

OPEN MEETING ITEM



COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



Arizona Corporation Commission
Interim Executive Director

DOCKETED

APR - 9 2009

ARIZONA CORPORATION COMMISSION

ORIGINAL

DOCKETED BY [Signature]

DATE: APRIL 9, 2009

DOCKET NOS: T-03517A-09-0015, T-03228A-09-0015 and T-20522A-09-0015

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda Martin. The recommendation has been filed in the form of an Order on:

AMERICATEL CORPORATION, MATRIX TELECOM, INC.
And GLOBAL OPERATING COMPANY
(PLEDGE ASSETS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

APRIL 20, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 28, 2009 and APRIL 29, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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[Signature]
MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman
5 GARY PIERCE
6 PAUL NEWMAN
7 SANDRA C. KENNEDY
8 BOB STUMP

9 IN THE MATTER OF THE JOINT APPLICATION
10 OF AMERICATEL COPORATION, MATRIX
11 TELECOM, INC. AND STARTEC GLOBAL
12 OPERATING COMPANY FOR APPROVAL TO
13 PLEDGE THEIR ARIZONA ASSETS PURSUANT
14 TO A.R.S. § 40-285.

DOCKET NO. T-03517A-09-0015
DOCKET NO. T-03228A-09-0015
DOCKET NO. T-20522A-09-0015

DECISION NO. _____

ORDER

11 Open Meeting
12 April 28 and 29, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On January 20, 2009, Americatel Corporation ("Americatel"), Matrix Telecom, Inc.
19 ("Matrix"), and Startec Global Operating Company ("Startec," and together with Americatel and
20 Matrix, the "Applicants") filed with the Arizona Corporation Commission ("Commission") an
21 application for approval to pledge their Arizona assets as security for certain debt financing
22 arrangements up to \$40 million pursuant to A.R.S. § 40-285 ("Application").

23 2. The Applicants caused notice of the Application to be published in the *Arizona*
Business Gazette on February 13, 2009.

24 3. On March 27, 2009, the Commission's Utilities Division Staff ("Staff") filed a Staff
25 Report recommending conditional approval of the request for encumbrance of assets.

26 4. On April 2, 2009, the Applicants filed their Response to Staff Report and Request for
27 Expedited Treatment ("Response").
28

1 5. Americatel is a Delaware corporation authorized by the Commission to provide
2 competitive intrastate telecommunication services under Decision No. 61054 (August 6, 1998).

3 6. Matrix is a Texas corporation authorized by the Commission to provide competitive
4 resold local exchange and competitive classification services under Decision No. 68343 (December
5 9, 2005), competitive resold interexchange except local exchange telecommunication services, under
6 Decision No. 65926 (May 16, 2003), and facilities-based local exchange telecommunication services,
7 under Decision No. 69944 (October 16, 2007).

8 7. Startec is a Delaware corporation. The Commission granted a Certificate of
9 Convenience and Necessity ("CC&N") to Startec Global Licensing Company, a former sister
10 company of Startec, to provide resold interexchange telecommunication services in Arizona under
11 Decision No. 63370 (February 16, 2001). In a *pro forma* restructuring, Startec became the holder of
12 that CC&N pursuant to Decision No. 69573 (May 21, 2007).

13 8. The Applicants are affiliated companies. MTAC Holding Corporation ("MTAC"), a
14 Delaware corporation, is the parent company of Americatel and Matrix. MTAC is also the parent
15 company of Startec Global Communications Corporation ("SGCC") and Startec Global Canadian
16 Holding Company ("SGCHC").

17 9. Americatel, Matrix, and Startec do business in most other states in addition to
18 Arizona.

19 10. Staff states that there are no compliance issues with any of the Applicants.

20 11. As of January 16, 2009, the Applicants entered into certain long-term credit facility
21 agreements and related documents in order to restructure their debt ("Facility Agreements"). The
22 Facility Agreements consist of a senior secured second lien facility for \$40 million and a senior
23 secured third lien facility, also for \$40 million. Both Facility Agreements are expected to mature in
24 five years.

25 12. The borrowers under the Facility Agreements are the Applicants, MTAC, SGCC, and
26 SGCHC ("Borrowers"). The Borrowers' obligations under the Facility Agreements will be secured
27 by substantially all of the assets of the Applicants, subject to an existing senior first lien facility
28 approved by the Commission in Decision No. 70184 (February 27, 2008).

1 13. According to the Applicants, their obligations under the Facility Agreements will not
2 be consummated until all required regulatory approvals are obtained.

3 14. The Applicants assert that participation in the financing arrangements will not result in
4 any changes to their management, day-to-day operations or provision of service, and will be entirely
5 transparent to their customers.

6 15. The Applicants also assert that the proposed financing will serve the public interest in
7 that it will allow the Applicants to introduce new services in Arizona, allow consumers to benefit
8 from competitive services and will promote competition.

9 16. Staff notes that Arizona Administrative Code (“A.A.C.”) R14-2-804(B) provides that
10 a Class A Utility may not obtain a financial interest in any affiliate not regulated by the Commission,
11 or guarantee or assume the liabilities of such an affiliate without Commission approval.¹ Under
12 A.A.C. R-14-2-804(C), the Commission must review the transaction to determine if it would impair
13 the financial status of the public utility, otherwise prevent it from attracting capital at fair and
14 reasonable terms, or impair the ability of the public utility to provide safe, reasonable, and adequate
15 service.

16 17. Staff determined that under A.A.C. R14-2-804, the proposed transactions will not
17 impair the Applicants’ financial status, prevent them from attracting capital at fair and reasonable
18 terms, or impair the ability of the Applicants to provide safe, reasonable and adequate service.

19 18. A.R.S. § 40-301 provides that foreign public service corporations providing
20 communications services within the state whose physical facilities are also used in providing
21 communications service in interstate commerce are not required to obtain authorization from the
22 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness
23 payable at periods of more than twelve months. Because the Applicants are each a foreign public
24 service corporation whose physical facilities are also used in providing communications services in
25 interstate commerce, pursuant to A.R.S. § 40-301(D), the Applicants’ proposed financing is exempt
26 from Commission approval.

27 ¹ The Applicants assert that they are not Class A Utilities. As such, they state that they are not subject to the requirements
28 of A.A.C. R14-2-804(B). Nevertheless, Staff analyzed the Application and made a determination pursuant to A.A.C. R14-
2-804(B) that the transaction will not impair the Applicants’ financial status.

1 19. However, A.R.S § 40-285 requires public service corporations to obtain Commission
2 authorization to encumber certain utility assets. According to Staff, the statute serves to protect
3 captive customers from a utility's disposition of assets that are necessary for the provision of service,
4 thereby preventing any service impairment due to disposal of critical assets necessary to provide
5 service.

6 20. Based on its review of the proposed transaction, Staff determined that the pledge of
7 the Applicants' Arizona assets would not impair the availability of service to the customers since the
8 Applicants provide competitive services that are available from alternative service providers.
9 However, Staff recommends that, because customers who have prepaid for service or made deposits
10 may have exposure to losses, any authorization for encumbrances should include customer protection
11 for prepayments and deposits.

12 21. Staff recommends approval of the Applicants' request to pledge assets as a guarantee
13 or to provide other forms of security for \$40 million in debt subject to the condition that all Arizona
14 customer deposits and prepayments be excluded from encumbrance or, in the alternative, be secured
15 by a bond or an irrevocable sight draft letter of credit, which is not included in the pledged collateral.

16 22. Staff recommends that the Applicants be authorized to engage in any transactions and
17 to execute or cause to be executed any documents necessary to effectuate the authorizations requested
18 in the Application.

19 23. Staff also recommends that the Applicants file with Docket Control, as a compliance
20 item in this matter, a copy of the loan documents within 60 days of the execution of any financing
21 transaction authorized herein.

22 24. In their Response, the Applicants requested that, rather than filing copies of the
23 executed loan documents with Docket Control, the Applicants be permitted to file the documents
24 with Staff as they contain highly confidential information. The Applicants also request that Staff's
25 recommendation be modified to require that the documents be submitted to Staff within 60 days of
26 the effective date of the Decision in this matter since the documents have already been executed and
27 the Applicants are awaiting Commission approval before the encumbrance takes effect.

28 25. The Response indicates that the Applicants have discussed these modifications with

1 Staff and Staff has no objections, and the Applicants intend to enter into a protective agreement with
2 Staff to address the confidentiality of the documents.

3 26. The requested modifications are reasonable and shall be adopted. The Applicants
4 should also file with Docket Control simultaneously with the provision of the documents to Staff, as a
5 compliance item in this docket, a notice stating that the executed loan documents were submitted to
6 Staff in compliance with this Decision.

7 27. Staff's recommendations, as modified herein, are reasonable and should be adopted.

8 **CONCLUSIONS OF LAW**

9 1. Applicants are a public service corporation within the meaning of Article XV of the
10 Arizona Constitution, A.R.S. § 40-285.

11 2. The Commission has jurisdiction over the Applicants and the subject matter of the
12 application.

13 3. Notice of the Application was given in accordance with the law.

14 4. The encumbrance approved herein pursuant to A.R.S. § 40-285 is for the purposes
15 stated in the Application and is reasonably necessary for those purposes.

16 5. Pursuant to A.A.C. R14-2-804 the proposed transactions will not impair the financial
17 status of the Applicants, prevent them from attracting capital at fair and reasonable terms, or impair
18 the ability of the Applicants to provide safe, reasonable and adequate service.

19 6. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application by Americatel Corporation, Matrix
22 Telecom, Inc., and Startec Global Operating Company for authorization to encumber assets as
23 security for debt financing up to \$40 million as provided for herein, shall be, and hereby is, granted,
24 subject to the condition that either all Arizona customer deposits and prepayments are excluded from
25 encumbrance or, in the alternative, are secured in the amount of the customer deposits and
26 prepayments either by a performance bond or an irrevocable sight draft letter of credit, which are not
27 included in the pledged collateral.

28 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec

1 Global Operating Company shall, within 60 days of the effective date of this Decision, file with
2 Docket Control as a compliance item in this docket, either a statement that all Arizona customer
3 deposits and prepayments are excluded from encumbrance, or copies of the performance bond or
4 irrevocable sight draft letter of credit in the amount of the customer deposits and prepayments, and
5 provide the original performance bond or irrevocable sight draft letter of credit to the Commission's
6 Business Office for safekeeping.

7 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec
8 Global Operating Company are hereby authorized to engage in any transactions and to execute or
9 cause to be executed any documents in order to effectuate the authorizations granted herein.

10 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec
11 Global Operating Company shall provide to the Utilities Division within 60 days of the effective date
12 of this Decision, copies of the executed loan documents.

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1 IT IS FURTHER ORDERED that Americatel Corporation, Matrix Telecom, Inc., and Startec
2 Global Operating Company shall file with Docket Control simultaneously with the provision of the
3 documents to Staff, as a compliance item in this docket, a notice stating that the executed loan
4 documents were submitted to Staff in compliance with this Decision.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8
9 CHAIRMAN _____ COMMISSIONER

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11 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

12
13 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this _____ day of _____, 2009.

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20 _____
21 MICHAEL P. KEARNS
22 INTERIM EXECUTIVE DIRECTOR

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29 DISSENT _____

30 DISSENT _____

1 SERVICE LIST FOR: AMERICATEL CORPORATION, MATRIX TELECOM, INC.
2 and STARTEC GLOBAL OPERATING COMPANY

3 DOCKET NOS.: T-03517A-09-0015, T-03228A-09-0015, and T-20522A-09-
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