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February 1, 2018

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 LLC, 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 Supplemental Brief, filed on behalf of Verizon Pennsylvania LLC, 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/sau

Suzan D. Paiva

SDP/sau
Enclosure

Via Email 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 Supplemental 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 1st day of February, 2018.

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.	:	

VERIZON'S SUPPLEMENTAL BRIEF

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Date: February 1, 2018

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INTRODUCTION

Six years ago the parties settled the vast majority of this case, leaving unresolved only one issue – what switched access rates applied under Federal Communications Commission's ("FCC") regulations for traffic Verizon terminated to Armstrong between January 1, 2012 and July 1, 2013. During this period, Verizon paid the rate required by the FCC's rules for "VoIP-PSTN" traffic, which was the correct rate. Not only is Armstrong's claim for more money (by arguing that this traffic was not VoIP-PSTN) wrong on the merits, but this is a federal question the Commission cannot and should not address. The FCC preempted state regulation of *all* switched access rates in 2011, so that these rates are no longer set by or under the jurisdiction of this Commission.[1] And in any event, as Verizon has argued from the beginning, Pennsylvania's VoIP Freedom Act removed Commission authority over Armstrong's intercarrier compensation claims. 73 P.S. § 2251.4.

If the Commission reaches the merits – which it should not do -- then the answer is easy because the FCC has already held that a cable modem is "Internet protocol-compatible customer premises equipment" within the meaning of its rule, and the piece of equipment at issue here is a cable modem, no matter what Armstrong chooses to call it. Under 47 C.F.R. §51.913(a), if the voice service Armstrong provides to its retail customers "originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment" then the traffic was "VoIP-PSTN." This case turns on Armstrong's opportunistic claim that its service does

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[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) ("*ICC Transformation Order*") ¶ 764.

not require "Internet protocol-compatible customer premises equipment" because the modem it places at the customer's premises is not "customer premises equipment." But the detailed discussion of what it meant by "customer premises equipment" in the FCC's *ICC Transformation Order*, the straightforward definition of "customer premises equipment" in the federal Telecommunications Act (47 USCS § 153(16)), as well as standard industry usage, all show that Armstrong is wrong. Because Armstrong's service "requires Internet protocol-compatible customer premises equipment" the traffic is VoIP-PSTN.

Verizon has paid Armstrong $1.5 million for terminating this traffic under the VoIP-PSTN rates, which is consistent with how Verizon paid all other cable telephony providers in Pennsylvania during that eighteen month period. Armstrong claims that it is owed almost $1 million more, because it claims entitlement to charge the higher rates that would be due for non-VoIP traffic. Armstrong cannot have it both ways. It benefits from treating its service as VoIP for retail purposes, avoiding Commission regulation and other regulatory burdens. It therefore is not entitled to charge higher access rates as if it were a regulated telephone company. Nationwide, other cable telephony providers uniformly classify their traffic as VoIP-PSTN; Pennsylvania cable companies such as Comcast and Time Warner have said so in official filings with this Commission. There is no reason Armstrong should be treated differently.

ARGUMENT

A. This issue of federal law should not be before the Commission.

As a threshold matter, the Commission does not have jurisdiction over the lone issue remaining in Armstrong's complaint. Not only did the FCC preempt the states and assume jurisdiction over all intercarrier compensation in its 2011 *ICC Transformation Order*, but even if it had not done so this Commission lacks authority over intercarrier compensation paid to Armstrong due to Pennsylvania's VoIP Freedom Act.

1. The FCC preempted state authority over intercarrier compensation.

Regardless of whether the traffic is VoIP-PSTN or not, compensation for terminating this traffic is subject to the FCC's jurisdiction. The FCC in its 2011 *ICC Transformation Order* assumed jurisdiction over switched access rates for *all* traffic, preempting state regulation. This decision was affirmed in 2014 by the United States Court of Appeals for the Tenth Circuit, which found that "in deciding to preempt regimes for state access charges, the FCC did not act arbitrarily or capriciously" but rather acted reasonably and within its statutory authority.[2] The Tenth Circuit recognized that the FCC was "exercising authority over all traffic exchanged with a local exchange carrier, including intrastate calls."[3]

The FCC "explicitly supersede[d] the traditional access charge regime," and placed "all traffic within the section 251(b)(5) regime at this time," underscoring the importance of treating these matters uniformly under federal law and "eliminating the thicket of disparate intercarrier compensation rates and payments that are ultimately

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[2] *Direct Communs. Cedar Valley, LLC v. FCC*, 753 F.3d 1015, 1121 (10th Cir. 2014) (specifically recognizing that the FCC had preempted Pennsylvania law regarding intrastate access charges).

