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August 29, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2nd Floor)
Harrisburg, PA 17105-3265

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 for electronic filing with the Commission is the original of Armstrong Telecommunications Inc.'s Brief in Opposition to Interlocutory Review and Verizon's Material Question. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By: Norman J. Kennard

cc: Cheryl Walker Davis (OSA)
Dennis J. Buckley, Presiding Administrative Law Judge

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, MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. Respondents	:	C-2010-2216325
	:	C-2010-2216293

ARMSTRONG BRIEF IN OPPOSITION TO INTERLOCUTORY REVIEW AND VERIZON'S MATERIAL QUESTION

I. BACKGROUND OF VERIZON'S "DISPUTE"

Armstrong Telecommunications Inc. ("Armstrong") adamantly opposes any stay or further delay in the Commission's consideration of the merits of its complaint against Verizon[1]. Indeed, Armstrong deserves restoration of the *status quo ante* -- the circumstances which existed *prior to* Verizon's unilateral actions of illegal repudiation and self-help. Instead, Verizon seeks the Commission's endorsement of its inexcusable behavior by staying Armstrong's complaint. Of course, the *status quo*, given Verizon's unilateral, self-help refusal to pay, is a request to deny relief to Armstrong and condone Verizon's blatant violation of a CLEC's tariffs, as well as Commission-approved ICAs,

[1] Verizon, in this matter, consists of two incumbent local exchange carriers ("ILECs"), Verizon Pennsylvania Inc. ("Verizon PA") and Verizon North LLC ("Verizon North" and, collectively, ("Verizon ILECs"); and two affiliated competitive local exchange carrier ("CLEC"), MCImetro Access Transmission Services, LLC Verizon Business and MCI Communications Services Inc. ("MCI") (all collectively "Verizon").

and "kidnap-and-ransom" method of dealing with other regulated telecommunications providers.[2]

Verizon's abrupt, one-sided decision to no longer pay the established rates and, instead, tender a self-help payment of vastly reduced compensation ($.0007 per minute of use or "MOU") for both local and toll traffic termination (an 87% reduction) is the genesis of this dispute. Verizon simply nominated itself as the decision maker, adopting a "so sue me" attitude, and continues to demand Armstrong's access services, while offering the lowest rate possible next to none at all. Verizon's continuing "short" payment using the inapplicable rate of $.0007/MOU and its simultaneous refusal to seek permission or trigger arbitration is why Armstrong filed this complaint.

In late August 2010,[3] after five years of consistent adherence to interconnection agreements[4] and tariffs, Verizon suddenly, and without any notice, unilaterally asserted that these documents are void and the Commission is without jurisdiction over the carriers involved, the intrastate traffic being exchanged[5] and the associated intercarrier compensation dispute. This previously agreed to and paid toll and local compensation

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[2] Verizon, nevertheless, continues billing Armstrong at the ICA reciprocal compensation and tariffed access creating a blatantly one-way (and completely inconsistent) compensation arrangement.

[3] Verizon's August 27, 2010 letter is Armstrong Exhibit 1 to its Motion for Partial Summary Judgment. Armstrong requests that its Motion for Partial Summary Judgment be incorporated by reference into this Answer. All facts set forth in this Answer are set forth in Armstrong's Motion.

[4] The Verizon ILECs, Verizon PA and Verizon North, voluntarily entered into Interconnection Agreements with Armstrong for which Commission approval was granted. *Joint Petition for Approval of an Interconnection Agreement and Amendment No. 1 Between Verizon North, Inc., and Armstrong Telecommunications, Inc., under Section 252(e) of the Telecommunication Act of 1996*, PA PUC Docket No. A-311014F7001, Opinion and Order entered August 30, 2005; and *Joint Petition for Approval of an Interconnection Agreement and Amendment No. 1 Between Verizon Pennsylvania Inc. and Armstrong Telecommunications, Inc., under Section 252(e) of the Telecommunication Act of 1996*, PA PUC Docket No. A-311014F7000, Opinion and Order entered August 30, 2005.

