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March 17, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: Armstrong Telecommunications, Inc. v.
Verizon Pennsylvania Inc., Verizon North LLC, MCImetro 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 Verizon's Prehearing Memorandum, being filed on behalf of Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively, "Verizon") in the above captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb

Via E-Mail and First Class U.S. Mail
cc: The Honorable Dennis J. Buckley
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon's Prehearing Memorandum, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 17th day of March, 2011.

VIA E-MAIL and FIRST CLASS MAIL

Norman J. Kennard, Esquire
Jennifer M. Caron, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108



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(215) 466-4755

Attorney for Verizon

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIZON'S PREHEARING MEMORANDUM

Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. (together, "Verizon"), pursuant to 52 Pa. Code § 5.222, respectfully submit this prehearing memorandum for purposes of the prehearing conference scheduled for March 21, 2011.

I. BACKGROUND AND RECENT DEVELOPMENTS

This dispute arises because Armstrong Telecommunications, Inc. ("Armstrong") refuses to negotiate with Verizon to arrive at a mutually acceptable and reciprocal intercarrier compensation rate for traffic that originates or terminates in Internet Protocol ("IP") format. Armstrong is a competitive local exchange carrier ("CLEC") that uses its connection to the public switched telephone network ("PSTN") to send and receive IP traffic for an affiliated cable telephony provider.¹ Armstrong filed this complaint asking

¹ Such traffic is sometimes also referred to as "Voice over Internet Protocol" or "VoIP." As the Commission has explained, "VoIP is a term of art that refers to a technology that provides an instantaneous or slightly-delayed real-time transmission of voice, data, and audio, or a combination thereof, in a digital format using Internet Protocol (IP) data packet transmission." *Investigation into*

the Commission to force Verizon to pay Armstrong's tariffed intrastate switched access rates of several cents per minute to terminate traffic destined to the VoIP customers of Armstrong's cable affiliate. Armstrong did so even though it routes the VoIP traffic its cable affiliate sends to Verizon's customers through other carriers so that Verizon is not always paid switched access rates on the same type of traffic. Verizon has attempted to deal reasonably with Armstrong and to avoid litigation by doing exactly what this Commission recognized as prudent — approaching Armstrong “in order to initiate good faith negotiations for a traffic exchange agreement encompassing the subject of IP-enabled traffic.”² Moreover, Verizon has continued to pay Armstrong at a rate of \$0.0007 per minute for the disputed VoIP traffic pending our attempt to negotiate an acceptable solution.

After Armstrong filed this formal complaint, the Federal Communications Commission (“FCC”) announced its intention to resolve, on an expedited schedule, the disputed issue that is at the heart of this case — how carriers should compensate each other on a fair and reciprocal basis for the exchange of VoIP traffic.³ The FCC's February 9, 2011 Notice of Proposed Rulemaking “recognize[d] the need for the [FCC] to move forward expeditiously” to resolve the “considerable dispute” over intercarrier compensation for VoIP traffic, an issue that is widely recognized to require uniform nationwide resolution by the FCC. (FCC 2/9/11 NPRM ¶ 613-614). The FCC intends to

Voice over Internet Protocol as a Jurisdictional Service, Docket No. M-00031707 (Opinion and Order entered May 24, 2004) (“5/24/04 VoIP Investigation Order”) at 1.

² *Palmerton Telephone Company v. Global NAPs South, Inc., etc.*, Docket C-2009-2093336 (Opinion and Order entered March 16, 2010) (“GNAPs/Palmerton Order”) at 35.

³ *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, WC Docket No. 10-90, etc. (Feb. 9, 2011) (FCC 2/9/11 NPRM”) (available on-line at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/FCC-11-13A1.pdf).

address this issue on an expedited schedule, ahead of its larger and more comprehensive effort to reform the existing intercarrier compensation regime. (FCC 2/9/11 NPRM ¶ 603-604). Comments to the FCC are due April 1, 2011 and reply comments are due April 18, 2011.

