

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Armstrong Utilities, Inc.,)	
)	
Complainant,)	File No. EB-08-MD-009
)	
v.)	
)	
The United Telephone Company Of)	
Pennsylvania D/B/A/ Embarq Pennsylvania,)	
)	
Respondent.)	
)	

ORDER OF DISMISSAL

Adopted: November 13, 2008

Released: November 13, 2008

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

I. INTRODUCTION

1. On August 21, 2008, Armstrong Utilities, Inc. (“Armstrong”) filed a pole attachment complaint¹ against United Telephone Company of Pennsylvania, d/b/a/ Embarq Pennsylvania (“Embarq”) pursuant to section 224 of the Communications Act of 1934, as amended (the “Act”),² and section 1.1404 of the Commission’s rules.³ In lieu of responding to the Complaint, Embarq filed three successive consent motions for extensions of time to file a Response, which were all premised on Embarq’s representation that the parties had reached an oral agreement to resolve their dispute, and needed additional time to document their agreement.⁴ Each of these motions for an extension of time was granted. The last motion extended Embarq’s deadline for filing a response to the Complaint until November 5, 2008.

2. On November 5, 2008, Armstrong and Embarq filed a joint motion to dismiss the Complaint with prejudice.⁵ In their Motion to Dismiss, the parties state that they have settled the dispute that gave rise to the Complaint and have agreed to seek withdrawal of the Complaint with prejudice as to all claims and defenses asserted therein.⁶ The parties assert that

¹ Pole Attachment Complaint, File No. EB-08-MD-009 (filed Aug. 21, 2008) (“Complaint”).

² 47 U.S.C. § 224.

³ 47 C.F.R. § 1.1404.

⁴ Respondent’s Consented-To Motion for Extension of Time, File No. EB-08-MD-009 (filed Sept. 18, 2008); Respondent’s Second Consented-To Motion for Extension of Time, File No. EB-08-MD-009 (filed Sept. 29, 2008); Respondent’s Third Consented-To Motion for Extension of Time, File No. EB-08-MD-009 (filed Oct. 6, 2008).

⁵ Joint Motion to Dismiss Formal Complaint with Prejudice, File No. EB-08-MD-009 (filed Nov.5, 2008) (“Motion to Dismiss”).

⁶ Motion to Dismiss at 1, ¶ 2.

dismissal of the Complaint “will serve the public interest by eliminating the need for further litigation and the expenditure of the associated time and resources of the parties and the Commission and will promote the private resolution of disputes.”⁷ Based on the foregoing facts, we are satisfied that the parties have shown good cause for granting their joint request to dismiss the complaint.

3. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and sections 1.1401-1.1418 of the Commission’s rules, 47 C.F.R. §§ 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the Joint Motion to Dismiss Formal Complaint with Prejudice IS GRANTED.

4. 10. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and sections 1.1401-1.1418 of the Commission’s rules, 47 C.F.R. §§ 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that Armstrong’s Complaint against Embarq IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau

⁷ Motion to Dismiss at 2, ¶ 3.