

Suzan DeBusk Paiva  
Assistant General Counsel  
Pennsylvania



1717 Arch Street, 3 East  
Philadelphia, PA 19103

Tel: (215) 466-4755  
Fax: (215) 563-2658  
Suzan.D.Paiva@Verizon.com

January 6, 2012

**Via Electronic Filing**

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

**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 the Reply Brief of the Verizon Companies, filed on behalf 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. (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 Federal Express**  
cc: The Honorable Dennis E. Buckley

**Via E-Mail and Federal Express**  
cc: Attached Certificate of Service

**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon's Reply Brief, 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 6<sup>th</sup> day of January, 2012.

**VIA E-MAIL and FEDERAL EXPRESS**

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

David Reams Jamieson, Esquire  
General Counsel  
Armstrong Holdings, Inc.  
One Armstrong Place  
Butler, PA 16001



Suzan D. Paiva  
Pennsylvania Bar ID No. 53853  
1717 Arch Street, 3 East  
Philadelphia, PA 19103  
(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.	:	

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**VERIZON'S REPLY BRIEF**

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Suzan DeBusk Paiva (Atty No.53853)  
Verizon  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
(215) 466-4755

Attorney for Verizon

Date: January 6, 2012

## TABLE OF CONTENTS

INTRODUCTION.....	1
ARGUMENT.....	2
CONCLUSION .....	10

## INTRODUCTION

The parties have settled all claims and counterclaims relating to traffic exchanged through December 31, 2011. All that is left to be considered is compensation for traffic exchanged after that date. Such compensation is governed by the Federal Communications Commission's ("FCC") November 18, 2011 intercarrier compensation and universal service order.<sup>1</sup> Accordingly, the Commission should dismiss this case.

The FCC's order requires traffic that originates or terminates in Internet Protocol ("IP") format (referred to in the order as "VoIP-PSTN traffic"), like the traffic at issue here, to be exchanged at rates equal to interstate switched access rates. Armstrong attempts to get around this straightforward holding by suggesting that the FCC's new VoIP-PSTN intercarrier compensation regime might not apply to its traffic. (Armstrong Initial Br. at 49). Under the terms of the FCC Order, Armstrong is plainly wrong. This theory, developed on the eve of the FCC's adoption of that regime, relies on the implausible notion that *none* of the traffic originated or terminated on Armstrong's cable VoIP affiliate's IP network does so in IP, contradicting Armstrong's earlier, repeated — and correct — admissions in this docket that *all* of the disputed traffic originates or terminates in IP. The FCC's order is clear that Armstrong's standard cable-originated VoIP traffic is subject to the rule that applies to all VoIP-PSTN traffic.

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<sup>1</sup> *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.*, WC Docket No. 10-90, etc., Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011) ("FCC Order"); 47 CFR § 51.913 (effective December 29, 2011).

## ARGUMENT

Armstrong agrees that the FCC Order establishes a prospective compensation regime for VoIP-PSTN traffic and that this regime was effective at least by January 1, 2012. (See Armstrong Initial Br. at 47; FCC Order ¶ 939, n. 1890; Verizon Initial Br. at 8-9). Armstrong also agrees that if the FCC Order applies to Armstrong's traffic, then it resolves the applicable compensation for the traffic disputed between the parties here as of its effective date. (Armstrong Initial Br. at 49). Because the FCC Order clearly governs the matter of compensation for Armstrong's traffic prospectively, there is nothing for the Commission to decide, and Armstrong's complaint should be dismissed.

Armstrong suggests, however, that the FCC Order might not apply to the disputed traffic in this case. According to Armstrong, "[i]t would preliminarily appear" that "the FCC has made no changes to the application of intercarrier compensation as it would apply to Armstrong's cable voice service." (Armstrong Initial Br. at 49). Armstrong posits that its traffic is not "VoIP-PSTN traffic" within the meaning of the FCC's Order because it is not originated and/or terminated in IP format, so it should be treated like ordinary non-VoIP traffic under the FCC's new pricing rules rather than being subject to the special pricing rule for VoIP-PSTN traffic. (*Id.* at 50).<sup>2</sup>

Armstrong is wrong. Its traffic is unquestionably IP-originated and/or IP-terminated, as Armstrong itself readily and repeatedly admitted in discovery in this docket. Armstrong admitted that "all traffic originated by...its cable affiliate in

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<sup>2</sup> The FCC described "VoIP-PSTN" traffic as "traffic exchanged over [Public Switched Telephone Network] PSTN facilities that originates and/or terminates in IP format." (FCC Order ¶ 940). The FCC's regulations state that traffic "exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate access charges specified by this subpart." 47 C.F.R. § 51.913(a).

