BINGHAM

REDACTED -- FOR PUBLIC INSPECTION

Russell M. Blau
Direct Phone: 202.373.6035
Direct Fax: 202.373.6001
russell.blau@bingham.com

October 11, 2011

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, WC Docket 10-90, GN Docket 09-51, WC Docket 07-135, WC Docket 05-337, CC Docket 01-92, CC Docket 96-45, WC Docket 03-109

Dear Ms. Dortch:

On October 8, 2011, John Harrington, Senior Vice President – Regulatory & Litigation of Neutral Tandem, Inc. ("Neutral Tandem"), and the undersigned, outside counsel to Neutral Tandem, met with Commissioner Robert McDowell and his legal advisor, Christine Kurth; with Margaret McCarthy, legal adviser to Commissioner Copps; and with Edward Lazarus, Chief of Staff to Chairman Genachowski; to discuss the above-referenced proceedings.

In the meeting, Neutral Tandem presented and discussed the attached written materials. Under separate cover and in accordance with the Protective Order in this proceeding,[1] copies of the confidential materials are being filed with the Secretary's Office and are being provided to Lynne Hewitt Engledow of the Wireline Competition Bureau.

Neutral Tandem stated that the record in this proceeding demonstrates the existence of robust competition in the market for tandem transit services. Neutral Tandem further urged that the Commission should not find tandem transit service to be a form of "interconnection" under Section 251(c)(2) of the Telecommunications Act of 1996, as such a finding would be inconsistent not only with the Commission's rules, but also with the Supreme Court's decision from earlier this year in *Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2254 (2011).

[1] *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket Nos. 07-135, 10-90, 05-337, and GN Docket No. 09-51, Protective Order, DA 10-1749 (WCB, rel. Sept. 16, 2010).

Boston
Frankfurt
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T +1.202.373.6000
F +1.202.373.6001
bingham.com

Neutral Tandem encouraged the Commission to determine that the market for tandem transit services is competitive and to reject the requests made by various carriers to impose TELRIC-based pricing on incumbent carriers' tandem transit service.

Respectfully submitted,

/s/ electronically signed

Russell M. Blau

Counsel to Neutral Tandem, Inc.

Attachment

cc: (by email)

Commissioner Robert McDowell
Christine Kurth
Margaret McCarthy
Edward Lazarus

REDACTED -- FOR PUBLIC INSPECTION

NEUTRAL TANDEM®

FCC Presentation – October 7, 2011

Neutral Tandem

- Leading provider of competitive local tandem transit service between competitive (i.e., non-ILEC) carriers.

- Local tandem transit occurs "when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediate provider." *FNPRM* ¶ 683 (Feb. 9, 2011).

Neutral Tandem

- NT provides local tandem transit service in 189 of the 192 LATAs in continental United States, and in Puerto Rico.
  - Only LATAs where NT does not provide service are Fishers Island, NY, and remote parts of Navajo Nation.

Local Tandem Transit Service

- *FNPRM* noted that "the record in this proceeding indicates that a competitive market for transit service exists." *FNPRM* ¶ 683.

- *FNPRM* requested that parties "refresh the record with regard to the need for the Commission to regulate transiting services, and the Commission's authority to do so." *Id.*

What has the Record Shown?

- The record confirms the existence of a robust competitive market for local tandem transit.
  - Falling prices (average price decreases of [redacted] year-to-year between 2007-2010, including more than [redacted] decline between 2009 and 2010).
  - Multiple new entrants to local tandem transit market.

    [redacted]

  - Alternatives to local tandem transit, such as carriers choosing to bypass tandem providers and direct connect their networks, are widely utilized.
- Carriers seeking TELRIC regulation of ILEC transit have not provided any data establishing absence of competitive options.

Federal Court Litigation

- Federal district courts have reached different results regarding transit.
  - First district court to address issue found TELRIC pricing not required for local transit. (Puerto Rico)
  - Two district courts have since affirmed state commission decisions requiring ILEC to provide local transit at TELRIC rates. (Nebraska, Connecticut).

- Connecticut court decision on appeal to Second Circuit.
  - State commission ignored substantial record evidence of competitive alternatives to ILEC transit.