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PUCO

May 31, 2007

**VIA HAND-DELIVERY**

The Public Utilities Commission of Ohio  
Attn: Renee J. Jenkins, Secretary  
180 East Broad Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215

**Re: Case No. 07-668 -TP-CSS  
Level 3 Communications, LLC and Broadwing Communications, LLC v.  
Neutral Tandem-Michigan, LLC**

Secretary Jenkins:

Enclosed please find the original and ten (10) copies of a Complaint to be filed in connection with the above-referenced matter on behalf of Level 3 Communications, LLC and Broadwing Communications, LLC.

If there are any questions concerning this filing, please contact this office.

Sincerely,



David A. Turano

DAT/tlh

Enclosure

cc: Allen R. Francis  
Gregg Strumberger, Esq.

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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Level 3 Communications, LLC	)	
	)	
and	)	
	)	
Broadwing Communications, LLC	)	
	)	
Complainants,	)	Case No. 07- <u>668</u> -TP-CSS
	)	
v.	)	
	)	
Neutral Tandem-Michigan, LLC	)	
	)	
Respondent.	)	

**COMPLAINT**

Level 3 Communications, LLC (“Level 3”) and Broadwing Communications, LLC (“Broadwing”) (collectively, the “Complainants”), file this Complaint against Respondent, Neutral Tandem-Michigan, LLC (“NT-M”), pursuant to Section 4905.26, O.R.C., and Rule 4901:9-01, O.A.C., and in support thereof state as follows:

**Parties**

1. Level 3 is a Delaware corporation, duly licensed to transact business in Ohio, and maintaining its principal place of business at 1025 Eldorado Blvd., Broomfield, Colorado 80021.

2. Level 3 is a “public utility” pursuant to Sections 4905.02 and 4905.03(A)(2), O.R.C., and is authorized to provide competitive local exchange and interexchange telecommunication services within Ohio pursuant to Certificate of Public Convenience and Necessity No. 90-9062 (“Certificate No. 90-9062”).

3. Broadwing is a wholly-owned subsidiary of Level 3 and a Delaware limited liability company, duly licensed to transact business in Ohio.

4. Broadwing is a “public utility” pursuant to Sections 4905.02 and 4905.03(A)(2), O.R.C., and is authorized to provide competitive local exchange and interexchange telecommunication services within Ohio pursuant to Certificate of Public Convenience and Necessity No. 90-9107 (“Certificate No. 90-9107”).

5. NT-M is a Delaware limited liability company, duly licensed to transact business in Ohio, and maintaining its principal place of business at One South Wacker Street, Suite 200, Chicago, Illinois 60606.

6. NT-M is a “public utility” pursuant to Sections 4905.02 and 4905.03(A)(2), O.A.C., and is authorized to provide competitive local exchange and interexchange telecommunication services within Ohio under its Certificate of Public Convenience and Necessity No. 90-9283 (“Certificate No. 90-9287”).

7. NT-M is a wholly-owned subsidiary of Neutral Tandem, Inc. (“NTI”), a Delaware corporation, duly licensed to transact business in Ohio, and maintains its principal place of business at One South Wacker, Suite 200, Chicago, Illinois 60606.

#### **Applicable Law And Jurisdiction**

8. Section 4905.26, O.R.C., provides, in pertinent part, as follows:

**Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory,**

or unjustly preferential, **or that any service is, or will be, inadequate or cannot be obtained**, and, upon complaint of a public utility as to any matter affecting its own product or service, **if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof**. Such notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

(Emphasis added).

9. Section 4905.22, O.R.C., provides as follows:

**Every public utility shall furnish necessary and adequate service** and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

(Emphasis added).

10. The Commission has jurisdiction pursuant to Sections 4905.26, 4905.05, and 4905.06, O.R.C.

#### **Allegations**

11. Level 3 LLC provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network. In Ohio, Level 3 LLC provides resold and facilities-based local exchange and interexchange telecommunication services pursuant to Certificate No. 90-9028.

12. Broadwing provides high-quality voice and data services to carriers, ISPs, and other business customers over its IP-based network. In Ohio, Broadwing provides resold and facilities-based local exchange and interexchange telecommunications services pursuant to Certificate No. 90-9107.

13. In Ohio, NT-M provides solely a wholesale tandem transit services to wireless, wireline, and cable companies pursuant to Certificate No. 90-9283. NT-M does not originate or terminate any telecommunications traffic.

14. NT-M has on file with the Commission negotiated interconnection agreements with the following incumbent local exchange carriers: (a) Verizon North, Inc.; (b) SBC Ohio (now AT&T Ohio); and (c) Cincinnati Bell Telephone Bell Telephone (collectively, the "ILECs").

15. NT-M has not filed, nor has this Commission approved, any traffic exchange agreements between NT-M and any other competitive local exchange carrier.