[5] The calls at issue in Armstrong's complaint are clearly intrastate, as they originate and terminate within Pennsylvania, are between Pennsylvania numbers and the underlying called and calling parties are located in Pennsylvania.

was abruptly stopped with change whatsoever in the underlying operations of any of the parties or in the law itself.

The *singular* fact that Verizon recites to explain its sudden change of position has always been true since the first call was exchanged between the parties -- Armstrong delivers and accepts traffic from a cable company, which uses Internet protocol ("IP") to provide telephone service its end user customers. The protocol conversion from time division multiplex ("TDM") to IP *occurs after the Verizon call is delivered to Armstrong and, indeed, after Armstrong delivers it* to the underlying cable company provider.[6]

Its legal argument is based upon the FCC's *Vonage* decision of 2004, entered *almost a full year prior* to the effectiveness of the Verizon ICAs *and six years before* Verizon stopped paying. The preemption assertion is specious, having been previously rejected by numerous states and federal courts, including this Commission in its landmark *Palmerton Opinion.*[7] Verizon's also claims that Armstrong, a CLEC certificated to provide "telecommunications" service and doing so as the cable company's portal to the PSTN, is acting as an "information service provider." This assertion is equally nonsensical. Armstrong is a "telecommunications carrier" certified by the Commission that provides wholesale CLEC services under the FCC's *Time Warner Decision* [8] and this Commission's *Sprint Wholesale* Order.[9]

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[6] Armstrong and Verizon exchange traffic in TDM and Armstrong delivers it from and to the cable company in TDM.

[7] *Palmerton Telephone Company v. Global NAPs South, Inc., Global NAPs Pennsylvania, Inc., Global NAPs, Inc. and Other Affiliates*, Docket C-2009-2093336, Opinion and Order entered March 16, 2010 ("*Palmerton Opinion*").

[8] *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 at ¶ 2 ("*Time Warner Decision*").

[9] *In re Sprint Communications Company L.P.*, 101 Pa.P.U.C. 895, 2006 WL 3675279 (Pa.P.U.C.) ("*Sprint Wholesale Order*").

Contrary to Verizon's misreading, the *Palmerton Opinion* does not stand for the proposition that a carrier may ignore its contracts and tariff obligations when using another company's switched access services-- so long as it offers something greater than "nothing." This "non-payment self-help" flies in the face of established procedures for seeking a rate change and constitutes a kidnap-and-ransom approach to compensation disputes. The specter of Pennsylvania's two largest ILECs and affiliated carriers unilaterally reducing Armstrong's access revenues by 87% based upon specious legal theories is an arrogant abuse of market power aimed at bringing a competitor to heel.

Verizon could have chosen one of three established contractual and statutory procedures to reduce the compensation payable to Armstrong.[10] Each of these alternatives, of course, would have required payment pending the dispute a business construct to which Verizon refuses to subscribe. The self-help seized by Verizon, all the while demanding the continued provision of network services from Armstrong, is patently unfair and completely unlawful. Under Verizon's requested stay, this unlawful *status quo* would continue *ad nauseum*.

II. INTERLOCUTORY REVIEW IS INAPPROPRIATE

The standards for interlocutory review of a material question sought by a participant are set forth in the Commission's regulations, which require that the petitioner

[10] Were Verizon truly seeking to act in good faith, as claimed, it has among three different procedures to follow rather than simply short paying and forcing Armstrong to bring suit: (1) Provide notice of ICA termination and renegotiate with Armstrong (Verizon ICA at §§ 2.1-2.3); (2) "Challenge" the ICA-specified rates, as the ICA also allows (Verizon ICA, Pricing Attachment at § 5); or (3) File a complaint as the tariff requires (Armstrong's State Access Tariff, Page 2-16).

state "compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding."[11]

Verizon has not complied with this requirement, because it cannot. There is no substantial prejudice to Verizon if hearings are held in this matter. Verizon has refused to pay the lawful compensation to Armstrong specified in interconnection agreements and tariffs, and with which it complied for five years before it refused to pay. There cannot possibly be any prejudice to Verizon by requiring that it justify its behavior. Certainly, Verizon should have anticipated that Armstrong would seek to enforce the agreements and its tariff. Allowing Armstrong's complaint to proceed will not prejudice Verizon.

