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January 31, 2011

Via Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17101

Re: Armstrong Telecommunications Inc. v. Verizon Pennsylvania Inc., Verizon North LLC, MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc., Docket Nos. C-2010-2216205, C-2010-2216311, C-2010-2216325 and C-2010-2216293

Dear Secretary Chiavetta:

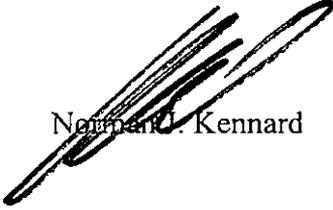
Enclosed please find an original and three (3) copies, plus one for each additional docket number, of the Reply of Armstrong Telecommunications Inc. to the New Matter of Verizon Pennsylvania Inc., Verizon North LLC, MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc.

If you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Armstrong Telecommunications Inc.,	:	
Complainant	:	
v.	:	Docket Nos. C-2010-2216205
	:	C-2010-2216311
Verizon Pennsylvania Inc., Verizon North	:	C-2010-2216325
LLC, MCI metro Access Transmission	:	C-2010-2216293
Services, LLC, d/b/a Verizon Access	:	
Transmission Services and MCI	:	
Communications Services Inc.	:	
Respondents	:	

**ARMSTRONG TELECOMMUNICATIONS INC.
REPLY TO NEW MATTER OF VERIZON PENNSYLVANIA INC.,
VERIZON NORTH LLC, MCIMETRO ACCESS TRANSMISSION
SERVICES LLC d/b/a VERIZON ACCESS TRANSMISSION SERVICES,
and MCI COMMUNICATIONS SERVICES INC.**

NOW COMES Armstrong Telecommunications Inc. (“Armstrong”) and, in response to the New Matter averred by Verizon Pennsylvania Inc., Verizon North LLC, MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Inc. (“Verizon”), and responds as follows:

RESPONSE TO NEW MATTERS

BACKGROUND

1. No response is required.
2. Admitted. It is admitted that Armstrong is certificated as a CLEC by the Pennsylvania Public Utility Commission (“Commission”). It is further admitted that Armstrong Utilities, Inc. (“AUI”) provides internet protocol-enabled (“IP”) voice service to end-use

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customers in Pennsylvania. By way of further response, AUI's operations are legally irrelevant to any issue in this case.

3. Admitted in part; denied in part. It is admitted that Armstrong is an intermediary. Armstrong operates as a "wholesale CLEC," a carrier recognized by both this Commission¹ and the Federal Communications Commission ("FCC"),² providing telecommunications services. It is admitted that Armstrong provides certain services to AUI, including PSTN interconnectivity, numbering resources and intercarrier compensation billing. By way of further response, AUI's operations are legally irrelevant to any issue in this case.

4. Admitted in part; denied. AUI calls are originated and terminated in IP-protocol. Armstrong is unaware of whether any of the traffic delivered by Verizon is also IP-originated, which allegation is, therefore, denied. At all times, the traffic between Verizon and Armstrong is exchanged in time division multiplex ("TDM") protocol.

5. Admitted in part; denied in part. AUI calls are originated and terminated in IP-protocol. Armstrong is unaware of whether any of the traffic delivered by Verizon is also IP-originated, which allegation is, therefore, denied. At all times, the traffic between Verizon and Armstrong is exchanged in TDM protocol. By way of further response, AUI's operations and technologies are legally irrelevant to any issue in this case.

6. Admitted. It is admitted that Armstrong sent Verizon an invoice for switched access services provided to Verizon on or about August 6, 2010. By way of further response,

¹ *Application of Sprint Communications Company L.P. for Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public In the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Docket Nos. A-310183F0002AMA-AMAC (Opinion and Order, entered December 1, 2006) ("*Sprint CLEC Application Order*").

² *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55 (Memorandum Opinion and Order, released March 1, 2007) ("*Time Warner Declaratory Ruling*").

Verizon has received and paid CABS Bills tendered by Armstrong for exchange access service since November 2007.³

7. Admitted. See responses to paragraphs 2, 3, 4 and 5. By way of further response, the traffic exchanged between Armstrong and Verizon is in TDM protocol. By way of further response, AUI's operations and technologies are legally irrelevant to any issue in this case.