Pennsylvania is originated in IP”; “all traffic originated by...Armstrong’s cable affiliate and terminated by Verizon in Pennsylvania is originated in IP”; “all traffic originated by Verizon and terminated by...Armstrong’s cable affiliate in Pennsylvania is terminated in IP”; and “[t]raffic originated and/or terminated by Armstrong and its cable affiliate...is all originated and/or terminated in IP protocol” and exchanged between Verizon and Armstrong in TDM protocol.<sup>3</sup> These admissions are consistent with Armstrong’s past FCC filings acknowledging its status as an “Interconnected VoIP” provider, discussed below. And these admissions place the disputed traffic squarely within the FCC’s VoIP-PSTN compensation regime.

In late October, however, just before the FCC adopted its order, Armstrong took all of these admissions back — even though none of the facts about Armstrong’s network or the traffic it exchanged with Verizon had changed.<sup>4</sup> Armstrong now denies that its traffic fits within the VoIP-PSTN rule because, it argues, “[t]he conversion to IP takes place at the MTA [Multimedia Terminal Adapter],” which, according to Armstrong, “is a component of Armstrong’s network, and is not customer premises equipment.” (Armstrong Initial Br. at 49). Armstrong claims that this is relevant because the FCC’s new definition of VoIP-PSTN traffic encompasses an IP-compatible customer premises equipment (“CPE”) component. (*Id.*). And Armstrong now asserts that the only CPE required to use its cable VoIP service are standard telephone handsets, which make and receive calls using analog signals. (Armstrong St. 2 at 17). Yet as discussed below, the FCC points to the very type of architecture used by Armstrong to describe the traffic

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<sup>3</sup> Armstrong Answer to Request for Admission 1-3 (Armstrong St. 1, Exhibit 7).

<sup>4</sup> See Supplemental Responses of Armstrong to the Requests for Admissions of Verizon (Oct. 19, 2011) (Armstrong St. 2.0, Exhibit 10).

covered by the VoIP-PSTN rule. Thus, the FCC Order on its face establishes that Armstrong's new position is baseless.

Armstrong's MTA, which is attached to or located near an Armstrong customer's house, is precisely the type of IP-compatible customer premises equipment included within the new VoIP-PSTN definition. The standard handsets used inside an Armstrong customer's house are irrelevant. Rather, as the FCC explains, "[c]ustomer premises equipment (CPE)" refers to any equipment "typically managed by a broadband provider as the last connection point to the managed network," including a "cable modem" or an "optical networking terminal (ONT)." (FCC Order ¶ 111, Figure 3). As examples of that "Customer premises equipment (CPE) typically managed by a broadband provider," the FCC listed "DSL modem, cable modem, satellite modem, optical networking terminal (ONT), etc." (*Id.*) The FCC distinguishes this CPE from the handset or other device used in the home that is connected to the modem and is defined as a "Consumer Device." (*Id.*) A "Consumer Device," in turn, is defined as one that is "connected to modem through internal wire or Wi-Fi (home networking), including hardware and software used to access the Internet and process content (customer managed)." (*Id.*)

Armstrong's MTA fits squarely within the FCC's description of CPE. It is a device installed at the customer's home that "connects [Armstrong's] broadband network to the telephone wiring inside [the customer's] home." (Verizon St. 1.0 at 24 and Exhibit 4). At the MTA, the customer's voice (an analog signal) is converted to IP packets for outgoing calls, and the IP packets are converted to analog signals for incoming calls. The signals are carried on the network of AUI, Armstrong's cable affiliate, in IP, which is necessary to "communicate with AUI's head-end equipment." (Armstrong St. 2 at 19).

Armstrong admits that AUI's "service configuration" "relies upon" the MTA that it "installs at the customer's premises for purposes of converting traditional analog traffic to IP packetized traffic." (Armstrong St. 2 at 18). In short, the MTA is the IP-compatible CPE "managed by a broadband provider" (in this case AUI) serving as "the last connection point" between AUI's "managed" IP network and the customer, and includes the function of a cable modem and/or ONT.<sup>5</sup>

Armstrong admits that the MTA is a cable modem.<sup>6</sup> Thus, the configuration described by the FCC is typical of all cable companies that provide VoIP service, including Armstrong: the end user customer uses the "Consumer Device," a standard handset that is connected to the CPE, which is a cable modem/MTA or other similar device (such as ONT). Indeed, the FCC expressly lists an ONT as a form of CPE that brings VoIP service within the VoIP-PSTN rule, and the ONT provides the same functions as Armstrong's "MTA": it is a media terminal adapter, it may be installed inside or outside the home, and it enables the customer to use standard telephone

