

ORIGINAL

OPEN MEETING



410

MEMORANDUM RECEIVED

TO: THE COMMISSION

Arizona Corporation Commission

DOCKETED

2008 MAR -6 P 3: 31

FROM: Utilities Division

MAR - 6 2008

AZ CORP COMMISSION
DOCKET CONTROL

DATE: March 6, 2008

DOCKETED BY

RE: IN THE MATTER OF THE APPLICATION OF AMERICATEL CORPORATION AND STARTEC GLOBAL OPERATING COMPANY FOR APPROVAL OF A PRO FORMA RESTRUCTURING AND OTHER RELATED APPROVALS (DOCKET NOS. T-03517A-07-0633 AND T-20522A-07-0633)

On November 11, 2007, Americatel Corporation ("Americatel") and Startec Global Operating Company ("Startec") (collectively, "Applicants"), pursuant to Arizona Revised Statutes §40-285,¹ request approval from the Commission of a *pro forma*² corporate restructuring involving the merger of the Applicants, with Americatel as the surviving entity.

The Applicants requested that the Commission act expeditiously to grant the requested approval before March 31, 2008 so that the Applicants may timely meet important business objectives. The primary objective is to simplify duplicative administrative processes, including regulatory filings around the country, that are caused by operating two entities that provide essentially the same services. Consolidating the entities at the end of a quarter is a less complicated way complete the merger and, if the merger is completed by the end of the first quarter 2008, the companies will not need to make duplicative filings during the second quarter of 2008. The Applicants further request that the Commission grant a waiver of the applicable provisions to the Commission's Slamming Rules (Arizona Administrative Code. R14-2-1901 through R14-2-1913.) In addition, the Applicants request the cancellation of Startec's Certificate of Convenience and Necessity ("CC&N")

In Decision No. 69573, Startec received authority to provide resold long distance in Arizona as a result corporate restructuring that was approved by the Commission on May 21, 2007 in Docket No. T-20522A-07-0161. In that Docket, all of the assets, including the CC&N granted to Startec Global Licensing Company in Decision No. 63370, were transferred to Startec. Startec is a wholly owned direct subsidiary of Startec Global Communications Corporation ("SGCC").

¹ Neither Americatel nor Startec is a Class A Utility and, therefore, the Public Utility Holding Companies and Affiliated Interests rules, A.A.C. R14-2-801 to R14-2-806 et seq. do not apply.

² The Applicants term "*pro forma*" because there is no change in the ultimate control of the proposed merged entities. In addition, the term "*pro forma*" is used because the proposed transaction qualifies for streamlined treatment at the Federal Communication Commission as a *pro forma* transfer of customers.

Startec currently has approximately 2000 subscribers in Arizona. Startec provides long distance, Internet, and other communications services to persons and businesses residing in 49 states, as well as Canada.³

In Decision No. 61054, dated August 6, 1998, Americatel received a CC&N to provide resold long distance telecommunications in Arizona. Americatel provides telecommunications services to customers that have a need to make calls to Latin America and the Caribbean. It provides international and domestic facilities-based and resold long distance services, including "dial around" casual calling (*i.e.*, 1010XXX) service and presubscribed 1+ calling services in each of the 48 contiguous states.

According to the Application, Platinum Equity, LLC ("Platinum Equity") a limited liability company currently holds its interest in Americatel through its wholly-owned subsidiary, MTAC Holding Corporation a Delaware corporation, which in turn, is a wholly owned subsidiary of EnergyTRACS Acquisition Corporation ("EnergyTRACS") a Delaware corporation which is in turn, is a wholly-owned subsidiary of Platinum Equity. Platinum Equity acquired indirect control of Startec on July 12, 2007, when it acquired indirect ownership of 100 percent of the equity in Startec. Platinum Equity currently holds this interest through its wholly-owned subsidiary SGCC which in turn, is a wholly owned subsidiary EnergyTRACS.

On December 31, 2007, SGCC and selected subsidiaries, including Startec, were transferred to Americatel. As a result, Platinum Equity now holds its interest in Startec indirectly through Americatel and requests approval to merge Startec in to Americatel. The Applicants state that, as a result of the merger, Startec and SGCC, Startec's immediate parent and holding company, will be merged with and into Americatel. Startec and SGCC will cease to exist. Americatel will become the operating telecommunications service provider in Arizona. It will provide service to Americatel and Startec customers.

