

ORIGINAL

OPEN MEETING



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MEMORANDUM RECEIVED

Arizona Corporation Commission

2010 JUN 15 A 8:58

TO: THE COMMISSION

DOCKETED

FROM: Utilities Division

JUN 15 2010

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: June 15, 2010

DOCKETED BY *MW*

RE: IN THE MATTER OF THE JOINT APPLICATION OF COMTEL TELCOM ASSETS LP DBA EXCEL TELECOMMUNICATIONS/VARTEC TELECOM/CLEAR CHOICE COMMUNICATIONS, MATRIX TELECOM, INC. DBA MATRIX BUSINESS TECHNOLOGIES AND AMERICATEL CORPORATION FOR APPROVAL OF THE TRANSFER OF ASSETS AND CUSTOMERS FROM COMTEL TELCOM ASSETS LP TO MATRIX TELECOM, INC. AND AMERICATEL CORPORATION TO ENCUMBER THEIR ASSETS (DOCKET NOS. T-20423A-10-0153, T-03228A-10-0153 AND T-03517A-10-0153)

Introduction

On April 21, 2010, Comtel Telcom Assets LP ("Comtel"), Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel," together with Comtel and Matrix, the "Applicants") filed a Joint Application requesting expedited approval pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285(A) and Arizona Administrative Code ("A.A.C.") R14-2-1107, from the Arizona Corporation Commission ("Commission"), to the extent required, for (1) Comtel to transfer substantially all of its assets and customers to Matrix, and (2) Matrix and Americatel to encumber their assets under certain financing arrangements. Additionally, upon notification by Comtel and Matrix that the transfer of assets and customers is completed, Comtel requests that its Certificate of Convenience and Necessity ("CC&N") and tariffs be cancelled. The Applicants also request a waiver of A.A.C. R14-2-1904 et seq., A.A.C. R14-2-2001-2007 and A.A.C. R14-2-1107(B) and whatever further relief the Commission deems appropriate to authorize the consummation of this transaction. On May 24, 2010, Comtel and Matrix filed an Affidavit of Publication confirming publication of a legal notice in *The Arizona Republic* on May 11, 2010.

Description of the Parties

Comtel

Comtel is a limited partnership organized under the laws of the State of Texas. Comtel's principal office is located at 433 Las Colinas Boulevard E., Suite 1300, Irving, Texas 75039. Comtel Assets Corporation is the majority owner of Comtel. Comtel Assets Corporation is wholly-owned by Denham Commodity Partners Fund III LP, a private equity fund.

In Arizona, Comtel is authorized to use the trade names of VarTec Telcom, VarTec Solutions, Excel Telecommunications, and Clear Choice Telecommunications to provide resold and facilities-based local exchange and resold interexchange telecommunications services pursuant to Decision No. 69175 granted on December 5, 2006. Comtel currently has one (1) employee in Arizona. As of May 12, 2010, Comtel was serving approximately 83 business customers, approximately 93 residential local exchange customers, approximately 901 presubscribed residential long distance customers and approximately 7,502 dial-around customers.

Matrix

Matrix is a Texas corporation with principal offices located at 7171 Forest Lane, Suite 700, Dallas, Texas 75230. In Arizona, Matrix is authorized to provide facilities-based local exchange telecommunications services pursuant to Decision No. 69944 granted October 16, 2007. Matrix is also authorized to provide resold local exchange telecommunications services pursuant to Decision No. 68343 granted on December 9, 2005, and competitive resold interexchange telecommunications services pursuant to Decision No. 65926 granted on May 16, 2003. As of May 12, 2010, Matrix was serving approximately 173 business customers and 244 residential customers in Arizona. Matrix does not have any employees in the State of Arizona.

Americatel

Americatel is a Delaware corporation with principal offices located at 7361 Calhoun Place, Suite 650, Rockville, Maryland 20855. In Arizona, Americatel is authorized to provide competitive interLATA/intraLATA resold telecommunications services, except local exchange services, pursuant to Decision No. 61054 granted on August 6, 1998. As of May 12, 2010, Americatel was serving approximately 23 business customers and 20 residential customers in Arizona. Americatel does not have any employees in the State of Arizona.