Verizon has also not addressed the second standard under which interlocutory review may be sought – to expedite the conduct of the proceeding. Verizon ignores this provision, because it cannot meet it. Verizon seeks to have the proceeding stayed, not expedited. Instead, Verizon speculates that future action which might be undertaken by the FCC may affect this case, asserting that:

> The Commission should suspend this proceeding for a limited period of time to avoid potentially conflicting regulatory results and to avoid wasting resources evaluating factual and legal issues that may either become moot may be in need of additional subsequent development in light of the FCC's determination.[12]

None of this wishful speculation addresses the two bases identified for seeking interlocutory appeal, a procedure that is of only limited availability.[13]

This case is already set for hearings and on a track to be presented to the Commission late this year or early next. Armstrong had previously sought Summary

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[11] 52 Pa. Code § 5.302(a).
[12] Verizon Petition at 1.
[13] 52 Pa. Code § 5.301 (a) ("The Commission will not permit interlocutory review of rulings made by a presiding officer during the course of proceedings, except as permitted by the act and as specified in this subchapter.").

Judgment on the basis that the questions presented are issues of law and not fact, but Verizon opposed prompt resolution and demanded a factual hearing, a position with which the presiding ALJ agreed.[14] Armstrong has agreed to go forward with hearings. It is now time for Verizon to explain its position based upon the law that exists now (and when Verizon sent its "dispute" letter in August 2010). While Armstrong is the Complainant and will be filing direct testimony on September 9, 2011, Verizon must justify it denial of payment with its testimony due on September 30, 2011 and should not be excused from doing so.

III. IF THE COMMISSION TAKES UP THE QUESTION, IT SHOULD BE ANSWERED IN THE NEGATIVE

Verizon states the material question as follows:

> Should the Commission suspend this proceeding given that the FCC is poised to make a determination this fall on the same VoIP compensation issue presented here?

As it did before ALJ Buckley, Verizon's request implies that, because the FCC may act to address the regulatory status of VoIP traffic, it will do so in a way that has retroactive effect and which will also allow Verizon to walk away from its contractual commitments. Neither of these assertions is true and the pending exculpation that Verizon implies is very unlikely.

[14] Rather than expend additional time, Armstrong has not sought interlocutory review of the ALJ's Order denying Armstrong's Motion for Partial Summary Judgment. Instead, it has push Verizon to set up a hearing schedule that provides Verizon with the requested opportunity to present the facts that Verizon claimed are necessary for the Commission to address this case.

The ABC Plan[15] to which Verizon is a signatory and upon which Verizon stakes its stay request, does not take a position on the appropriate compensation for VoIP traffic prior to January 1, 2012. As conceded by Verizon, the ABC Plan does not ask the FCC to render a ruling regarding compensation for VoIP traffic prior to January 1, 2012.[16] The ABC Plan, therefore, expressly would *only modify, if at all,* Verizon's compensation obligations to Armstrong for periods beginning *after* January 1, 2012, leaving an almost eighteen month gap of non-payment by Verizon, since it refused to pay the July 2010 billing.[17] Moreover, the ABC Plan would set the rate applicable after January 1, 2012 at interstate access level, not the $.0007 rate to which Verizon has self-helped itself.[18] Thus, the ABC Plan, as presented to the FCC, would have no effect on any issue in this case until January 1, 2012 and, when it becomes effective thereafter, will result in a rate much higher than Verizon is paying Armstrong presently.

Predictably, Verizon will likely point to the Commission's recent order in the *RLEC Access Case* as support for a stay of this proceeding, although the situations are completely dissimilar.[19] In the *RLEC Access Case*, the issue was the potential conflict of

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[15] Letter from AT&T, Verizon, CenturyLink, Frontier, FairPoint, Windstream, USTelecom, National Telecommunications Cooperative Association, OPASTCO, and Western Telecommunications Alliance, to FCC Commissioners, FCC Docket Nos. WC 10-90 *et al.* (July 29, 2011); Letter from Verizon, AT&T, CenturyLink, Windstream, Fairpoint, and Frontier, to FCC Commissioners, *America's Broadband Connectivity Plan* (July 29,2011) ("ABC Plan").