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<sup>5</sup> To the extent Armstrong presumes that CPE can only refer to equipment owned by the customer, that is also wrong. The FCC rejected that limitation in paragraph 111 when it described the CPE in this service context as "typically managed by a broadband provider." The FCC's discussion is fully consistent with the Telecommunications Act definition of CPE, which does not require customer ownership but only "equipment employed on the premises of a person" — a standard that the MTA clearly satisfies. 47 USCS § 153(16). In fact, the term CPE had its origins in equipment that was *always* owned by the carrier. See *In re Procedures for Implementing the Detariffing of Customer Premises Equip. & Enhanced Servs.*, 95 F.C.C.2d 1276, 1279 (FCC 1983) ("For purposes of this proceeding, customer premises equipment includes any equipment provided by a common carrier and located on the premises of a customer"); *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, 20543 (FCC 1996) (ILEC payphones should be classified as CPE but may still be owned by the ILEC).

<sup>6</sup> Armstrong's website informs customers that if they also purchase internet service from AUI they can use the MTA as a replacement for the non-voice capable cable modem. (Verizon St. 1, Exhibit 4 (FAQs – "How does it work?")). The FCC has also explained that a "multimedia terminal adapter" in the context of cable VoIP service is simply a part of the cable modem that is "used to enable voice services over a cable modem." *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶ 235, n. 835 (Rel. March 3, 2006).

headsets. Thus, there is no doubt that Armstrong's MTA is a form of CPE that brings Armstrong's VoIP service within the FCC's rule. (FCC Order ¶ 111, Figure 3).

Armstrong's attempt to remove its traffic from the FCC's VoIP-PSTN compensation regime deserves no serious consideration. The FCC made clear that the calls associated with the kind of cable VoIP traffic and the arrangement Armstrong has here — a standard retail VoIP provider with a LEC partner providing interconnection to the PSTN — are exactly what the FCC's VoIP-PSTN compensation regime is intended to reach.<sup>7</sup> For example, in discussing the scope of its new framework, the FCC observed that "VoIP-PSTN intercarrier compensation typically involves the exchange of traffic between two carriers, one (or both) of which are providing wholesale inputs to a retail VoIP service." (FCC Order ¶ 959 & n. 1970) (citing comments of "cable operators" explaining that "their retail VoIP provider partners with a LEC for the exchange of traffic with other carriers"). The FCC considered the feasibility of the approach it adopted with specific reference to VoIP providers and their LEC partners, citing "broad support for the principle that VoIP providers and their wholesale carrier partners can comply with an intercarrier compensation regime with charges that differ at least to some degree based on where the calls originate and terminate." (FCC Order ¶ 959 n. 1972; *see also* ¶ 948 n. 1914) (discussing the application of the VoIP-PSTN compensation regime to "VoIP providers and their wholesale carrier partners"). The FCC emphasized that providing clarity with respect to VoIP-PSTN intercarrier compensation going forward was urgently necessary to stanch the flow of "disputes and litigation" — like this one — at state

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<sup>7</sup> Armstrong concedes that it utilizes a "wholesale CLEC . . . business model" that is "used by the majority, if not the entire, cable industry," including "all Pennsylvania cable companies." (Armstrong St. 2 at 4-5). The FCC "has endorsed in the past" these arrangements where "retail VoIP providers rely on wholesale carrier partners for, among other things, interconnection, access to numbers, and compliance with 911 obligations." (FCC Order ¶ 970).

commissions and the courts over appropriate compensation for VoIP traffic. (FCC Order ¶ 937). It deliberately crafted a rule comprehensive enough to sweep in “all forms” of such intercarrier compensation disputes, (*id.* ¶ 941), including claims of “asymmetries in payments,” where “some VoIP providers’ wholesale carriers charge full access charges,” but do not pay them. (FCC Order ¶ 938).