[3] *Id.* at 1113.

borne by consumers."[4] Having carriers seek piecemeal state interpretations of the FCC's intercarrier compensation rules, as Armstrong does here, would undercut the FCC's policy of "a more unified approach" to intercarrier compensation.[5] The Pennsylvania Supreme Court has also recognized the importance of having federal authorities interpret federal law uniformly for the telecommunications industry.[6]

Not only would it step outside its jurisdiction, but the Commission would waste its own and party resources if it were to attempt to interpret this FCC rule. The federal courts would review both the question of jurisdiction and the merits of any Commission decision *de novo,*[7] and if they even reached the merits would defer to the FCC interpretation of its own rules.[8] Under the circumstances, it is not the best use of this Commission's or the parties' resources to incur the expense and burden of litigating and deciding this federal law issue.

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4 *ICC Transformation Order* ¶ 764.

5 *Id.*

6 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).

7 "We review a state utility commission's . . . interpretation of the 1996 Act and its associated regulations de novo." *Qwest Corp. v. Colo. Pub. Utils. Comm'n*, 656 F.3d 1093, 1098 (10th Cir. 2011); *see also MCI Telecomm. Corp. v. Bell Atl. Pa.*, 271 F.3d 491, 517 (3d Cir. 2001) (declining to defer to a state utility commission's interpretation of federal law).

8 *See Auer v. Robbins*, 519 U.S. 452, 461-462, 117 S. Ct. 905, 137 L. Ed. 2d 79(1997) (federal courts must defer to an agency's interpretation of its regulations, even in a legal brief, unless the interpretation is "plainly erroneous or inconsistent with the regulation or there is any other reason to suspect that he interpretation does not reflect the agency's fair and considered judgment on the matter in question.") The last time the Commission's interpretation of an FCC regulation involving Verizon was reviewed in federal court, the Third Circuit reversed this Commission because it deferred to the FCC's opposite interpretation in its *amicus* brief after the Commission spent considerable time and resources defending its decision in the federal courts. *Verizon Pa., Inc. v. Pa. PUC*, 484 Fed. Appx. 735, 735-736, 2012 U.S. App. LEXIS 11292, *1-2, 2012 WL 1995025 (3rd Cir. 2012) ("[d]eferring to the interpretation of that provision offered by the FCC as amicus curiae, we hold that the District Court properly granted summary judgment in favor of Verizon. Accordingly, we will affirm.")

2. The VoIP Freedom Act removes Commission jurisdiction.

In addition to the FCC's preemption of state law, Pennsylvania's VoIP Freedom Act removes jurisdiction for this Commission to regulate "the rates, terms and conditions of VoIP service or IP-enabled service," including intercarrier compensation rates. 73 P.S. § 2251.4.[9] The VoIP Freedom Act applies here because this Commission has already held that Armstrong's voice service is subject to the state statute since it is an "IP-enabled" or "VoIP" service, which is exactly how Armstrong treats its service for purposes of this Commission's regulation, as unregulated VoIP.[10] While the VoIP Freedom Act preserves limited Commission jurisdiction over "[s]witched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company," Armstrong is not a "local exchange telecommunications company" under applicable law. 73 P.S. § 2251.6(1)(iv). Because "local exchange telecommunications company" is not defined in the VoIP Freedom Act, the Commission must look to "other statutes upon the same or similar subjects."[11] The best source of a definition for the exact same term is Chapter 30 of the Public Utility Code, under which the defined term "local exchange telecommunications company" only

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[9] This threshold jurisdictional issue is discussed in more detail in Verizon's Main Brief filed December 6, 2011, at pages 9-17.

