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January 25, 2012

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, 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 Verizon's Reply to Armstrong's Answer to Petition to Reopen the Record, being 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 J. Buckley

Via E-Mail and First Class Mail
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 to Armstrong's Answer to Petition to Reopen the Record, 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 25th day of January, 2012.

VIA E-MAIL and FIRST CLASS U.S. MAIL

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Armstrong Telecommunications, Inc.	:	
	:	Docket Nos. C-2010-2216205
Complainant,	:	C-2010-2216311
	:	C-2010-2216325
v.	:	C-2010-2216293
Verizon Pennsylvania Inc., et al.,	:	
	:	
Respondents.	:	

**VERIZON'S REPLY TO ARMSTRONG'S ANSWER TO
PETITION TO REOPEN THE RECORD¹**

The FCC's issuance of its order and regulations setting intercarrier compensation for VoIP-PSTN traffic marked a "material change[] of fact or of law" that occurred "since the conclusion of the hearing"² and requires the record to be reopened to admit documents responding to Armstrong's position on the applicability of the new FCC rule so that the Commission has a full and fair opportunity to consider relevant facts regarding Armstrong's novel argument among cable companies that its cable voice service is not "VoIP-PSTN" under the FCC's new definition. Verizon's limited petition to reopen the record satisfies the standards of 52 Pa. Code § 5.431(b) and § 5.571 and should be granted.³

A. FCC Form 499 Database Report for Armstrong

Verizon seeks to admit the FCC's database entry showing that Armstrong's April 2011 Form 499 (which self-reports Armstrong's classification for purposes of federal regulation) classified its cable voice service as "Interconnected VoIP." Armstrong opposes admission of this public document, arguing that Verizon should have presented it at the hearing to rebut

¹ As agreed, Verizon replies to Armstrong's answer to its petition to reopen the record in lieu of oral argument.

² 52 Pa. Code § 5.571(b).

³ Armstrong claims it would be prejudiced without a substantive response to Verizon's arguments based on the proffered documents. (Armstrong Answer at 1-2). Verizon does not oppose such an opportunity, but the argument is moot since Armstrong already responded substantively in its answer to the petition.

Armstrong's written testimony. (Armstrong Answer at 2-3). That misses the point.

Armstrong's testimony did not – and obviously could not – argue that its traffic does not fall under the FCC's new definition of "VoIP-PSTN" traffic because the definition was not issued at the time of the testimony.⁴

With the issuance of the FCC's VoIP-PSTN rule, Armstrong's classification of its cable voice service as "interconnected VoIP" takes on new significance. The FCC explained in its order that its definition of VoIP-PSTN includes (and is also more expansive than) its regulatory definition of "interconnected VoIP."⁵ (FCC Order ¶ 941 and n.1892). Thus, there is a new purpose for which Armstrong's self-classification as an "interconnected VoIP" provider is relevant: whether its traffic meets the FCC's new definition of VoIP-PSTN traffic. Accordingly, Verizon requests that Armstrong's admission on this point be accepted into the record to respond to "material changes of fact or of law alleged to have occurred since the conclusion of the hearing" in the form of the FCC order. 52 Pa. Code § 5.571(b).

Armstrong also argues that its previous self-classification as "interconnected VoIP" should be kept out of the record because Armstrong has now "change[d] its legal position." (Armstrong Answer at 3). But this self-serving position change is Armstrong's substantive response to Verizon's argument. Armstrong's admission that its cable voice service was "interconnected VoIP" at a time when Armstrong stood to gain the benefits of lighter regulation and when the matter was not directly tied to intercarrier compensation is significant. It is for the Commission to decide whether Armstrong's alleged, subsequent change of position with respect

⁴ Armstrong's written testimony also did not focus on whether its service was "interconnected VoIP"; it simply argued that Armstrong's traffic was not jurisdictionally interstate for intercarrier compensation purposes because (i) it differs from the "over-the-top" VoIP service offered by Vonage and (ii) there is no net protocol conversion. (Armstrong St. 2 at 17-18; 25-26).

⁵ "Interconnected VoIP" is defined by the FCC regulation at 47 C.F.R. § 9.3 and requires among other things the use of "Internet protocol-compatible customer premises equipment (CPE)." Here, contrary to its filings at the FCC, Armstrong claims it has no IP-compatible CPE.

to its classification for federal purposes nullifies its correct earlier concession that its service satisfies the “interconnected VoIP” definition, which is now incorporated in the VoIP-PSTN definition. Armstrong provides no good reason why the Commission should be kept unaware of its earlier admission when it decides this case.⁶ Accordingly, Verizon’s petition to reopen the record to admit this Form 499 document should be granted. *See also* 52 Pa. Code § 5.406(a)(2) (providing for the admission of this type of public document).

B. Other Cable Company VoIP Tariff Filings

Verizon also requests admission of tariff filings by CLEC intermediaries for cable VoIP providers in Pennsylvania and elsewhere that were created after the close of the record and could not have been presented earlier. These companies, unlike Armstrong, unanimously categorized their traffic as “VoIP-PSTN” in their tariff revisions implementing the FCC’s new compensation regime for VoIP traffic.⁷ These filings are public documents that “may be offered in evidence . . . by specifying the document or part thereof and where it may be found.” 52 Pa. Code § 5.406.

