



**January 24, 2023**

Re: Docket No. A-2022-3037170 - Joint Petition of Armstrong Telephone Company and Barr Tell USA, Inc. for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996 (**Joint Petition for Approval of an Interconnection Agreement**)

**TO ALL PARTIES OF RECORD:**

### **Background**

On December 9, 2022, Armstrong Telephone Company (Armstrong) and Barr Tell USA, Inc. (Barr Tell) (collectively, Party or Parties) filed a Joint Petition for Approval of an Interconnection Agreement (Joint Petition) in the above-captioned proceeding. The Interconnection Agreement (Agreement) was filed pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code) (TA-96), including 47 U.S.C. §§ 251, 252, and 271, and the Commission's Orders in *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996) (*June 1996 Implementation Order*); Order on Reconsideration entered September 9, 1996; see also *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) (*May 2004 Implementation Order*) (collectively, *Implementation Orders*).<sup>1</sup> See also *Proposed Modifications to the Review of Voluntarily Negotiated Interconnection Agreements Pursuant to 47 U.S.C. § 252(e)(2)*,

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<sup>1</sup> Section 252(e) of TA-96 requires that the Commission's review of the Agreement be completed within 90 days of its filing. The Agreement was filed on December 9, 2022, and the statutory deadline for the Commission to approve or disapprove the Agreement is on March 9, 2023.

*et al.*, Docket No. M-2022-3030709 (Final Order entered June 16, 2022) (*June 2022 Modifications Order*).<sup>2</sup>

The Commission's *May 2004 Implementation Order* requires the Parties to file signed copies of the Agreement with the Commission within thirty days of its signing. The last Party signed the Agreement on November 29, 2022. Accordingly, the Agreement was filed in accordance with the required thirty-day deadline. The Commission published notice of the Joint Petition in the *Pennsylvania Bulletin* on December 24, 2022, at 52 *Pa. B.* 8037, advising that any interested parties could file comments within ten days. No comments have been received.

In the Joint Petition before the Commission, Armstrong is the Incumbent Local Exchange Carrier (ILEC) and Barr Tell is not currently certificated as a Competitive Local Exchange Carrier (CLEC) in Armstrong's service territory.<sup>3</sup>

### **Standard of Review**

The standard for review of a negotiated interconnection agreement is set out in pertinent part, at Section 252(e)(2) of TA-96, 47 U.S.C. § 252(e)(2), which provides that the state commission may only reject an agreement adopted by negotiation under subsection (a) if it finds that: (1) the agreement discriminates against a telecommunications carrier not a party to the agreement; or (2) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

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<sup>2</sup> The Commission, through the issuance of the *June 2022 Modifications Order*, revised its practice of considering for disposition at a scheduled Public Meeting voluntarily negotiated interconnection agreements and amendments thereto between telecommunications carriers that are routine, ministerial, and do not involve policymaking considerations. In the *June 2022 Modifications Order*, the Commission determined that such routine, non-policymaking review of Interconnection Agreements will be delegated to Commission Staff to advise the parties of such disposition through the issuance of a Secretarial Letter, which shall have the same legal effect as disposition at Public Meeting.

<sup>3</sup> We note that regardless of the types of services covered by this Agreement, it would be a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq.*, if Barr Tell began offering services or assessing surcharges to end users where it has not been authorized to provide such services and for which tariffs have not been authorized.

## **Summary of Terms**

The Parties sought approval of the Agreement, which sets forth their respective obligations and the terms and conditions under which they will interconnect their respective networks, exchange local traffic and provide other services.

The Agreement will become effective upon the Commission's approval and, unless cancelled or terminated earlier in accordance with terms of the Agreement, shall have an initial term of two years (Initial Term). The Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Initial Term on a year-to-year basis. Under the Agreement, either Party may terminate the Agreement effective upon the expiration of the Initial Term or any succeeding renewal term by providing written notice of termination ninety days in advance of the termination date. Agreement at 3, 6.

The Agreement also contains the following four attachments: (1) Directory Listing; (2) 911/E911; (3) Pricing; and (4) Resale.

The Directory Listing Attachment provides that neither Party shall have any responsibility to the other to provide operator services, directory assistance, or directory listing, including white or yellow pages. However, if either Party elects to publish its own directory it shall extend to the other Party the opportunity to include the other Party's customer listings. Attachment 1.