[10] *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). The definitions of "VoIP service" and "IP-enabled" in the VoIP Freedom Act are different from the FCC's definition of "VoIP-PSTN" traffic in that they do not require "Internet protocol-compatible customer premises equipment." 73 P.S. § 2251.3. *See also* Verizon Main Br. at 13, fn 19; VZ St. 2.0, Freet Supplemental Testimony at 6.

[11] "When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters . . . *other statutes upon the same or similar subjects."* 1 Pa.C.S. § 1921(c)(5) (emphasis added). It is well-established that "[w]here a court needs to define an undefined term, it may consult definitions in statutes." *H.E. Rohrer, Inc. v. Zoning Hearing Bd. of Jackson Twp*., 808 A.2d 1014 (Pa. Cmwlth. 2002). *See also Tink-Wig Mt. Lake Forest Prop. Owners Ass'n v. Lackawaxen Twp. Zoning Hearing Bd*., 986 A.2d 935 (Pa. Commw. Ct. 2009); *Adams Outdoor Adver., L.P. v. Zoning Hearing Bd.*, 909 A.2d 469 (Pa. Commw. Ct. 2006).

includes incumbent local exchange carriers and does not "include[] CLECs" such as Armstrong.[12] Accordingly, the VoIP Freedom Act only preserves Commission jurisdiction over switched access and intercarrier compensation rates for incumbent local exchange carriers, which Armstrong is not. No other exception applies.

It appears that Armstrong itself agrees that the Commission lacks jurisdiction over Armstrong's cable telephony. Armstrong has not applied for nor received a certificate of public convenience, or otherwise submitted to the Commission's jurisdiction over its cable voice service.[13] Armstrong admits its voice products are not tariffed, for example,[14] and in these ways it concedes that this service is subject to the VoIP Freedom Act. Just as the Commission lacks jurisdiction over Armstrong's cable telephony service generally, the Commission lacks jurisdiction to address Armstrong's claim here.[15]

B. The traffic was VoIP-PSTN under 47 C.F.R. §51.913 (a)(3).

If the Commission nonetheless decides to reach the merits of Armstrong's arguments, then it should find that the traffic at issue was "VoIP-PSTN." Because

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12 Chapter 30 defines "local exchange telecommunications company" as "[a]n *incumbent carrier* authorized by the commission to provide local exchange telecommunications services." 66 Pa. C.S. § 3012 (emphasis added). This Commission held that CLECs and cable telephony providers come under the term "alternative service provider," which is defined as "[a]n entity that provides telecommunications services in competition with a local exchange telecommunications company." 66 Pa. C.S. § 3012. The Commission has recognized that "Chapter 30 has differentiated the definition of an ILEC as a 'local exchange telecommunications company,' and that of a CLEC as an 'alternative service provider.' 66 Pa. C.S. § 3012. Thus, the new statute makes an express distinction between the two classes of providers of local exchange telecommunications services." *Petition of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services for a Waiver of the Commission's Regulations at 52 Pa. Code §§ 53.58 and 53.39 to Permit Detariffing of Services to Enterprise and Large Business Customers*, Docket No. P-2009-2082991 (Opinion and Order entered June 3, 2009) ("*MCI Detariffing Order*") at 6.

13 *See* VZ St. 2.0, Freet Supplemental Testimony at 6.

14 *See* Tr. at 47-50.

15 This Commission "has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication" and must act within, and cannot exceed its jurisdiction. *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977).

Verizon already paid Armstrong $1.5 million under the FCC's VoIP-PSTN rates to terminate this traffic, the complaint should be dismissed or denied.

> Of relevance to this case, effective January 1, 2012, all 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).

This traffic, also referred to as "VoIP-PSTN" traffic in the FCC's *ICC Transformation Order*, was further defined as follows:

> Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment. 47 C.F.R. §51.913 (a)(3).

