

2673

WolfBlock

213 Market Street, 9th Floor, P.O. Box 865, Harrisburg, PA 17108-0865
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Deanne M. O'Dell
Direct Dial: (717) 255-3744
Direct Fax: (717) 237-7314
E-mail: dodell@wolfblock.com

RECEIVED
2008 APR 11 AM 9:49
INDEPENDENT REGULATORY
REVIEW COMMISSION

April 9, 2008

VIA HAND DELIVERY

James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: **Petition of Level 3 Communications, LLC to Amend the
Public Utility Commission Regulations to Streamline
Transfer of Control and Affiliate Filing Requirements for
Competitive Carriers - Docket No. P-00062222 and**

**Rulemaking to Amend Chapter 63 Regulations so as to
Streamline Procedures for Commission Review of Transfer
of Control and Affiliate Filings for Telecommunications
Carriers - Docket No. L-00070188**

Dear Secretary McNulty:

On behalf of Neutral Tandem-Pennsylvania, LLC, enclosed for filing please find an original and fifteen copies of its Comments with regard to the above-referenced matters.

If you have any questions regarding this filing, please contact me at your convenience.

Respectfully submitted,



Deanne M. O'Dell
For WolfBlock LLP

DMO/kra
Enclosure
cc: Joseph Witmer (via email)

HAR:79865.1/NEU057-245144

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Level 3 Communications, LLC	:	
To Amend the Public Utility Commission	:	
Regulations to Streamline Transfer of	:	
Control and Affiliate Filing Requirements for	:	Docket No. P-00062222
Competitive Carriers	:	
	:	
Rulemaking to Amend Chapter 63	:	
Regulations so as to Streamline Procedures	:	
for Commission Review of Transfer of	:	
Control and Affiliate Filings for	:	Docket No. L-00070188
Telecommunications Carriers	:	

**COMMENTS OF
NEUTRAL TANDEM-PENNSYLVANIA, LLC**

I. INTRODUCTION

On February 9, 2008, the Commission's proposed revisions to its rules and procedures governing the transfer of control and affiliate filing requirements under 66 Pa.C.S. §§ 1102(a)(3) and 1103 were published in the Pennsylvania Bulletin.¹ Interested parties were invited to submit Comments in response to the proposals. Neutral Tandem-Pennsylvania, LLC ("Neutral Tandem") is a leading provider of tandem services primarily to wireless, wireline, cable and VoIP providers and is the first company to build an independent tandem network devoted to helping competitive carriers exchange traffic. Founded in 2003, Neutral Tandem has continued to expand its business and entered the Pennsylvania market in 2006.² As a carrier expanding its business operations into Pennsylvania, Neutral Tandem supports the Commission's efforts to

¹ 38 Pa.B. 758.

² Currently pending before the Commission are Neutral Tandem's applications for authority to operate as an interexchange toll reseller, facilities based interexchange provider, competitive access provider and competitive local exchange provider. See Docket No. A-211435.

streamline its processes and to provide more rapid review of proposed transactions. To that end, the streamlined process as set forth in the Commission's proposed regulations is generally reasonable.

However, the proposed regulations do not include provisions requiring carriers to disclose information about their regulatory compliance and any (a) violations of federal or state law that have been found in the three years prior to the filing or (b) alleged violations of federal or state law subject to currently pending proceedings. Without disclosure of such information, the Commission's regulations as proposed have the potential of processing too quickly an application from an applicant that requires more thorough review due to its questionable regulatory compliance history. By adopting Neutral Tandem's proposed language discussed below and requiring disclosure of compliance information, the Commission will be getting the information necessary to decide to exercise its discretion to take the time necessary to review the application and the applicant to ensure that granting the application is in the public interest.

II. COMMENTS

The proposed rulemaking creates a general rule for review and approval within a 60-day period for the vast majority of applications seeking approval for transactions under Sections 1102(a)(3) and 1103 of the Public Utility Code involving acquisitions, diminutions in control, mergers, stock sales or transfers, transfers of assets or control of a telecommunications public utility. For some transactions, the rules also propose a 30-day review and approval process. For both types of processes, proposed Sections 63.324(d) and 63.325(d) set forth the specific information the applicant must provide. Specifically, Sections 63.324(d)(12) and 63.325(d)(12) require "[a] verified statement affirming that the utility is in compliance with Commission obligations and filings." These are the only sections that require an applicant to address its

compliance with the Commission's regulations. No other sections require the applicant to disclose actual or alleged violations of any other state or federal law as a general matter.³

The Commission should revise its regulations to require the disclosure of such information. More specifically, proposed Sections 63.324(d) and 63.325(d) should be revised as follows:

(12) A verified statement affirming that the utility is in compliance with Commission obligations and filings as well as a listing of all state and federal proceedings (a) wherein the utility was found to have violated either state or federal requirements within the three year period prior to filing the application or (b) currently pending wherein the utility is alleged to have violated either state or federal requirements.

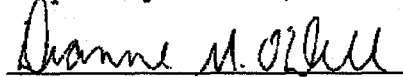
By requiring this information, the Commission will be engaging in appropriate due diligence to ensure that the application does not warrant closer review based on the applicant's compliance history. Where an applicant provides a listing of actual or alleged violations of state and/or federal law, the Commission will have the information necessary to decide to exercise its discretion in proposed Sections 63.324(j)(4) and 63.325(j)(4) to reclassify the transaction and give itself more time to review the applicant and its application. By taking this additional time for carriers whose history seems to warrant it, the Commission will be exercising appropriate due diligence to ensure that the proposed transaction is in the public's best interest. Furthermore, the Commission will be ensuring that those carriers with good regulatory compliance will be able to utilize the streamlined process.

³ Proposed Sections 63.324(d)(17) and 63.325(d)(17) are limited to actions related to the transaction ("[a] verified statement establishing that no state or federal regulatory agency is expected to undertake an informal or formal investigation, complaint, or proceeding related to the transaction.")(emphasis added).

III. Conclusion

Neutral Tandem supports the Commission's proposed rules and appreciates the efforts of the Commission to ensure that these important transactional applications are processed in a timely and streamlined manner. To that extent, Neutral Tandem does not propose any major substantive changes to the proposed regulations addressing the process. Neutral Tandem does, however, recommend revisions to Sections 63.324(d) and 63.325(d) to require applicants to provide the Commission with information regarding state and/or federal regulatory information. By requiring this information, the Commission will ensure that the streamlined process does not result in fast-tracking applications from applicants who, because of their questionable regulatory history, require more careful review to insure that the public interest is served by approving the transaction.

Respectfully submitted,



Alan Kohler, Esquire

Deanne O'Dell, Esquire

Wolf, Block, Schorr & Solis-Cohen LLP

213 Market Street, 9th Floor

Harrisburg, PA 17101

(717) 237-7160

Counsel for Neutral Tandem-Pennsylvania,
LLC

Dated: April 9, 2008