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January 17, 2012

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2<sup>nd</sup> 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 Answer to Verizon's Petition to Reopen the Record. 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: Dennis J. Buckley, Presiding Administrative Law Judge  
Certificate of Service

**Before The  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ARMSTRONG ANSWER TO  
PETITION OF VERIZON TO REOPEN THE RECORD**

Armstrong Telecommunications, Inc. (“Armstrong”) hereby answers the Petition to Reopen the Record (“Petition”) filed by Verizon Pennsylvania Inc., Verizon North LLC (together “Verizon ILECs”) MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. (collectively “Verizon”) with the Pennsylvania Public Utility Commission (“Commission”) on January 6, 2012 and, pursuant to 52 Pa. Code § 5.571(c), submits this Answer.

1. Concurrently with the filing of its Reply Brief at the end of the day on Friday, January 6, 2012, Verizon, the party with the burden of proof in this proceeding,<sup>1</sup> submitted a request to reopen the record to include certain documents which it presumed to extensively discuss in that Reply Brief.

2. Verizon’s Petition should be denied as prejudicial to Armstrong. By seeking to reopen the record at the same time as the filing of Reply Briefs, Verizon has precluded

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<sup>1</sup> Armstrong Main Brief at 12 and Reply Brief at 2.

Armstrong from also addressing the substantive arguments that Verizon seeks to derive from those documents. Armstrong, therefore, addresses both the request to admit as well as the substantive arguments that Verizon raises regarding these documents.

**A. FCC Form 499 Database Report for Armstrong**

3. The Form 499 filed in April 2011 by Armstrong with the Federal Communications Commission (“FCC”), obviously, existed and was available to Verizon, at the time of the November 2011 hearings held in this matter. Presentation now is untimely, since the document could have been presented at hearings. Verizon offers no excuse for its delay. Armstrong had made clear in its rebuttal testimony that it did not believe that traffic to/from its cable subscribers originated or terminated in IP, or used IP-compatible CPE equipment. To the extent Verizon intended to refute those positions, using Armstrong's 499 filings or any other evidence, it was provided every opportunity within the confines of the proceeding to do so and did not.

4. The issues relating to whether AUI provides “interconnected VoIP” service was developed on the record of this case by both parties.<sup>2</sup> Therefore, the material is duplicative.

5. The document is irrelevant to the issue for which relevance is claimed, mainly whether AUI’s service falls under the definition of “VoIP-PSTN traffic.” On the Form 499, ATI simply states that it provides “interconnected VoIP” service as its main service, which definition is different from “VoIP-PSTN” service.<sup>3</sup>

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<sup>2</sup> Armstrong Main Brief at 35-46.

<sup>3</sup> Compare 47 C.F.R. § 9.3 (Interconnected VoIP) and 47 C.F.R. § 51.701(b)(3).

6. Verizon is really seeking only to re-illuminate the argument it previously advanced that, because Armstrong previously described itself as providing Internet protocol originated/terminated services, it is not entitled to correct that position. Armstrong has previously addressed, both in testimony and in its brief,<sup>4</sup> the circumstances surrounding the change of its legal position. Armstrong, on October 19, 2012, amended its prior discovery responses to Verizon as a result of a more specific and careful review of its network and service delivery architecture. Consistent with those revisions, Armstrong filed revised discovery answers prior to the submission of rebuttal testimony and nearly one month prior to the hearing in this case. Simply put, it acknowledged and explained its more refined position in its rebuttal testimony, well before hearings were held, giving Verizon ample opportunity to submit refuting evidence while the record was open.

7. The FCC Form 499 should not be admitted into the record and all argument related to it should be ignored. The document is not timely presented, is duplicative, is repetitive, and is irrelevant.

#### **B. Pennsylvania Cable VoIP Tariff Filings**

8. Verizon seeks to introduce tariffs filed by two other Pennsylvania cable companies claiming “VoIP-PSTN” status in order to argue that Armstrong, therefore, should also do the same and its failure to do so “brands Armstrong as an outlier in the cable telephony industry...”<sup>5</sup>

9. The fact that two cable companies, Comcast (Exhibit B) and Time Warner (Exhibit C), filed tariffs indicating they believe 100% of their originated/terminated traffic is

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<sup>4</sup> NT at 89; Armstrong Reply Brief at 19.

<sup>5</sup> Verizon Reply Brief at 8.

"VoIP-PSTN traffic," does not bear at all on the question of whether *Armstrong's traffic* meets the FCC definition of "VoIP-PSTN traffic." Cable operators have designed their networks in different ways and Verizon's presumption that Armstrong's network is identical to that of Comcast and Time Warner is merely presumed and not demonstrated on the record of this case. Moreover, Sprint (Exhibit D) is not a cable operator<sup>6</sup> at all and its filing is not germane.