The 911/E911 Attachment provides that as of the effective date of the Agreement, Armstrong is not the 911 service provider servicing the PSAP (Public Safety Answering Point) for Barr Tell. Each Party is solely responsible for making such arrangements to connect to a 911 service provider. Attachment 2.

The Parties agree to reciprocally exchange Local Traffic, Transport and Termination on a Bill and Keep basis. Barr Tell shall subscribe to the Armstrong's retail telecommunications service and then re-offer such services to the public under its own company name. Agreement at 7, Attachment 3.

The resale discount will be at 12 percent. Attachment 4.

## **Disposition**

The Commission approves the Agreement, finding that it satisfies the two-pronged criteria of Section 252(e) of TA-96. In approving this privately negotiated Agreement, the Commission expresses no opinion regarding the enforceability of its

independent state authority preserved by Section 251(d)(3) of TA-96, 47 U.S.C. § 251(d)(3), and any other applicable law.

We shall minimize the potential for discrimination against other telecommunications carriers not parties to the Agreement by providing here that our approval of this Agreement shall not serve as precedent for agreements to be negotiated or arbitrated by other parties. This is consistent with our policy of encouraging settlements. 52 Pa. Code § 5.231; *see also* 52 Pa. Code § 69.401, *et seq.*, relating to settlement guidelines, and the Commission's Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* On the basis of the foregoing, the Agreement does not discriminate against other telecommunications carriers not parties to the negotiations that resulted in the Agreement or to the Agreement itself.

TA-96 requires that the terms of the Agreement be made available for other parties to review. 47 U.S.C. § 252(h). However, this availability is solely for the purpose of full disclosure of the terms and arrangements contained therein. The accessibility of the Agreement and its terms to other parties does not connote any intent that the approval of such an agreement will affect the status of negotiations between other parties. In this context, we will not require Armstrong or Barr Tell to embody the terms of the Agreement in a filed tariff. In addition, we note that the Parties have filed a signed, true and correct copy of the Agreement as part of their Joint Petition, and the Secretary's Bureau has published an electronic copy of the Agreement to our website prior to its publication in the *Pennsylvania Bulletin*. Since we approve the Agreement as filed, without any modifications, we will not require the Joint Petitioners to file an electronic copy of the Agreement upon its approval by this Secretarial Letter.

With regard to the public interest element of this matter, no negotiated interconnection agreement may affect or eliminate an ILEC's obligations with regard to protection of the public safety and welfare, continued service quality, and preservation of the rights of consumers. *See, e.g.*, Section 253(b) of TA-96. This is consistent with TA-96 and with Chapter 30 of the Code,<sup>4</sup> wherein service quality and standards, *i.e.*, Universal Service, 911, Enhanced 911,<sup>5</sup> and Telecommunications Relay Service, are and remain statutory obligations of the telecommunications carriers. In addition, an ILEC

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<sup>4</sup> 66 Pa. C.S. §§ 3011-3019.

<sup>5</sup> Both ILECs and CLECs are under the affirmative obligation to route 911/E911 call traffic to the appropriate PSAP. Although CLECs may have direct trunking arrangements with PSAPs for the handling of 911/E911 call traffic, we note that such traffic is often routed to the PSAP through the switching and trunking facilities of an interconnected ILEC.

cannot, through the negotiation of an agreement or amendment, eliminate its carrier of last resort obligations.<sup>6</sup>

### Conclusion

Based on the foregoing and pursuant to Section 252(e) of TA-96 and our subsequent orders thereunder, we determine that the Agreement between Armstrong and Barr Tell is non-discriminatory to other telecommunications companies not party to the Agreement and that the Agreement is consistent with the public interest. Therefore, we shall grant the Joint Petition of Armstrong and Barr Tell for approval of the Interconnection Agreement and mark this docket closed.

Any affected party may appeal the staff action (approval or rejection of the Joint Petition under TA-96 standards) to the full Commission by filing a Petition for Appeal from actions of staff pursuant to 52 Pa. Code § 5.44 within twenty (20) days of the date of this Secretarial Letter. Should you have any questions, you may contact the Office of Special Assistants, Kathryn G. Sophy, Director. Please direct your inquiry to (717) 787-1827 or [RA-OSA@pa.gov](mailto:RA-OSA@pa.gov).

Very truly yours,



Rosemary Chiavetta  
Secretary

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<sup>6</sup> See, e.g., Section 253(b) of TA-96.