

Decision 08-07-016 July 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Neutral Tandem California, LLC,

Complainant,

v.

Level 3 Communications and its subsidiaries,

Defendant.

Case 07-03-008
(Filed March 6, 2008)

DECISION GRANTING MOTION TO WITHDRAW COMPLAINT

Summary

This decision grants the motion of Neutral Tandem California, LLC (Neutral Tandem or Complainant) to withdraw its complaint against Level 3 Communications (Level 3 or Defendant). Complainant and Defendant, two California certificated competitive local exchange carriers, are the sole parties to this matter. The parties reached a global settlement of the issues arising out of their negotiated agreements, which they have litigated before 14 state commissions, including California. This proceeding is closed.

Background

On March 6, 2007, Neutral Tandem and its affiliates filed a complaint against Level 3 and its subsidiaries, asking the Commission to determine two issues. First, whether the Commission had the authority under California law to order Level 3 to directly interconnect with Neutral Tandem for the limited

purpose of accepting tandem transit traffic¹ that it delivers for termination on Level 3's network; and, second, whether Level 3's refusal to offer Neutral Tandem similar terms and conditions of interconnection as the terms and conditions it offers to the incumbent tandem transit provider² violated the anti-discrimination provisions of the California Public Utilities Code.

Since 2004, Neutral Tandem and Level 3 have operated under various commercially-negotiated agreements that contained 30-day contract termination provisions available to both parties. In February 2007, Level 3 provided notice to Neutral Tandem that it was terminating the contracts. Neutral Tandem filed its complaint. Evidentiary hearings took place in June 2007. The proceeding was submitted on July 25, 2007.

On June 11, 2008, Neutral Tandem moved to withdraw the complaint, because it had reached a global settlement of all of the actions and related disputes at issue here and in various other states. Neutral Tandem advises that although the terms of its accord with Level 3 are confidential, the parties have now entered into a direct connection agreement pursuant to which Level 3 will accept transit traffic delivered by Neutral Tandem. Level 3 appears to have reviewed Complainant's motion as submitted, and does not oppose it.

Discussion

The Commission generally looks with favor at a unanimous settlement of a dispute brought before it. Typically, however, the Commission considers such

¹ Tandem transit traffic refers to intermediary switching of local and other non-access traffic that originates and terminates on the networks of different telecommunications providers within a local calling area.

² Pacific Bell Telephone Company doing business as AT&T California.

settlements in advance of the evidentiary hearing and post-hearing briefing. Here, the settlement comes after these events. Complainant notes that the accord that it has reached with Defendant is a global one that resolves similar disputed issues between the two in various other states as well as in California. Consequently, given this circumstance and the fact that the instant dispute has involved only these two parties, we will permit Complainant to withdraw its complaint at this juncture. We do not anticipate any ill-effect upon the public interest by our granting Complainant's motion. However, we caution that our granting leave to withdraw the complaint in this case should not be considered a precedent for future post-hearing withdrawals lacking the specific facts of this proceeding.

Categorization and Need for Hearings

In the Instructions to Answer dated March 15, 2007, the Commission categorized this proceeding as adjudicatory and determined that hearings were necessary. Based on the record, we affirm the categorization and determination.

Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. Complainant filed a complaint against Defendant on March 6, 2007.
2. Evidentiary hearings took place on June 4 and June 5, 2007.

3. The matter was submitted on July 25, 2007.

4. On June 11, 2008, Complainant moved to withdraw its action against Defendant because the two reached a global settlement of all the actions and related disputes at issue here and in various other states.

5. Defendant does not oppose Complainant's motion to withdraw its complaint.

Conclusions of Law

1. Complainant should be permitted to withdraw its complaint against Defendant.

2. The leave granted herein to withdraw a complaint post-hearing and post-briefing should not be considered precedential.

3. For administrative efficiency, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The request of Neutral Tandem California, LLC to withdraw Case (C.) 07-03-008 is granted.

2. C.07-03-008 is closed.

This order is effective today.

Dated July 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners