

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 07A-459T

IN THE MATTER OF THE APPLICATION OF NEUTRAL TANDEM-COLORADO, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (4 CCR 723-2-2103), A LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES (4 CCR 723-2-2103), AND SPECIFIC FORMS OF PRICE REGULATION

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Stipulation") is entered into by and between Staff of the Colorado Public Utilities Commission ("Staff") and Neutral Tandem-Colorado, LLC ("Neutral Tandem"). Staff and Neutral Tandem collectively are referred to as Parties, and individually as Party.

INTRODUCTION AND BACKGROUND

1. Neutral Tandem is a limited liability company with its principal office located at 1 South Wacker Drive, Suite 200, Chicago, Illinois 60606.
2. On November 21, 2007, Neutral Tandem initiated this docket by filing its Application for Certificate of Public Convenience and Necessity ("CPCN") to Provide Local Exchange Telecommunications Services and a Letter of Registration to Provide Emerging Competitive Telecommunications Services and Specific Forms of Price Regulation ("Application").
3. On November 26, 2007, Staff sent a letter to the applicant seeking additional information. The applicant timely filed the response on December 7, 2007.
4. Staff timely filed its Notice of Intervention in this matter on January 3, 2008.
5. Staff and Neutral Tandem now stipulate and agree that the Commission should approve the Application on the terms set forth in this Stipulation regarding financial assurance responsibilities.

TERMS OF STIPULATION AND SETTLEMENT

6. Pursuant to Section 40-15-503.5, C.R.S., Neutral Tandem shall maintain a letter of credit for a period of three (3) years from the date that its initial tariff to provide regulated telecommunications service to any customer in Colorado becomes effective, which shall occur after the CPCN becomes effective. Such letter of credit must be renewed annually by Neutral Tandem for a period of three (3) years. Concurrent with the filing of an Advice Letter and initial tariff to provide such telecommunications services in Colorado, Neutral Tandem shall file with the Commission a verified statement, signed by an officer of Neutral Tandem, attaching the original and two copies of the letter of credit to the verified statement. The beneficiary of the letter of credit shall be the Colorado Public Utilities Commission.

7. Initially, the letter of credit shall be in the amount of fifty thousand dollars (\$50,000), which will be the minimum amount required for the duration of the letter of credit. The formula used to calculate the amount of the letter of credit is attached to this Stipulation as Exhibit A and incorporated herein.

8. The issuer of the letter of credit shall be rated "Secure" by A.M. Best Company, Inc.

9. Within thirty (30) calendar days of the calendar date that the number of Neutral Tandem's revenue producing lines¹ reaches one thousand (1,000) lines for services provided in Colorado, Neutral Tandem shall recalculate the amount of the letter of credit that will be required and shall file a report with the Commission that clearly shows the number of revenue producing lines and the recalculated amount of the letter of credit that is then required, using the same formula used for determining the initial amount of the letter of credit, which is found in and is attached as Exhibit A.

¹ The term "revenue producing lines" shall mean lines that have been activated and for which customers are being billed. In the event Neutral Tandem sells systems that serve multiple lines, the calculation of "revenue producing lines" or the equivalent shall be made pursuant to Federal Communications Commission Form 477, "Instructions for the Local Competition and Broadband Reporting Form."

Within thirty (30) calendar days of the day after the thirty-day report period set forth above in this same Paragraph No. 8 has expired, an officer of Neutral Tandem shall file with the Commission a verified statement that the letter of credit has been increased to the required amount, clearly identifying the new or amount added to the original letter of credit amount and the new term, if any, of the letter of credit and attaching the original and two copies of the new or increase to the letter of credit to the verified statement.

10. Neutral Tandem shall file a report with the Commission, noting this Docket Number in the subject line of the cover letter, no later than December 31 of each year that the letter of credit is required, beginning in the year that Neutral Tandem offers regulated telecommunications services to its customers under its effective tariff. This report shall include the following:

- (a) The total number of revenue producing lines of Neutral Tandem for regulated telecommunications services to end user customers in Colorado for the six (6) months preceding the date of the report;
- (b) Any change in the number of revenue producing lines of Neutral Tandem for regulated telecommunications services to end user customers in Colorado for the six (6) months preceding the date of the report;
- (c) the amount of the existing letter of credit; and
- (d) any recalculation of the amount of the letter of credit that may be required.

11. An increase in the amount of the letter of credit will not be required unless the recalculation of the amount of the letter of credit required, as calculated using the formula set for in Exhibit A, exceeds twenty percent (20%) of the existing letter of credit amount using the average access line count in the report provided in paragraph 10 above or the access line count reaches 1000, whichever is reached first.

12. The monies from the letter of credit shall be disbursed as set forth in this paragraph in the event of the issuance of an order by the Commission resulting from a formal complaint pursuant to paragraph 14 below. Disbursement shall be made on a percentage basis, with the percentages as specified in Exhibit A. Disbursement of the letter of credit shall be made as described below:

a. To funds mandated by the Commission and Colorado statute, including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service;

b. To wholesale telecommunications provider(s), specifically for services provided to Neutral Tandem for which payment has not yet been received on undisputed amounts; and for the wholesale telecommunications provider's costs of providing notice to customers if Neutral Tandem fails to do so due to Neutral Tandem's discontinuance of providing service, after verification of those costs by Staff;

c. To refund customer deposits and prepayments for telecommunications services not yet received in the event that Neutral Tandem discontinues service to its customers. Upon attestation by an officer of Neutral Tandem that all refunds owed to customers for payment for services not yet received has been rendered and the disbursement of the funds to all other parties has been completed, the Commission shall disburse to Neutral Tandem any remaining proceeds from the letter of credit up to the amount of the refunds Neutral Tandem issued to customers; and

d. For Commission-incurred costs for items including, but not limited to, notices mailed by the Commission or the designated default provider if Neutral Tandem discontinues service and fails to mail notice to customers, as required by 4 Code of Colorado Regulations (CCR) 723-2-2108 ("Rule 2108"); any Commission-incurred costs associated with the

transitioning of customers to another provider; and any Commission-incurred bankruptcy court costs.

13. At any time any portion of the letter of credit is disbursed, Neutral Tandem shall obtain an addition to the current letter of credit or a new letter of credit for the amount required based on the formula set forth in Exhibit A.

14. Neutral Tandem shall be considered in default of the letter of credit in the following circumstances:

- a. If Neutral Tandem
 - i. untimely (late by more than thirty (30) calendar days which period shall begin on the first day after the due date) remits or fails to remit payments to statutory funds (including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service);
 - ii. untimely remits or fails to submit undisputed payments to wholesale providers;
 - iii. untimely pays or fails to pay any refunds, credits or deposits owed to customers; and
- b. untimely files or fails to file Commission-required reports including, but not limited to:
 - i. annual reports;
 - ii. line count report when the number of revenue-producing lines in Colorado first exceed one thousand (1,000) lines for the first time;
 - iii. verified annual statements of line counts and letter of credit amounts;
 - iv. verified statements of letter of credit renewal or modification;

iv. and/or violation of any Commission rules concerning regulated telecommunication providers.

15. Occurrence of any or all of the items described in Paragraph No. 13(a) and (b) above shall be cause for Staff to request that the Commission issue a formal complaint concerning the actions of or failure to act by Neutral Tandem as well as to make recommendations to the Commission concerning Neutral Tandem's letter of credit and the status of Neutral Tandem's CPCN. In the event the Commission issues an order resulting from a formal complaint that finds Neutral Tandem is in breach of any or all of the items described in Paragraph No. 13(a) and (b) above, the Commission may authorize its representatives to draw on the letter of credit. No demand for a draw on the letter of credit shall be honored by the issuing financial institution, absent an order resulting from a formal complaint issued by the Commission authorizing its representative to draw on the letter of credit.

16. Neutral Tandem agrees that it will not discontinue service to customers for any reason unless the Commission has granted its application to discontinue pursuant to Rule 2108. For so long as Neutral Tandem is obligated to provide the letter of credit, in the event that Neutral Tandem files an application pursuant to Rule 2108, Neutral Tandem shall file with the Commission, and serve a copy on Staff, the following: (a) the number of business and residential lines affected by such discontinuance; (b) a customer list, including the name, address and telephone number of each customer; (c) the amount of any refund due to each individual customer for payment of service not received by the customer; and (d) the identity of all underlying providers supporting the regulated telecommunications services affected by such discontinuance.

17. Neutral Tandem expressly acknowledges that, in accordance with Section 40-5-105, C.R.S. (2004), as amended, it cannot sell, assign, or otherwise transfer its Colorado assets that are used in the provision of regulated telecommunications services, including, without limitation, Billing

Account Numbers, customers, Interconnection Agreements, and its CPCN, without first having obtained Commission approval.

18. In this docket, Neutral Tandem shall provide Staff notice, within thirty days' of its execution, of any agreement between Neutral Tandem and a third party for the provision of marketing, customer service, or customer acquisition services in connection with Neutral Tandem's regulated telecommunications service in Colorado. If such third party agreement is entered into with a party that is affiliated with Neutral Tandem and over whom Neutral Tandem exercises substantial oversight, Neutral Tandem shall provide notice of such agreement within seven (7) days of its entry into the agreement. This requirement does not include employment agreements with Neutral Tandem employees who may be hired to perform inside sales, marketing or customer service or acquisition activities.

19. For the three (3) year period that Neutral Tandem is required to maintain a letter of credit pursuant to Paragraph No. 5, above, Neutral Tandem shall file a report with the Commission in writing within ten (10) calendar days of any of the following occurrences in connection with the regulated telecommunications services provided by Neutral Tandem or one of its regulated affiliates:

- a. Assessment of civil penalties by any court or regulatory body;
- b. Assessment of criminal penalties by any court or regulatory body;
- c. Injunctive relief awarded by any court or regulatory body;
- d. Any corrective action taken by any court or regulatory body;
- e. Any refund of more than one hundred dollars (\$100) in any individual case, or any refund of two hundred fifty dollars (\$250) or more to any class of customers awarded by any court or regulatory body;
- f. Reparations to any party awarded by any court or regulatory body;

- g. Initiation of a show cause or formal complaint proceeding by any court or regulatory body;
- h. Initiation of disciplinary proceedings by any court or regulatory body, including proceedings to limit or to place restrictions on any authority to operate a CPCN or offer any service;
- i. Refusal to grant authority to operate or provide a service by any court or regulatory body;
- j. Revocation of authority to operate or to provide a service by any court or regulatory body;
- k. Voluntary surrender of any certificate or authority to operate in lieu of any action by a court or regulatory body; or
- l. Any combination of the foregoing sanctions, penalties, corrective actions, or other proceedings.

20. If Neutral Tandem fails to perform any or all of the obligations set forth in this Stipulation including, but not limited to, failing to obtain and maintain a letter of credit according to the terms outlined in this Stipulation and/or fails to timely report to the Commission any events set forth in Paragraph 18 above, Staff shall consider Neutral Tandem to have breached this Stipulation. In that event, Staff may request that the Commission issue a formal complaint to determine whether the Commission should take action against Neutral Tandem's CPCN. In the event the Commission issues an order resulting from a formal complaint that finds Neutral Tandem is in breach of any or all of the obligations set forth in this Stipulation, the Commission may authorize its representatives to draw on the letter of credit. No demand for a draw on the letter of credit shall be honored by the issuing

financial institution, absent an order resulting from a formal complaint issued by the Commission authorizing its representative to draw on the letter of credit.