The FCC has acknowledged the problem presented by Armstrong's unreasonable position in this case, where Armstrong demands payment from Verizon at relatively high intrastate switched access rates but Verizon is not always paid switched access on the VoIP traffic that comes to Verizon from Armstrong.⁴ The FCC recognizes that there is "evidence of asymmetrical revenue flows for traffic exchanged between a traditional wireline LEC [i.e., Verizon] and a VoIP provider [i.e., Armstrong and its cable affiliate], with the VoIP provider (or its LEC partner) collecting access charges, for example, but refusing to pay them," which industry members argue presents an "economically irrational arbitrage opportunity" that will lead to results that are "discriminatory, inimical to the interests of consumers, and at war with the public interest." (FCC 2/9/11 NPRM at ¶ 610).⁵ The FCC intends to address these inequitable and anti-competitive compensation schemes.

This Commission has recognized from the outset that it is the FCC and not the state commissions that must make the call regarding jurisdictional issues relating to the

⁴ In the territories of some of the rural incumbent local exchange carriers Armstrong is charging nine cents a minute or more for intrastate switched access.

⁵ Like the FCC, this Commission also disfavors asymmetrical arbitrage schemes such as Armstrong's attempt to collect access rates that it avoids paying, because they result in "an anticompetitive environment that artificially and inimically transmits inaccurate price signals to end-user consumers of telecommunications and communications services" and violate Chapter 30's directive to "[p]romote and encourage the provision of competitive services by a variety of service providers *on equal terms* throughout all geographic areas of this Commonwealth." *Palmerton Telephone Company v. Global NAPs South, Inc., etc.*, Docket C-2009-2093336 (Opinion and Order on Reconsideration entered August 3, 2010) ("GNAPs/Palmerton Recon Order") at 13-14 (quoting 66 Pa. C.S. § 3011(8)) (emphasis in original).

exchange of VoIP traffic.⁶ Even where the Commission reluctantly stepped in to address a compensation dispute where one party claimed the traffic at issue was VoIP, it noted that it only did so because the FCC had not yet resolved the VoIP compensation issue and it deliberately confined its order to the specific facts of that case without making any sweeping pronouncements.⁷

Verizon respectfully submits that this Commission should hold this matter in abeyance for a reasonable period of time to allow the FCC to provide the guidance it has promised. We would welcome the opportunity to submit a memorandum to explain in more detail why a stay is appropriate, with an opportunity for Armstrong to respond. In short, proceeding with the case now would require the Commission and the parties to waste their time and limited resources trying to resolve the same VoIP compensation issue that is presently being addressed on an expedited schedule by the FCC. It also would put the Commission at risk of being inconsistent with the FCC's action and having its decision here invalidated. Indeed, Armstrong's own affiliates recently argued to this Commission that "it is better for Pennsylvania to see how the FCC develops the details" of its larger intercarrier compensation reform "than it is to rush in ahead of it."⁸

If this complaint proceeds to the filing of testimony and a hearing, it promises to be controversial, complex, and vigorously litigated, with the outcome likely challenged on appeal, requiring an additional expenditure of Commission resources. Administrative

⁶ See, e.g., 5/24/04 VoIP Investigation Order at 4 ("it is premature to make conclusive jurisdictional or policy determinations or to take action until the FCC provides guidance.")

⁷ GNAPs Palmerton Order at 42 (noting that its conclusion in that case was "[b]ased on the case-specific evidentiary record," including the fact that the record evidence did not establish that all of the traffic at issue was VoIP and the fact that GNAPS refused to negotiate a mutual compensation rate but rather took the position that it need not pay anything to terminate its traffic).

⁸ *AT&T Communications of Pennsylvania v. Armstrong Telephone Company – Pennsylvania*, Docket No. C-2009-2098380, I-00040105, Exceptions of Armstrong Telephone Company – Pennsylvania, etc. (filed September 2, 2010) (pending).

efficiency and the interest of orderly decision-making would best be served by staying this case or otherwise holding scheduling in abeyance pending the FCC's decision.

Following the FCC's decision, the Commission may assess whether the FCC's action has resolved the parties' dispute or whether further action by this Commission is needed.

