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*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 response to Verizon's Reply to Armstrong's Answer to the 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, MCImetro Access Transmission	:	C-2010-2216293
Services, LLC, d/b/a Verizon Access	:	
Transmission Services and MCI	:	
Communications Services Inc.	:	
Respondents	:	

**ARMSTRONG’S ANSWER TO  
VERIZON’S REPLY TO ARMSTRONG’S ANSWER TO THE  
PETITION OF VERIZON TO REOPEN THE RECORD**

Armstrong Telecommunications, Inc. (“Armstrong”) files this Answer to the latest pleading of Verizon Pennsylvania Inc., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. (collectively “Verizon”), a document captioned Verizon’s Reply to Armstrong’s Answer to Verizon’s Petition to Reopen the Record, filed on January 25, 2012 with the Pennsylvania Public Utility Commission (“Commission”).

**I. Summary of Answer**

Having sought special permission to file a Reply to Armstrong’s Answer to Verizon’s Petition, Verizon presents nothing new to support the grant of its petition to reopen the evidentiary record. Verizon has used the opportunity merely to reiterate substantive arguments addressed already in its Reply Brief.

The substantive issue remaining in this case after the parties’ settlement is whether Armstrong’s services meet the FCC’s newly enacted definition of “VoIP-PSTN” traffic and the proper rating of its traffic as a prospective matter.

The Form 499 filed by Armstrong on April 1 2011, where it classified itself as “Interconnected VoIP” was a position fully recanted by Armstrong on the record of this case. Verizon is free to point out this change (and goes out of its way to do so), but does not need to employ old documents that pre-date the *FCC November 18<sup>th</sup> ICC/USF Order*<sup>1</sup> (and the hearing held in this case) to confuse the issues. Whether Armstrong revised its position on “Interconnected VoIP” has no legal bearing on whether it meets the new definition of “VoIP-PSTN.” If Armstrong’s service did not require “Internet protocol-compatible customer premises equipment (CPE)” under the “Interconnected VoIP” definition, a matter that was addressed at hearing, then it is not “VoIP-PSTN” traffic either.

Equally prejudicial and misdirected is Verizon’s argument that, because other cable companies have claimed VoIP status under the new definition, Armstrong must do so also. The FCC’s definition is uniform in that it applies to all networks equally. The FCC never stated, however, that it intended or even expected that all networks that employ IP would fall within that definition. Certainly, the FCC never deemed the entire cable industry to be “VoIP,” rather it established a network specific definition that “requires IP-compatible customer premise equipment.”

The basic proposition for which Verizon seeks to present the tariffs, therefore, is facially deficient. The fact that some companies have filed tariffs does not demonstrate “that other cable companies take the opposite view of the rules.” It likely means that their networks are different. The *same* rule is applied to *different* networks with *different* results. Thus, the fact of a tariff

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<sup>1</sup> *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report And Order And Further Notice Of Proposed Rulemaking released November 18, 2011 (“*FCC November 18<sup>th</sup> ICC/USF Order*”).

filing without evidence of those carriers' networks is irrelevant and meaningless for purposes here.

## **II. Verizon's Proffered Documents Should Be Rejected Under The Commission's Regulations**

### **A. Public Documents**

The fact that evidence may be "public documents" under the Commission's regulations<sup>2</sup> does not render them automatically admissible. The regulation cited by Verizon addresses only the manner of producing public documents as proposed evidence. It is not a blanket admission of any public document into evidence. The threshold for admission of evidence remains first and foremost that the offering party must demonstrate that the proposed evidence is relevant and material, has probative value that outweighs any danger of unfair prejudice<sup>3</sup> and is timely offered upon presentation of a sponsoring witness and the opportunity for cross-examination.<sup>4</sup>

The Commission's rules of evidence exist for a reason. There must be an organized and timely process for the presentation of relevant and material evidence. Evidence may be excluded if it is cumulative or the probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or consideration of undue delay or waste of time. Verizon's proffered exhibits are all of the latter and none of the former. While exceptions exist for good cause shown, Verizon's efforts fail that test.

The FCC Form 499 was relevant to issues that existed before the *FCC November 18<sup>th</sup> ICC/USF Order* and its inclusion now is merely an attempt to correct that prior oversight. As to the extraneous tariffs containing other carriers' self-declarations, these are not only irrelevant to the specific issues, parties, and case at hand, but are also highly prejudicial in their ability to

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<sup>2</sup> 52 Pa. Code § 5.406.

<sup>3</sup> 52 Pa. Code § 5.401.

<sup>4</sup> 52 Pa. Code § 5.402.

unfairly color Armstrong's specific network evidence with a broad, and wholly irrelevant, brush. The fact that they are public documents is an insufficient basis to overcome these evidentiary infirmities.