Description of Proposed Transactions

In the Application, Comtel, Matrix, and Americatel state the following:

1. Matrix and Comtel entered into an Asset Purchase Agreement dated March 13, 2010.
2. The Agreement provides for an acquisition, by Matrix, of certain assets of Comtel, including Comtel's customer bases and substantially all of the assets used in Comtel's provision of telecommunications services. Matrix will replace Comtel as the service provider in Arizona.
3. Those customers transferred from Comtel to Matrix will continue to receive service from Matrix under the same rates, terms and conditions as the services currently provided, and under the same applicable brand name. The transfer of

customer bases and assets will be almost seamless and virtually transparent to customers served by Comtel. All of the affected customers will receive notice no later than thirty (30) days before the planned transfer.

4. Matrix will continue to provide service to its Arizona customers pursuant to Matrix's existing CC&N. Therefore, Comtel's CC&N and tariffs will be cancelled upon notification by the Applicants that the proposed transaction has been completed.
5. In order to finance part of the consideration for this transaction, the Applicants expect that Matrix will obtain seller financing from Comtel for which Americatel would act as a co-guarantor pledging certain assets as security.
6. The financing is expected to consist of a secured promissory note in the initial principal amount of up to \$17 million. The secured promissory note would be subordinated only to Matrix's and Americatel's current senior lender under their existing credit facility (the "Senior Credit Facility"), which will remain in place.¹
7. The secured promissory note will be secured by a second priority lien on all collateral pledged under the Senior Credit Facility, which is substantially all of the assets of Matrix and Americatel. The secured promissory note is expected to have a maturity of the earlier of (a) twenty-four (24) months from closing of the proposed transaction and (b) the payment in full, in cash, of the Senior Credit Facility. The interest rate is expected to be 10% per year.

The Applicants Request

In the Application, the Applicants request that the Commission approve the following:

- a. The transfer of customer bases and assets of Comtel to Matrix resulting from the asset purchase agreement pursuant to A.A.C. R14-2-1107; and
- b. Matrix's and Americatel's participation and encumbrance of assets in the debt financing arrangements pursuant to A.R.S. § 40-285(A); and
- c. Cancellation of Comtel's CC&N and associated tariffs, upon notification from the Applicants that the proposed transaction has been completed.

The Applicants also request expedited consideration and approval of this Application as soon as possible, but no later than the Commission's June 2010 Open Meeting, to permit Applicants to consummate the transaction by the end of the second quarter of 2010.

¹ Matrix and Americatel obtained approval for the Senior Credit Facility in Decision No. 70184 on February 27, 2008.

Staff's Analysis and Conclusions

The Affiliated Interests Rules

The Public Utility Holding Companies and Affiliated Interests Rules apply to all Class A investor-owned utilities, defined as telecommunications carriers that have Arizona jurisdictional annual revenues of more than \$1 million. Based on revenues reported in the 2009 Annual Reports on file with the Commission, none of the Applicants generated more than \$1 million of Arizona jurisdictional revenue, therefore this Application is not subject to A.A.C. R14-2-801 through 805 of the Public Utility Holding Companies and Affiliated Interests Rules.

Transfer of Customers and Assets

The Applicants have stated in its Application that Comtel's current Arizona customers and the assets to support the provision of services to those customers will be transferred to Matrix. Matrix will become the service provider for those customers and will continue to provide service to those Arizona customers under its existing certificate with no change in the rates, terms, or conditions of service as currently provided. No assets or customers will be transferred to Americatel. The transfer of customers and assets from Comtel to Matrix will be virtually transparent to those affected customers in terms of the services that those customers receive.

Cancellation of CC&N

The Applicants are requesting cancellation of Comtel's CC&N and associated tariffs upon notification from the Applicants that the proposed transaction has been completed. The Arizona customers of Comtel will be transferred to Matrix. Since Comtel will no longer be providing telecommunications services in the State of Arizona, the CC&N of Comtel will no longer be necessary.

Request for Waiver of Slamming and Cramming Rules

In the Joint Application, the Applicants are requesting a waiver of A.A.C. R14-2-1904 et seq. and any other anti-slamming rules regarding the transfer of customer bases. The Applicants are also requesting a waiver of A.A.C. R14-2-2001 through 2007, the Commission's anti-cramming rules. At least 30 days prior to the anticipated closing date and transfer of customers, Comtel and Matrix will provide notice to the Comtel customers describing the transfer of Comtel's customer bases to Matrix and assuring customers that they will continue to receive the same telecommunications services that they are currently receiving in accordance with the rates, terms, and conditions of their existing contracts or effective tariffs. The customer notice will also advise those customers that they have the option of selecting a new service provider if they do not wish to become a customer of Matrix.

On April 21, 2010, as an exhibit to the Joint Application, the Applicants provided Staff a copy of the customer notice. Staff has reviewed the customer notification letter that Comtel and Matrix will be providing to the Comtel customers. Because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed transfer and informs customers that they may subscribe to the telecommunications service provider of their choice, Staff believes the Commission's Slamming rules (Article 19 - Consumer Protections For Unauthorized Carrier Changes) should be waived in this matter. The Commission's Cramming rules (Article 20 - Consumer Protections For Unauthorized Carrier Charges) are intended to ensure all Customers in this state are protected from Unauthorized Charges on their bill from a Telecommunications Company. The Applicants state at Page 8 of the application ". . . the affected customer will receive the same services as they currently receive under the same rates, terms and conditions." Therefore, Staff does not recommend that the Commission's Cramming rules be waived in this matter.

Financing Arrangements

Matrix and Americatel request approval to encumber their assets under certain financing arrangements in order to finance part of the consideration for the proposed transaction. A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service, thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. In this instance, a pledge of Matrix's and Americatel's assets should not impair the availability of service to customers since Matrix provides competitive services that are available from alternate service providers. However, customers may still have exposure to losses to the extent they have prepaid for service or made deposits. Accordingly, Staff finds that any authorization for encumbrances should provide customer protection for prepayments and deposits.

Request for Waiver of A.A.C. R14-2-1107

In the Joint Application, the Applicants are requesting a waiver of A.A.C. R14-2-1107, which governs a telecommunications company's discontinuance of competitive local exchange or interexchange services in the state. As an alternative, if not in its entirety, the Applicants are requesting a waiver of A.A.C. R14-2-1107(B) which requires publication of a legal notice within twenty (20) days of the Application.

While the Applicants had originally requested a waiver of publishing a legal notice in all counties affected by the Application, as specifically required in A.A.C. R14-2-1107(B), Comtel and Matrix, in the alternative, published a legal notice of the Joint Application in *The Arizona Republic*. The legal notice appeared in the May 11, 2010 edition. A copy of the legal notice and the Affidavit of Publication was filed on May 21, 2010. In addition, the current Comtel customers will already be receiving a customer notice at least thirty (30) days prior to the anticipated closing date and transfer of customers as required by the Federal Communications Commission customer migration rules. Based on the above-mentioned customer and legal notice

actions taken or that will be taken by Comtel and Matrix, a waiver of A.A.C. R14-2-1107 would be unnecessary.

The Public Interest

Matrix and Americatel are in compliance with Decision No. 70184 in which the Commission approved an encumbrance of Matrix's and Americatel's assets and approval for the Senior Credit Facility. On February 27, 2008, in Decision No. 70184, the Commission approved Matrix's, Americatel's, and Startec Global Operating Company's pledge of its Arizona assets as security for debt financing up to \$120 million. This proposed transaction would be subordinated only to Matrix's and Americatel's current senior lender under their existing credit facility, which will remain in place. Matrix and Americatel will participate in the new financing arrangement, consisting of a second priority lien on all collateral pledged under the existing credit facility, which is substantially all of the assets of Matrix and Americatel, as necessary for the loans in this Application.

As of May 12, 2010, the combined Comtel and Matrix Companies' Arizona workforce consisted of approximately one (1) employee. Matrix has indicated that it does not foresee any Arizona workforce reductions or Arizona plant or facility closings from Comtel or Matrix should this Application be approved by the Commission.

The Applicants indicated that the proposed transaction will serve the public interest by ensuring that the current Comtel customers continue to enjoy high-quality, uninterrupted telecommunications services from carriers with significant technical, managerial, and financial resources.

Comtel currently has a \$135,000 performance bond which was obtained as a requirement of Decision No. 69175. Matrix does not have a performance bond in place. Since one entity, Matrix, will remain after the transfer of assets from Comtel to Matrix is completed, Staff recommends that Matrix be required to procure either a performance bond or an irrevocable sight draft Letter of Credit in the amount of \$135,000. Matrix has indicated that it understands that the \$135,000 performance bond or irrevocable sight draft Letter of Credit cannot be encumbered. At present, none of the Applicants are holding any customer deposits in Arizona.

The Applicants were found to be in Good Standing and in Compliance by the Consumer Services and Compliance Sections of the Commission. The Applicants have indicated that there are no outstanding or unresolved consumer complaints pending with this Commission. Staff's search of the Consumer Services database for the past three (3) years through May 14, 2010 found no complaints, inquiries, or opinions filed for these Companies.

On May 21, 2010, the Applicants' filed an Affidavit of Publication verifying public notice of its financing Application. The Applicants published notice of its financing Application in *The Arizona Republic* on May 11, 2010.

Staff's Recommendations

Staff recommends that the Application of Comtel and Matrix for a transfer of assets and customer bases of Comtel to Matrix, resulting from the proposed transaction, be approved. Staff also recommends that the Application of Matrix and Americatel for participation in debt financing arrangements be approved pursuant to A.R.S. § 40-285. In addition, Staff recommends that the Application of Comtel for cancellation of Comtel's CC&N and associated tariffs, upon notification from the Applicants that the proposed transaction has been completed, be approved pursuant to A.A.C. R14-2-1107.

Staff further recommends that approval be conditioned on the following:

- a. That the Applicants provide notice to the Commission within thirty (30) days following the transaction close proposed in this Application.
- b. That Matrix file conforming tariffs, within sixty (60) days of the effective date of a Decision in this matter, to incorporate the rates, terms and conditions of service that were included in the Comtel tariffs. Until such time, the Comtel tariffs shall be presumed to be the effective tariffs.
- c. That for one year following acquisition close or until Matrix and Comtel informs the Commission by filing an Affidavit with Docket Control that acquisition-related activities are completed, whichever occurs last, Matrix and Comtel provide written notification to Docket Control and to the individual members of the Commission, at least sixty (60) days in advance, of any planned acquisition-related Arizona workforce layoffs; any planned acquisition-related Arizona plant closings; and any planned acquisition-related Arizona facility closings.
- d. That Matrix files with Docket Control updates by April 15, 2011 and April 15, 2012 on the status of plans to increase employees and investment in Arizona.
- e. That Matrix and Americatel file with Docket Control updates by April 15, 2011 and April 15, 2012 of any changes in the status of debt financing plans.
- f. That Comtel, Matrix, and Americatel be limited from pledging any customer deposits, advances, or prepayments currently held by Comtel or which may be held by Comtel and/or Matrix in the future, as debt security.
- g. That Matrix procure, within 30 days of approval of this application by the Commission, either a performance bond or irrevocable sight draft Letter of Credit in a form acceptable to Staff and in the amount of \$135,000 which is equal to the amount of performance bond currently in place under Comtel. The original bond or letter must be filed with the Commission's Business Office and copies of the bond or letter with Docket Control, as a compliance item in the docket, before

transferring the customer bases from Comtel to Matrix. The Comtel performance bond shall remain in place until Matrix procures a performance bond or irrevocable sight draft Letter of Credit.

- h. That Matrix shall file, as an annual compliance item in this docket, a notarized attestation from an Officer of the Company stating whether all Arizona customer deposits, advances, and prepayments are excluded from encumbrance, or whether they are secured by a performance bond or irrevocable sight draft Letter of Credit which is not included in the pledged collateral.
- i. That Matrix notifies the Comtel customers of the proposed transfer and financing through a direct mailing to the Comtel customers, allowing those customers to elect, within ninety (90) days of receiving the notice, to continue or discontinue service with Matrix, without contractual obligation or penalty. Verification of the notice should be filed with Docket Control within ninety (90) days of a decision in this matter.
- j. That the Commission's Slamming rules (Article 19 - Consumer Protections For Unauthorized Carrier Changes) be waived in this matter.
- k. That the Commission's Cramming rules (Article 20 - Consumer Protections For Unauthorized Carrier Charges) not be waived in this matter.



Steven M. Olea
Director
Utilities Division

SMO:PJG:lh\WVC

ORIGINATOR: Pamela J. Genung

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BEFORE THE ARIZONA CORPORATION COMMISSION

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

IN THE MATTER OF THE JOINT)
APPLICATION OF COMTEL TELCOM)
ASSETS LP DBA EXCEL)
TELECOMMUNICATIONS/VARTEC)
TELECOM/CLEAR CHOICE)
COMMUNICATIONS, MATRIX)
TELECOM, INC. DBA MATRIX BUSINESS)
TECHNOLOGIES AND AMERICATEL)
CORPORATION FOR APPROVAL OF THE)
TRANSFER OF ASSETS AND)
CUSTOMERS FROM COMTEL TELCOM)
ASSETS LP TO MATRIX TELECOM, INC.)
AND AMERICATEL CORPORATION TO)
ENCUMBER THEIR ASSETS)

DOCKET NOS. T-20423A-10-0153
T-03228A-10-0153
T-03517A-10-0153

DECISION NO. _____

ORDER

Open Meeting
June 29 and 30, 2010
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On April 21, 2010, Comtel Telcom Assets LP ("Comtel"), Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel," together with Comtel and Matrix, the "Applicants") filed a Joint Application requesting expedited approval pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285(A) and Arizona Administrative Code ("A.A.C.") R14-2-1107, from the Arizona Corporation Commission ("Commission"), to the extent required, for (1) Comtel to transfer substantially all of its assets and customers to Matrix, and (2) Matrix and Americatel to encumber their assets under certain financing arrangements. Additionally, upon notification by Comtel and Matrix that the transfer of assets and customers is completed, Comtel requests that its Certificate of Convenience and Necessity ("CC&N") and tariffs be cancelled. The Applicants also

1 request a waiver of A.A.C. R14-2-1904 et seq., A.A.C. R14-2-2001-2007 and A.A.C. R14-2-
2 1107(B) and whatever further relief the Commission deems appropriate to authorize the
3 consummation of this transaction. On May 24, 2010, Comtel and Matrix filed an Affidavit of
4 Publication confirming publication of a legal notice in *The Arizona Republic* on May 11, 2010.

5 2. Comtel is a limited partnership organized under the laws of the State of Texas.
6 Comtel's principal office is located at 433 Las Colinas Boulevard E., Suite 1300, Irving, Texas
7 75039. Comtel Assets Corporation is the majority owner of Comtel. Comtel Assets Corporation
8 is wholly-owned by Denham Commodity Partners Fund III LP, a private equity fund.

9 3. In Arizona, Comtel is authorized to use the trade names of VarTec Telcom, VarTec
10 Solutions, Excel Telecommunications, and Clear Choice Telecommunications to provide resold
11 and facilities-based local exchange and resold interexchange telecommunications services pursuant
12 to Decision No. 69175 granted on December 5, 2006. Comtel currently has one (1) employee in
13 Arizona. As of May 12, 2010, Comtel was serving approximately 83 business customers,
14 approximately 93 residential local exchange customers, approximately 901 presubscribed
15 residential long distance customers and approximately 7,502 dial-around customers.

16 4. Matrix is a Texas corporation with principal offices located at 7171 Forest Lane,
17 Suite 700, Dallas, Texas 75230. In Arizona, Matrix is authorized to provide facilities-based local
18 exchange telecommunications services pursuant to Decision No. 69944 granted October 16, 2007.
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21 telecommunications services pursuant to Decision No. 65926 granted on May 16, 2003. As of
22 May 12, 2010, Matrix was serving approximately 173 business customers and 244 residential
23 customers in Arizona. Matrix does not have any employees in the State of Arizona.