Americatel states that it will provide telecommunications services to customers using the same network; billing systems; and customer service operations currently used by Startec and that no existing service will be discontinued, reduced, or impaired as a result of the proposed *pro forma* merger. Americatel further states that it will serve Startec's customers using the same rates, terms, and conditions that currently apply under Startec. Americatel also states that it intends to adopt those portion of Startec's tariff relating to Startec's service offerings and will file a revised tariff after consummation of the proposed transaction or as directed by the Commission.

According to the Applicants, the approval of the proposed *pro forma* merger serves the public interest by streamlining and eliminating inefficiencies from the business and administrative operations of Startec and Americatel, strengthening competition in Arizona and bringing more of the well-recognized benefits of vigorous competition to telecommunications customers throughout Arizona. In addition, the Applicants assert that the proposed transaction will benefit customers by

³Startec does not provide service in Alaska or the District of Columbia.

permitting Americatel to integrate Startec's assets into its own services to create new, "best of class" offerings to ensure that the benefits Startec's customers currently enjoy remain available to them and also may become available to Americatel's existing customers.

A copy of the notice sent to Startec's customers is included as Exhibit B in the Application. The Applicants notified all of Startec's customers in Arizona of the proposed merger on November 7, 2007. The notice informed the customers that they will have access to alternative interexchange service providers and that they have the right to select a different preferred long distance carrier if they choose not to remain with Startec.

On December 6, 2008, the Applicants filed a Notice of Filing Affidavit of Publication. Notice of the Application was published in The Arizona Republic on November 23, 2007. In response to Staff Data Request JFB1-2, Startec stated that it currently does not and has never collected advances, deposits, or prepayments from its Arizona customers.

Startec's CC&N should be cancelled if the proposed merger is approved by the Commission. The Applicants have complied with the requirements established in A.A.C. R14-2-1107.

The Consumer Services Section of the Utilities Division has reported that from January 1, 2004 through December 26, 2007 there were no complaints, inquiries, and/or opinions filed against Americatel or Startec. The Compliance Section of the Utilities Division has reported that there are no delinquencies and/or Compliance concerns for either Americatel or Startec.

Staff recommends:

- A. that the Commission approve the Applicants' request to merge Startec into Americatel,
- B. that the Commission grant the Applicants a waiver of its slamming rules,
- C. that Startec's CC&N be cancelled. Upon cancellation of the CC&N, Startec will not be authorized to provide resold long distance services in Arizona and therefore, will not be subject to the requirements of Decision No. 69573, and
- D. that Americatel submit revisions to its tariff to adopt those portions of Startec's tariffs relating to Startec's service offerings within 30 days of the Commission's Decision in this matter.
- E. that Americatel file verification that the merger has been completed with Docket Control within 30 days following the merger date proposed in this transaction.

THE COMMISSION

March 6, 2008

Page 4

- F. that for one year following the merger close, or until Americatel informs the Commission by filing an affidavit with Docket Control, as a compliance item in this docket, that merger-related activities are completed, whichever comes last.



for Ernest G. Johnson
Director
Utilities Division

EGJ:JFB:lhmlMAS

ORIGINATOR: John Bostwick

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BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

IN THE MATTER OF THE APPLICATION
OF AMERICATEL CORPORATION AND
STARTEC GLOBAL OPERATING
COMPANY FOR APPROVAL OF A PRO
FORMA RESTRUCTURING AND OTHER
RELATED APPROVALS

DOCKET NOS. T-03517A-07-0633
T-20522A-07-0633
DECISION NO. _____
ORDER

Open Meeting
March 27, 2008
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On November 11, 2007, Americatel Corporation (“Americatel”) and Startec Global Operating Company (“Startec”) (collectively, “Applicants”), pursuant to Arizona Revised Statutes §40-285,¹ request approval from the Commission of a *pro forma*² corporate restructuring involving the merger of the Applicants, with Americatel as the surviving entity. The Applicants respectfully request that the Commission act expeditiously to grant the approval requested before March 31, 2008 so that the Applicants may timely meet important business objectives. The primary objective is to simplify duplicative administrative processes, including regulatory filings

¹ Neither Americatel nor Startec is a Class A Utility and, therefore, the Public Utility Holding Companies and Affiliated Interests rules, A.A.C. R14-2-801 to R14-2-806 et seq. do not apply.
² The Applicants term “*pro forma*” because there is no change in the ultimate control of the proposed merged entities. In addition, the term “*pro forma*” is used because the proposed transaction qualifies for streamlined treatment at the Federal Communication Commission as a pro forma transfer of customers.