[16] Verizon Petition at 2 ("An element in that overall framework is a *prospective determination* by the FCC that intrastate switched access charges will not apply to VoIP traffic." (Emphasis added)).

[17] ABC Plan at 10 ("This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers.").

[18] ABC Plan at 10 ("All 'toll' traffic that originates in IP or terminates in IP will be subject to current interstate access rates (regardless of whether it is interstate or intrastate...").

[19] Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105 and AT&T Communications of Pennsylvania, LLC v. Armstrong Telephone Company -Pennsylvania, et al., Docket Nos. C-2009-2098380, et al., Docket Nos. C-2009-2098380, et al., ("*RLEC Access Case*") Opinion and Order entered August 11, 2011.

the prospective reforms adopted by the Commission in it July 18, 2011 Order with the FCC's own prospective access reforms, including the ABC Plan proposal to preempt the states. A petition for reconsideration filed by the RLECs was granted so that the appeal period would be stayed and the Commission could retain jurisdiction to review what the FCC may do.[20] There is no such pending appellate date here or the potential that the Commission may lose its ability "to proceed further."[21] Most importantly, the Commission's reconsideration expressly did not stay continuing implementation and further record development of the RLEC access case.[22] Thus, the appeal period was stayed not the case itself.

A. Verizon's Request Fails to Meet the Process Gas Standards

As ALJ Buckley previously held, Verizon's petition for stay should be considered according to the criteria set forth in *Process Gas*,[23] under which Verizon, as the petitioner, has the obligation to successfully demonstrate *all* of the following:

(1) A strong likelihood of success on the merits;

(2) Irreparable injury if a stay is denied;

(3) Issuance of a stay will not substantially harm other interested parties; and

(4) Issuance of a stay will not adversely affect the public interest.[24]

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[20] *RLEC Access Case*, Opinion and Order entered August 11, 2011 at 3 ("Under Rule 1701, the Commission must act to grant a petition for reconsideration within thirty days of the date of entry of the order for which reconsideration is sought, or otherwise lose jurisdiction to do so if a petition for review is timely filed. In this case, should appellate review of the July 18, 2011 Opinion and Order be sought, the thirty-day timeframe within this Commission must act to preserve its jurisdiction by ruling upon the pending Petitions for Reconsideration is on or before August 17, 2011.").

[21] Under Pa. R.A.P. 1701(a), after an appeal is taken, the governmental unit "may no longer proceed further in the matter."

[22] *RLEC Access Case*, Opinion and Order entered August 11, 2011 at 4 ("It is noted explicitly that our grant of reconsideration does not stay, at this time, the directives contained in the Commission's July 18, 2011 Rural Access Charge Investigation Opinion and Order; rather that determination will be made when we consider the merits of the these petitions for reconsideration and clarification in a subsequent order....").

[23] *See* Post-Hearing Order entered May 21, 2011, at 4 n.1.

[24] *Pa. P.U.C. v. Process Gas Consumers Group*, 467 A.2d 805, 808-09 (Pa. 1983) (*"Process Gas"*).

The Commission has previously noted that this is appropriate standard for review of a stay request of a pending case.[25] Verizon has failed to satisfy the *Process Gas* criteria and its request for a stay should be denied.

1. There Is Little Or No Likelihood Of Success Verizon On Its Legal Arguments.

As support for its request for a stay, Verizon asserts, either explicitly or implicitly, that: this Commission has no present jurisdiction over intrastate traffic that, at any time, is in Internet protocol; the FCC is posed to preempt the states' regulation of carrier-to-carrier intrastate traffic in its most recent NPRM;[26] the FCC will set rates at the $.0007 per minute level; the effect of FCC action will be retroactive; and the FCC's actions in this regard are imminent.