24 5. Americatel is a Delaware corporation with principal offices located at 7361
25 Calhoun Place, Suite 650, Rockville, Maryland 20855. In Arizona, Americatel is authorized to
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1 2010, Americatel was serving approximately 23 business customers and 20 residential customers
2 in Arizona. Americatel does not have any employees in the State of Arizona.

3 The Transactions

4 6. Matrix and Comtel entered into an Asset Purchase Agreement dated March 13,
5 2010.

6 7. The Agreement provides for an acquisition, by Matrix, of certain assets of Comtel,
7 including Comtel's customer bases and substantially all of the assets used in Comtel's provision of
8 telecommunications services. Matrix will replace Comtel as the service provider in Arizona.

9 8. Those customers transferred from Comtel to Matrix will continue to receive service
10 from Matrix under the same rates, terms and conditions as the services currently provided, and
11 under the same applicable brand name. The transfer of customer bases and assets will be almost
12 seamless and virtually transparent to customers served by Comtel. All of the affected customers
13 will receive notice no later than thirty (30) days before the planned transfer.

14 9. Matrix will continue to provide service to its Arizona customers pursuant to
15 Matrix's existing CC&N. Therefore, Comtel's CC&N and tariffs will be cancelled upon
16 notification by the Applicants that the proposed transaction has been completed.

17 10. In order to finance part of the consideration for this transaction, the Applicants
18 expect that Matrix will obtain seller financing from Comtel for which Americatel would act as a
19 co-guarantor pledging certain assets as security.

20 11. The financing is expected to consist of a secured promissory note in the initial
21 principal amount of up to \$17 million. The secured promissory note would be subordinated only
22 to Matrix's and Americatel's current senior lender under their existing credit facility (the "Senior
23 Credit Facility"), which will remain in place.¹

24 12. The secured promissory note will be secured by a second priority lien on all
25 collateral pledged under the Senior Credit Facility, which is substantially all of the assets of Matrix
26 and Americatel. The secured promissory note is expected to have a maturity of the earlier of (a)
27

28 ¹ Matrix and Americatel obtained approval for the Senior Credit Facility in Decision No. 70184 on February 27, 2008.

1 twenty-four (24) months from closing of the proposed transaction and (b) the payment in full, in
2 cash, of the Senior Credit Facility. The interest rate is expected to be 10% per year.

3 13. In their Application, the Applicants request that the Commission approve the
4 following:

- 5 a. The transfer of customer bases and assets of Comtel to Matrix resulting from
6 the asset purchase agreement pursuant to A.A.C. R14-2-1107; and\
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10 the Applicants that the proposed transaction has been completed.

11 14. The Applicants also request expedited consideration and approval of this
12 Application as soon as possible, but no later than the Commission's June 2010 Open Meeting, to
13 permit Applicants to consummate the transaction by the end of the second quarter of 2010.

14 15. The Public Utility Holding Companies and Affiliated Interests Rules apply to all
15 Class A investor-owned utilities, defined as telecommunications carriers that have Arizona
16 jurisdictional annual revenues of more than \$1 million. Based on revenues reported in the 2009
17 Annual Reports on file with the Commission, none of the Applicants generated more than \$1
18 million of Arizona jurisdictional revenue, therefore this Application is not subject to A.A.C. R14-
19 2-801 through 805 of the Public Utility Holding Companies and Affiliated Interests Rules.

20 16. The Applicants have stated in its Application that Comtel's current Arizona
21 customers and the assets to support the provision of services to those customers will be transferred
22 to Matrix. Matrix will become the service provider for those customers and will continue to
23 provide service to those Arizona customers under its existing certificate with no change in the
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tariffs upon notification from the Applicants that the proposed transaction has been completed.

1 The Arizona customers of Comtel will be transferred to Matrix. Since Comtel will no longer be
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3 longer be necessary.

