

ORIGINAL

OPEN MEETING



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MEMORANDUM
Arizona Corporation Commission

DOCKETED

AZ CORP COM
DOCKET CO

TO: THE COMMISSION

MAR 25 2013

FROM: Utilities Division

2013 MAR 25 10 11 25

DATE: March 25, 2013

DOCKETED BY *JM*

RE: IN THE MATTER OF THE APPLICATION OF AMERICATEL CORPORATION AND MATRIX TELECOM, INC. FOR AN ORDER AUTHORIZING THE ENCUMBRANCE OF THEIR ASSETS (DOCKET NOS. T-03517A-13-0033 AND T-03228A-13-0033)

Introduction

On February 22, 2013, Americatel Corporation (“Americatel”) and Matrix Telecom, Inc. (“Matrix”) (collectively, “Applicants”) filed an application requesting Arizona Corporation Commission (“Commission”) approval pursuant to Arizona Revised Statutes (“A.R.S.”) § 40-285 to encumber their Arizona assets in connection with certain financing arrangements. In connection with an acquisition of Americatel and Matrix by Impact Telecom, Inc. (“Impact”), the Applicants will incur long-term debt obligations. In addition to borrowing under these facilities, the Applicants intend to guarantee these obligations and grant a security interest in their assets to secure the financing arrangements.

Background

Americatel and Matrix are affiliated companies, both 100% owned by MTAC Holding Corporation, a Delaware corporation. Americatel is a Delaware corporation with principal offices located at 433 E. Las Colinas Blvd, Suite 400, Irving, Texas 75039. Americatel provides international and domestic facilities-based and resold long distance services in 49 states. Americatel is authorized to provide competitive interLATA/intraLATA resold telecommunications services in Arizona, except local exchange services, as granted in Decision No. 61054 dated August 6, 1998.

Matrix is a Delaware corporation with principal offices located at 433 E. Las Colinas Blvd, Suite 400, Irving, Texas 75039. Established in 1990, Matrix is a competitive provider of integrated communications services including local, 1+long distance and toll-free voice services plus a wide range of data services, such as dedicated Internet access, frame relay and point to point transmission services, in all 50 states and the District of Columbia. Such services are provided primarily to enterprise customers. Matrix is authorized to provide facilities-based local exchange telecommunications services as granted in Decision No. 69944 dated October 16, 2007. Matrix is also authorized to provide resold local exchange services as granted in Decision No. 68343 dated December 9, 2005, and competitive resold interexchange telecommunications services as granted in Decision No. 65926 dated May 16, 2003.

The Proposed Transactions

On February 15, 2013, Impact and EnergyTRACS Acquisition Corp., a Delaware corporation ("Seller"), and MTAC Holding Corporation, a Delaware corporation ("Parent"), the corporate parents of Americatel and Matrix, entered into a stock purchase agreement ("Agreement"). Pursuant to the Agreement, Impact will acquire control of the Parent, and indirect control of Americatel and Matrix. Americatel and Matrix will become indirect subsidiaries of Impact.

Americatel and Matrix request approval to encumber their respective assets in Arizona in connection with certain arrangements. The Applicants intend to enter into a long-term financing arrangement to finance the acquisition of Americatel and Matrix by Impact, provide working capital, and to be used for other corporate purposes (the "Financing"). The Financing arrangement is expected to consist of a secured lien facility of \$22.5 million and a revolving loan facility of \$7 million.¹ In addition, because financing arrangements approved by the Commission in Decision No. 73580 dated November 12, 2012 have not been completed, the Financing described herein will replace the earlier-approved borrowing.

All of the obligations of the Financing are expected to be guaranteed by the Applicants. The Financing arrangements will also be secured by substantially all of the assets of the Applicants in Arizona.

In the application, the Applicants state that their customers will continue to receive services under the same rates, terms and conditions that they currently receive today. The proposed transaction will not produce a change in the Applicants' operating authority in Arizona.

Staff's Analysis and Conclusions

Staff has confirmed that the Applicants are not Class A utilities. Staff reviewed the Applicants' 2011 Annual Reports filed with the Commission that show that Americatel and Matrix had less than \$1 million in Arizona revenue. Consequently, Commission approval for the transfer of indirect control of Americatel and Matrix to Impact is not required under the Arizona Administrative Code ("A.A.C.") rules R14-2-801 through R14-2-806 ("Affiliated Interest Rules"). Also, Impact does not provide telecommunications services in Arizona.

Pursuant to A.R.S. § 40-285(A), a "public service corporation shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line, plant or system necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder" without approval from the Commission. The Applicants requested Commission approval to encumber their Arizona assets in connection with certain financing arrangements to be entered into by the Applicants. Staff received an e-mail that confirms that any customer advances, deposits or prepayments collected by Americatel and

¹ On February 26, 2013, the Applicants filed a *Notice of Errata* to change the revolving loan facility to \$7 million from \$1 million.