This new rule meant that even VoIP-PSTN traffic that might previously have been subject to "intrastate" switched access rates would immediately be subject to lower interstate rates, in accordance with the FCC's transition to a bill-and-keep regime. For traffic that was not VoIP-PSTN, the FCC set an 18 month glide path from January 1, 2012 to July 1, 2013, after which intrastate terminating switched access rates were set at parity with interstate rates, and thus the terminating rates were the same from that time forward. 47 C.F.R. § 51.911(c). Today, most of these terminating switched access rates have already been reduced to bill-and-keep and the transition will be complete by July 1, 2018 for price cap carriers and July 1, 2020 for rate of return carriers. For the 18 month period between January 1, 2012 and July 1, 2013, Armstrong is not entitled to anything more than $1.5 million that Verizon already paid under the FCC's transitional rules for VoIP-PSTN traffic.[16]

[16] See Armstrong St. 3 (Starkey Supp. Reb.) at 10 and Proprietary Exhibit D for calculation of amount already paid. If Armstrong argues for the first time in its Supplemental Brief that it is entitled to

1. This traffic is VoIP-PSTN under the plain language of federal law.

Armstrong's argument that its voice service does not require "Internet protocol-compatible customer premises equipment," somehow making it different from every other cable telephony service, is baseless. Armstrong concedes that"[t]he conversion to IP takes place at the MTA [Multimedia Terminal Adapter]," which makes that device "Internet-protocol capable" equipment that is located at the subscriber's residence. Nonetheless, Armstrong claims that this MTA "is a component of Armstrong's network, and is not customer premises equipment." (Armstrong Initial Br. at 49). In short, Armstrong's argument that its traffic is not VoIP-PSTN rises and falls on its strained contention that the MTA is not "customer premises equipment." Armstrong is wrong. Its MTA is precisely the type of IP-compatible customer premises equipment included within the VoIP-PSTN definition.

The Commission does not have to reach Armstrong's argument because it involves a question of federal law outside the Commission's jurisdiction. But if it does, it will find that this case presents an easy issue that the FCC already has decided. The FCC explained in its *ICC Transformation Order* issuing these regulations that when it used the term "customer premises equipment" in this rule it meant a cable modem – which is what the MTA is. According to the FCC, "[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)." (*ICC Transformation Order* ¶ 111, Figure 3). As

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interest or late payment charges on the additional sum it seeks, then the Commission should take administrative notice of the fact that Armstrong's switched access tariff states that "[t]he late payment charge does not apply to unpaid balances associated with disputed amounts." Armstrong Telecommunications, Inc. Tariff Pa. PUC No. 5, Section 2.5.6(b). This is certainly a disputed amount.

examples of that "[c]ustomer premises equipment (CPE) typically managed by a broadband provider," the FCC listed "DSL modem, cable modem, satellite modem, optical networking terminal (ONT), etc." (*Id.*) Armstrong admits that the MTA is a cable modem.[17] By Armstrong's own admission and by its functionality the MTA is customer premises equipment in this context. Armstrong argues that the "customer premises equipment" for its cable telephony service is the customer's telephone handset, not the MTA. But this claim directly conflicts with the FCC's holdings. The FCC defines the handset or other device used in the home that is connected to the modem as a "Consumer Device," not "Customer Premises Equipment." (*Id*.)

The record shows that Armstrong's MTA is the IP-compatible customer premises equipment "managed by a broadband provider" serving as "the last connection point" between Armstrong's "managed" IP network and the customer, and includes the function of a cable modem and/or ONT, precisely as described by the FCC in its order. The MTA 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). This "service configuration" "relies upon" the MTA that it

[17] Armstrong's website informs customers that if they also purchase internet service 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).

"installs at the customer's premises for purposes of converting traditional analog traffic to IP packetized traffic." (Armstrong St. 2 at 18).

Armstrong's argument seems to turn exclusively on the assumption that "customer premises equipment" can only refer to equipment actually owned by the customer, and Armstrong claims that it owns the MTA as part of its own network so it cannot be customer premises equipment.[18] But that presumption that customer premises equipment must be owned by the customer is wrong. The FCC rejected that limitation in paragraph 111 of its order when it described the "customer premises equipment" in this service context as "typically managed by a broadband provider." Because the FCC's regulations do not contain a definition of customer premises equipment, the Telecommunications Act definition of that term applies. The following is the statutory definition of "customer premises equipment."

