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October 18, 2011

VIA ELECTRONIC FILING

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

Re: CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90 and GN Docket No. 09-51

Dear Ms. Dortch:

On October 17, 2011, the undersigned, along with Neutral Tandem's outside counsel Russell M. Blau of Bingham McCutchen LLP, met with Austin Schlick, Diane Griffin Holland, and Nandan Joshi of the General Counsel's office, and with Albert Lewis of the Wireline Competition Bureau.

During the meeting, Neutral Tandem presented and discussed the attached written materials. Neutral Tandem also made reference to its prior comments and declarations submitted in this proceeding. Neutral Tandem emphasized that the record in this proceeding demonstrates the existence of robust competition in the market for tandem transit services.

Neutral Tandem further emphasized 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).

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.

I also expressed Neutral Tandem's support for certain of the proposals made in the October 12 *ex parte* submitted by Level 3 Communications. In particular, Neutral Tandem supports Level 3's proposal that the FCC clarify the benchmark that applies when a CLEC serves an end user with a single switch and provides common transport to the ILEC tandem, rather than to its own tandem (Proposed Rule Change #2 in Level 3's *ex parte*). Neutral Tandem also supports Proposed Rule Change #1 and #3 in Level 3's *ex parte*.

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Neutral Tandem does not agree that Level 3's Proposed Rule Change #4 should be adopted as drafted. Proposed Rule Change #4 would add a paragraph to rule 62.26(f), as follows:

"(3) When the competing ILEC does not charge a rate for common transport between its tandem and a second tandem, the benchmark rate shall not include any such charge for such transport."

Neutral Tandem's concern stems from the fact that certain IXCs that have incumbent LEC affiliates may refuse to receive access traffic from a CLEC via direct interconnection with the CLEC's tandem, and instead require that the traffic be sent through the tandem of the IXC's incumbent LEC affiliate. These IXCs may do so because their payment to their incumbent LEC affiliates for tandem services do not result in a net payment from a corporate perspective. Thus, IXCs affiliated with incumbent LECs may actually have an incentive to require traffic to be sent through the second/ILEC tandem.

In that scenario, therefore, it is appropriate for an IXC to incur the charges associated with delivering access traffic to the tandem of its affiliated incumbent LEC, because the IXC has chosen to receive the traffic through the tandem of its affiliated ILEC, rather than through direct interconnection with the CLEC.

Respectfully submitted,

/electronically signed/

John R. Harrington

Encl.

REDACTED – FOR PUBLIC INSPECTION

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FCC Presentation – October 17, 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.