

ORIGINAL

OPEN MEETING



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MEMORANDUM
Arizona Corporation Commission
DOCKETED

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TO: THE COMMISSION

JUN 02 2015

2015 JUN -2 P 3:23

FROM: Utilities Division

DOCKETED BY *DMB*

AZ CORP COMMISSION
DOCKET CONTROL

DATE: June 2, 2015

RE: IN THE MATTER OF THE APPLICATION OF AMERICATEL CORPORATION D/B/A 1010 123 AMERICATEL D/B/A AMETEX D/B/A/ STARTEC FOR APPROVAL TO CANCEL THEIR CERTIFICATE OF CONVENIENCE AND NECESSITY AND TRANSFER THEIR CUSTOMER BASE TO MATRIX TELECOM, INC. D/B/A MATRIX BUSINESS TECHNOLOGIES D/B/A VARTEC TELECOM D/B/A CLEAR CHOICE COMMUNICATIONS D/B/A EXCEL TELECOMMUNICATIONS. (DOCKET NOS. T-03228A-14-0407 AND T-03517A-14-0407)

On December 12, 2014, Matrix Telecom, Inc. d/b/a Matrix Business Technologies d/b/a VarTec Telecom d/b/a Clear Choice Communications d/b/a Excel Telecommunications ("Matrix") and Americatel Corporation d/b/a 1010 123 Americatel d/b/a Ametex d/b/a Amextel d/b/a Startec ("Americatel") (together, "Applicants") filed an application requesting approval from the Arizona Corporation Commission ("Commission") of the transfer of the long distance customers of Americatel to Matrix. In addition, the Applicants seek a waiver of Arizona Administrative Code ("A.A.C.") R-14-1901-1913 (the "Slamming Rules"); a waiver of the notice and publication portion of the discontinuance rules per A.A.C. R-14-2-1107; the cancellation of Americatel's Certificate of Convenience and Necessity ("CC&N") and applicable tariffs and such other approvals as the Commission deems necessary for the Applicants to complete the transaction.

In support of this filing, Applicants provide the following information.

Introduction

The Applicants state the transaction is part of a multi-state effort to consolidate certain subsidiaries of Impact Telecom, Inc. ("Impact") and is therefore an internal corporate reorganization. The Applicants are coordinating proceedings with an expected implementation date of January 1, 2015 and therefore request the grant of the Application no later than January 1, 2015.

Description of the Applicants

A. Americatel Corporation

Americatel was incorporated under the laws of the State of Delaware on April 4, 1992, and holds a CC&N to provide competitive interLATA/intraLATA resold telecommunications services (except local exchange services) in Arizona pursuant to Decision No. 61054 dated August 6, 1998. Americatel's principle office is located in Irving, Texas and is a wholly owned subsidiary of Impact.

B. Matrix Telecom, Inc.

Matrix was incorporated under the laws of the State of Texas on June 13, 1990. In Arizona, Matrix holds a CC&N to provide competitive resold interexchange telecommunications services pursuant to Decision No. 65926 dated May 16, 2003, a CC&N to provide competitive resold local exchange services pursuant to Decision No. 68343 dated December 9, 2005, and a CC&N to provide competitive facilities-based local exchange services pursuant to Decision No. 69944 dated October 16, 2007. Matrix currently offers presubscribed interexchange and local telecommunications services in Arizona. Matrix's principle office is located in Irving, Texas and is a wholly owned subsidiary of Impact.

The Proposed Transaction

The Applicants state Americatel's customers in all states in which it operates will be transferred to Matrix beginning on or after January 1, 2015, subject to regulatory approvals. Currently, there are 710 presubscribed Americatel customers in Arizona.¹ Americatel will also transfer its accounts receivables and liabilities to Matrix.² Following the transfer, the former Americatel interexchange customers will be served by Matrix. Customers will continue receiving the same services from Matrix as they were receiving before the transaction from Americatel. Matrix's tariff will be revised to incorporate Americatel's services and Americatel will cease to operate.

