

Decision 10-07-036 July 29, 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.

Application 10-04-029
(Filed April 23, 2010)

DECISION AFFIRMING FINAL ARBITRATOR'S REPORT

We affirm the Final Arbitrator's Report determining that Blue Rooster Telecom, Inc. is not entitled to adopt the existing interconnection agreement between Blue Casa Communications, Inc. and Verizon California Inc., or to commence operations under that agreement pending resolution of the parties' interconnection dispute. This proceeding is closed.

I. Background

Blue Rooster Telecom, Inc. (Blue Rooster) is a newly-certified competitive local exchange carrier (CLEC). On March 30, 2010, Blue Rooster submitted an advice letter seeking to adopt the existing interconnection agreement between Blue Casa Communications, Inc. (Blue Casa) and Verizon California Inc. (Verizon). Verizon denied Blue Rooster's request on the basis that the Blue Casa agreement is almost seven years old (dated August 15, 2004), the Blue Casa

agreement itself is an adoption of an earlier agreement between Pac-West Telecomm Inc. (Pac-West) and Verizon (dated May 29, 2003) that has since been amended, the original term of the agreement has expired and the agreement is terminable upon 90 days' written notice so CLECs currently operating under it do so under this "evergreen" term, the agreement does not reflect existing law including two Federal Communications Commission (FCC) orders (dated 2004 and 2008) clarifying how carriers should be compensated for internet service provider traffic, and it does not reflect the seven years of business developments that are reflected in Verizon's more recent interconnection agreements.

Blue Rooster maintains that the Blue Casa agreement should be available to it because other CLECs are currently operating under it, so that Blue Rooster would be placed at a significant competitive disadvantage if it is not allowed to adopt it. Blue Rooster asserts that Verizon has not met the requirements of Resolution ALJ-181 because it has not specified the provisions in the Blue Casa agreement to which it objects. Blue Rooster asserts that, if this matter nevertheless proceeds to arbitration, the Commission should order Verizon to honor the adoption of the terms of the Blue Casa agreement to which it does not object, and implement the terms of the Blue Casa agreement to which it does object subject to retroactive true-up, pursuant to Rule 7.3.2 of Resolution ALJ-181.

At the initial arbitration meeting conducted on May 28, 2010, the arbitrator determined that this dispute does not raise any disputed issues of material fact that require hearing, and set the time for filing concurrent briefs on the legal issues of (1) whether Blue Rooster is entitled to adopt the previously-approved interconnection agreement between Verizon and Blue Casa, and, if not, (2) whether Blue Rooster is entitled to commence operations pursuant to an

order requiring Verizon to honor all of the provisions of that Verizon/Blue Casa interconnection agreement to which Verizon does not have an actual, good faith objection, pursuant to Rule 7.3.2 of Resolution ALJ-181. The parties filed concurrent opening briefs on June 9 and concurrent reply briefs on June 16, 2010, when the arbitration proceeding was submitted.

The Draft Arbitrator's Report was filed on June 18, 2010. Blue Rooster and Verizon filed comments on June 28, 2010. The Final Arbitrator's Report was filed on July 12, 2010.

II. Arbitrator's Determinations

The arbitrator determined that the Blue Casa interconnection agreement is no longer available for adoption by other CLECs pursuant to Section 51.809 of the FCC's rules and Rule 7.2 of this Commission's Resolution ALJ-181 implementing Section 252 of the Telecommunications Act of 1995, because a reasonable period of time has elapsed since Blue Casa and Verizon entered into it: the original agreement is nearly seven years old, the original term of the agreement expired almost four years ago and the agreement is terminable upon 90 days' written notice. The arbitrator further determined that Blue Rooster is not entitled to operate under the Blue Casa Agreement pending resolution of its interconnection dispute with Verizon; to the extent that Blue Rooster seeks to commence operations pending negotiation and/or arbitration of an interconnection agreement, it should ask Verizon to honor the terms of an available interconnection agreement subject to retroactive price true-up based on the resolution of the negotiation or arbitration, consistent with the intent of Rule 7.3.2 of Resolution ALJ-181.

We affirm the arbitrator's determination of the issues in this matter.

III. Public Review and Comment

The period for public review and comment on this decision is waived pursuant to Rule 14.6(c)(5) of the Rules of Practice and Procedure.

Findings of Fact

1. The Final Arbitration Agreement determined that the Blue Casa interconnection agreement is no longer available for adoption by other CLECs pursuant to Section 51.809 of the FCC's rules and Rule 7.2 of this Commission's Resolution ALJ-181 implementing Section 252 of the Telecommunications Act of 1995, because a reasonable period of time has elapsed since Blue Casa and Verizon entered into it: the original agreement is nearly seven years old, the original term of the agreement expired almost four years ago and the agreement is terminable upon 90 days' written notice.

2. The Final Arbitration Agreement further determined that Blue Rooster is not entitled to operate under the Blue Casa Agreement pending resolution of its interconnection dispute with Verizon; to the extent that Blue Rooster seeks to commence operations pending negotiation and/or arbitration of an interconnection agreement, it should ask Verizon to honor the terms of an available interconnection agreement subject to retroactive price true-up based on the resolution of the negotiation or arbitration, consistent with the intent of Rule 7.3.2 of Resolution ALJ-181.

Conclusions of Law

1. Verizon should not be required to make the Blue Casa interconnection agreement available for adoption by Blue Rooster.

2. To the extent that Blue Rooster seeks to commence operations pending negotiation and/or arbitration of an interconnection agreement, it should ask Verizon to honor the terms of an available interconnection agreement subject to

retroactive price true-up based on the resolution of the negotiation or arbitration, consistent with the intent of Rule 7.3.2 of Resolution ALJ-181.

3. The Final Arbitrator's Report should be affirmed.
4. This proceeding should be closed.

ORDER

IT IS ORDERED that:

1. We affirm the determinations reached in the July 12, 2010 Final Arbitrator's Report.
2. This proceeding is closed.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners