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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, 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 please find Verizon's Petition to Reopen the Record, being filed on behalf of Verizon Pennsylvania LLC (formerly 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") in the above captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,


Suzan D. Paiva

SDP/slb

Via E-Mail and Federal Express
cc: The Honorable Dennis J. Buckley
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon's 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 7th day of January, 2015.

VIA E-MAIL and FEDERAL EXPRESS

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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.	:	

PETITION TO REOPEN THE RECORD

Pursuant to 52 Pa. Code § 5.571 and 5.431, Verizon Pennsylvania LLC., Verizon North LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services Inc. (together, “Verizon”) respectfully request that the record be reopened to accept additional evidence.

Armstrong Telecommunications, Inc. (“Armstrong”) opposes any reopening of the record, contending that the Commission should be required to decide this case based on a stale record developed in 2011 – a record that closed before the Federal Communications Commission (“FCC”) issued the very order and rules that the Commission will be required to interpret here and before Armstrong provided any of the services for which it now seeks to collect. Good cause exists for a limited reopening to accept into evidence supplemental testimony and documents that reflect relevant developments that have occurred in the ensuing years, so that the Commission may decide this important matter of federal law based on a fresh and current record.

In support of this petition, Verizon avers as follows:

A. Background

1. On November 9 and 10, 2011, evidentiary hearings were held in this matter. The record was closed at the end of the day on November 10, 2011. (Tr. at 278). The matter in dispute was intercarrier compensation for traffic terminated to Armstrong from Verizon, based on its nature as Internet Protocol (“IP”) traffic.

2. Shortly after the record closed, on November 18, 2011, the FCC entered an order and issued regulations comprehensively addressing the applicable intercarrier compensation framework for many different types of interstate and intrastate traffic, including IP traffic, and bringing the pricing for different types of traffic under the federal rules.¹ Because it was issued after the close of the record, this order and its impact on the case were not addressed in the testimony or at hearing in late 2011.

3. Following the filing of their Initial Briefs, the parties settled all claims and counterclaims relating to traffic exchanged through December 31, 2011. They did not resolve the issue of compensation for traffic exchanged going forward, although they agreed that compensation for the disputed traffic exchanged on or after January 1, 2012 would be governed by the FCC’s November 18, 2011 order and rules.

4. The FCC order and rules require traffic that originates or terminates in IP format (referred to in the order as “VoIP-PSTN traffic”), to be exchanged at rates equal to interstate switched access rates, effective immediately, while intrastate traffic that was not VoIP-PSTN could be terminated at higher intrastate rates for a defined period of time. The parties disagree as to whether Armstrong’s traffic is “VoIP-PSTN” traffic under the

¹ *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”) ¶ 933.

FCC's rules (and thus subject to interstate rates). The respective positions were argued in Reply Briefs filed January 6, 2012. Verizon contends that Armstrong's traffic is "VoIP-PSTN" and subject to interstate rates under the FCC's new rules, and stated its intention to pay those rates, rendering Armstrong's claims moot.²

5. Concurrent with its January 2012 Reply Brief, Verizon also moved to reopen the record to admit certain public documents relating to the application of the FCC's order because the record had closed before that order was issued. By order dated July 16, 2014,³ the presiding officer denied Verizon's petition to reopen the record, without prejudice to allowing a renewed petition following a prehearing conference.

6. The presiding officer afforded the parties an opportunity to agree on the matter of reopening the record, but Armstrong did not agree. The parties, however, agreed on the procedure to be followed if the presiding officer granted Verizon's petition to reopen the record. That procedure includes supplemental testimony and briefing and is memorialized in a December 17, 2014 order of the presiding officer.

B. Legal Standard

7. Under the Commission's rules, "[a]fter the record is closed, additional matter may not be . . . accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. Code § 5.431(b).

Pursuant to 52 Pa. Code § 5.571(a), "[a]t any time after the record is closed but before a

² For terminating switched access services for traffic classified as intrastate for the period from January 1, 2012 through June 30, 2013, there was a difference between the rate applicable to VoIP-PSTN traffic and ordinary toll traffic, but effective July 1, 2013, the FCC rules required Armstrong's intrastate switched access rates to be reduced to parity with its interstate switched access rates. Therefore, the period of disagreement is limited to January 1, 2012 through June 30, 2013 and there is no disagreement over the applicable rate for current traffic.

³ Due to a typographical error the order is dated July 16, 2013, but the case docket shows it was issued on that date in 2014.

final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.” Such a petition may be based on “material changes of fact or of law alleged to have occurred since the conclusion of the hearing.” 52 Pa. Code § 5.571(b).

8. The services for which Armstrong now seeks to collect additional compensation were rendered after the existing record closed in 2011 (the dispute involves traffic exchanged on or after January 1, 2012). The nature of the traffic exchanged between the two parties during those three years, the nature of the services rendered by Armstrong, and Armstrong’s billings during those three years, among other things, are relevant to the Commission’s decision in this matter, but are not now in evidence. And the FCC order that now determines the compensation for that traffic was also issued after the close of the record. Literally all of the facts at issue in this matter occurred “since the conclusion of the hearing.” These constitute “material changes of fact” that requires the taking of additional evidence.

9. The FCC’s issuance of its order and regulations setting intercarrier compensation for VoIP-PSTN and other types of traffic marked a “material change[] of fact or of law” that occurred “since the conclusion of the hearing”⁴ and requires the record to be reopened 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.

⁴ 52 Pa. Code § 5.571(b).

10. Given the passage of time since the record closed at the end of 2011, it is important to refresh the record so that the Commission has the opportunity to be aware of the most current relevant facts when it decides the case.

11. 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. Under the procedure agreed to by the parties, Armstrong will have ample opportunity to respond to the new evidence and even to cross-examine if it wishes to do so, ensuring that there is no prejudice to Armstrong.

12. For the reasons specified below, good cause exists to admit the additional information and documents described below into the record and they are needed to respond to material changes of fact or of law that have occurred since the close of the record.

C. Good Cause Exists to Reopen the Record

i. Information relating to Armstrong's characterization of its cable telephony as unregulated VoIP service

13. The record should be reopened because it is relevant for the Commission to know how Armstrong and its affiliates have characterized their cable telephony service from a regulatory standpoint in the several years since the FCC's order was issued. Whether Armstrong's traffic is "VoIP-PSTN" for purposes of intercarrier compensation turns on whether Armstrong's cable affiliate originates and/or terminates its traffic in IP format. 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; *see also* 47 C.F.R. § 51.913(a). Armstrong contends in this case that its traffic does not meet this definition.

14. Early in this case, Armstrong admitted that its cable affiliate's traffic was originated and terminated in IP, but it later purported to take back that admission and has since argued that the traffic is not VoIP. (Verizon Reply Br. at 3). Armstrong's witnesses denied at the hearing that its cable affiliate's services are "VoIP" or "IP enabled" services under Pennsylvania's VoIP Freedom Act, which is the legal basis upon which that company's services have been treated as deregulated and exempt from the need for filing tariffs or obtaining a certificate of public convenience from the Commission. (Verizon Cross Ex. 6; Tr. at 88-89).

15. It is relevant for the Commission to know that Armstrong and its cable affiliate have continued, even after the issuance of the FCC's order and the filing of Reply Briefs, to claim status as an unregulated cable VoIP provider to avoid traditional telephone regulation, even as they disavow that status here to claim that their traffic is not "VoIP-PSTN" and that they are entitled to the benefits of traditional regulation (*e.g.*, collection of higher intrastate access rates).

16. If the record is reopened, Verizon will show that Armstrong's cable affiliates, Armstrong Utilities, Inc. and Armstrong Digital Services, Inc., have not applied for a certificate of public convenience or filed tariffs with this Commission since the issuance of the FCC's order and the filing of Reply Briefs in early 2012 in which Armstrong contended that the traffic of its cable affiliate is not originated or terminated in IP. Verizon will also show that Armstrong filed a verified pleading with this Commission only weeks after it filed its Reply Brief in this matter. This pleading characterized Armstrong's cable affiliate Armstrong Utilities, Inc. as "not a jurisdictional

public utility.”⁵ But if this company’s telephone service is not VoIP or IP enabled service, as claimed in this case, it would be subject to Commission jurisdiction. The Commission must be made aware, through a re-opening of the record, that Armstrong is claiming unregulated status in other proceedings.