Armstrong’s only challenge is to claim that the numerous tariff filings by other cable VoIP providers classifying their service as “VoIP-PSTN” under the FCC rules have no “probative value” here. (Armstrong Answer at 4). That is wrong, as Verizon offers these documents to support the factual assertion that Armstrong’s disavowal of VoIP-PSTN status marks it as an outlier in the cable telephony industry and that accepting its argument would lead to a lack of uniformity that would undermine the FCC’s rule. (Verizon Reply Br. at 8). This fact

⁶ Armstrong’s contention that Verizon bears the burden of proof is irrelevant since proffered evidence should be admitted regardless of which party has the burden, but it is also incorrect. *See* 66 Pa. C.S. § 332(a); *Palmerton Telephone Co. v. Global NAPs South, Inc., etc.*, Docket C-2009-2093336 (Opinion and Order entered March 16, 2010) at 48 (concluding that Palmerton, the party demanding the payment of switched access charges, was the complainant and therefore as “the proponent of a rule or order has the burden of proof.”).

⁷ Armstrong argues that Sprint is not a “cable operator” and “its filing is not germane” for that reason, (*Id.* at 4), but Armstrong itself identified Sprint as a wholesale intermediary CLEC serving cable companies in Pennsylvania. (Armstrong St. 2 at 64).

is highly probative to the Commission's analysis because 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"). The Commission therefore should be permitted to know that other cable companies take the opposite view of the rule from Armstrong's. Indeed, it is the Commission that should determine the value of these documents, not Armstrong.

Armstrong's contention that its network is materially different from that of Comcast, Time Warner and other cable companies is contrary to the record. According to Armstrong's own testimony, "[t]he products and services offered by AUI are typical of cable companies in the United States." (Armstrong St. 2 at 6). And the record shows that the network configuration is typical as well. Armstrong, like all cable voice providers, uses a multi-media terminal adaptor, or "MTA," to convert the customer's analog voice signal to IP packets and vice versa. (Compare Armstrong St. 2 at 18-19 with Armstrong Answer at 5 (quoting descriptions of Time Warner and Comcast cable voice service)).⁸ The only "difference" Armstrong identifies is its claim that its MTA is on the Armstrong side of some imaginary "demarcation" line and is owned by Armstrong rather than sold or leased to the end user, but this manufactured distinction is

⁸ Armstrong attempts to distinguish its cable voice service from that offered by Comcast and Time Warner by arguing that the New Hampshire and Vermont commissions "found that the cable operations of Comcast and Time Warner are very different than Armstrong's here." (Armstrong Answer at 5). This marks another turnabout in Armstrong's position because Armstrong's main brief argued based on the exact same orders that the Vermont and New Hampshire Commissions "*have very thoroughly reviewed the operations of cable company telephony networks similar to Armstrong's* and concluded that no net protocol conversion occurs in these types of arrangements" because the "cable company's terminal adapters" convert the call to and from IP "to a signal that can be recognized and processed by the callers' telephone sets." (Armstrong Main Br. at 40) (emphasis added). The networks cannot be "similar" when it suits Armstrong but "very different" when it does not. In any event, Armstrong's interpretation overreaches since neither case compared Armstrong's network to Comcast's or Time Warner's and neither decision, each of which pre-dates the FCC's order, addressed whether cable voice service is "VoIP-PSTN" under the FCC's new regulations.

immaterial when it comes to application of this FCC rule.⁹ Neither the FCC's order, its new rules nor the statutory definition of "customer premises equipment" references a "demarcation point" or requires the CPE to be owned or leased by the end user.¹⁰ To the contrary, the only discussion of CPE in the FCC's order makes clear that this term refers to equipment "typically managed by a broadband provider as the last connection point to the managed network," which is exactly what Armstrong's MTA is. (FCC Order ¶ 111, Figure 3).

Again though, while Armstrong may argue that its claims about ownership of the MTA are significant, these are substantive contentions for the Commission to consider; they are not a basis to keep out record evidence that undercuts Armstrong's position. Armstrong has proffered no reason why the Commission should be kept unaware of the fact that other cable voice providers recognize that their service falls under the FCC's VoIP-PSTN definition when it evaluates Armstrong's arguments here, including the impact of those other tariffs on the uniformity of implementation of the FCC's VoIP compensation regime in Pennsylvania. Accordingly, Verizon's petition to reopen the record for the limited purpose of admitting these public documents should be granted.



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Dated: January 25, 2012

Counsel for Verizon

⁹ Armstrong is wrong in contending that the Commission must accept its claim that the MTA is part of Armstrong's network. The Commission will decide the facts based on the entirety of the record. For example, Armstrong's claim is contradicted by the pre-litigation statement on its website telling prospective customers that "Armstrong provides the Multimedia Terminal Adapter at no additional charge," a statement that would not be necessary if the MTA were merely part of Armstrong's network. (VZ St. 1.0, Ex. 4, "FAQs").

¹⁰ See 47 USCS § 153(16) (referring to CPE as "equipment employed on the premises of a person," without reference to which entity owns or operates it).