

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

05-17-10
04:59 PM

In the Matter of the Request for Arbitration of Verizon California Inc. Pursuant to Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to Affirm Verizon's Denial of Blue Rooster Telecom, Inc.'s Request to Adopt the Interconnection Agreement between Blue Casa Communications, Inc. and Verizon California Inc. Because a Reasonable Period of Time Has Elapsed.

A. 10-04-029

**RESPONSE OF BLUE ROOSTER TELECOM, INC. (U7169C) TO
REQUEST FOR ARBITRATION**

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
John L. Clark
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321

Attorneys for Blue Rooster Telecom, Inc.

Date: May 17, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Request for Arbitration of Verizon California Inc. Pursuant to Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to Affirm Verizon's Denial of Blue Rooster Telecom, Inc.'s Request to Adopt the Interconnection Agreement between Blue Casa Communications, Inc. and Verizon California Inc. Because a Reasonable Period of Time Has Elapsed.

A. 10-04-029

**RESPONSE OF BLUE ROOSTER TELECOM, INC. (U7169C) TO
REQUEST FOR ARBITRATION**

Pursuant to Rule 3.6, as modified by Rule 7.3.3 of Resolution ALJ-181, Blue Rooster Telecom, Inc. (“Blue Rooster”) hereby responds to the request of Verizon California Inc. (“Verizon”) for arbitration of Blue Rooster’s adoption of the previously-approved interconnection agreement (“ICA”) between Verizon and Blue Casa Communications, Inc.

FACTUAL BACKGROUND

Blue Rooster is a newly-certified competitive local exchange carrier (“CLEC”) based in San Luis Obispo.¹ Shortly after Blue Rooster received its operating authority, Blue Rooster submitted two advice letters, one seeking to adopt the existing ICA between Blue Casa Communications, Inc. (“Blue Casa”) and Pacific Bell Telephone Company (“Pacific Bell”), and one seeking to adopt the existing ICA between Blue Casa and Verizon. Although the origin of

¹ Blue Rooster received authority to operate as a partial-facilities-based and resale local exchange carrier and interexchange carrier by Decision No. 10-03-018, which was issued on March 11, 2010, in Application 09-09-017.

the ICA between Blue Casa and Pacific Bell was an arbitrated ICA between MCImetro Access Transmission Services, LLC (“MCI”) and Pacific Bell approved nine years earlier by Decision No. 01-09-054, Pacific Bell honored Blue Rooster’s adoption of that ICA despite the passage of time (and despite the fact that MCI and Pacific Bell had entered into an entirely new ICA in 2006). By contrast, Verizon is refusing to honor Blue Rooster’s adoption of the Blue Casa ICA, despite the fact that a number of other CLECs are currently operating under that same agreement.²

Blue Rooster has attempted to compare the provisions of the Blue Casa/Verizon ICA with a more recent ICA that Verizon has represented is “available” for adoption and has found very few differences.³ However, the few differences that Blue Rooster did find are significant. These include: (i) provisions in the “available” agreement that effectively reverse key outcomes obtained by CLECs in the Commission’s arbitration of ICA amendments to reflect the *Triennial Review Order*⁴ (“TRO”) and the *Triennial Review Remand Order*⁵ (“TRRO”) issued by the Federal Communications Commission⁶; (ii) provisions in the “available” agreement that impose a very one-sided procedure for disputing Verizon’s notoriously error-prone billings; (iii) one-sided provisions in the “available” agreement that allow Verizon to charge the CLEC for completing certain types of traffic exchanged between the parties but deny

² These other CLECs include, *inter alia*, Pac-West Telecomm, Inc., whose ICA with Verizon serves as the base of the adopted ICA.

³ Verizon provided copies of the ICAs in PDF; consequently, the task of comparing the newer and older agreements had to be undertaken by reading hard copies of the ICAs side by side, which obviously was a time-consuming and tedious endeavor.

⁴ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 16,978, FCC 03-36 (2003).

⁵ *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand*, 20 FCC Rcd 2533, FCC 04-290 (2005).

the CLEC that same right; (iv) lack of provisions in the “available” agreement establishing a non-disparagement requirement for handling misdirected service calls; (v) one-sided provisions in the “available” agreement that penalize the CLEC, but not Verizon, for mismatches in interconnection facilities and experienced traffic volumes; (vi) absence of provisions in the “available” agreement that allow the CLEC to obtain entrance facilities at total element long run incremental cost (“TELRIC”) for purposes of interconnection; and (vii) absence of provisions in the “available” agreement that address intercarrier compensation for ZUM zone 3 traffic. There may be other significant differences as well that Blue Rooster missed during its hard copy-to-hard copy comparison.

Because of these important differences, Blue Rooster would be placed at a significant disadvantage both in competing with the other CLECs that are operating under the Blue Casa/Verizon ICA (or similar iterations of the 2001 MCI/Verizon ICA) and in competing directly with Verizon.

THE COMMISSION SHOULD DISMISS VERIZON’S REQUEST AND ORDER VERIZON TO IMPLEMENT THE ADOPTED ICA IMMEDIATELY.

Rule 7.3.1 of Resolution ALJ-181 provides:

In any application for arbitration filed pursuant to Rule 7, the ILEC has the burden of proof that the carrier’s request does not meet the requirements of § 51.809. The ILEC’s request for arbitration must include facts and evidence that its request for arbitration is consistent with the requirements of § 51.809 and Rule 7.2.

Clearly, Verizon has failed to present a request for arbitration that meets the intent and requirements of ALJ 181. Verizon’s request contains absolutely no specification of the provisions that are the subject of Verizon’s objection. Instead, Verizon objects to Blue Rooster’s adoption in its entirety, asserting, apparently, that all of the provisions are old and obsolete.

⁶ See, D. 06-02-035, D. 06-07-033, and D. 07-02-034 in Application 04-03-014.

Thus, based on Verizon's request, it would appear that Verizon is seeking arbitration of every single word in the adopted ICA. Yet, Verizon's on-going acquiescence in the provisions of the existing Blue Casa/Verizon ICA and similar existing iterations of the 2001 MCIIm ICA, and its offering, in "available" ICAs, provisions that are largely identical to those that are the subject of the adopted ICA, belie Verizon's assertion that the adopted ICA is entirely too old. Indeed, if the provisions of the existing ICAs were truly objectionable, Verizon could have terminated those agreements and sought to renegotiate and, if necessary, arbitrate new provisions to replace the objectionable provisions; but, Verizon has not done so.

The fact is, Verizon has not identified any issue that needs to be arbitrated, nor has Verizon presented any facts or evidence that even hint at what its position is on the merits of the ICA. In short, Verizon's request does not present the Commission with a basis for proceeding to arbitration. Accordingly, the Commission should dismiss Verizon's request.

If, however, the Commission decides to proceed to arbitration, it should, in the meantime, order Verizon to begin implementing those provisions of the adopted ICA to which Verizon does not have good faith objection. Because Verizon has objected to the ICA in its entirety, Blue Rooster has been deprived of the ability to begin operations in Verizon's service area. This Verizon-imposed delay is anticompetitive and contrary to established rules. When an ILEC has requested arbitration of a CLEC's request to adopt an ICA, the ILEC is not permitted, as Verizon has done, to entirely avoid doing business with the CLEC. Instead, Rule 7.3.2 of Resolution ALJ-181 provides:

Should the ILEC file for arbitration, the ILEC shall immediately honor the adoption of those terms not subject to objection pursuant to Rule 7.2, effective as of the date of the filing of the arbitration request. Furthermore, to the extent the ILEC seeks arbitration of a particular interconnection, service or element, the ILEC shall immediately honor such provisions subject to retroactive price true-up back to the date when

the arbitration request was filed, based on the Commission's resolution of the arbitration. The effective date of other disputed issues will be set in the arbitration process and could be made effective retroactive to the date when the arbitration request was filed.

Therefore, even if Blue Rooster is not entitled to a dismissal of Verizon's request for arbitration, it is, at the very least, entitled to commence operations pursuant to an order requiring Verizon to honor all of the provisions of the adopted ICA to which Verizon does not have an actual, good faith objection.

Respectfully submitted this May 17, 2010 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
John L. Clark
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321

By /s/ John L. Clark
John L. Clark

Attorneys for Blue Rooster Telecom, Inc.

CERTIFICATE OF SERVICE

I, Linda Chaffee, certify that I have on this 17th day of May 2010 caused a copy of the foregoing

**RESPONSE OF BLUE ROOSTER TELECOM, INC.
(U7169C) TO REQUEST FOR ARBITRATION**

to be served on all known parties to A.10-04-029 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

Commissioner Dian Grueneich
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

ALJ Hallie Yacknin
California Public Utilities Commission
505 Van Ness Avenue, Room 5103
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of May 2010 at San Francisco, California.

/s/ Linda Chaffee
Linda Chaffee

Service List – A.10-04-029
Updated 4/27/2010

RUDOLPH M. REYES
rudy.reyes@verizon.com

PUC/X119243.v1