8. Admitted in part; denied in part. It is admitted that, on or about August 27, 2010, Verizon submitted a dispute of the CABS Bill referenced at paragraph 6 above. It is denied that there is any merit to Verizon's dispute and is further averred that Verizon has not brought the dispute in good faith. The remainder of the allegations of this paragraph are denied. Verizon's August 27, 2010 dispute letter speaks for itself. Armstrong is without any knowledge regarding payment to Verizon by other carriers, which allegations, therefore, are denied. It is further denied that Armstrong originates traffic.

9. Admitted in part; denied in part. It is admitted that, on August 30, 2010, Armstrong replied by email to Verizon's August 27, 2010 letter. The email speaks for itself and the remainder of the allegations of this paragraph, therefore, are denied.

10. Admitted in part; denied in part. It is admitted that Armstrong believes that tariffed state access charges are due for intrastate, interexchange access services provided by Armstrong, including for IP-originated and IP-terminated traffic, which facts are irrelevant to any issue in this case.. Further, Armstrong has no knowledge of what may have come to Verizon's "attention" and, therefore, such allegations are denied.

11. Denied. Armstrong has no knowledge of, and Verizon has never shared, the traffic study referenced in this paragraph, the claimed results of which, therefore, are denied.

³ See Complaint at ¶17 and Verizon's admission of this fact in its Answer.

Without identification by Verizon of the “wholesale providers” referred to in this paragraph, Armstrong is unable to respond to the remaining averments of this paragraph.

12. Admitted in part; denied in part. It is admitted that Armstrong takes the position that tariffed intrastate switched access rates are due for traffic delivered by Verizon to Armstrong. See response to paragraph 10. If by “explain[ation] to Armstrong,” Verizon is referring to the August 27, 2010 letter, the document speaks for itself and the remainder of the allegations of this paragraph, therefore, are denied. It is expressly denied that Armstrong “attempts to force Verizon” to pay “while avoiding paying Verizon...”

13. Denied. Verizon’s letter dated September 3, 2010, speaks for itself and the allegations of this paragraph, therefore, are denied.

14. Denied. Verizon’s September 3, 2010 letter speaks for itself, which allegations, therefore, are denied. The remaining averments of this paragraph are legal argument to which no response is required. Verizon has never shared any calculations of a “composite rate” with Armstrong, which averments, therefore, are denied. By way of further response, however, as averred by Armstrong in its Complaint at paragraph 16, the rates set forth in Armstrong’s Intrastate Tariff exactly mirror those of the underlying ILECs.⁴

15. Denied. Verizon’s September 3, 2010 letter speaks for itself, as does Armstrong’s September 27, 2010 email and the allegations of this paragraph, therefore, are denied. It is further denied that ownership by Armstrong of a tandem is a requirement for charging tandem-switched transport rate elements. Armstrong utilizes the services of a third party tandem operator and provides tandem-switched transport services to Verizon for which it must pay under the terms of Armstrong’s Intrastate Tariff.

⁴ Verizon’s Answer avers that it does not have sufficient information to determine whether the public tariffs of Armstrong and the underlying ILECs contain the same rates. See Verizon Answer at ¶ 16.

16. Denied. Armstrong's September 7, 2010 letter speaks for itself and the allegations of this paragraph, therefore, are denied. It is admitted, however, that Armstrong does not believe that either of the two "additional" grounds for dispute have any merit either.

17. Admitted. It is admitted that Verizon continues to refuse to pay Armstrong for the intrastate exchange access services it provides to Verizon and, instead, pays a rate of Verizon's choosing that has no application to the exchange access services being provided.

18. Admitted. It is admitted that the parties did continue to discuss the Verizon's claimed disputes subsequently. It is further admitted that Armstrong filed a Formal Complaint due to Verizon's continuing refusal to pay to Armstrong the lawfully required compensation for the provision of intrastate, exchange access services to Verizon and, instead, pay a rate of its own unilateral choosing.

NEW MATTERS IN THE NATURE OF COUNTERCLAIMS

I. Attempt to Impose Intrastate Switched Access Charges on VoIP Traffic in Violation of Federal Law

19. No response to this paragraph is required.

20. Denied. This paragraph contains averments of law to which no reply is required. By way of further response, however, it is denied that Armstrong is an "information services provider" or that its intrastate switched access rates do not apply.

21. Denied. This paragraph contains averments of law to which no response is required. By way of further response, however, it is denied the FCC has held that intrastate access charges do not apply to the traffic at issue in this proceeding. The two Federal District Court decisions cited have no legal merit, even as persuasive precedent, in this proceeding.

22. Denied. The averments of this paragraph contain conclusions of law to which no response is required. By way of further response, however, Armstrong believes that delivering carriers' interconnected VoIP traffic must pay access charges.⁵

23. Denied. This paragraph contains averments of law to which no response is requested. By way of further response, the so-called "exemption" is legally irrelevant to this Complaint.

24. Denied. The averments of this paragraph contain conclusions of law to which no response is required. By way of further response, however, Armstrong's receipt of traffic from Verizon is as a "telecommunications carrier" providing exchange access service to which access charges apply.⁶ The underlying technology used to originate and/or terminate calls exchanged between Armstrong and Verizon, once again, is legally irrelevant to this Complaint.

25. Denied. The paragraph contains repetitive averments of law to which no response is required.

26. Denied. This paragraph contains conclusions of law to which no response is required. By way of further response, however, the Commission's Order in *Palmerton v. Global NAPs* held that the originating technology of traffic delivered to and received from a telecommunications carrier should be compensated according to the calling jurisdiction, which in this case is intrastate, interexchange.⁷

27. Admitted in part; denied in part. See Armstrong's Answer to Verizon New Matter herein at paragraphs 8, 13, 17 and 18. The compensation being paid by Verizon is inapplicable and has no application to the traffic at issue in this proceeding.

⁵ *Palmerton Telephone Company v. Global NAPs*, PUC Docket No. C-2009-2093336, Opinion and Order entered March 16, 2010 ("*Palmerton Order*").

⁶ *Time Warner Declaratory Ruling; Sprint CLEC Application Order; and Palmerton Order.*

⁷ *Palmerton Order.*

28. Denied. The averments of this paragraph contain legal arguments to which no response is required. By way of further response, however, the Commission has already declared that intrastate switched access charges apply to IP-originated and IP-terminated traffic when exchanged between telecommunications carriers,⁸ directly contrary to the ruling sought by Verizon now.

II. Enforcing an Asymmetrical Compensation Scheme in Violation of the Public Utility Code

29. No response to this paragraph is required.

30. Denied. It is denied that Armstrong routes its traffic “in such a way to avoid” the payment of intrastate switched access to Verizon or any other local exchange carrier. It is denied that Armstrong knows that the carriers through whom it routes traffic do not pay access charges.

31. Denied. It is denied that Armstrong is playing any “game.” It is denied that Armstrong has any liability for paying access charges on traffic delivered to Verizon or any other local exchange carrier by other carriers. Armstrong has no knowledge regarding any disputes between Verizon and other carriers’ non-payment for Armstrong traffic delivered to Verizon. It is further denied that the issue is “Armstrong’s VoIP traffic,” inasmuch as Armstrong receives and delivers traffic in TDM protocol.

32. Denied. This paragraph contains legal averments to which no response is required. The *Palmerton Order* speaks for itself. It is further denied that Armstrong is avoiding any payments.

33. This paragraph contains legal and policy arguments to which no response is required. By way of further response, however, it is denied that Armstrong is “rout[ing] its own traffic to Verizon in such a way as to avoid paying access charges.” It is denied that Armstrong

⁸ *Palmerton Order*.

has any liability for paying access charges on traffic delivered to Verizon or any other local exchange carrier by other carriers. Armstrong has no knowledge about access charge disputes between Verizon and other carriers.

34. Denied. The contents of this paragraph consist of legal and policy arguments and a request for relief, to which no response is required. By way of further response, however, to the extent Verizon has failed to enforce its own access tariff as to third-party carriers responsible for payment, this inaction does not in any way affect the applicability and enforceability of Armstrong's own tariffs.

III. Charges in Violation of 66 Pa. C.S. § 3017(c)

35. No response to this paragraph is required.

36. Denied. 66 Pa. C.S. § 3017(c) speaks for itself.

37. Denied. This paragraph contains legal averments to which no response is required. By way of further response, however, tariffed rates must be no higher unless cost justified.

