

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION FOR DISPUTE RESOLUTION
PURSUANT TO DECISION 95-12-056 PROCESS**

Background

On April 15, 2005, 01 Communications, Inc. (01) filed a motion for expedited resolution of its dispute with Verizon California Inc. (Verizon) pursuant to the process set forth in Decision (D). 95-12-056, Section III(D). 01 and Verizon are telecommunications carriers operating in California that have interconnected their networks since 1999, allowing either carrier to pass telecommunications traffic from one carrier to the other. The dispute at issue concerns the amount of compensation that Verizon is obligated to pay to 01 for transporting and terminating "dial-up" Internet calls under the terms of an interconnection agreement that was executed in 1999 (the 1999 Agreement). The 1999 Agreement remained in effect until a new agreement became effective on

August 15, 2003.¹ The amount in dispute includes approximately \$2.2 million in charges for traffic transported and terminated by 01 since July 2002, plus approximately \$1.1 million in charges for traffic transported and terminated by 01 during the four-quarter period prior to July 2002. 01 filed its motion for dispute resolution in this docket because it is the same docket in which D.95-12-056 was issued. 01 accordingly asks that the Commission appoint an administrative law judge to conduct the dispute resolution process outlined in D.95-12-056, and to reach substantive findings in its favor. In D.95-12-056, the Commission provided for an expedited dispute resolution process to address disputes over breach of contract or interpretation of parties' rights and obligations.

Verizon filed a response in opposition to the motion on May 2, 2005. In its response, Verizon does not address the substantive merits of 01's claims, but reserves the right to respond to the substantive arguments made in the Motion until further briefing, either in this proceeding or in a private arbitration. Verizon limits its remarks to the issue of whether the dispute resolution process described in D.95-12-056 is the proper procedural vehicle. Verizon argues that use of the process described in D.95-12-056 to resolve the parties' disputes would be improper because the parties previously agreed to use a different dispute resolution mechanism under the 1999 Agreement. Section 42.1 of the 1999 Agreement provides that the procedures in Section 42 constitute the parties sole remedy for the resolution of disputes arising under the agreement. Under

¹ In 2003, as part of an arbitration over a new interconnection agreement, the parties agreed by stipulation that Verizon's liability under the 1999 Agreement, for reciprocal compensation for ISP-bound traffic would end no later than June 22, 2003.

Section 42.2 of the 1999 Agreement, parties first negotiate in an attempt to resolve any disputes that arise under the Agreement. Under Section 42.3, if parties fail to resolve a dispute within 60 days after either of them requests negotiation of the dispute, the dispute is to be submitted to binding arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association. Based on its belief that Section 42 prohibits the use of any procedure other than negotiation or arbitration in accordance with Sections 42.2 and 42.3 of the 1999 Agreement, Verizon argues that 01 had no right to invoke the dispute resolution procedures prescribed in D.95-12-056, Section III(D).

Verizon argues that a party that has agreed to private arbitration as the exclusive remedy for dispute resolution may not later resist private arbitration merely because the party does not wish a particular dispute to be arbitrated. Verizon further argues that the practical effect of granting 01's request would be to reform the parties' express agreement to privately arbitrate unresolved disputes by substituting a mechanism that calls for Commission involvement.

01 acknowledges that Section 42 of the 1999 Agreement includes a procedure for resolving "any controversy or claim arising out of or relating to" the 1999 Agreement. 01 claims, however, that in bringing this motion, it expressly does not invoke the dispute resolution procedure described in Article III, Section 42. 01 argues that the issue of compensation for the delivery and receipt of ISP-bound local calls cannot be resolved simply by referring to the terms of the 1999 Agreement, but will require interpretation and implementation of the Federal Communications Commission (FCC) Internet Service Provider

(ISP) Remand Order,² as well as requirements of this Commission. 01 therefore argues that private arbitration is not well suited for resolving the disputes at issue.

Discussion

The threshold issue in dispute here relates to the proper procedural vehicle to address parties' disputes. Parties disagree over whether to use the process described in D.95-12-056, Section III(D), versus that described in Section 42 of the 1999 Agreement, based on the Commercial Arbitration rules of the American Arbitration Association. It is concluded that the dispute resolution process prescribed under the 1999 Agreement is the proper vehicle to resolve the dispute raised by 01.

As its basis for denying that the provisions of the 1999 Agreement apply as the applicable basis for dispute resolution in this instance, 01 merely asserts that it "expressly *does not* invoke the dispute resolution procedure described in Article III, Section 42." Yet, 01 fails to explain how it can seek dispute resolution of a provision of the 1999 Agreement without invoking the dispute resolution procedure prescribed in Article III, Section 42. The language in the 1999 Agreement does not provide the latitude for either party to pick and choose unilaterally which disputed issues will be resolved through commercial arbitration and which will be resolved through other means. Instead, the 1999 Agreement language indicates that the Parties agreed to use the alternative dispute resolution procedure described in Sections 42.1 and 42.2 "as their *sole*

² *In the Matter of Intercarrier Compensation for ISP-Bound Traffic* (2001) 16 FCC Rcd 9191 (ISP Remand Order).

remedy with respect to *any controversy or claim* arising out of their Agreement or its breach.” (Emphasis added.) The fact is that the dispute at issue here is a “controversy or claim arising out of their Agreement or its breach.” Therefore, the 1999 Agreement does not permit use of the dispute resolution process described in D.95-12-056, even though 01 may believe that private arbitration is not well suited for resolving the disputes at issue.

01 argues that the issue of compensation for delivery and receipt of ISP-bound local calls cannot be resolved simply by referring to the terms of the 1999 Agreement, but also requires interpretation and implementation of numerous facets of the FCC ISP Remand Order as well as a determination of the applicability of this Commission’s requirements that all amendments and modifications be filed with and approved by this Commission. Verizon responds that private arbitration entities are particularly well equipped to handle a range of issues from the most basic contract disputes to the most complex and employ arbitrators with specific backgrounds in various industries. 01 presents nothing to refute Verizon’s claims concerning the level of sophistication and expertise of private arbitration entities. Therefore, 01 provides no basis to conclude that a private arbitration entity would not be able to address competently the pertinent issues relating to interpretation of the FCC ISP Remand Order, or any other legal or regulatory matters necessary to resolve parties’ disputes over Verizon’s obligations to 01 under the 1999 Agreement.

Accordingly, the motion of 01 to invoke the Commission’s dispute resolution process described in D.95-12-056 is denied. 01’s proper recourse is to pursue dispute resolution in accordance with the process described in Section 42 of the 1999 Agreement, utilizing the Commercial Arbitration rules of the American Arbitration Association. In issuing this ruling, no prejudgment is

made concerning the substantive merits of either parties' claims or arguments as to Verizon's obligations to 01 under the 1999 Agreement.

Therefore, **IT IS RULED** that:

1. The motion of 01 Communications, Inc. (01) to invoke the expedited dispute resolution process described in Decision 95-12-056 is denied.
2. 01's proper recourse is to pursue dispute resolution in accordance with the process described in Section 42 of its 1999 Agreement, utilizing the Commercial Arbitration rules of the American Arbitration Association.
3. In issuing this ruling, no prejudgment is made concerning the substantive merits of arguments as to parties' rights or obligations under the 1999 Agreement.

Dated December 1, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion for Dispute Resolution Pursuant to Decision 95-12-056 Process on all parties of record in this proceeding or their attorneys of record.

Dated December 1, 2005, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.