10. These tariff filings lack any probative value. Verizon's additional evidence evinces nothing about the network configurations of Comcast or Time Warner, let alone establish that the networks of those carriers are materially similar to Armstrong's network. Nor does the evidence that Verizon seeks to introduce explain the operations of Sprint's cable customers. The tariffs do not speak at all to the physical network architecture used to deliver those companies' services. The tariff language provides no information about (1) the placement of the MTA relative to the demarcation point in the customer's home/business, (2) the extent to which the customer may own/lease the MTA or (3) the extent to which the MTA is part of the carrier's network in the same way it is part of Armstrong's network. These are all critical aspects of the FCC-required analysis.

11. Verizon attempts to overcome this gaping hole in its evidence by distorting record evidence to incorrectly claim that "Armstrong admits that its network configuration is typical of cable VoIP providers."<sup>7</sup> However, this statement is devoid of the detail necessary to evaluate Armstrong's claims regarding its use of "IP-compatible CPE." While "equipment like the MTA" is admittedly common in cable networks, as Armstrong witnesses stated, the

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<sup>6</sup> Part, but certainly not all, of Sprint's business includes operating as a wholesale CLEC for some, unidentified cable companies.

<sup>7</sup> Verizon Reply Brief at 8 (note 11) (citing Armstrong Rebuttal Testimony at 7, noting that "all cable VoIP providers use equipment like the MTA.").

manner in which that equipment is designed and deployed varies widely. While some VoIP customers purchase that equipment (or lease it), and even take it with them when traveling away from home (indicating that the equipment is likely CPE per the FCC's rules),<sup>8</sup> Armstrong's network is built differently. Armstrong customers cannot own and do not lease the MTA, likewise, they cannot access it, let alone take it with them when they might travel away from their home or business.

12. Some cable companies also pass ownership and control of the IP-compatible device to the customer. Other state commissions have expressly found that, on the Comcast and Time Warner networks, the operators whose tariff filing Verizon seeks to introduce, the IP-compatible device is actually owned and physically operated by the customer. For example, the New Hampshire Commission recently found that the cable operations of Comcast and Time Warner are very different than Armstrong's here:

*The cable operator provides telephone-specific hardware to customers subscribing to cable telephone service. This additional hardware, called an "embedded multi-media terminal adapter" or eMTA, includes a standard telephone jack with the same physical and electrical characteristics as a telephone jack from a traditional telephone company such as FairPoint Communications or any one of the RLECs. The customer then plugs in a standard, traditional telephone or a telephone wire that is connected to multiple standard telephones.*<sup>9</sup>

Similarly, in Vermont, Comcast leases the device to the customer, who is responsible for inserting into the customer's inside wire (i.e., again, on the customer side of the demarcation point): "Comcast IP refers to the CPE used in connection with its CDV service as an eMTA (embedded multimedia terminal adaptor). Comcast IP leases eMTAs to customers

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<sup>8</sup> See, *Vonage Decision*.

<sup>9</sup> *Petition for an Investigation into the Regulatory Status of IP Enabled Voice Telecommunications Services*, Order Finding Jurisdiction and Requiring Limited Regulation, N.H. Pub. Utils. Comm'n Docket No. DT 09-044, 291 P.U.R. 4th 377 (2011), slip op. at 6 (record citation omitted, emphasis added).

for a monthly fee. The customer's eMTA is connected to the Comcast network via the customer's inside cable wiring.”<sup>10</sup>

13. All the information necessary to evaluate the Armstrong network under the new FCC definition is already in the record as described in Armstrong's Reply Brief. The unrefuted evidence adduced in the record of *this case* establishes that the MTA is owned and operated by Armstrong and is deployed on the Armstrong (carrier) side of the demarcation point.<sup>11</sup> The fact that the Armstrong web site, in generalized prose targeted at the lay public, states that the MTA connects to the customer's inside wire<sup>12</sup> does not provide the details necessary to evaluate the FCC definitional test. The Armstrong witnesses provided the specifics of the MTA placement on the network, which was not challenged by Verizon. The MTA here is on the carrier side of the demarcation point and “telecommunications equipment.” It is not plugged into inside wire by the customer. It is installed by the company on the network side of the network interface device.<sup>13</sup>

14. The Comcast and Time Warner tariff filings, as well as those of any other cable company, are irrelevant, therefore, to the inquiry into whether *Armstrong's network* is configured in such a way that all of its originating and terminating traffic would be accurately defined as “VoIP-PSTN traffic.” As explained in Armstrong's Reply Brief, a review of the specific network is required in order to evaluate the FCC's technical criteria for VoIP-PSTN Traffic. The FCC specifically did not apply its regulations to any given industry or group of carriers. Instead, it established physical and technical criteria that must be applied on a

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<sup>10</sup> *Investigation into Regulation of Voice Over internet Protocol 9"VoIP") Services*, Vt. Pub. Serv. Bd. Docket No. 7316 (Board Order Re Phase I entered October 28, 2010), slip op. at 11 (Findings 27 and 28). Please see Armstrong “Compendium of Cases Presently Available on Westlaw Only” filed with the Main Brief for a copy of this decision.