4 18. In the Joint Application, the Applicants are requesting a waiver of A.A.C. R14-2-
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13 wish to become a customer of Matrix.

14 19. On April 21, 2010, as an exhibit to the Joint Application, the Applicants provided
15 Staff a copy of the customer notice. Staff has reviewed the customer notification letter that Comtel
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16 requirement of Decision No. 69175. Matrix does not have a performance bond in place. Since one
17 entity, Matrix, will remain after the transfer of assets from Comtel to Matrix is completed, Staff
18 recommends that Matrix be required to procure either a performance bond or an irrevocable sight
19 draft Letter of Credit in the amount of \$135,000. Matrix has indicated that it understands that the
20 \$135,000 performance bond or irrevocable sight draft Letter of Credit cannot be encumbered. At
21 present, none of the Applicants are holding any customer deposits in Arizona.

22 27. The Applicants were found to be in Good Standing and in Compliance by the
23 Consumer Services and Compliance Sections of the Commission. The Applicants have indicated
24 that there are no outstanding or unresolved consumer complaints pending with this Commission.
25 Staff's search of the Consumer Services database for the past three (3) years through May 14, 2010
26 found no complaints, inquiries, or opinions filed for these Companies.

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1 28. On May 21, 2010, the Applicants' filed an Affidavit of Publication verifying public
2 notice of its financing Application. The Applicants published notice of its financing Application
3 in *The Arizona Republic* on May 11, 2010.

4 29. Staff recommends that the Application of Comtel and Matrix for a transfer of assets
5 and customer bases of Comtel to Matrix, resulting from the proposed transaction, be approved.

6 30. Staff also recommends that the Application of Matrix and Americatel for
7 participation in debt financing arrangements be approved pursuant to A.R.S. § 40-285.

8 31. In addition, Staff recommends that the Application of Comtel for cancellation of
9 Comtel's CC&N and associated tariffs, upon notification from the Applicants that the proposed
10 transaction has been completed, be approved pursuant to A.A.C. R14-2-1107.

11 32. Staff further recommends that approval be conditioned on the following:

- 12 a. That the Applicants provide notice to the Commission within thirty (30) days
13 following the transaction close proposed in this Application.
- 14 b. That Matrix file conforming tariffs, within sixty (60) days of the effective date
15 of a Decision in this matter, to incorporate the rates, terms and conditions of
16 service that were included in the Comtel tariffs. Until such time, the Comtel
17 tariffs shall be presumed to be the effective tariffs.
- 18 c. That for one year following acquisition close or until Matrix and Comtel
19 informs the Commission by filing an affidavit with Docket Control that
20 acquisition-related activities are completed, whichever occurs last, Matrix and
21 Comtel provide written notification to Docket Control and to the individual
22 members of the Commission, at least sixty (60) days in advance, of any planned
23 acquisition-related Arizona workforce layoffs; any planned acquisition-related
24 Arizona plant closings; and any planned acquisition-related Arizona facility
25 closings.
- 26 d. That Matrix files with Docket Control updates by April 15, 2011 and April 15,
27 2012, on the status of plans to increase employees and investment in Arizona.
- 28 e. That Matrix and Americatel file with Docket Control updates by April 15, 2011
and April 15, 2012, of any changes in the status of debt financing plans.
- f. That Comtel, Matrix, and Americatel be limited from pledging any customer
deposits, advances, or prepayments currently held by Comtel or which may be
held by Comtel and/or Matrix in the future, as debt security.
- g. That Matrix procure, within 30 days of approval of this application by the
Commission, either a performance bond or irrevocable sight draft Letter of

1 Credit in a form acceptable to Staff and in the amount of \$135,000 which is
2 equal to the amount of performance bond currently in place under Comtel. The
3 original bond or letter must be filed with the Commission's Business Office and
4 copies of the bond or letter with Docket Control, as a compliance item in the
5 docket, before transferring the customer bases from Comtel to Matrix. The
6 Comtel performance bond shall remain in place until Matrix procures a
7 performance bond or irrevocable sight draft Letter of Credit.