17. It is also relevant for the Commission to know that before the entry of the FCC’s November 2011 order, Armstrong classified Armstrong Digital Services, Inc. (which Armstrong’s witnesses testified offers the identical service and is “as one” with its parent Armstrong Utilities Inc., Tr. at 47) as an “Interconnected VoIP” provider in its Form 499 reporting to the FCC.⁶ Armstrong argues that its traffic is not VoIP-PSTN traffic under the FCC order because the equipment used by its cable affiliate at the customer’s home is not “Internet protocol-compatible customer premises equipment.” (Armstrong Reply Br. at 6). But Armstrong’s Form 499 document – filed before the FCC issued its order and Armstrong stood to gain by charging higher rates if it disavowed its VoIP status – shows that Armstrong at that time classified its service as “Interconnected VoIP.”

ii. Information relating to other cable telephony providers treatment of traffic as VoIP-PSTN

18. It is relevant for the Commission to know that since the FCC’s order was issued the CLEC intermediaries for other cable VoIP providers in Pennsylvania have unanimously categorized their traffic as “VoIP-PSTN” in their tariff revisions

⁵ *Application of Armstrong Telecommunications, Inc. for Authority to Operate as an Inter-Exchange Reseller, Competitive Access Provider and a Facilities-Based and Reseller of Competitive Local Exchange carrier Services in the Territory of Frontier Commonwealth*, filed January 30, 2012 at Docket No. A-2012-2287271.

⁶ If the record is reopened Verizon would submit with its testimony a copy of an FCC’s database entry depicting the Form 499 filing for April 1, 2011 for Armstrong Digital Services, Inc., and a blank copy of the signature page of the FCC’s Form 499. This document was attached to Verizon’s original January 6, 2012 petition to reopen the record.

implementing the FCC's new compensation regime for VoIP traffic. 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.

19. Verizon will offer these documents into evidence to support its 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 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.

20. The Commission should determine the value of these documents. Verizon sought to admit some of these tariff documents with its Reply Brief, but its request was denied (without prejudice). The Commission should not 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. Armstrong will not be prejudiced because it will have the opportunity to make whatever arguments it has to distinguish its service from Comcast, Time Warner and Sprint.

21. If the record is reopened, Verizon will submit the following public documents showing the recognition by other Pennsylvania cable telephony providers that their traffic is VoIP-PSTN under the FCC order:

- March 2, 2012 Secretarial Letter at Docket No. R-2011-2280510 and Comcast Phone of Pennsylvania, LLC Supplement 6 to Tariff Pa. PUC No. 4, Section 3.2.2, filed on December 28, 2011.
- March 2, 2012 Secretarial Letter at Docket No. R-2011-2280528 and Comcast Business Communications, LLC, Supplement No. 1 to Tariff Pa. PUC No. 8, Section 3.2.2, filed on December 28, 2011.
- March 5, 2012 Secretarial Letter at Docket No. R-2011-2281778 and Time Warner Cable Information Services (Pennsylvania), LLC d/b/a Time Warner Cable, Supplement No. 2 to Tariff Pa. PUC No. 2 filed on December 30, 2011 and Time Warner Cable June 1, 2012 letter.
- March 2, 2012 Secretarial Letter at Docket No. R-2011-2280629 and Sprint Communications Company, L.P. Supplement No. 8 to Tariff Pa. PUC No. 4, Section 14.1, filed on December 23, 2011.

iii. Information relating to services rendered, billings and payments during the disputed period

22. It is relevant for the Commission to know what services were rendered by Armstrong, and what has been billed and paid in the years since the record closed. If permitted to submit additional testimony, Verizon will show that for the disputed traffic Armstrong has billed Verizon for terminating switched access services at its interstate switched access rates, and *Verizon has paid the full amount billed*. For the disputed time period (January 1, 2012 through June 30, 2013), Armstrong billed Verizon approximately \$1.5 million and Verizon paid that amount, and it has continued to pay Armstrong's bills.

23. If the record is not opened to admit this information, the Commission will be required to decide this dispute over payment due for a past period without knowing

what was billed and paid, or what amount is in dispute, which is not reasonable since that information is easily available.

WHEREFORE, for the foregoing reasons Verizon respectfully requests that the record be reopened for the limited purpose of admitting the information and documents described above. This reopening should be accomplished under the procedure agreed to by the parties and memorialized in the presiding officer's December 17, 2014 order, which will provide Armstrong with ample opportunity to respond to the new evidence.

Respectfully submitted,



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