

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Neutral Tandem, Inc. and</b>	)	
<b>Neutral Tandem-Illinois, LLC</b>	)	
	)	<b>07-0277</b>
<b>vs.</b>	)	
	)	
<b>Level 3 Communications, LLC</b>	)	

**LEVEL 3 COMMUNICATIONS LLC’S NOTICE OF WITHDRAWAL  
OF ITS PETITION TO REOPEN THE PROCEEDING**

Level 3 Communications, LLC, (“Level 3”) hereby serves notice to the Commission that it voluntarily withdraws its petition seeking Commission approval to reopen the proceeding, filed with the Commission on February 22, 2008 (the “Petition.”)

On February 22, 2008, pursuant to Section 200.900 of the Commission’s Rules of Practice, 83 Ill. Adm. Code § 200.900, Level 3 filed its Petition requesting that the Commission consider reopening the proceeding on the basis that certain facts relied on by the Commission when it adopted Judge Brodsky’s Order have changed, and as a result, Level 3 should no longer be required to maintain direct, physical interconnection with Neutral Tandem. (Petition, at 1-2.) Notwithstanding the facts set forth in that Petition, Level 3 hereby notifies the Commission that it withdraws that Petition. Neutral Tandem and the Staff have opposed Level 3’s Petition and specifically requested that the Commission deny Level 3’s Petition and not reopen the proceeding. Without conceding any of the arguments made by either the Staff or Neutral Tandem, Level 3 hereby withdraws its Petition.

While there is no specific rule governing whether Level 3 may withdraw its Petition on notice, there is no procedure or rule that prohibits Level 3 from withdrawing its Petition. The Petition requested that the Commission review information and determine whether to reopen the proceeding. No action has been taken by the Commission on the Petition. While there is no

Commission rule barring Level 3 from withdrawing its Petition, the Commission has held that a party may voluntarily withdraw petitions without prejudice. See *Du Page Airport Authority v. Rogers Radio Call, Inc.*, ICC Docket No. 88-0175 (Order, May 13, 1992), 1992 Ill. Puc. LEXIS 152 (1992); see also *Jones v. Securities & Exchange Com.*, 298 U.S. 1, 22; 80 L. Ed. 1015, 1024; 56 S. Ct. 654, 660 (1936) (the voluntarily withdrawal of an administrative agency proceeding “must be granted if no prejudice be shown beyond the prospect of another suit, unless there be a specific rule of court to the contrary.”) In addition, while the Illinois Code of Civil Procedure does not apply in administrative proceedings, *Village of S. Elgin v. Pollution Control Bd.*, 64 Ill. App. 3d 565,570; 381 N.E.2d 778, 782 (2 Dist. 1978), Section 2-1009 of the Code provides that a “plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party’s attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.” 735 ILCS 5/2-1009.

No action having been taken on Level 3’s Petition, Level 3 hereby dismisses and withdraws its Petition.

Dated: April 8, 2008

Respectfully submitted,

Level 3 Communications, LLC



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Henry T. Kelly, one of its attorneys.

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Neutral Tandem, Inc.  
and Neutral Tandem-Illinois, LLC

vs.

Level 3 Communications, LLC

ICC Docket 07-0277

**NOTICE OF FILING**

Please take notice that on April 8, 2008, we caused to be filed via electronic mail with the Illinois Commerce Commission, the **LEVEL 3 COMMUNICATIONS LLC'S NOTICE OF WITHDRAWAL OF ITS PETITION TO REOPEN THE PROCEEDING**. A copy of the foregoing documents are hereby served upon you.



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Henry T. Kelly, attorney for  
Level 3 Communications, LLC

**CERTIFICATE OF SERVICE**

I, Henry T. Kelly, an attorney, hereby certify that I served this **Notice of Filing** and a copy of the **LEVEL 3 COMMUNICATIONS LLC'S NOTICE OF WITHDRAWAL OF ITS PETITION TO REOPEN THE PROCEEDING**, on the attached service list via electronic mail on April 8, 2008.



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