

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

In the Matter of Neutral Tandem-Missouri, LLC's)
Filing to Introduce Its Access Services Tariff) File No. TT-2010-0099
PSC MO No. 3) Tariff No. JX-2010-0151

NEUTRAL TANDEM-MISSOURI, LLC'S RESPONSE

COMES NOW Neutral Tandem-Missouri, LLC (Neutral Tandem), through undersigned counsel, and submits this response to AT&T's Motion to Suspend and Investigate Tariff filed September 18, 2009, (AT&T's initial Motion), AT&T's Response to Neutral Tandem Status Report filed November 13, 2009, (AT&T Response 1) and AT&T Response to Neutral Tandem's Third Status Report filed December 7, 2009 (AT&T Response 2). Neutral Tandem requests the Commission either permit the tariff to take effect by operation of law or approve the tariff in its currently pending form. Neutral Tandem also requests the Commission shorten the time for responses to this pleading from 10 days to 8 days. In support hereof, Neutral Tandem states as follows:

1. Neutral Tandem filed its Access Services Tariff (PSC MO No. 3) on September 8, 2009, with a proposed effective date of October 8, 2009. To facilitate discussions with AT&T and Staff, Neutral Tandem has extended the effective date several times, and the current proposed effective date is December 31, 2009. In addition, Neutral Tandem has filed substitute tariff sheets on November 9, 2009, and December 7, 2009, reflecting revisions requested by and negotiated with AT&T and Commission Staff. As referenced above, AT&T has filed its initial Motion and two responses. The deadline for Neutral Tandem's response to AT&T's initial Motion has

been extended, then held in abeyance, at Neutral Tandem's request, and the Commission's patience is appreciated. However, Neutral Tandem believes that it has exhausted its ability to compromise further with AT&T, and that the time has come to approve the tariff. Neutral Tandem understands Staff does not object to this request.

2. The revisions reflected in the substitute tariff sheets satisfy all but one of the objections to Neutral Tandem's tariff raised in the AT&T Companies' initial Motion and Responses. The substitute tariff filings also have resolved the concerns and requests for revisions by the Commission Staff. Despite Neutral Tandem's efforts to accommodate AT&T Companies' concerns over the nearly three-month period that this tariff has been pending, AT&T remains unsatisfied on one "issue". Since a review of the pleadings quickly exposes the absence of a specific reference to a provision of Neutral Tandem's tariff to which AT&T objects, AT&T's "issue" appears to be that it will experience increased costs as a result of the approval of Neutral Tandem's tariff ("In either case, IXCs will incur a substantial increase in cost." See AT&T Response 2 at page 2).

3. Since Neutral Tandem's tariff complies with the Commission's standards, such an argument cannot form the basis to delay approval of the tariff. Assuming, however, for the sake of argument that such a claim could be the basis for such a delay, AT&T's claim is not true. In support of its position, AT&T argues that it will need to "(1) build out duplicative additional facilities to the Neutral Tandem switch; or (2) pay duplicative tandem switching charges (i.e., one to the ILEC for switching the call to Neutral Tandem, and another to Neutral Tandem for switching the call on to the subtending local carrier)." *Id.* However, AT&T will only pay duplicative tandem switching

charges to the ILEC as described in clause (2) above if it elects not to directly connect to Neutral Tandem. That is its decision, since Neutral Tandem is ready, willing and able to directly connect with AT&T. With respect to building out these direct connect facilities, such facilities will not be duplicative as AT&T argues in clause (1) above. Rather, when traffic between Neutral Tandem and AT&T is carried over these facilities, AT&T will be able to reduce the existing facilities between itself and the ILEC (and avoid the costs associated with these facilities). Thus, AT&T's claim of experiencing a substantial increase in costs (operating as an IXC) is a red-herring. Its "issue" appears to be the fact that the affiliated AT&T local exchange carrier would prefer to not have competition. And a competitor's preference is no excuse for delaying implementation of Neutral Tandem's tariff, which is in compliance with all applicable laws and regulations.

4. In fact, the Federal Communication Commission has long promoted competition in the switched access market. As part of its effort to establish a pro-competitive, deregulatory national policy framework for the United States telecommunications industry, the FCC, in the *CLEC Access Reform Order*, adopted a new regulatory regime for interstate switched access services provided by competitive local exchange carriers to interexchange carriers. See, In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Access Reform Order*). Competition is favored for a variety of reasons, including its benefits to consumers through the development of new products and services. For example, Neutral Tandem has the ability to deliver traffic using IP compatible switching technology, which offers various

benefits versus the legacy circuit-switched technology still utilized by some ILECs. Use of IP compatible switching technology can also benefit IXCs by *lowering* their operational costs.

5. AT&T's objections also fail to recognize the value of redundancy in the network for purposes of dealing with future outages. The FCC recognized the critical importance of tandem diversity in a 2006 report regarding the impact of Hurricane Katrina on telecommunications networks. The report found that Hurricane Katrina highlighted the dependence within our nation's telecommunications infrastructure on tandem switches:

[M]ore than 3 million customer phone lines were knocked out in the Louisiana, Mississippi, and Alabama area following Hurricane Katrina. The wireline telephone network sustained significant damage both to the switching centers that route calls and to the lines used to connect buildings and customers on the network. *Katrina highlighted the dependence on tandems and tandem access to SS7 switches.* The high volume routes from tandem switches, especially in and around New Orleans, were especially critical and vulnerable. *Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution.* . . . The switches that failed, especially tandems, had widespread effects on a broad variety of communications in and out of the Katrina region. . . . As an example, a major tandem switch in New Orleans was isolated, which meant that no communications from parts of New Orleans to outside the region could occur. (Emphasis added).

Source: Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, "Report and Recommendations to the Federal Communications Commission", June 12, 2006, page 8, 14. A copy of the report is attached hereto for reference.

6. For the reasons above, Neutral Tandem requests that the Commission either allow the tariff to take effect on the current proposed effective date, or issue its order approving the tariff to take effect on that date. Further delay constitutes prejudice and an unreasonable interference with Neutral Tandem's operations in Missouri. As

stated above, a competitor's preference is not justification for delaying approval of a tariff that complies with the Commission's standards.

7. Neutral Tandem also requests the Commission shorten the period for responses to this pleading to 8 days, which would result in a deadline of December 18, 2009, in order to permit consideration of any responses and action by the Commission prior to the proposed effective date of the tariff. (4 CSR 240-2.080(15). AT&T has described its objections three times already in pleadings filed with this Commission, this Response of Neutral Tandem is brief and does not raise any complex new issues, and Neutral Tandem understands Staff does not object to the tariff taking effect

WHEREFORE, Neutral Tandem respectfully requests the Commission permit Neutral Tandem's tariff to take effect on the proposed effective date of December 31, 2009, and shorten the time for responses to this pleading to 8 days.

Respectfully submitted,

/s/Mary Ann Young

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ATTORNEYS FOR NEUTRAL
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on Staff Counsel's office at gencounsel@psc.mo.gov, on the Office of Public Counsel at opcservice@ded.mo.gov and on counsel for AT&T Communications of the Southwest, Inc., and Southwestern Bell Telephone Company, d/b/a AT&T Missouri at leobub@att.com this 10th day of December 2009.

/s/Mary Ann Young

Mary Ann (Garr) Young