38. Denied. It is denied that Armstrong's tariffed access rates are set at a level higher than the incumbent local exchange carrier. The remainder of this paragraph consists of legal arguments, to which no response is required.

39. Denied. Once again, Armstrong has no knowledge of any disputes regarding delivery of traffic to Verizon, which allegations are therefore denied.

IV. Charges in Violation of State Tariff and State Law

40. No response to this paragraph is required.

41. Admitted. It is admitted that Armstrong is entitled to bill for switched access service in accordance with the terms of its Armstrong's state access tariff.

42. Denied. Armstrong's tariff authorizes it to bill tandem-switched transport rate elements where, as it does in accepting Verizon traffic, it provides such services. Armstrong's access tandems are provided by a third-party tandem operator. There is no requirement in the tariff that Armstrong actually "operate" the tandem or that precludes third-party arrangements.

43. Admitted in part; denied in part. It is admitted that Armstrong does not "own" the tandem switch. However, by way of further response, Armstrong does provide tandem-switched transport services to Verizon by way of the tandem arrangement with a third-party. It is denied that Armstrong must "own" the tandem as a predicate to charging tandem-switched transport rate elements.

44. Admitted. It is admitted that Armstrong bills Verizon for tandem-switched transport rate elements and that Verizon has disputed these charges, refusing to pay for tandem-switched transport services provided.

45. Denied. This paragraph contains legal argument to which no response is required. It is denied, however, that Armstrong's billing of tandem-switched rate elements is unlawful.

NEW MATTERS IN THE NATURE OF AFFIRMATIVE DEFENSES

1. Denied. Armstrong's Complaint states a claim upon which relief may be granted by this Commission.

2. Denied. The Commission has full and complete subject matter jurisdiction over the claims set forth in the Complaint.

3. Denied. Verizon has not properly paid compensation to Armstrong for the intrastate switched access services provided by Armstrong to Verizon.

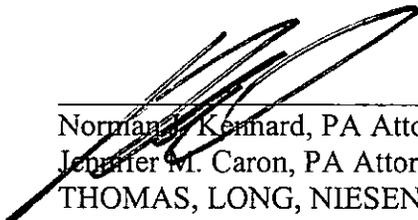
4. Denied. It is denied that “the doctrine of unclean hands” has any application in this proceeding.

5. Denied. This paragraph consists of statements of law, speculation of what the FCC may do in the future, incorrect interpretations of the Commissions’ *Palmerton Order* and continuing attempts to justify the inapplicable rate that Verizon “is willing to pay...” The averments in this paragraph have been previously denied. This paragraph consists of no more than an attempt to justify Verizon’s unilateral refusal to pay the appropriate, Commission-determined rate. By way of further response, however, Verizon’s actions, including its one-sided refusal to pay, and the payment of a much lower rate that has no application to Verizon’s Traffic, is undertaken by Verizon in bad faith and is hardly an attempt to negotiate in good faith. As set forth in Armstrong’s Complaint, Verizon is illegally withholding payment to advantage its attempt to negotiate a non-tariffed, discriminatory rate for itself.

Prayer For Relief

WHEREFORE, Armstrong requests that the Commission grant its Complaint, dismiss Verizon’s New Matter and grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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Attorneys for
Armstrong Telecommunications, Inc.

Date: January 31, 2011

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VERIFICATION

I, James D. Mitchell, Vice President, Armstrong Telecommunications, Inc, verify that the information provided in the foregoing is true and correct to the best of my knowledge, information and belief. I expect to be able to provide the same at a hearing held in this matter. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: 1/28/2011

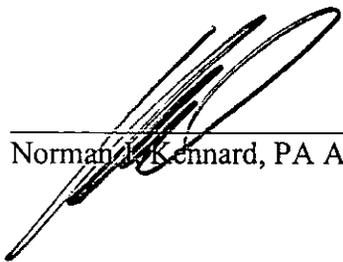

James D. Mitchell

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CERTIFICATE OF SERVICE

I hereby certify that I have on the 31st day of January, 2011, served a true and correct copy of the foregoing document upon the parties listed below via electronic mail and first class mail, postage prepaid:

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