Staff's Analysis

Request for Waiver of Slamming Rules

The Applicants state they seek a waiver of the Slamming Rules and any other applicable anti-slamming regulations that may be inconsistent with the Federal Communications Commission's ("FCC") rules regarding the transfer of customer bases. A written notice of the proposed transfer was provided to all Americatel customers on or about November 20, 2014. The notice informed the Americatel customers of the transfer pursuant to Section 47 C.F.R 64.1120(e)(3) of the FCC's rules. Staff has reviewed the notice delivered to those affected customers. Because the notice informs customers the rates, terms and conditions of service will not change as a result of the proposed transactions and informs customers they may subscribe to the telecommunications service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in this matter.

Waiver of A.A.C. R14-2-1107 (A)(2) and (B)

The Applicants respectfully request the Commission waive specific portions of the discontinuance of service rules. These portions are the customer notice section of A.A.C. R14-2-1107 (A)(2) and the publication requirement specified in A.A.C. R14-2-1107 (B). As mentioned, customers received a notification as required by the FCC. The Applicants stated as they have already provided direct notice to the customers of Americatel of the merger with Matrix, Matrix will be offering those customers the same services at the same price and no customers will be impaired

¹ See response to Staff Data Request STF 1.4.

² See response to Staff Data Request STF 1.8.

by this change, a second notice of discontinuance will be confusing to customers and in this instance should not be required. Additionally, Americatel contends the direct customer notification provided to all presubscribed customers regarding the transfer and discontinuance of service provides greater notice than an open published legal notice.

Staff believes a waiver of A.A.C. R14-2-1107 (A)(2) and (B) is appropriate in this circumstance as service to Americatel's customers will not be abandoned or discontinued and Americatel's customers will continue to receive service under the same rates, terms and conditions.

Cancellation of CC&N

The Applicants request cancellation of Americatel's CC&N and associated tariff effective upon consummation of the transaction as Americatel will cease to operate after the transaction. Americatel has no employees in Arizona and has no facilities or assets in Arizona. Americatel has not collected any advances, deposits and/or prepayments from customers in Arizona.

Staff's research revealed the Commission's Business Office is in possession of an original (and subsequently cancelled) \$2,500 bond as well as an original \$5,000 bond (that replaced the \$2,500 bond) both of which indicate Americatel as the Principle. The Applicants indicated that upon approval of the cancellation of Americatel's CC&N, these bonds should be returned to:

Mr. Alex Valencia
Senior Director
Government Affairs and Compliance
433 East Las Colinas Blvd.
Suite 500
Irving Texas 75039³

Complaints and Compliance

The Consumer Services Section of the Utilities Division reports that from January 1, 2011 to January 15, 2015, there have been no complaints, inquiries, or opinions about Matrix and Americatel. Both Matrix and Americatel have filed their respective 2013 Utilities Annual Reports. According to the Corporations Division, Matrix is in good standing and Americatel is not in good standing due to failure to file its Annual Report for 2014. The Compliance Section of the Utilities Division reports there are currently no delinquencies for Matrix and Americatel is not in compliance at this time. On May 8, 2015, Matrix filed an application requesting the rescission of its bond requirement.⁴

Staff Recommendations

Staff recommends approval of the Application of Matrix and Americatel for Matrix to acquire the Arizona customers of Americatel. Staff also recommends, upon notification from the

³ See response to Staff Data Request STF 2.2.

⁴ See *In The Application Of Matrix Telecom, Inc. For An Order Rescinding Its Bond Requirement*, Docket No. T-03228A-15-0149.

THE COMMISSION

June 3, 2015

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Applicants that the proposed transaction has been completed, the CC&N and tariffs of Americatel be cancelled and Americatel's bonds mentioned previously be returned to the contact indicated. Upon cancellation of its CC&N, Americatel will no longer be authorized to provide telecommunications services in Arizona. Therefore, Americatel will no longer be subject to the requirements of Decision No. 61054.

Staff further recommends that approval be conditioned on the following:

- a. The Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transaction in this Application.
- b. That Matrix file an updated tariff, within thirty (30) 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 Americatel tariff.

Staff believes the Commission's Slamming and Discontinuance Rules all apply to this transaction. However, based on the above, Staff recommends the following:

- A waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases 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;
- A waiver of A.A.C. R14-2-1107 (A)(2), which governs a telecommunications company's verification that all affected customers have been notified of the proposed discontinuance of service and that all affected customers will have access to an alternative interexchange service provider.
- A waiver of A.A.C. R14-2-1107 (B), which requires that the Applicant publish legal notice of the application in all counties affected by the application describing with particularity the substance of the application.