- 8
- 9 h. That Matrix shall file, as an annual compliance item in this docket, a notarized
10 attestation from an Officer of the Company stating whether all Arizona
11 customer deposits, advances, and prepayments are excluded from encumbrance,
12 or whether they are secured by a performance bond or irrevocable sight draft
13 Letter of Credit which is not included in the pledged collateral.
- 14 i. That Matrix notifies the Comtel customers of the proposed transfer and
15 financing through a direct mailing to the Comtel customers, allowing those
16 customers to elect, within ninety (90) days of receiving the notice, to continue
17 or discontinue service with Matrix, without contractual obligation or penalty.
18 Verification of the notice should be filed with Docket Control within ninety
19 (90) days of a decision in this matter.
- 20 j. That the Commission's Slamming rules (Article 19 - Consumer Protections For
21 Unauthorized Carrier Changes) and Cramming rules (Article 20 - Consumer
22 Protections For Unauthorized Carrier Charges) should be waived in this matter.
- 23 k. That the Commission's Cramming rules (Article 20 - Consumer Protections For
24 Unauthorized Carrier Charges) not be waived in this matter .

25 CONCLUSIONS OF LAW

26 1. Comtel Telcom Assets LP, Matrix Telcom, Inc., and Americatel Corporation are
27 public service corporations within the meaning of Article XV of the Arizona Constitution and
28 A.R.S. § 40-285.

1 The Commission has jurisdiction over Comtel Telcom Assets LP, Matrix Telcom,
2 Inc., and Americatel Corporation and the subject matter in this filing.

3 The Commission, having reviewed the filing and Staff's Memorandum dated
4 June 15 2010, concludes that pursuant to A.R.S. §§40-285 and A.A.C. R14-2-1107 it is in the
5 public interest to grant approval for Comtel Telcom Assets LP to transfer substantially all of its
6 assets and customers to Matrix Telecom, Inc., and for Matrix Telecom, Inc. and Americatel
7 Corporation to encumber their assets under certain financing arrangements.

8 ...

ORDER

IT IS THEREFORE ORDERED that the Joint Application of Comtel Telecom Assets LP and Matrix Telecom, Inc. requesting approval to transfer substantially all of Comtel's assets and customers in Arizona to Matrix Telecom, Inc. be and hereby is approved.

IT IS THEREFORE ORDERED that the Joint Application of Matrix Telecom, Inc. and Americatel Corporation requesting approval to encumber their assets under certain financing arrangements described in Finding of Fact Nos. 10, 11 and 12 be and hereby is approved.

IT IS FURTHER ORDERED that the Joint Application of Comtel Telecom Assets LP and Matrix Telecom, Inc. to cancel Comtel Telecom Assets LP Certificate of Convenience and Necessity to provide resold and facilities-based local exchange and resold interexchange telecommunications services shall be, and hereby is, granted, upon notification by Comtel and Matrix that the transfer of assets and customers is completed.

IT IS FURTHER ORDERED that upon cancellation of Comtel Telecom Assets LP Certificate of Convenience and Necessity, Comtel shall no longer be authorized to provide resold and facilities-based local exchange and resold interexchange telecommunications services in Arizona and therefore, shall no longer be subject to the requirements of Decision No. 69175.

IT IS FURTHER ORDERED that Comtel Telecom Assets LP's tariffs associated with providing resold and facilities-based local exchange and resold interexchange telecommunications services in Arizona that are on file with the Commission, shall be, and hereby are cancelled, upon notification from Comtel and Matrix that the transfer of assets and customers is completed.

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IT IS FURTHER ORDERED that approval of the Joint Application is conditioned upon the Applicants fulfilling the recommendations described in Finding of Fact No. 32.

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

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, 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 _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

EGJ:PJG:lhm\WVC

1 SERVICE LIST FOR: Comtel Telecom Assets LP d/b/a Excel Telecommunications/VarTec
2 Telecom/Clear Choice Communications, Matrix Telecom Inc. d/b/a Matrix Business
3 Technologies, and Americatel Corporation

4
5 DOCKET NOS. T-20423A-10-0153, T-03228A-10-0153, T-03517A-10-0153

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