In addition, including standard cable VoIP services such as Armstrong’s within the category of VoIP-PSTN traffic is fully consistent with prior FCC orders and common industry practice. The FCC has routinely included cable VoIP service within the definition of “interconnected VoIP,” accepting the fact that this service requires “Internet protocol-compatible customer premises equipment.” (47 C.F.R. § 9.3). And cable VoIP providers, including Armstrong, have just as routinely complied with FCC rules (*e.g.*, 911 requirements and identification of VoIP traffic for federal universal service fund purposes) pertaining to interconnected VoIP providers. Armstrong itself represented that Armstrong Digital Services Inc. (which it testified offers the identical service and is “as one” with its parent AUI, Tr. at 47), is an “Interconnected VoIP” provider on its 2011 Form 499-A submitted to the FCC.<sup>8</sup> In filing that form Armstrong was required to certify that “all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company. . .” FCC 2011 Form 499-A at 8. Armstrong cannot claim status as an “Interconnected VoIP” provider to

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<sup>8</sup> A copy of the FCC’s database entry depicting Armstrong’s Form 499 filing and the blank signature page (page 8) to the FCC’s form is attached as Supplemental Exhibit A to Verizon’s motion pursuant to 52 Pa. Code § 5.571(a) requesting that the Commission reopen the record to consider this and other public documents, which is being filed this date.

avoid traditional telephone regulation but, at the same time, disavow that status now to claim the benefits of regulation (*e.g.*, collection of tariffed intrastate access rates).<sup>9</sup>

Moreover, Armstrong's new theory that its cable VoIP traffic is outside the FCC's VoIP-PSTN compensation regime brands Armstrong as an outlier in the cable telephony industry, and accepting it would lead to a lack of uniformity that would undermine the FCC's rule.<sup>10</sup> All cable VoIP providers use equipment like the MTA to enable their IP networks to communicate through ordinary analog handsets, and Armstrong is no different.<sup>11</sup> But unlike Armstrong, other cable companies agree that their service is VoIP-PSTN traffic under the FCC's rule. For example, Comcast's Pennsylvania tariff revision reflecting implementation of the FCC's VoIP-PSTN compensation regime "affirms that all of its Pennsylvania traffic either originates from or terminates to a VoIP end user and is therefore, VoIP-PSTN."<sup>12</sup> Comcast filed similar tariff language in a number of other states.<sup>13</sup> Time Warner Cable's December 30, 2011 Pennsylvania tariff filing similarly states in its cover letter that "[t]he Company's access traffic is exclusively

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<sup>9</sup> Armstrong also benefits by classifying its retail voice services as unregulated VoIP under state law. (Tr. at 47-50) (conceding that AUI has not requested and does not have a certificate of public convenience authorizing it to offer public utility service; that its voice products are not tariffed; and that it does not report its retail end user revenue to the Commission).

<sup>10</sup> Maintaining uniformity was, in the FCC's view, critical to achieving the pro-consumer goals of intercarrier compensation reform, including elimination of arbitrage opportunities across providers and across jurisdictions. (*See, e.g.*, FCC Order ¶ 740) ("a national, uniform framework best advances our goals"). As the Pennsylvania Supreme Court has explained, the overriding goal of the federal Telecommunications Act was to establish a regulatory scheme that is "governed *uniformly* by standards established by federal law." *MCI Worldcom, Inc. v. PUC*, 577 Pa. 294, 313 (Pa. 2004) (emphasis added).

<sup>11</sup> Armstrong admits that its network configuration is typical of cable VoIP providers. (Armstrong St. 2 at 7).

<sup>12</sup> Comcast Phone of Pennsylvania, LLC Supplement 6 to Tariff Pa. PUC No. 4, Section 3.2.2 and Comcast Business Communications, LLC, Supplement No. 1 to Tariff Pa. PUC No. 8, Section 3.2.2, attached as Supplemental Exhibit B to Verizon's petition to reopen the record.

<sup>13</sup> These states include Alabama, Arizona, Colorado, Ohio, Maryland, New York, South Carolina, Texas and Virginia. (*See* Supplemental Exhibit E to Verizon's petition to reopen).

VoIP-PSTN and this filing is being made to revise access rates to mirror interstate access rates in compliance with the [FCC Order].”<sup>14</sup> Similarly, the tariff revision filed here and around the country by Sprint, a well-known intermediary CLEC for cable-VoIP providers, states that “[a]ll traffic between Sprint Communications Company, L.P., and the end user originates and terminates in VoIP format.”<sup>15</sup> Other cable VoIP providers and their LEC partners have, likewise, revised their tariffs to reflect that the traffic exchanged with others is 100% VoIP-PSTN, and, therefore, all subject to the FCC’s VoIP-PSTN compensation regime.<sup>16</sup> There is no reasonable basis for Armstrong to argue that its own cable VoIP traffic is not “VoIP-PSTN” traffic under the FCC’s order when the traffic of the rest of the cable telephony industry is “VoIP-PSTN” traffic.<sup>17</sup>

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<sup>14</sup> Time Warner Cable Information Services (Pennsylvania), LLC d/b/a Time Warner Cable, Supplement No. 2 to Tariff Pa. PUC No. 2, attached as Supplemental Exhibit C to Verizon’s petition to reopen the record. Similar Time Warner filings from other states are included in Supplemental Exhibit D. *See also* Armstrong St. 2 at 64 (identifying Time Warner as a Pennsylvania wholesale intermediary for cable companies).