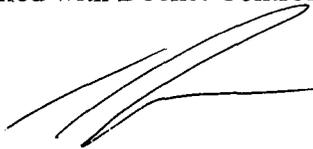
Matrix will be excluded from the proposed encumbrance. Therefore, to the extent that Applicants hold any Arizona customer advances, deposits or prepayments, those funds should not be pledged as part of the financing transactions.

The Applicants' participation in the new financing arrangement will not result in a change in any of the Applicants' day to day operations nor will it adversely affect Applicants' current or proposed operations in Arizona. In addition, Applicants will not be encumbering any customer advances, deposits or prepayments as part the financing arrangements. The financing arrangements will serve the public interests in promoting competition among telecommunications carriers by providing the Applicants with the opportunity to strengthen their financial position which is expected to yield benefits to the Applicants' customers and to the public interest. The Applicants will continue to provide services to their customers and will not alter rates or terms and conditions in Arizona.

On March 13, 2013, the Applicants filed with the Commission's Docket Control an affidavit of publication verifying public notice of its proposed financing arrangement. The Applicants' published notice of its application appeared in *The Arizona Republic* on March 13, 2013.

Staff's Recommendations

Staff recommends that the application requesting Commission approval pursuant to A.R.S. § 40-285 to pledge or otherwise encumber the Applicants' Arizona assets in connection with certain financing arrangements be approved on the condition that all customer advances, deposits and prepayments will not be included in the proposed encumbrance and equivalent amounts be retained by the Applicants. In addition, Staff recommends that Applicants file a copy of executed security documents, as a compliance item, with the Director of the Utilities Division within 90 days of a decision in this matter and a confirmation letter of such filing be filed with Docket Control on the same date.



Steven M. Olea
Director
Utilities Division
SMO:JFB:sms/BES

ORIGINATOR: John Bostwick

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BEFORE THE ARIZONA CORPORATION COMMISSION

- BOB STUMP
Chairman
- GARY PIERCE
Commissioner
- BRENDA BURNS
Commissioner
- BOB BURNS
Commissioner
- SUSAN BITTER SMITH
Commissioner

IN THE MATTER OF THE APPLICATION)
OF AMERICATEL CORPORATION AND)
MATRIX TELECOM, INC. FOR AN ORDER)
AUTHORIZING THE ENCUMBRANCE OF)
THEIR ASSETS)

DOCKET NOS. T-03517A-13-0033
T-03228A-13-0033

DECISION NO. _____

ORDER

Open Meeting
April 9 and 10, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 22, 2013, Americatel Corporation (“Americatel”) and Matrix Telecom, Inc. (“Matrix”) (collectively, “Applicants”) filed an application requesting Arizona Corporation Commission (“Commission”) approval pursuant to Arizona Revised Statutes (“A.R.S.”) § 40-285 to encumber their Arizona assets in connection with certain financing arrangements. In connection with the acquisition of Americatel and Matrix by Impact Telecom, Inc. (“Impact”), the Applicants will incur long-term debt obligations. In addition to borrowing under these facilities, the Applicants intend to guarantee these obligations and grant a security interest in their assets to secure the financing arrangements.

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1 Background

2 2. Americatel and Matrix are affiliated companies, both 100% owned by MTAC
3 Holding Corporation, a Delaware corporation. Americatel is a Delaware corporation with
4 principal offices located at 433 E. Las Colinas Blvd, Suite 400, Irving, Texas 75039. Americatel
5 provides international and domestic facilities-based and resold long distance services in 49 states.
6 Americatel is authorized to provide competitive interLATA/intraLATA resold telecommunications
7 services in Arizona, except local exchange services, as granted in Decision No. 61054 dated
8 August 6, 1998.

9 3. Matrix is a Delaware corporation with principal offices located at 433 E. Las
10 Colinas Blvd, Suite 400, Irving, Texas 75039. Established in 1990, Matrix is a competitive
11 provider of integrated communications services including local, 1+long distance and toll-free voice
12 services plus a wide range of data services, such as dedicated Internet access, frame relay and point
13 to point transmission services, in all 50 states and the District of Columbia. Such services are
14 provided primarily to enterprise customers. Matrix is authorized to provide facilities-based local
15 exchange telecommunications services as granted in Decision No. 69944 dated October 16, 2007.
16 Matrix is also authorized to provide resold local exchange services as granted in Decision No.
17 68343 dated December 9, 2005, and competitive resold interexchange telecommunications
18 services as granted in Decision No. 65926 dated May 16, 2003.

19 The Proposed Transactions

20 4. On February 15, 2013, Impact, and EnergyTRACS Acquisition Corp., a Delaware
21 corporation ("Seller"), and MTAC Holding Corporation, a Delaware corporation ("Parent"), the
22 corporate parents of Americatel and Matrix, entered into a stock purchase agreement
23 ("Agreement"). Pursuant to the Agreement, Impact will acquire control of the Parent, and indirect
24 control of Americatel and Matrix. Americatel and Matrix will become indirect subsidiaries of
25 Impact.