There is no merit to Verizon's preemption position. As discussed in the introductory section of this brief and, more extensively in Armstrong's Motion for Partial Summary Judgment, this Commission assuredly has jurisdiction over intrastate traffic under a cohesive and consistent body of law.[27] The FCC has consistently refused to address compensation and the states have done so. Even if the FCC does address compensation for VoIP traffic in the context of its NPRM, the ABC Plan would only do so for traffic exchanged on January 1, 2012 and thereafter.

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[25] The background for the application of this standard to Verizon's request has been previously addressed by Armstrong. Armstrong Answer to Verizon Motion to Dismiss or Stay at 9-11.

[26] *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, WC Docket No. 07-135; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, GN Docket No. 09-51; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; and *Lifeline and Link-Up*, WC Docket No. 03-109, (*"FCC NPRM Docket"*) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released February 9, 2011 (*"FCC NPRM"*).

[27] *See* Armstrong Motion for Partial Summary Judgment at 25-33.

The best that the *FCC NPRM* could manage on this point is to "seek comment on whether and how the Commission could use CAF [Universal Service Fund replacement mechanism] support *to create incentives* for states to take action that will advance our mutual goals."[28] There is no indication whatsoever in the NPRM that the FCC is seeking to declare all intercarrier compensation to be federally jurisdictional. Verizon's arguments to the contrary are, at best, misguided, wishful thinking.

Verizon asserts that, at the very least, the FCC is poised to do *something*. Again, Verizon is overly optimistic. The FCC has promised to act on the issue of intercarrier compensation reform on numerous occasions for more than a decade, even before the *Unified Intercarrier Compensation NOPR* was released in 2005.[29] Whether the FCC will actually act this time is unclear. What is clear, however, is the fact that Verizon exaggerates, by miscitation, the FCC's "recognition" that there is "*some* [the word excluded by Verizon in its own quotation[30]] evidence of asymmetrical revenue flows," that would warrant action.

In 2009, the FCC acknowledged that it has not preempted state commissions, who should act in the meantime on the basis of "existing law":

> ... that the lack of regulatory direction from the Commission [FCC] regarding these issues does not, in fact, stand as a legal obstacle to the PUCT's resolution of the arbitration.... We emphasize that the PUCT should not wait for Commission [FCC] action to move forward. Rather, the PUCT must proceed to arbitrate this interconnection agreement in a timely manner, relying on existing law.[31]

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[28] *FCC NPRM Docket* at ¶ 296.

[29] *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Report and Order, issued March 3, 2005 ("*Unified Intercarrier Compensation NOPR*") and *In re IP-Enabled Services,* 19 F.C.C.R. 4863 (2004)("*IP-Enabled Investigation*").

[30] Verizon Motion at 10 (¶ 35).

[31] *Petition of UTEX Communications Corporation, Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Commission of Texas Regarding Interconnection Disputes with AT&T Texas,* WC Docket No. 09-134, Memorandum Opinion And Order, released October 9, 2009 ("*UTEX Opinion*"), at ¶¶ 9 and 10.

The Commission recognized this in the *Palmerton Opinion*, where it stated:

> Although the FCC has not yet formally proceeded with any jurisdictional classification of interconnected VoIP calls, it still expects state utility regulatory commissions to deal with and resolve intercarrier compensation disputes that may implicate interconnected VoIP.... Finally, the FCC fully expects state utility regulatory commissions to address intercarrier compensation issues that involve intrastate traffic and access matters.[32]

The circumstances underpinning the aforementioned authority have not changed. As the Commission correctly observed, the FCC has not acted and "...we do not need and cannot afford to wait and speculate whether the FCC will reach some sort of coherent and sustainable conclusion to its IP-enabled services and intercarrier compensation reform proceedings, when this might happen, and what the FCC's conclusions might be."[33]

Verizon is simply wishing that its federal advocacy position were already approved and implemented by the FCC. There is no indication that the FCC will ultimately adopt Verizon's advocacy of a $.0007/MOU rate. Verizon has acknowledged before the FCC,[34] that the FCC has not acted.[35] Verizon, instead, urges that the FCC

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[32] *Palmerton Opinion* at 41-42 (citing generally *UTEX Opinion* and *North County Communications Corp. v. MetroPCS California, LLC*, File No. EB-06-MD-007, Memorandum Opinion and Order, DA 09-719, released March 30, 2009).