<sup>15</sup> Sprint Communications Company, L.P. Supplement No. 8 to Tariff Pa. PUC No. 4, Section 14.1, attached as Supplemental Exhibit D to Verizon’s petition to reopen the record. Sprint filed similar tariff revisions in several other states, including Arizona, California, Colorado, Florida, Georgia, Ohio, Massachusetts, Maryland, New York, South Carolina, Texas, and West Virginia. (*See* Supplemental Exhibit E to Verizon’s petition to reopen). *See* Armstrong St. 2 at 64 (identifying Sprint as a Pennsylvania wholesale intermediary for cable companies).

<sup>16</sup> *See, e.g.*, Cox tariff revisions filed in Georgia, Ohio and Virginia (“All intrastate traffic exchanged between a Cox end user and the customer originates and/or terminates in Internet Protocol (“IP”) format therefore is defined as Relevant VoIP-PSTN Traffic and in accordance with this tariff section and in the absence of an interconnection agreement will be billed at rates equal to Cox’s applicable tariffed interstate switched access rates as provided in Tariff FCC 4.”) Charter Fiberlink revised its Georgia and South Carolina tariffs to reflect its interstate, rather than intrastate, switched access rates. (*See* Supplemental Exhibit E to Verizon’s petition to reopen).

<sup>17</sup> While the FCC order is clear that cable VoIP service is included in the definition of VoIP-PSTN Traffic, the United States Telecom Association (“USTA”) recognized the disruptive effect of Armstrong’s arguments and on December 29, 2011 requested that the FCC’s Wireline Competition Bureau staff state explicitly that the definition of VoIP-PSTN traffic in 47 C.F.R. § 51.913(a) “includes cable VoIP traffic within the new ‘IP-PSTN’ category, regardless of how cable companies distribute traffic within a home or the standard cable VoIP equipment used at the customer location.” (USTA Petition for Clarification and Reconsideration, FCC Docket 10-90 at 34-35) (available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021752209>).

In light of the FCC's Order and regulations, Armstrong's claims for payment of intrastate access charges on the VoIP-PSTN traffic at issue are moot and should be dismissed.<sup>18</sup>

### CONCLUSION

For the foregoing reasons, the issue of compensation for traffic exchanged between Verizon and Armstrong following December 31, 2011 is governed exclusively by the FCC's Order and regulations and Armstrong's complaint should be dismissed.

Respectfully submitted,

  
Suzan D. Paiva (Atty ID No. 53853)  
Verizon  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-466-4755  
Facsimile: 215-563-2658  
E-mail:  
[Suzan.D.Paiva@verizon.com](mailto:Suzan.D.Paiva@verizon.com)

Counsel for Verizon

Dated: January 6, 2012

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<sup>18</sup> If this Commission were to do anything other than dismiss the complaint in recognition that the FCC rule applies, it would run afoul of state law. As Verizon explained in its initial brief, Pennsylvania's VoIP Freedom Act, 73 P.S. § 2251.1, et seq., removes this Commission's jurisdiction over Armstrong's complaint. This Commission has already held that Armstrong is offering an "IP-enabled" or "VoIP" service as defined by the VoIP Freedom Act. *Sandra Brown v. Armstrong Digital Services, Inc., d/b/a Armstrong Telephone*, C-2008-2079810, 2009 Pa. PUC LEXIS 211 (ID of ALJ Corbett, May 12, 2009, adopted as the Commission's final order June 30, 2009). Although the law preserves jurisdiction over "intercarrier compensation" issues for charges of *incumbent* LECs, it does not preserve jurisdiction over the charges of *competitive* LECs like Armstrong. (Verizon Br. at 9-17). Although Armstrong denies that its services are "VoIP" or "IP enabled" notwithstanding the Commission's holding that they are (Verizon Cross Ex. 6; Tr. at 88-89), it advances no argument to support this conclusion. Armstrong cannot even advance the misguided theory it now asserts regarding the FCC order, since the state law definitions of "IP-enabled" and "VoIP" services do not include any reference to IP-compatible customer premises equipment. (See 73 P.S. § 2251.3).