Steven M. Olea
Director
Utilities Division

SMO:MAC:vsc\WVC

ORIGINATOR: Matt Connolly

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 SUSAN BITTER SMITH
Chairman

3 BOB STUMP
Commissioner

4 BOB BURNS
Commissioner

5 DOUG LITTLE
Commissioner

6 TOM FORESE
Commissioner

7
8 IN THE MATTER OF THE APPLICATION)
OF AMERICATEL CORPORATION D/B/A)
9 1010 123 AMERICATEL D/B/A AMETEX)
D/B/A/ STARTEC FOR APPROVAL TO)
10 CANCEL THEIR CERTIFICATE OF)
11 CONVENIENCE AND NECESSITY AND)
TRANSFER THEIR CUSTOMER BASE TO)
12 MATRIX TELECOM, INC. D/B/A MATRIX)
BUSINESS TECHNOLOGIES D/B/A)
13 VARTEC TELECOM D/B/A CLEAR)
CHOICE COMMUNICATIONS D/B/A)
14 EXCEL TELECOMMUNICATIONS.)

DOCKET NOS. T-03228A-14-0407
T-03517A-14-0407

DECISION NO. _____

ORDER

15 _____
Open Meeting
16 June 16 and 17, 2015
Phoenix, Arizona

17 BY THE COMMISSION:

18 FINDINGS OF FACT

19 1. On December 12, 2014, Matrix Telecom, Inc. d/b/a Matrix Business Technologies
20 d/b/a VarTec Telecom d/b/a Clear Choice Communications d/b/a Excel Telecommunications
21 (“Matrix”) and Americatel Corporation d/b/a 1010 123 Americatel d/b/a Ametex d/b/a Amextel
22 d/b/a Startec (“Americatel”) (together, “Applicants”) filed an application requesting approval from
23 the Arizona Corporation Commission (“Commission”) of the transfer of the long distance customers
24 of Americatel to Matrix. In addition, the Applicants seek a waiver of Arizona Administrative Code
25 (“A.A.C.”) R-14-1901-1913 (the “Slamming Rules”); a waiver of the notice and publication portion of
26 the discontinuance rules per A.A.C. R-14-2-1107; the cancellation of Americatel’s Certificate of
27 Convenience and Necessity (“CC&N”) and applicable tariffs and such other approvals as the
28 Commission deems necessary for the Applicants to complete the transaction.

2. In support of this filing, Applicants provide the following information.

Introduction

3. The Applicants state the transaction is part of a multi-state effort to consolidate certain subsidiaries Impact Telecom, Inc. ("Impact") and is therefore an internal corporate reorganization. The Applicants are coordinating proceedings with an expected implementation date of January 1, 2015 and therefore request the grant of the Application no later than January 1, 2015.

Description of the Applicants

Americatel Corporation

4. Americatel was incorporated under the laws of the State of Delaware on April 4, 1992 and holds a CC&N to provide competitive interLATA/intraLATA resold telecommunications services (except local exchange services) in Arizona pursuant to Decision No. 61054 dated August 6, 1998. Americatel's principle office is located in Irving, Texas and is a wholly owned subsidiary of Impact.

Matrix Telecom, Inc.

5. Matrix was incorporated under the laws of the State of Texas on June 13, 1990. In Arizona, Matrix holds a CC&N to provide competitive resold interexchange telecommunications services pursuant to Decision No. 65926 dated May 16, 2003, a CC&N to provide competitive resold local exchange services pursuant to Decision No. 68343 dated December 9, 2005, and a CC&N to provide competitive facilities-based local exchange services pursuant to Decision No. 69944 dated October 16, 2007. Matrix currently offers presubscribed interexchange and local telecommunications services in Arizona. Matrix's principle office is located in Irving, Texas and is wholly owned subsidiary of Impact.

Description of the Transaction

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¹ See response to Staff Data Request STF 1.4.