26 5. Americatel and Matrix request approval to encumber their respective assets in
27 Arizona in connection with certain arrangements. The Applicants intend to enter into a long-term
28 financing arrangement to finance the acquisition of Americatel and Matrix by Impact, provide

1 working capital, and to be used for other corporate purposes (the "Financing"). The Financing
2 arrangement is expected to consist of a secured lien facility of \$22.5 million and a revolving loan
3 facility of \$7 million.¹ In addition, because financing arrangements approved by the Commission
4 in Decision No. 73580 dated November 12, 2012, have not been completed, the Financing
5 described herein will replace the earlier-approved borrowing.

6 6. All of the obligations of the Financing are expected to be guaranteed by the
7 Applicants. The Financing arrangements will also be secured by substantially all of the assets of
8 the Applicants in Arizona.

9 7. In the application, the Applicants state that their customers will continue to receive
10 services under the same rates, terms and conditions that they currently receive today. The
11 proposed transaction will not produce a change in the Applicants' operating authority in Arizona.

12 Staff's Analysis and Conclusions

13 8. Staff has confirmed the Applicants are not Class A utilities. Staff reviewed the
14 Applicants' 2011 Annual Reports filed with the Commission that show that Americatel and Matrix
15 had less than \$1 million in Arizona revenue. Consequently, Commission approval for the transfer
16 of indirect control of Americatel and Matrix to Impact is not required under the Arizona
17 Administrative Code ("A.A.C.") rules R14-2-801 through R14-2-806 ("Affiliated Interest Rules").
18 Also, Impact does not provide telecommunications services in Arizona.

19 9. Pursuant to A.R.S. § 40-285(A), a "public service corporation shall not sell, lease,
20 assign, mortgage or otherwise dispose of or encumber the whole or any part of its railroad, line,
21 plant or system necessary or useful in the performance of its duties to the public, or any franchise
22 or permit or any right thereunder" without approval from the Commission. The Applicants
23 requested Commission approval to encumber their Arizona assets in connection with certain
24 financing arrangements to be entered into by the Applicants. Staff received an e-mail that
25 confirms that any customer advances, deposits or prepayments collected by Americatel and Matrix
26 will be excluded from the proposed encumbrance. Therefore, to the extent that Applicants hold

27 _____
28 ¹ On February 26, 2013, the Applicants filed a *Notice of Errata* to change the revolving loan facility to \$7 million
from \$1 million.

1 any Arizona customer advances, deposits or prepayments, those funds should not be pledged as
2 part of the financing transactions.

3 10. The Applicants' participation in the new financing arrangement will not result in a
4 change in any of the Applicants' day to day operations nor will it adversely affect Applicants'
5 current or proposed operations in Arizona. In addition, Applicants will not be encumbering any
6 customer advances, deposits or prepayments as part the financing arrangements. The financing
7 arrangements will serve the public interests in promoting competition among telecommunications
8 carriers by providing the Applicants with the opportunity to strengthen their financial position
9 which is expected to yield benefits to the Applicants' customers and to the public interest. The
10 Applicants will continue to provide services to their customers and will not alter rates or terms and
11 conditions in Arizona.

12 11. On March 13, 2013, the Applicants filed with the Commission's Docket Control an
13 affidavit of publication verifying public notice of its proposed financing arrangement. The
14 Applicants' published notice of its application appeared in *The Arizona Republic* on March 13,
15 2013.

16 Staff's Recommendations

17 12. Staff recommends that the application requesting Commission approval pursuant to
18 A.R.S. § 40-285 to pledge or otherwise encumber the Applicants' Arizona assets in connection
19 with certain financing arrangements be approved on the condition that all customer advances,
20 deposits and prepayments will not be included in the proposed encumbrance and equivalent
21 amounts be retained by the Applicants. In addition, Staff recommends that Applicants file a copy
22 of executed security documents, as a compliance item, with the Director of the Utilities Division
23 within 90 days of a decision in this matter and a confirmation letter of such filing be filed with
24 Docket Control on the same date.

25 CONCLUSIONS OF LAW

26 1. Americatel Corporation and Matrix Telecom, Inc. are public service corporations
27 within the meaning of Article XV of the Arizona Constitution and Arizona Revised Statutes § 40-
28 285.

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

3 3. The Commission, having reviewed the filing and Staff's Memorandum dated March
4 25, 2013, concludes that it is in the public interest to approve the application with the conditions
5 recommended by Staff in Finding of Fact No. 12.

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ORDER

IT IS THEREFORE ORDERED that the Americatel Corporation and Matrix Telecom, Inc. application requesting approval to pledge or otherwise encumber their Arizona assets be and hereby is approved, subject to the condition that all customer advances, deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

IT IS FURTHER ORDERED that the Americatel Corporation and Matrix Telecom, Inc. file a copy of executed security documents, as a compliance item, with the Director of the Utilities Division within 90 days of a decision in this matter and a confirmation letter of such filing be filed with Docket Control on the same date.

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, JODI JERICH, 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 _____, 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:JFB:sms/BES

Decision No. _____

1 SERVICE LIST FOR: Americatel Corporation and Matrix Telecom, Inc.
2 DOCKET NOS.: T-03517A-13-0033 and T-03228A-13-0033

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