Parte at 1 (emphasis added).

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costs, and so forth),¹⁴ in a business relationship it is not enough that a party simply agrees to cover another party's costs. By establishing direct connections with Neutral Tandem, Verizon Wireless is providing a valuable service—connections to Verizon Wireless customers. It is access to these direct connections that forms the basis of Neutral Tandem's business model, which presumably includes a profit beyond simple recovery of costs. Yet Neutral Tandem is asking for one of the essential inputs for its business at no more than Verizon Wireless's cost. In the highly competitive wireless industry, which is governed by Section 201 and not the stringent standards that Congress set forth in Section 251, there is simply no basis for a government mandate that requires Verizon Wireless to offer a valuable good to Neutral Tandem at cost. Subject to Section 201, Verizon Wireless *must* be allowed to earn a reasonable return on its facilities and investment, and because of the competitive nature of the wireless market, there is no justification for the Commission to intercede and set a price absent a showing that Verizon Wireless's rates are not reasonable. In addition, the mandated connection that Neutral Tandem seeks could result in the loss of IXC connections with Verizon Wireless, an important source of revenue for the company.¹⁵ Moreover, it is not simply the costs of direct connection with Neutral Tandem that threaten to impose a significant burden on Verizon Wireless—it is the cost of providing direct access to all third-party providers who might invoke any interconnection right granted to Neutral Tandem in this proceeding in the future.

¹⁴ It is not at all clear that Neutral Tandem is making an offer that is even this generous. Neutral Tandem's pleadings can be fairly read to suggest that it is willing to pay for the costs of delivering traffic *to* Verizon Wireless's network, but that it is not willing to pay for the changes that Verizon Wireless would have to make to its network to accommodate these connections.

¹⁵ If the Commission mandates that Verizon Wireless establish a direct connection with Neutral Tandem, but does not address the compensation issues, interexchange carriers will have little incentive to negotiate for direct connection with Verizon Wireless. Instead, they will simply flow traffic through Neutral Tandem, potentially avoiding any requirement to compensate Verizon Wireless for the traffic that they terminate onto Verizon Wireless's network. For this reason, any order mandating direct connection should be limited to local traffic, and should exclude interexchange traffic.

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Second, Neutral Tandem's position ignores the simple fact that one of the primary reasons that Verizon Wireless terminated its relationship with Neutral Tandem was its belief that Neutral Tandem breached its contract and tariff obligations by delivering to Verizon Wireless: (i) traffic from carriers that Verizon Wireless did not have interconnection agreements with; and (ii) traffic that provided insufficient information for Verizon Wireless to identify the originating carrier. According to the filings made in this docket by Level3, Neutral Tandem has been the cause of similar compensation issues with other carriers.¹⁶ As a result, Verizon Wireless incurred real and significant costs terminating traffic that came from Neutral Tandem's switches, but for which Verizon Wireless was unable to recover compensation from the originating carrier. The Commission cannot mandate direct interconnection without providing a means for Verizon Wireless to recover compensation for such traffic from Neutral Tandem.

IV. ANY ORDER MANDATING DIRECT CONNECTIONS MUST ALLOW FOR REASONABLE VOLUME COMMITMENT REQUIREMENTS

If the Commission were to adopt an order mandating direct interconnection for the first time between a CMRS provider and a party such as Neutral Tandem, it must allow for reasonable volume commitment requirements. Pursuant to Section 201, the carrier from whom interconnection is requested (in this case, Verizon Wireless) must be able to set these volume commitment requirements as part of the reasonable terms and conditions of service. Allowing the requesting carrier to dictate establishment of direct connections regardless of the level of traffic it intends to send over the connections would lead to profound network inefficiencies. Indeed, the entire basis for establishing tandem connections is to avoid the needless expense and complexity of a profusion of direct connections where the traffic volume is minimal or sporadic.

If the Commission does set a bright-line rule for the level of traffic at which a direct connection can be requested, such a rule must be sufficient to deter inefficient connections and must also require a firm commitment from the

¹⁶ Level3 May 16, 2007 Ex Parte. Not coincidentally, Neutral Tandem's reaction in those cases, just as in this case, was to seek regulatory intervention rather than attempt to resolve the issues on a business-to-business level.



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requesting party to flow at least the minimum level of traffic. Neutral Tandem's vague request that it be allowed to establish connections "at any Verizon Wireless switch to which Neutral Tandem (or its customers) has at least three DS1s' worth of traffic"¹⁷ is completely insufficient in both of these respects. First, the level of traffic Neutral Proposes is far too low. While the record in this proceeding is not sufficient to establish the proper amount of traffic that should trigger an obligation to establish a direct connection, in Verizon Wireless's judgment sound network engineering principles would dictate a level of DS3 or higher (or roughly seven times the level proposed by Neutral Tandem). Second, Neutral Tandem appears to be attempting to avoid committing to actually delivering a given level of traffic over the connections—there is no guarantee that all of the company's customers' traffic will be sent through Neutral Tandem over the direct connection. Relatedly, if the Commission adopts any sort of mandate here, it should also make clear that Verizon Wireless retains the right to negotiate reasonable terms of interconnection.

For these and the other reasons set forth in Verizon Wireless's pleadings, Verizon Wireless urges the Commission to deny Neutral Tandem's Petition. Consistent with the Commission's rules on *ex parte* communications, this letter is being filed electronically in the captioned docket. Please let me know if there are any questions related to this filing.

Sincerely yours,

/s/ *Helgi C. Walker*
Helgi C. Walker

Attachment

cc: S. Bergman V. Goldberg
M. Carey A. Lewis
S. Deutchman J. Veach
J. Hunter
W. Leighton
C. Moore

¹⁷ Petition at 19.