<sup>11</sup> Armstrong Reply Brief at 9-10; NT at 80-82.

<sup>12</sup> See Verizon Reply Brief at 4.

<sup>13</sup> See Armstrong Reply Brief at 10; Armstrong Rebuttal at 14, 17, 18, *etc.*; and NT at 80-82.

factual basis to each carrier's network.<sup>14</sup> The FCC had made no statement that it intended to make or, in fact, did make, a sweeping pronouncement that the entire industry, including the cable industry, was expected to fall within the definition of "VoIP-PSTN traffic." Rather, the FCC enacted a definition which requires "IP-origination" (or termination) "requiring IP-compatible customer premise equipment." Armstrong established in this proceeding the necessary facts to make that evaluation as it relates to its network. Verizon failed to refute that information and should not now be allowed to submit tangential information that is not only untimely, but ungrounded.

15. Throughout its history of reviewing IP-based products for purposes of understanding inter-carrier compensation issues, the FCC has recognized that the analysis is often fact-specific to a given carrier's service/network configuration (see, for example, *AT&T IP-in-the-Middle*, *Vonage*, *Pulver.com*, etc.). As it stated in the *AT&T IP-in-the-Middle*:

We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, i.e., an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.<sup>15</sup>

It did the same here. Any broader, more encompassing result is wishful thinking by Verizon.

16. Armstrong's Reply Brief contains an extensive discussion of the FCC's rules involving the designation of "telecommunications equipment" and "customer premise equipment" as bifurcated by the "demarcation point."<sup>16</sup> Verizon fails to address these points in its own Reply Brief and relies, instead, upon the *FRCC ICC/USF Order* where it addresses the broadband network and how it will measure capacity and latency for funding purposes,

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<sup>14</sup> Armstrong Reply Brief at 4 and 15.

<sup>15</sup> *AT&T IP-in-the-Middle* at ¶ 1.

<sup>16</sup> Armstrong Reply Brief at 11-12.

not the telephony network,<sup>17</sup> and, alternatively, recites the FCC's 1983 detariffing order which addressed equipment that was, at that time, owned by the telephone company and in the process of being transferred to the customer's ownership.

17. Simply put, the tariffs put forward by Verizon establish only a single, meaningless fact – that three carriers of a group of unidentified size have chosen, presumably taking their own network/service configurations into account, to tariff traffic to/from their subscribers as "VoIP-PSTN traffic." That choice made by those carriers has no bearing on the validity of Armstrong's position in this case, nor does it provide evidence useful to the Commission in evaluating Armstrong's position. It certainly does not label Armstrong an "outlier" or even wrong in its position.

18. Therefore, Verizon's Petition to Reopen the Record to accept Exhibits B, C and D should be denied as the information is irrelevant, not probative, misleading and not germane to the development of the facts required to apply the FCC's definition of the newly-created term "VoIP-PSTN traffic" to *Armstrong*.

### **C. Other Cable VoIP Tariff Filings**

19. For all of the above-stated reasons, introduction of randomly selected tariff pages from other states involving Comcast, Time Warner and various other cable companies, as well as Sprint which is not a cable company, suffer from all the same legal, factual and

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<sup>17</sup> Verizon Reply Brief repeatedly refers to ¶ 111 of the FCC's Order which is simply designed to identify components of the broadband network in order to devise a workable means of determining speed and latency criteria that are then used to define whether carriers are entitled to withdraw from the revised Universal Service Fund (Connect America Fund). Verizon baldly mischaracterizes what the FCC actually says. It is the modem which the FCC describes as being "Customer premise equipment (CPE) typically managed by a broadband provider as the last connection point to the managed network." Contrary to Verizon's assertion, the FCC is not defining CPE as "any equipment typically managed by a broadband provider as the last connection point to the managed network." It is measuring the dynamics of the broadband connection from that point.

logical infirmities as the Pennsylvania tariff filings addressed in the preceding section. Their admission should be denied also. The argument related to those exhibits should be ignored.

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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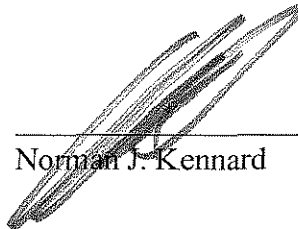
*Attorneys for  
Armstrong Telecommunications Inc.*

DATED: January 17, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 17<sup>th</sup> day of January, 2012, served a true and correct copy of the foregoing upon the person below via first class and electronic mail as follows:

Suzan D. Paiva Esquire  
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Norman J. Kennard