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

Verizon claims that, with issuance of the FCC's VoIP-PSTN rule, Armstrong's previous classification of its service "Interconnected VoIP" takes on "new significance" and there is a "new purpose" under the "VoIP-PSTN" rule to which this form is newly relevant.<sup>5</sup> This is untrue. The fact that Verizon seeks to support through this document has not changed from the time of hearing. The matter of Armstrong's change of position was thoroughly addressed by Armstrong and explored by Verizon in discovery, testimony, and briefs.<sup>6</sup> Thus, the only purpose of the Form 499 is to continue to insist that Armstrong's change of position is impermissible and its prior position irrevocable.

The FCC did not wholly invent a new definition. It modified the existing definition of "Interconnected VoIP," which is a four part test requiring both "a broadband connection from the user's location" *and* "Internet protocol-compatible customer premises equipment (CPE)."<sup>7</sup> As Armstrong explained on the record, it is neither.<sup>8</sup>

The new "VoIP-PSTN" rule deleted the requirement of a broadband connection, but not that of "Internet protocol-compatible customer premises equipment." The FCC described the term CPE when it promulgated the definition of "interconnected VoIP":

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<sup>5</sup> Verizon Reply at 2.

<sup>6</sup> Armstrong Answer at 2-3.

<sup>7</sup> 47 CFR § 9.3 ("Interconnected VoIP service. An interconnected Voice over Internet protocol (VoIP) service is a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.").

<sup>8</sup> Armstrong Rebuttal Testimony at 17-19.

The term “IP-compatible CPE” refers to *end-user equipment that processes, receives, or transmits IP packets. Users may in some cases attach conventional analog telephones to certain IP-compatible CPE* in order to use an interconnected VoIP service. For example, IP-compatible CPE includes, but is not limited to, (1) terminal adapters, which contain an IP digital signal processing unit that performs digital-to-audio and audio-to-digital conversion and have a standard telephone jack connection for connecting to a conventional analog telephone; (2) a native IP telephone; or (3) a personal computer with a microphone and speakers, and software to perform the conversion (softphone).<sup>9</sup>

As Armstrong’s witnesses explained, there are no terminal adapters that “have a standard telephone jack connection” or non-analogue phones or personal computers used in Armstrong’s network design. They explained that the IP-conversion device is not plugged into the wall (“a standard jack connection”) and the customer interface does not use computers. The user does not do anything with the “IP-compatible” device, since it is part of the Armstrong network.

While there may be a new legal definition, there is no “new purpose” for the April 2011 Form 499. Where Armstrong pointed out on the record that it did not meet the CPE test of “Interconnected VoIP,” it refuted the applicability of “VoIP-PSTN.” Verizon’s position was then as it is now – to undermine Armstrong’s own network evidence and label Armstrong as an opportunist. The FCC Form 499 should have and could have been offered at hearing. The addition of the Form 499 now is merely cumulative, and meant to simply bolster an *ad hominem* attack. The dated form serves no new purpose and should be rejected.

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

Similarly, Verizon presents no new argument why the Commission should consider the proposed tariff filings of other cable companies either within or outside Pennsylvania. These filings prove nothing about Armstrong’s network. In fact, the proposed tariffs prove nothing about the other carriers’ networks, either. They are mere self-declarations that provide no

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<sup>9</sup> *In the Matter of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 04-36 and WC Docket No. 05-196, First Report and Order released June 3, 2005 (“*VoIP 911 Order*”) at footnote 77 (emphasis added). The final regulations are set forth at Appendix B.

information at all about the filing companies' underlying networks. They certainly do not support any factual finding or legal conclusion about Armstrong's network.

Verizon had ample opportunity to contrast Armstrong's and other cable voice carriers' network similarities and differences in testimony, but did not do so. It is ironic that Verizon, after the record is closed in this case, now wants to include additional information about how the IP networks of various cable companies operate, when, during the evidentiary phase of this case, Verizon could not describe the workings of its own IP network (i.e., FiOS Digital Voice).<sup>10</sup>

Converting the carrier-specific definition of "VoIP-PSTN" into a case of "majority rules," only serves to confuse the issues. Tariffs are not evidence of network functionality. Armstrong's traffic must be judged based upon Armstrong's network, not another carrier's tariff filings. This argument to the contrary mistakes untested and unexplained declarations for network facts in a way that is unfair and prejudicial to Armstrong.<sup>11</sup>

Verizon's pleadings illustrate the confusion easily created by an approach that relies on imprecise references, out of context quotations, and unsupported conclusions, an approach further enabled if the proposed tariffs are admitted. Verizon accuses Armstrong of seeking to have it both ways – claiming the networks are "similar" when it suits Armstrong but 'very different' when it does not."<sup>12</sup> This is a gross misstatement.

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<sup>10</sup> NT at 140-141 (particularly as to the placement of the IP device).

<sup>11</sup> Indeed, as Armstrong demonstrated in brief, notwithstanding a carrier's own self-declarations, when challenged and subject to the rigors of evidentiary proof, regulators in other jurisdictions can and have disagreed with these self-declarations. For example, New Hampshire expressly found that Comcast's and Time Warner's "cable voice" was telecommunications traffic subject to state regulation and not federally preempted. Armstrong Answer at 4-6. As was evident in those rulings, due process entitles a carrier to prove the functions of its own network and allows the regulator to draw its own conclusions. See *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 50 ("Time Warner adds that Digital Phone Service requires a broadband connection and specialized IP-compatible customer premise equipment[.]").