II. ISSUES

If this matter proceeds to litigation, the Commission will have to address at least the following issues:

1. Whether Armstrong's attempt to charge tariffed intrastate switched access rates for IP-originated and IP-terminated traffic violates federal law because the traffic at issue is both jurisdictionally interstate and an "information service" as defined in federal law. Two recent federal district court decisions have confirmed that tariffed access charge regimes do not apply to VoIP traffic, and both courts denied efforts by competing local exchange carriers to apply their tariffed intrastate access charges to VoIP traffic.⁹ Verizon expects this disputed issue to be resolved as a result of the FCC's expedited action following from the 2/9/11 NPRM.
2. Whether the FCC will establish a mandatory compensation regime for IP-originated and IP-terminated traffic that preempts the application of intrastate access rates. The FCC is taking comments on a number of alternatives, including subjecting VoIP traffic to a unique intercarrier compensation regime. (FCC 2/9/11 NPRM ¶ 616). Verizon expects this issue to be resolved as a result of the FCC's expedited action following from the 2/9/11 NPRM.¹⁰
3. If this Commission retains any authority to determine VoIP compensation rates following the FCC's action, then the Commission will have to decide whether to permit Armstrong to enforce its tariffed intrastate switched access rates against Verizon when it routes its own VoIP traffic to Verizon in such a way that access charges are not always paid to Verizon. Verizon asserted a new matter against Armstrong contending that this asymmetrical compensation has an anti-competitive effect on consumers in violation of the Public Utility Code and violates Chapter 30's directive to ensure that carriers are permitted to compete on

⁹ *PAETEC Communications, Inc. v. CommPartners, LLC*, No. 08-cv-397, 2010 WL 1767193 (D.D.C. Feb. 18, 2010); *Manhattan Telecommunications Corp. v. Global NAPs, Inc.*, No. 08-Civ-3829, 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010).

¹⁰ While application of the existing access regime is one of the many options that the FCC has presented for consideration, it is clearly not the FCC's favored option, given its recognition of "the need to move away from today's intercarrier compensation system" for other voice traffic as part of its comprehensive intercarrier compensation reform. (See FCC 2/9/11 NPRM ¶ 613). In any event, as the Notice indicates, it is an option for the FCC, not the states, to consider.

equal terms. This issue may be rendered moot by the FCC's expedited action resulting from the 2/9/11 NPRM.

4. If the Commission retains any jurisdiction over Armstrong's claim that its intrastate switched access tariff applies to IP-originated and IP-terminated traffic following the FCC's decision, then the Commission will have to decide whether it should nonetheless dismiss or stay this complaint pending negotiation of a commercial agreement governing the exchange of that traffic. At least one other state commission has already directed the parties to a complaint seeking application of tariffed intrastate access charges to VoIP traffic to "enter into private contract negotiations on the rates, charges, terms and conditions for the exchange" of that traffic.¹¹ This Commission also has recognized that it is acceptable for a carrier, upon receipt of "billing invoices" charging tariffed switched access rates for VoIP traffic, to approach another carrier "in order to initiate good faith negotiations for a traffic exchange agreement encompassing the subject of IP-enabled traffic." (*GNAPs/Palmerston Order* at 35). This issue may be rendered moot by the FCC's expedited action resulting from the 2/9/11 NPRM.
5. To the extent Armstrong's state access tariff applies after the FCC's decision, or has been applied in the past, the Commission will have to decide whether Armstrong is violating 66 Pa C.S. § 3017(c) by charging switched access rates higher than those charged by the incumbent local exchange carrier in the same territory, or whether Armstrong's switched access rates are otherwise unjust and unreasonable in violation of 66 Pa. C.S. § 1301. If the FCC determines that a rate other than intrastate switched access rates applies to VoIP traffic, then this issue will be rendered moot with regard to VoIP traffic going forward. It is possible that a dispute would remain over past overcharges¹² and/or for any non-VoIP traffic the parties may continue to exchange in the future.
6. To the extent Armstrong's state access tariff applies after the FCC's decision or has been applied in the past, the Commission will have to decide whether Armstrong is unlawfully billing Verizon for tandem switched transport rate elements, including tandem switching, tandem transport facility and tandem transport termination, where Armstrong does not operate a tandem switch, in violation of its own tariff. If the FCC determines that a rate other than intrastate switched access rates applies to VoIP traffic, then this issue will be rendered moot with regard to VoIP traffic going forward. It is possible that a dispute would remain over past overcharges and/or for any non-VoIP traffic the parties may continue to exchange in the future.

¹¹ *Order Directing Negotiation, Complaint of TVC Albany, Inc. d/b/a Tech Valley Comm. Against Global NAPs, Inc. for Failure to Pay Intrastate Access Charges*, Case 07-C-0059 (New York Public Serv. Comm'n March 20, 2008).