16. On July 6, 2004, Level 3 and NTI, on its own behalf and on behalf of its operating subsidiaries (hereinafter references to "NTI" shall include its subsidiary NT-M), entered into a commercially-negotiated traffic exchange agreement (the "Level 3 Agreement"), pursuant to which NTI delivers tandem transit traffic from third-party carriers to Level 3. A similar commercially-negotiated traffic exchange agreement (the "Broadwing Agreement") had been entered on February 2, 2004, by which NTI delivers tandem transit traffic from third-party carriers to Broadwing. The Level 3 Agreement and the Broadwing Agreement (collectively, the "Complainants' TE Agreements") each include a specific, bargained-for termination provision allowing either party to terminate the agreement upon thirty (30) days' advanced written notice to the other party.

17. On January 30, 2007, Level 3 provided written notice to NTI that the Level 3 Agreement would be terminated on March 2, 2007. On February 14, 2007, written notice was provided on behalf of Broadwing to NTI that the Broadwing Agreement would be terminated on March 23, 2007. The February 14, 2007 notice also extended the termination effective date of

the Level 3 Agreement to March 23, 2007. NTI does not dispute that Level 3 and Broadwing lawfully terminated the Complainants' TE Agreements.

18. In Ohio, Level 3 terminates approximately 7.6 million minutes of transit traffic each month from NT-M; Broadwing terminates approximately 1.7 minutes of transit traffic each month from NT-M. Based on information and belief, approximately 3.3 billion minutes of transit traffic are exchanged in Ohio by all carriers. As a result, the amount of traffic that NT-M terminates to the Complainants represents about three-tenths (0.3) of a percent of all tandem transit traffic in the state.

19. In February and March of 2007, Complainants engaged in negotiations with NTI in an effort to reach a single, comprehensive, nationwide agreement. At the conclusion of those discussions, however, the parties were unable to reach a mutually acceptable replacement agreement.

20. In early March of 2007, the Complainants extended the date on which they would no longer accept traffic via a direct network connection from NTI to June 25, 2007. (Complainants will continue to accept traffic from NTI and its carrier customers on an indirect basis.) The term of the Complainants' TE Agreements was not extended. As a result of this action, NTI has had more than the 30 days bargained-for in the Complainants' TE Agreements to inform its customers of the changed circumstances, and to allow its customers to take appropriate steps to ensure that their originating traffic reaches the Complainants' customers.

21. The calls in this dispute are destined to customers of the Complainants. The Complainants have no incentive to see those calls fail and do not wish for their customers to be prevented from receiving calls. The Complainants believe that the calls originating from NTI's carrier customers may successfully be routed to the Complainants through other transit

arrangements, so long as reasonable steps are taken by NTI. NTI has not taken these responsible steps (i.e. informing its customers of termination of the Complainants' TE Agreements so that arrangements can be made), and has instead chosen only to file complaints against Level 3 in a number of states.<sup>1</sup> While the Complainants have indicated their willingness to work to ensure that there are no disruptions of service associated with the termination of the agreements, NTI has taken no discernable actions to address the needs of its customers. Consequently, the Complainants initiate this proceeding to bring this matter to the attention of the Commission, and ask the Commission to order NT-M to notify its customers and make the arrangements necessary to ensure uninterrupted service to its customers.

22. The refusal of NT-M to take appropriate steps in response to the pending termination of the Complainants' TE Agreements in order to avoid a possible disruption in service represents a failure to furnish necessary and adequate service as required by Section 4905.22, O.R.C.

#### **Requested Relief**

23. The Complainants respectfully request that the Commission:
- a. Find that the Complainants have stated reasonable grounds for their Complaint;
  - b. Find that NT-M's failure to inform its customers of the termination of the Complainants' TE Agreements is an unreasonable, unjust, and insufficient practice affecting or relating to its services as a telecommunication services provider, and a violation of its responsibility and duty under Section 4905.22, O.R.C., to furnish necessary and adequate service;

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<sup>1</sup> Complaints are pending in New York, Georgia, Florida, Illinois, Michigan, Minnesota, Connecticut, and California. No final decisions have been issued as of the date of this filing.

- c. Order NT-M to notify its customers of the termination of the Complainants' TE Agreements, and to take such other steps as are necessary to ensure uninterrupted service to customers;
- d. In the event that NT-M's customers cannot complete the steps to route the Complainants' traffic via an alternative provider by June 25, 2007, order NT-M to route its customer's traffic over its existing interconnection arrangements with the ILECs;
- e. If NT-M terminates traffic to the Complainants after June 25, 2007, order NT-M to pay the Complainants \$0.001 per minute of use as compensation for the use of the Complainants' network;
- f. Order NT-M to post a bond to ensure that Complainants do not suffer financial harm in the event that NT-M refuses to pay for terminating traffic to the Complainants; and
- g. Order any and all such other relief as the Commission deems appropriate.



Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC

BROADWING COMMUNICATIONS, LLC

By:



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