GENERAL SETTLEMENT TERMS AND CONDITIONS

21. This Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. Furthermore, this Stipulation does not constitute agreement, by any Party, that any principle or methodology contained within this Stipulation may be applied to any situation other than the above-captioned case. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning the Stipulation, shall attach to any principle or methodology contained in the Stipulation.

21. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this Docket under a new procedural schedule. The withdrawing Party shall notify the Commission and the other Party to this Stipulation in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation ("Notice"). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation.

22. In the event this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding.

Moreover, in such an event, except as may be specifically provided for herein, neither anything said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation, nor the settlement terms and conditions contained herein, nor the Stipulation itself may be used in this or any other administrative or court proceeding by any of the Parties hereto, or otherwise.

23. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable, and in the public interest. Each Party pledges its support of this Stipulation and urges the Commission to approve same, without modification.

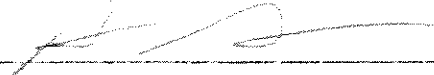
24. Except as otherwise specifically agreed in this Stipulation, nothing contained herein shall be deemed as constituting either a settled practice or precedent for the purposes of any other proceeding, and by entering into this Stipulation, no Party shall be deemed to have agreed to any specific principles of ratemaking. The Parties expressly reserve the right to advocate positions different from those stated in this Stipulation in any proceeding other than one necessary to obtain approval of, or to implement, this Stipulation or its terms and conditions. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

25. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement.

26. The signatories represent that the signatories to this Stipulation have full authority to bind their respective Parties to the terms of this Stipulation.

Dated this 23rd day of January 2008.

**FOR NEUTRAL TANDEM-COLORADO,
LLC.**

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**FOR STAFF OF THE COLORADO PUBLIC
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EXHIBIT A

Letter of Credit

Calculation

Estimated Number of Customers: 500

Average Revenue per customer per month: \$ 25.00 Monthly Revenue per customer

Fixed Utilities Fund (FUF): 1.433% of Intrastate revenues

911 Fund: \$0.50 per line per month

Colorado High Cost Support Mechanism (CHCSM): 2.7% of revenues

Low Income Fund: \$.00 per line per month

TRS Relay Fund: \$ 0.07 per line per month

PUC Administrative Costs In the event CLEC does not perform customer transition obligations, calculated at \$3.26 per customer.

Prepayments assume each customer prepays one month of service ((\$25X1)X 500 customers)

Wholesale Supplier Regulatory Obligation, 2 months of service ((\$25X2)X 500 customers)

Customer deposits assume 5% of retail customers will need to place a 2 month deposit of \$50

| | | | |
|--|---------------|-------------------|--|
| Number of Customers | 500 | <u>% of Total</u> | |
| Annual Revenues | \$150,000 | | |
| FUF | \$2150 | 4% | |
| 911 | 3000 | 6% | |
| CHCSM | 4050 | 8% | |
| Low Income | 0 | 0% | |
| TRS Fund | 420 | 1% | |
| PUC Administrative Costs | 1630 | 3% | |
| Customer deposits | 1250 | 5% | |
| Customer Prepayments | 12,500 | 25% | |
| Wholesale Supplier Obligation | <u>25,000</u> | <u>50%</u> | |
| Total Deposit/LETTER OF CREDIT Requirement | \$50,000 | 100% | |

CERTIFICATE OF SERVICE

I hereby certify that the original and seven (7) copies of **STIPULATION AND SETTLEMENT AGREEMENT** was filed via Hand Delivery on this 29th day of January, 2008, addressed to the following:

Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202

Copies are also being sent via U.S. Mail, postage prepaid, and/or by electronic e-mail, on this 29th day of January, 2008, addressed to the following:

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Senior Regulatory Counsel
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Broomfield, CO 80021

Rogelio Peña
Regulatory Counsel
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Elizabeth A. Dindinger