

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)
)
Petition of Neutral Tandem, Inc. for)
Interconnection with Verizon Wireless, Inc.) WC Docket No. 06-159
Pursuant to Sections 201(a) and 332(c)(1)(B))
of the Communications Act of 1934, as Amended)

**REPLY COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE**

On August 9, 2006, the Commission issued a Public Notice in the above-entitled proceeding inviting comments on Neutral Tandem, Inc.’s petition for interconnection pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (“the Act”). According to the Public Notice, Neutral Tandem is attempting to establish direct physical connections and through routes with Verizon Wireless, Inc. (Verizon Wireless). The New York State Department of Public Service ("NYDPS") hereby replies to comments filed in response to the aforementioned Public Notice.

The NYDPS is particularly interested in this matter because one of the markets where Neutral Tandem is attempting to interconnect with Verizon Wireless includes the New York City metropolitan area. Certain commercial mobile radio service (CMRS) parties who have commented in this proceeding state that, for competitive reasons, the Commission should reject Neutral Tandem’s request to require Verizon Wireless to establish adequate connections in markets served by both entities. Specifically, the CMRS parties assert that the Commission has never required a CMRS carrier to interconnect directly with another carrier under Section 201(a)

of the Act, and has instead let the market determine how CMRS carriers should achieve interconnection.¹ Thus, their argument goes, the Commission should defer to the market in the instant matter. Under Section 201(a) of the Act,² the Commission may order interconnection when it finds that doing so would be in the public interest. Importantly, the public interest standard articulated in Section 201(a) allows the Commission to consider market factors and other issues in its review of interconnection requests made pursuant to that section. The United States Court of Appeals for the Fifth Circuit, for example, has found that the public interest question is broad, taking in “all relevant factors relating to the ‘public convenience and necessity.’”³ The Court went on to remark that the public interest is to be considered in light of Section 151 of the Act,⁴ which articulates the goal of making available “a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities and reasonable charges.”⁵ The NYDPS believes that the relief requested by Neutral Tandem will foster network reliability and competition in New York and elsewhere. Consequently, the Commission should grant Neutral Tandem's Petition on the grounds that doing so is in the public interest.

¹ Comments of CTIA – The Wireless Association® (CTIA) at 4; *see also* Comments of United States Cellular Corporation at 3-4 (a flexible approach to interconnection should be maintained); Comments of Rural Cellular Association at 3-4 (§201(a) does not mandate direct interconnection). Notably, CTIA refers to Neutral Tandem’s service as constituting “direct interconnection,” in order to bolster its assertion that the Commission should, as it has in the past, refrain from requiring CMRS carriers to provide direct interconnections to other carriers. Neutral Tandem’s service, however, appears to provide indirect, tandem-switched connections between and among a multitude of wireline and CMRS carriers (other than Verizon Wireless). Consequently, CTIA’s reliance on the Commission’s prior demurral to requiring CMRS carriers to directly connect is misplaced.

² 47 U.S.C. §201(a).

³ *Mid-Texas Communications v. American Tel. & Tel. Co.*, 615 F.2d 1372, 1379 (5th Cir. 1980).

⁴ 47 U.S.C. §151.

⁵ *Mid-Texas Communications*, 615 F.2d at 1379.

First, Neutral Tandem's petition directly affects network reliability in New York. In the wake of the September 11, 2001 attack on the World Trade Center, it became apparent that wireless services are a critical alternative platform to the wireline network in New York. This is even more true today, as wireless subscribership has substantially increased in the five years since that tragedy. Consequently, reliable connectivity between wireline and wireless services is crucial. After the September 11 attack, we found that the wireless industry may have consistently undersized trunks interconnecting their services to wireline facilities. While this practice may make sense from a purely economic standpoint, the danger is that it can result in network "choke points" that may easily become swamped in emergency or catastrophic situations. This in turn can cause large numbers of calls to and from wireless services to be blocked. Real problems have occurred in the past, and the NYDPS is interested in promoting efficient solutions to network congestion. Neutral Tandem's redundant tandem platform provides additional and redundant interconnection between wireless and wireline carriers, and thus could mitigate congestion problems and enhance reliability in New York.⁶

Second, the Commission's longstanding commitment to promote competitive markets justifies intervention. The Commission has said that it will intercede in the event a CMRS provider refuses a reasonable request to interconnect. More particularly, it noted that:

Unlike independent CMRS carriers, LEC affiliated CMRS carriers may have a unique incentive to deny interconnection so as to keep CMRS-to-CMRS traffic interconnected through the local exchange landline network, and to continue to collect CMRS interconnection charges from both sets of CMRS providers through their access charge structure. Such LEC ownership issues may play an important role in

⁶ Route diversity and facilities redundancy are also important to network reliability. Neutral Tandem already provides both of these in New York to the extent its tandem switches are not collocated with those of the incumbents. Redundancy of interconnection with Verizon Wireless is of particular importance, as Verizon Wireless is among the largest wireless providers in the nation, with at least 43 million subscribers nationwide.

assessing whether a denial of interconnection is a reasonable business decision or a form of anticompetitive conduct intended to raise rivals' costs of doing business and hence hinder competition.⁷

In this instance, Neutral Tandem is seeking to terminate its traffic to Verizon Wireless without going first through Verizon Communications' wireline facilities. Neutral Tandem's platform provides an additional means of interconnection between wireless and wireline carriers, and thereby promotes competition between Neutral Tandem and Verizon Communications in New York. As described in Neutral Tandem's petition (p. 2), if Verizon Wireless directly connects to Neutral Tandem in New York, it will enable competitive local exchange carriers, cable companies and independent CMRS providers to bypass the Verizon tandem. Verizon Wireless, however, appears to be engaging in the very behavior the Commission cautioned against. Consequently, the Commission should order interconnection so that Neutral Tandem and other carriers may seek alternative, competitive means of establishing interconnection.

For all the reasons above, the Commission should grant Neutral Tandem's request to require Verizon Wireless to establish a connection for terminating traffic from Neutral Tandem.

Respectfully submitted,

s/ Peter McGowan

Peter McGowan
Acting General Counsel
John C. Graham
Assistant Counsel
New York State
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

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⁷ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666, 10688 ¶ 43 (rel. April 20, 1995).