<sup>12</sup> Verizon Reply at 4, note 8.

In addressing the cable networks described in New Hampshire and other jurisdictions, Armstrong was refuting very specific Verizon claims that net protocol conversions occurred on Armstrong's network. Where the northern New England commissions agreed that there were no net protocol conversions, because the traffic originated on an analogue phone, Armstrong found the similarities and noted them. However, where those jurisdictions described a different CLEC arrangement where the device is given or leased to the customer and installed by the customer, these are obvious differences, which were also noted.

Equally imprecise is the reasoning that, because the Armstrong witnesses acknowledged that its retail offerings are similar to other cable companies ("typical of cable companies;" specifically voice, broadband and TV programming<sup>13</sup>), then the networks cannot be "materially different."<sup>14</sup> The testimony was simply a description of the so-called "triple play" of services, which all carriers strive to provide. ILECs, including Verizon, offer the same triple play bundles (a quadruple play with Verizon Wireless included) and are not cable companies at all. Evidence of services offered is not evidence of network architecture deployed to provide those services, but Verizon confuses the two. Disparagement on grounds that "you are either all alike or not alike at all" is simplistic and not at all helpful in applying the FCC test of IP-compatible CPE.

Armstrong has taken the clear and consistent position in this case that the protocol converter (the "terminal adapter") is not CPE:

... AUI's customers do not need any special CPE equipment to use the service. They connect to AUI's service using their traditional telephone equipment via the copper-based inside wire in their homes/businesses including standard telephone jacks (RJ11) you find in any residence/business. While a Vonage customer must first have an Internet connection at his/her premises before they can use

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<sup>13</sup> Armstrong Rebuttal Testimony at 6.

<sup>14</sup> Verizon Reply at 4.

DigitalVoice, AUI's end-users do not. Indeed, AUI serves a number of customers who take only its telephone service, but not its Internet service.

\* \* \* \*

... [The] Terminal Adapter is part of the AUI network, it is not provided or managed by the customer and is not premise equipment owned by the customer (i.e., is not CPE). The Terminal Adapter allows AUI to convert its network IP signal to a traditional analog signal (and *vice versa*) specifically so the subscriber can use existing inside wire (rather than a broadband connection) to obtain telephone service -- exactly as the customer would get from Verizon or any other LEC. Note also, that while the Terminal Adapter converts analog signals into IP to allow it to communicate with AUI's head-end equipment, unlike the Vonage service, that communication does not rely upon the Internet. Instead, it relies upon a private hybrid fiber-coaxial network owned and managed by AUI.<sup>15</sup>

The contrary claim, that the specifics of the network are not relevant and the matter should be decided on the basis of what others in the industry have determined is appropriate for themselves, is a denial of the rule and substitution of a "majority rules" principal. Where Verizon claims that "[t]he only "difference" Armstrong identifies" is the specifics of its own network, which is "manufactured distinction" that is "immaterial when it comes to application of this FCC rule," Verizon renounces the rule itself.<sup>16</sup>

The rule *does*, in fact, require such specific inquiry and Verizon has not adduced any evidence regarding what the customers of other carriers "require." Without such, those carriers' tariff filings are wholly irrelevant. The more Verizon is allowed to enlarge the record and re-plead its case, the more it confuses the issues. The use of other carriers' extraneous tariff filings simply perpetuates this confusion. No more should be allowed.

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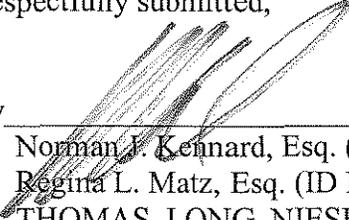
<sup>15</sup> Armstrong Rebuttal Testimony at 17-19.

<sup>16</sup> VZ Reply at 4-5. ("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 immaterial when it comes to application of this FCC rule."). On the stand, its own witnesses acknowledged the importance of the demarcation rules in the analysis. NT at 149.

WHEREFORE, for the foregoing reasons, Armstrong respectfully requests that Your Honor deny Verizon's Petition to Reopen the Record as the exhibits sought to be entered are untimely, highly prejudicial and confusing, and irrelevant to Armstrong's network, the network at issue in this case.

Respectfully submitted,

By



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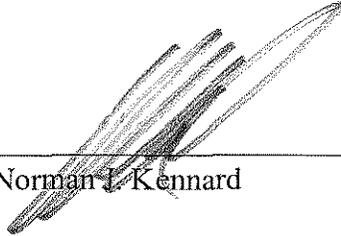
*Attorneys for  
Armstrong Telecommunications Inc.*

DATED: February 1, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 1<sup>st</sup> day of February, 2012, served a true and correct copy of the foregoing upon the person below via electronic and first class mail as follows:

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