1 around the country, that are caused by operating two entities that provide essentially the same
2 services. Consolidating the entities at the end of a quarter is a less complicated way complete the
3 merger and, if the merger is completed by the end of the first quarter 2008, the companies will not
4 need to make duplicative filings during the second quarter of 2008. The Applicants further request
5 that the Commission grant a waiver of the applicable provisions to the Commission's slamming
6 rules Arizona Administrative Code (A.A.C. R14-2-1901 to A.A.C. R14-2-1913.) In addition, the
7 Applicants request the cancellation of Startec's Certificate of Convenience and Necessity
8 ("CC&N")

9 2. In Decision No. 69573, Startec received authority to provide resold long distance in
10 Arizona as a result corporate restructuring that was approved by the Commission on May 21, 2007
11 in Docket No. T-20522A-07-0161. In that Docket, all of the assets, including the CC&N granted
12 to Startec Global Licensing Company in Decision No. 63370, were transferred to Startec. Startec
13 is a wholly owned direct subsidiary of Startec Global Communications Corporation ("SGCC").

14 3. Startec currently has approximately 2000 subscribers in Arizona. Startec provides
15 long distance, Internet, and other communications services to persons and businesses residing in
16 49 states, except Alaska and the District of Columbia, as well as Canada.

17 4. In Decision No. 61054, dated August 6, 1998, Americatel received a CC&N to
18 provide resold long distance telecommunications in Arizona. Americatel provides
19 telecommunications services to customers that have a need to make calls to Latin America and the
20 Caribbean Latin America and the Caribbean. It provides international and domestic facilities-
21 based and resold long distance services, including "dial around" casual calling (*i.e.*, 1010XXX)
22 service and presubscribed 1+ calling services in each of the 48 contiguous states.

23 5. According to the Application, Platinum Equity, LLC ("Platinum Equity") a limited
24 liability company currently holds its interest in Americatel through its wholly-owned subsidiary,
25 MTAC Holding Corporation a Delaware corporation, which in turn, is a wholly owned subsidiary
26 of EnergyTRACS Acquisition Corporation ("EnergyTRACS") a Delaware corporation which is in
27 turn, is a wholly-owned subsidiary of Platinum Equity. Platinum Equity acquired indirect control
28 of Startec on July 12, 2007, when it acquired indirect ownership of 100 percent of the equity in

1 Startec. Platinum Equity currently holds this interest through its wholly-owned subsidiary SGCC
2 which in turn, is a wholly owned subsidiary EnergyTRACS.

3 6. On December 31, 2007, SGCC and selected subsidiaries, including Startec, were
4 transferred to Americatel. As a result, Platinum Equity now holds its interest in Startec indirectly
5 through Americatel and requests approval to merge Startec in to Americatel.

6 7. The Applicants state that, as a result of the merger, Startec and SGCC, Startec's
7 immediate parent and holding company, will be merged with and into Americatel. Startec and
8 SGCC will cease to exist. Americatel will become the operating telecommunications service
9 provider in Arizona. It will provide service to Americatel and Startec customers.

10 8. Americatel states that it will provide telecommunications services to customers
11 using the same network; billing systems; and customer service operations currently used by Startec
12 and that no existing service will be discontinued, reduced, or impaired as a result of the proposed
13 *pro forma* merger. Americatel further states that it will serve Startec's customers using the same
14 rates, terms, and conditions that currently apply under Startec. Americatel also states that it
15 intends to adopt those portion of Startec's tariff relating to Startec's service offerings and will file
16 a revised tariff after consummation of the proposed transaction or as directed by the Commission.

17 9. According to the Applicants, the approval of the proposed *pro forma* merger serves
18 the public interest by streamlining and eliminating inefficiencies from the business and
19 administrative operations of Startec and Americatel, strengthening competition in Arizona and
20 bringing more of the well-recognized benefits of vigorous competition to telecommunications
21 customers throughout Arizona. In addition, the Applicants assert that the proposed transaction will
22 benefit customers by permitting Americatel to integrate Startec's assets into it own services to
23 create new, "best of class" offerings to ensure that the benefits Startec's customers currently enjoy
24 remain available to them and also may become available to Americatel's existing customers.