¹² The FCC has specifically sought "comment on whether particular reform options would have retroactive effect." (FCC 2/9/11 NPRM at ¶ 614).

III. PROCEDURAL SCHEDULE

As stated above, Verizon respectfully requests that the Commission refrain from setting a litigation schedule at this time, and stay or otherwise hold the matter in abeyance pending FCC action on the VoIP compensation issue. Verizon suggests that the parties be required to provide a status report to the presiding officer within 30 days of any substantive FCC decision on VoIP compensation.

If Armstrong disagrees with the proposal to stay this matter, then Verizon suggests the following procedural schedule to brief the stay issue and allow it to be brought to the full Commission as a material question, if necessary:

April 12, 2011 – Parties file simultaneous memoranda on whether the matter should be stayed or otherwise held in abeyance to await FCC action

April 26, 2011 – Parties file replies to the April 12 memoranda

20 days following presiding officer's written order – Either party may file a petition requesting Commission review and answer to a material question pursuant to 52 Pa. Code § 5.302 if it disagrees with the presiding officer's resolution.

20 days following entry of Commission order on merits of any material question petition, or as needed – Further telephonic prehearing conference if necessary to address scheduling or other issues as a result of orders from the Commission or the FCC.

IV. WITNESSES

For the reasons stated above, Verizon does not propose the filing of testimony or scheduling of an evidentiary hearing at this time. However, in compliance with the prehearing order in this matter, Verizon identifies the following witnesses should testimony be required:

William Munsell (issues relating to traffic exchange and VoIP compensation)
600 Hidden Ridge, Room E03c59
Irving, TX 75038
(972) 718-8941

Patrick Merrick (issues relating to Armstrong access charges and refund claims)
22001 Loudoun County Parkway, Room E1-3-517
Ashburn, VA 20147
(703) 886-5088

Paul B Vasington (policy matters relating to issues in this case)
125 High St-Oliver Twr, 07 Floor Room 739,
Boston, MA 02110
(617) 743-5521

Verizon reserves the right to identify new or different witnesses, including but not limited to in response to issues raised by Armstrong in its testimony.

V. DISCOVERY

The parties have already commenced discovery in this matter, with both Armstrong and Verizon answering one set of discovery. Verizon does not see the need to modify the Commission's standard discovery rules. If the Commission determines to stay this matter pending the FCC's consideration of the VoIP compensation issue, Verizon requests that any additional discovery be stayed as well.

VI. PROTECTIVE ORDER

Discovery in this matter has already called for the disclosure of information that the parties view as competitively sensitive or otherwise proprietary. Pursuant to 52 Pa. Code § 5.423(c)(4), Verizon and Armstrong have agreed on a form of protective order to govern their production of proprietary and highly confidential information prior to the entry of a protective order in this matter. The agreed-upon form of order is attached hereto and Verizon respectfully requests that this or a similar form of protective order be entered to govern the information already produced and that may in the future be produced or filed in this case.

VII. SERVICE LIST

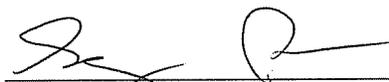
Pursuant to 52 Pa. Code § 1.55, Verizon's representative for the service list in this proceeding is as follows:

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Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658
Suzan.d.paiva@verizon.com

VIII. SETTLEMENT

Verizon has requested that Armstrong enter into negotiation of a commercial agreement that would establish fair and appropriate reciprocal rates, terms and conditions for the exchange of VoIP traffic, rather than litigate this issue before the Commission. Verizon continues to be open to the amicable resolution of this matter.

Respectfully submitted,



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Suzan.D.Paiva@verizon.com

Counsel for Verizon

Dated: March 17, 2011

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROTECTIVE ORDER

THEREFORE,

IT IS ORDERED:

1. This Protective Order, submitted by Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. (together, "Verizon") and Armstrong Telecommunications, Inc. ("Armstrong"), is hereby established for use in this proceeding with respect to all materials and information identified at Paragraph 2 of this Protective Order which are filed with the Commission, produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures or cross-examination or provides as a courtesy to a party to this proceeding, which

are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY” (hereinafter collectively referred to as “Proprietary Information”).

In addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Order pertaining to such material. Such “HIGHLY CONFIDENTIAL” information shall be only such Proprietary Information that constitutes or describes the producing party's marketing plans, including, inter alia, costing and pricing aspects thereof, competitive strategies, market share projections, marketing materials that have not yet been used, customer-identifying information, or customer prospects for services that are subject to competition.

3. Proprietary Information and Highly Confidential Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information and Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures.

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel may afford access to Proprietary Information made available by another party (“the producing party”) to the party's expert(s), subject to the following restrictions:

i. Such expert(s) may not hold any of the following positions with any competitor of the producing party: (a) an officer, board member, significant stockholder, partner, owner (other than owner of stock) or an employee of any competitor of the producing party who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; or (b) an officer, board member, significant stockholder, partner, owner (other than owner of stock) of any affiliate of a competitor of the producing party; provided, however, that any expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other ownership interest valued at less than \$500,000 and/or constituting less than a 10 % interest in a business does not, in itself, establish a significant potential for violation.

ii. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the producing party, said independent expert must: (1) advise the producing party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the producing party; and (3) if

segregation of such personnel is impractical, the independent expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the producing party. The producing party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

b. Highly Confidential Information. Proprietary Information or other material designated as “Highly Confidential” shall be produced for inspection by a party's counsel of record only. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they may submit the issue orally to the presiding Administrative Law Judge for resolution. If upon inspection the requesting party disagrees with the designation of any of the material as “Highly Confidential” and the producing party does not revise the designation, that issue may also be submitted orally to the Administrative Law Judge for resolution. For purposes of this paragraph, non-lawyer experts engaged by the Office of Consumer Advocate, the Office of Small Business Advocate or the Office of Trial Staff who qualify under the provisions of paragraph 4(a)(i) and sign Appendix A to this Order shall be treated as counsel of record with regard to the production of Highly Confidential Information.

c. No other persons may have access to the Proprietary Information or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to

receive, or who is afforded access to any Proprietary Information or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

5. Prior to making Proprietary Information or Highly Confidential Information available to any person as provided in numbered Paragraph 4, above, counsel shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as "Appendix A". Counsel shall promptly deliver to the producing party a copy of the executed Appendix A.

6. A producing party shall designate data or documents as constituting or containing Proprietary Information or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten or printed designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information or Highly Confidential Information, the producing party insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information or Highly Confidential Information.

7. Any federal agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C.A. §552(b)(4) until such time as the information is found to be non-proprietary.

8. Any state agency which has access to and/or receives copies of the Proprietary Information or Highly Confidential Information will consider and treat the Proprietary Information or Highly Confidential Information as within the exemption from

disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. §66.1(2) until such time as the information is found to be non-proprietary.

9. Any public reference to Proprietary Information or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information or Highly Confidential Information to fully understand the reference and not more. The Proprietary Information or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. Parts of any record in this proceeding containing Proprietary Information or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in number Paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge or the Commission. Unresolved challenges arising under Paragraph 11 shall be decided on motion or petition by the presiding officer or the Commission as provided by 52 Pa. Code §5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

11. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information or Highly Confidential Information; to question or challenge the admissibility of Proprietary Information or Highly Confidential Information; to refuse or object to the production of Proprietary Information or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary Information or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or

information as Proprietary Information or Highly Confidential Information, the party claiming that the information is Proprietary Information or Highly Confidential Information retains the burden of demonstrating that the designation is necessary and appropriate.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary Information or Highly Confidential Information shall be immediately returned upon request to the party furnishing such Proprietary Information or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information or Highly Confidential Information have been destroyed.

Dated: _____

Dennis J. Buckley
Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the retaining party) and is not, or has no knowledge or basis for believing that he/she is: (1) an officer, board member, significant stockholder, partner or owner other than stock of any competitor of _____ (the "Producing Party") or an employee of any competitor of the Producing Party who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the Producing Party; or (2) an officer, board member, significant stockholder, partner, or owner other than stock of any affiliate of a competitor of the Producing Party.

The undersigned has read and understands the Protective Order that deals with the treatment of Proprietary Information and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of numbered Paragraph 4 (a)(ii) of the Order prior to submitting this Affidavit.

SIGNATURE

PRINT NAME

DATE

ADDRESS

EMPLOYER