[33] *Palmerton Opinion* at 26.

[34] *FCC NPRM Docket*, Comments of Verizon and Verizon Wireless filed April 1, 2011 ("Verizon 4/1 Comments") at 3-4.

[35] Verizon 4/1 Comments at 8 ("The Commission, however, has never determined 'the appropriate intercarrier compensation framework' for VoIP traffic that originates or terminates on the PSTN. In particular, the Commission has not yet decided whether legacy intercarrier compensation rules—such as tariffed switched access charges—apply to VoIP traffic. As the Commission acknowledges, this lack of clarity has led to disputes and litigation before federal courts and state commissions. Many of these disputes were initially stayed pending the Commission's resolution of the intercarrier compensation rules for VoIP. But, in more recent cases, several courts and state commissions have made clear that they are no longer willing to postpone their decisions until the Commission acts.") (citations omitted).

"should" implement a rate of $.0007/minute,[36] recognizing that this is not currently the case.[37]

And, most importantly, even under Verizon's view as expressed to the FCC, the $.0007/minute rate would be a "default rate" that applies in the *absence* of an agreement.[38] It does not argue that the $.0007 rate should disrupt compensation already agreed to in *existing* interconnection agreements.[39]

2. There Is No Irreparable Injury To Verizon If A Stay Is Denied.

There is no irreparable harm to Verizon were it to continue to pay Armstrong according to the same terms and conditions under which the parties operated for five years prior to the August 27th Letter. Mere monetary loss is insufficient grounds for finding irreparable harm.[40]

Nor is there any harm associated with proceeding to hear this case. It is highly ironic, and even duplicitous, for Verizon to argue that the case should be stayed because

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[36] Verizon 4/1 Comments at 4 ("The Commission should immediately adopt a single low default rate of $0.0007 per minute prospectively for all VoIP traffic that connects with the PSTN at either end-point of a call.").

[37] Verizon 4/1 Comments at 4 ("Swift action setting a low default rate for VoIP traffic will provide carriers and investors with needed certainty and allow for more efficient deployment of broadband and advanced services.").

[38] Verizon 4/1 Comments at 5-6 ("Most important, the Commission should hold that intercarrier compensation rates for VoIP traffic should be established in the first instance not through top-down, one-size-fits-all regulation, but through negotiated, commercial agreements between interconnecting carriers. A market-based approach, relying on negotiated, commercial agreements, is the best long-term solution to ensuring the efficiency of the communications markets in the face of rapid technological change. Indeed, negotiated agreements have proven successful in a variety of circumstances - most notably in the Internet itself. If providers are unable to reach a commercial agreement, however, the Commission should also establish a default rate of $0.0007 per minute for the origination and termination of VoIP traffic on the PSTN, under its exclusive jurisdiction over VoIP services.").

[39] Comments of Verizon and Verizon Wireless filed before the FCC April 18, 2011 at the *FCC NPRM Docket* ("Verizon 4/18 Comments") at 11 ("All traffic that connects with the PSTN and is not covered by voluntary commercial agreements—regardless of carrier or of the distance it travels—should be subject to a default terminating rate of $0.0007 per minute for traffic delivered to the terminating carrier's serving end office.").

[40] *Three County Services, Inc. v. The Philadelphia Inquirer*, 337 Pa. Super. 241, 486 A.2d 997 (1985) (holding appellee was only entitled to a preliminary injunction if the loss pending final adjudication was not be compensable by an award of money damages).

the Commission and the parties should not have to "spend their time and limited resources."[41] If that were the case, then Verizon should not have jumped the gun and refused to pay in advance of an FCC decision.[42] Verizon could have saved everybody's "time and limited resources" were it to have maintained the *status quo of payment* until the FCC actually acted.

Instead, Verizon decided to unilaterally adopt and implement its own federal advocacy (except the part about adhering to existing agreements), to the detriment of Armstrong, without the consent of either Armstrong or this Commission. Verizon is simply attempting to force Armstrong to capitulate by refusing to pay for the use of its network (thereby withholding millions of dollars that are important to Armstrong's ongoing operations). Verizon's advocacy is not the law and Verizon has no right to compel compliance with Verizon's view and then seek to stay that outcome until a day when the FCC may act.