25 10. A copy of the notice sent to Startec's customers is included as Exhibit B in the
26 Application. The Applicants notified all of Startec's customers in Arizona of the proposed merger
27 on November 7, 2007. The notice informed the customers that they will access to alternative

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1 interexchange service providers and that have they have the right to select a different preferred
2 long distance carrier if they choose not to remain with Startec.

3 11. On December 6, 2008, the Applicants filed a Notice of Filing Affidavit of
4 Publication. Notice of the Application was published in The Arizona Republic on November 23,
5 2007.

6 12. In response to Staff Data Request JFB1-2, Startec stated that it currently does not
7 and has never collected advances, deposits, or prepayments from its Arizona customers.

8 13. Startec's CC&N should be cancelled if the proposed merger is approved by the
9 Commission. The Applicants have complied with the requirements established in A.A.C. R14-2-
10 1107.

11 14. The Consumer Services Section of the Utilities Division has reported that from
12 January 1, 2004 through December 26, 2007 there were no complaints, inquiries, and/or opinions
13 filed against Americatel or Startec.

14 15. The Compliance Section of the Utilities Division has reported that there are no
15 delinquencies and/or Compliance concerns for either Americatel or Startec.

16 16. Staff has recommended:

- 17 a. that the Commission approve the Applicants' request to merge Startec
18 into Americatel,
- 19 b. that the Commission grant the Applicants a waiver of its slamming
20 rules,
- 21 c. that Startec's CC&N be cancelled. Upon cancellation of the CC&N,
22 Startec will not be authorized to provide resold long distance services
23 in Arizona and therefore, will not be subject to the requirements of
24 Decision No. 69573, and
- 25 d. that Americatel submit revisions to its tariff to adopt those portions of
26 Startec's tariffs relating to Startec's service offerings within 30 days of
27 the Commission's Decision in this matter.
- 28 e. that Americatel file verification that the merger has been completed
with Docket Control within 30 days following the merger date
proposed in this transaction.
- f. that for one year following the merger close, or until Americatel
informs the Commission by filing an affidavit with Docket Control, as
a compliance item in this docket, that merger-related activities are
completed, whichever comes last.

1 IT IS FURTHER ORDERED that for one year following the merger close, or until
2 Americatel informs the Commission by filing an affidavit with Docket Control, as a compliance
3 item in this docket, that merger-related activities are completed, whichever comes last, Americatel
4 shall provide written notification to the Director of the Utilities Division and to the individual
5 members of the Commission 60 days prior to any planned merger-related Arizona workforce
6 layoffs; any planned merger-related Arizona plant closings; and any planned merger-related
7 Arizona facility closings.

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1 IT IS FURTHER ORDERED that if the surviving merged entity or its affiliated companies
 2 decide to conduct layoffs or facility closings in Arizona attributable to the merger, they shall file a
 3 report with the Commission within two months of the effective date of the layoffs or closings
 4 stating why such layoffs and/or closings were necessary, and what efforts the companies made, or
 5 are making, to re-deploy the affected employees elsewhere in the surviving merged entity or its
 6 affiliates. This report shall be filed for one year following merger close or until Americatel
 7 informs the Commission by filing an affidavit with Docket Control that merger-related activities
 8 are completed, whichever comes last.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10
 11 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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 14 _____
 CHAIRMAN

COMMISSIONER

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 16 _____
 COMMISSIONER

COMMISSIONER

COMMISSIONER

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 18 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
 19 Executive Director of the Arizona Corporation Commission,
 20 have hereunto, set my hand and caused the official seal of
 this Commission to be affixed at the Capitol, in the City of
 Phoenix, this _____ day of _____, 2008.

21
 22 _____
 23 DEAN S. MILLER
 24 Interim Executive Director

25 DISSENT: _____

26
 27 DISSENT: _____

28 EGJ:JFB:lh\MAS

1 SERVICE LIST FOR: Americatel Corporation and Startec Global Operating Company
2 Docket Nos. T-03517A-07-0633 and T-20522A-07-0161

3 Mr. Michael Hallam
4 Lewis & Roca, LLP
40 North Central Avenue
5 Phoenix, Arizona 85004-4429

6 Mr. Ernest G. Johnson
7 Director, Utilities Division
Arizona Corporation Commission
8 1200 West Washington
Phoenix, Arizona 85007

9 Mr. Christopher C. Kempley
10 Chief Counsel, Legal Division
Arizona Corporation Commission
11 1200 West Washington
12 Phoenix, Arizona 85007

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