

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Neutral Tandem - Missouri, LLC for Expansion of)	
Certificate of Service Authority to Provide)	Case No. CA-2010-0245
Basic Local Exchange Telecommunications Service)	
in the State of Missouri and to Classify said)	
Services and the Company as Competitive)	

NEUTRAL TANDEM RESPONSE TO COMMISSION ORDER

COMES NOW Neutral Tandem - Missouri, LLC, ("Applicant" or "Neutral Tandem") and submits this response to the Commission's *Order Directing Filing* issued on April 5, 2010 in this matter. Neutral Tandem respectfully requests the Commission to acknowledge the variance previously granted by the Commission in File No. TT-2010-0099 and issue an order in the instant case granting statewide certificate of service authority to Neutral Tandem, as sought by its Application in this matter filed on February 26, 2010 and as recommended by the Staff on March 23, 2010.

1. On December 23, 2009, the Commission issued its *Order Approving Tariff and Granting Variance* in File No. TT-2010-0099, *In the Matter of Neutral Tandem-Missouri, LLC's Filing to Introduce its Access Services Tariff PSC MO No. 3*. That *Order* approved Neutral Tandem's access services tariff (Tariff No. JX-2010-0151), with the condition that Neutral Tandem shall not provide service in any area in the State of Missouri in which it is not certificated.

2. The December 23, 2009 *Order* also granted Neutral Tandem a variance from the restriction on access rates in its certificate granted in File No. CA-2006-0035, and specifically allowed Neutral Tandem to charge a single rate per access rate element (that of

CenturyTel) in all territories not served by large incumbent local exchange carriers, as proposed in its tariff. The access rate cap imposed on Neutral Tandem in its original certification case (CA-2006-0035) is the same cap that was codified in HR 1779 (2008), referenced in the Commission's *Order Directing Filing* issued on April 5, 2010 in this matter.

3. AT&T Communications of the Southwest, Inc. and Southwestern Bell Telephone Company, d/b/a AT&T Missouri (collectively, AT&T) had filed a motion requesting suspension of the Neutral Tandem access services tariff in File No. TT-2010-0099, on September 18, 2009. However, AT&T withdrew its opposition to the tariff on December 18, 2009.

4. The Commission's *Order Approving Tariff and Granting Variance* issued on December 23, 2009, and which granted Neutral Tandem a variance from the Commission's standard access charge restriction, became effective on December 31, 2009. No application for rehearing was filed by any party following the issuance of the *Order*, and no appeal has been taken therefrom. Thus, the variance, more recently referred to in the Staff Recommendation in the instant case (File No. CA-2010-0245), is already in effect, as a matter of law.

5. That the variance is appropriate and lawful is evident from the analysis provided by Staff in its *Staff Response* filed in this matter on April 6, 2010. The Commission may suspend the application of a statutory requirement under Section 392.361.6, RSMo, and may require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement.¹ In TT-2010-0099, as a condition of the variance regarding access rates, the

¹ "If the commission suspends the application of a statutory requirement under *this section*, it

Commission required Neutral Tandem to apply the access charge rate elements of CenturyTel in all exchanges not served by large incumbents. *Order Approving Tariff and Granting Variance*, File No. TT-2010-0099, Order issued December 23, 2009 (effective December 31, 2009), at page 3. The Commission also conditioned its December 23, 2009 order on Neutral Tandem obtaining statewide certification, which is the purpose of the instant application.

6. Section 392.420, RSMo, provides:

In the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange companies, the commission shall waive, *at a minimum*, the application and enforcement of its quality of service and billing standards rules, as well as the provision of subsection 2 of section 392.210, subsection 1 of section 392.240, and section 392.270, 392.380, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340. (Emphasis added.)

It is clear that the statutory phrase, “at a minimum,” is intended to provide the Commission with substantial discretion in granting waivers and statutory variances to alternative local exchange telecommunications companies, such as Neutral Tandem, in addition to those enumerated in the statute.

7. Alternatively, as observed by Staff, the access rate provision of Sections 392.261 and 392.370, RSMo, may not apply to Neutral Tandem in the first instance, since Neutral Tandem provides tandem switching services to other telecommunications companies (including incumbent local exchange companies). The access rate cap of Sections 392.261 and 392.370, RSMo, limits the exchange access rates of an alternative

may require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement.” Section

local exchange company to “the exchange access rates of the incumbent local exchange company *against whom the alternative local exchange company is competing.*” Arguably, Neutral Tandem is not *competing against* the incumbent local exchange company but is a *vendor of services to* the incumbent local exchange company. However, as observed by Staff, Neutral Tandem will have some access rates. Capping those rates at the CenturyTel access rates is acceptable to the Company and Staff and will adequately protect the public interest.

WHEREFORE, Applicant Neutral Tandem - Missouri, LLC, respectfully requests that the Commission grant it an expanded certificate of service authority to provide basic local telecommunications service as requested in this matter, classify Applicant and Applicant's proposed basic local services as competitive, and grant waivers of the statutes and regulations set out in the application, including the variance from Sections 392.361.6 and 392.370, RSMo, as previously granted in File No. TT-2010-0099.

Respectfully submitted,

/s/ William D. Steinmeier

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369.361.6, RSMo. (Emphasis added.)

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov and on the General Counsel's office at gencounsel@psc.mo.gov this 15th day of April, 2010.

/s/ William D. Steinmeier

William D. Steinmeier