Likewise, there is no harm in requiring Verizon to follow lawful procedures to challenge the rates paid to Armstrong. The Verizon ICAs and Armstrong's tariff clearly specify the lawful mechanisms available to bring an action that would serve Verizon's obvious objective to pay less.[43] Verizon acknowledges none of these. It did not serve notice that it sought to terminate the current ICA and negotiate a new one. It did not file a proceeding to challenge an ICA-specified charge and then seek a refund as the ICAs

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[41] Verizon Motion at 10 (¶ 36).

[42] Particularly where it exhorts the FCC to resolution on the same basis. *See* Verizon 4/1 Comments at 9 ("This litigation is costly, and it diverts resources from new and innovative services and broadband networks. It also has resulted in contradictory legal rulings: most federal courts have held that the legacy access charge regime does not apply to VoIP, while state commissions generally have sought to assert jurisdiction over VoIP traffic to apply legacy intercarrier compensation rules to that service. The regulatory uncertainty in this area is likely deterring investment in VoIP and the associated growth in broadband usage and deployment.").

[43] *See* Armstrong Motion for Partial Summary Judgment at 16-20.

require. It did not file a complaint, in violation of the procedures set forth in Armstrong's access tariff, but rather has forced Armstrong to do so. Its actions are also contrary to the Public Utility Code, which requires that a complaint be filed to challenge an existing tariffed rate.[44] Verizon simply nominated itself as the decision maker, adopted an arrogant "so sue me" attitude, and continued to demand Armstrong's access services, all while paying Armstrong the lowest rate possible (next to nothing).

3. The Issuance Of A Stay Will Substantially Harm Armstrong.

The harm to Armstrong is clearly Verizon's suspension of the agreed to revenue streams and the simultaneous stay of Armstrong's attempts to collect that lawfully due compensation. By refusing to pay the agreed to rates for the use of its network, Verizon is withholding millions of dollars from Armstrong's ongoing operations (currently almost $2.5 million), an amount that continues to increase at a rate of approximately $200,000 per month.[45]

Verizon is using its considerable market clout as the largest LEC and toll carrier in Pennsylvania to cash starve Armstrong and, thereby, force concessions. By doing so, Verizon is in direct violation of its 2006 ICA commitment to pay rates for local and toll termination at rates that are 4.2 times and 8.1 times higher, respectively, than it now is "offering." The audacity of such an approach is truly infuriating and to claim it is simply a "good faith offer" to negotiate is arrogance perfected. Verizon's attempts to "negotiate" are really, just simple, brutal assertions of market power to force capitulation of a competitor.

[44] 66 Pa.C.S. §§ 315 (a), 316, 701, 703 (g), and 1309 (a).
[45] *See* Armstrong Motion for Partial Summary Judgment at Exhibit 3.

4. Issuance of A Stay Is Also Contrary To The Public Interest.

There is no conceivable public interest served by the Commission's endorsement of Verizon's action or by implicitly suspending Verizon's lawful obligations. Indeed, Verizon's Petition cites no public interest benefits.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Armstrong Telecommunications Inc. respectfully requests that the Public Utility Commission deny Verizon Pennsylvania, Inc.'s petition for interlocutory review and/or answer the material question in the negative.

Respectfully submitted,

By_____

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DATED: August 28, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of August, 2011, served a true and correct copy of the foregoing Armstrong Telecommunications Inc.'s Brief in Opposition to Interlocutory Review and Verizon's Material Question in the above-captioned proceeding, upon the persons and in the manner via first class and electronic mail as follows:

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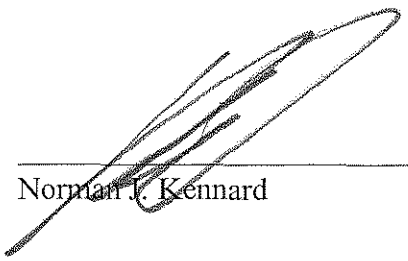

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