> The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

47 USCS § 153(16). This definition does not require customer ownership, but only that the equipment be "employed on the premises of a person" — a standard that the MTA clearly satisfies. For decades, end-users were *prohibited* from owning their own equipment, and the very term "CPE" or "customer premises equipment" had its origins in equipment that was *always* owned by the carrier, not the customer.[19] Armstrong's

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[18] The record also does not support Armstrong's claim that the MTA is part of Armstrong's network. 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").

[19] *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

argument, that if the customer does not own the MTA it is not "customer premises equipment," lacks any basis in the law. There is no doubt that Armstrong's MTA is "Internet protocol-compatible customer premises equipment" under federal law, making its traffic VoIP-PSTN.

2. All other members of the cable industry classify their traffic as VoIP-PSTN.

Armstrong's 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.[20] 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.[21] But unlike Armstrong, other cable companies operating in Pennsylvania agree that their service is VoIP-PSTN traffic under the FCC's rule. Attached as Exhibits C, D, E and F to Verizon's Supplemental Testimony are tariff filings by companies known to be CLEC intermediaries for cable telephony providers uniformly taking the position that traffic originated by or terminated to them is VoIP-PSTN under the FCC's rules. These companies include Comcast, Time Warner Cable and Sprint. Verizon's witness Ms.

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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).

[20] 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.*, *ICC Transformation Order* ¶ 740 ("a national, uniform framework best advances our goals").

[21] Armstrong admits that its network configuration is typical of cable VoIP providers. (Armstrong St. 2 at 7). 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).

Freet explained that the positions of these cable telephony intermediaries in their Commission tariff filings are "consistent with my experience reviewing bills to Verizon for terminating traffic to CLEC intermediaries for cable VoIP providers. Cable VoIP providers or their CLEC intermediaries bill Verizon at the VoIP-PSTN rate." VZ St. 2.0 at 7-8. There is no reasonable basis to classify Armstrong's cable VoIP service any different from the services of all of these other cable telephony providers for intercarrier compensation purposes.

3. Armstrong concedes that its service is an unregulated VoIP service by its own conduct and admissions.

Armstrong also benefits by classifying its retail voice services as unregulated VoIP under state law, and it should not be heard to disavow that status only for the purposes of claiming one of the former advantages of traditional regulation – higher access charges.[22] Even after it concocted this argument that its traffic is not VoIP-PSTN six years ago, Armstrong has continued to claim status as a provider of unregulated cable VoIP service to avoid traditional retail telephone regulation. Armstrong's cable affiliates that provide this voice service have never sought a certificate of public convenience from this Commission and the Armstrong family of companies continues to represent its service as unregulated VoIP in regulatory filings.[23] In fact, early in this case, Armstrong admitted that its cable affiliate's service was originated and terminated in IP, but only later, when it advantaged Armstrong's attempt to seek higher access charges, did it purport to take back that admission and argue that the traffic is not VoIP. (Verizon Reply

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[22] See 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).

[23] See VZ St. 2.0 (Freet Supplemental Testimony) at 6-7 and Exhibits A and B.

Br. at 3; VZ St. 2.0 at 7 and Exhibit B). Armstrong cannot have it both ways. If it is providing an unregulated VoIP service for purposes of avoiding retail regulation, then it cannot claim the higher access charges of a traditional provider of regulated telephone service.

CONCLUSION

For the foregoing reasons, Armstrong's complaint should be dismissed or denied.

Respectfully submitted,

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Counsel for Verizon

Dated: February 1, 2018

47 CFR § 51.913 Transition for VoIP-PSTN traffic.

(a)

(1) **Terminating Access Reciprocal Compensation subject to this subpart 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 terminating access charges specified by this subpart**. Interstate originating Access Reciprocal Compensation subject to this subpart 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 originating access charges specified by this subpart.

(2) Until June 30, 2014, intrastate originating Access Reciprocal Compensation subject to this subpart 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 intrastate originating access charges specified by this subpart. Effective July 1, 2014, originating Access Reciprocal Compensation subject to this subpart 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 originating access charges specified by this subpart.

(3) **Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment**.

(b) Notwithstanding any other provision of the Commission's rules, a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service. For purposes of this provision, functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of the incumbent local exchange carrier access service.