1 accounts receivables and liabilities to Matrix.² Following the transfer, the former Americatel
2 interexchange customers will be served by Matrix. Customers will continue receiving the same
3 services from Matrix as they were receiving before the transaction from Americatel. Matrix's tariff will
4 be revised to incorporate Americatel's services and Americatel will cease to operate.

5 **Request for Waiver of Slamming Rules**

6 7. The Applicants seek a waiver of the Slamming Rules and any other applicable anti-
7 slamming regulations that may be inconsistent with the Federal Communications Commission's
8 ("FCC") rules regarding the transfer of customer bases. A written notice of the proposed transfer was
9 provided to all Americatel customers on or about November 20, 2014. The notice informed the
10 Americatel customers of the transfer pursuant to Section 47 C.F.R 64.1120(e)(3) of the FCC's rules.

11 8. Staff has reviewed the notice that will be sent to those affected customers. Because the
12 notice informs customers the rates, terms and conditions of service will not change as a result of the
13 proposed transactions and informs customers that they may subscribe to the telecommunications
14 service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in
15 this matter.

16 **Request for Waivers of A.A.C. R14-2-1107 (A)(2) and (B)**

17 9. The Applicants respectfully request that the Commission waive specific portions of the
18 discontinuance of service rules. These portions are the customer notice section of A.A.C. R14-2-1107
19 (A)(2) and the publication requirement specified in A.A.C. R14-2-1107 (B). As mentioned, customers
20 received a notification as required by the FCC. The Applicants stated as they have already provided
21 direct notice to the customers of Americatel of the merger with Matrix, Matrix will be offering those
22 customers the same services at the same price and no customers will be impaired by this change, a
23 second notice of discontinuance will be confusing to customers and in this instance should not be
24 required. Additionally, Americatel contends the direct customer notification provided to all
25 presubscribed customers regarding the transfer and discontinuance of service provides greater notice
26 than an open published legal notice.

27 _____
28 ² See response to Staff Data Request STF 1.8.

1 10. Staff believes a waiver of A.A.C. R14-2-1107 (A)(2) and (B) is appropriate in this
2 circumstance as service to Americatele's customers will not be abandoned or discontinued and
3 Americatele's customers will continue to receive service under the same rates, terms and conditions.

4 **Cancellation of CC&N**

5 11. The Applicants request cancellation of Americatele's CC&N and associated tariff effective
6 upon consummation of the transaction as Americatele will cease to operate after the transaction.
7 Americatele has no employees in Arizona and has no facilities or assets in Arizona. Americatele has not
8 collected any advances, deposits and/or prepayments from customers in Arizona.

9 12. Staff's research revealed the Commission's Business Office is in possession of an original
10 (and subsequently cancelled) \$2,500 bond as well as an original \$5,000 bond (that replaced the \$2,500
11 bond) both of which indicate Americatele as the Principle. The Applicants indicated that upon
12 approval of the cancellation of Americatele's CC&N, these bonds should be returned to:

13 Mr. Alex Valencia
14 Senior Director
15 Government Affairs and Compliance
16 433 East Las Colinas Blvd.
 Suite 500
 Irving Texas 75039³

17 **Complaints and Compliance**

18 13. The Consumer Services Section of the Utilities Division reports that from January 1, 2011
19 to January 15, 2015, there have been no complaints, inquiries, or opinions about Matrix and
20 Americatele. Both Matrix and Americatele have filed their respective 2013 Utilities Annual Reports.
21 According to the Corporations Division, Matrix is in good standing and Americatele is not in good
22 standing due to failure to file its Annual Report for 2014. The Compliance Section of the Utilities
23 Division reports there are currently no delinquencies for Matrix and Americatele is not in compliance at
24 this time. On May 8, 2015, Matrix filed an application requesting the rescission of its bond
25 requirement.⁴

26 . . .

27 _____

28 ³ See response to Staff Data Request STF 2.2.

⁴ See *In The Application Of Matrix Telecom, Inc. For An Order Rescinding Its Bond Requirement*, Docket No. T-03228A-15-0149.

Staff Recommendations

14. Staff recommends approval of the Application of Matrix and Americatel for Matrix to acquire the Arizona customers of Americatel. Staff also recommends, upon notification from the Applicants that the proposed transaction has been completed, the CC&N and tariffs of Americatel be cancelled and Americatel's bonds mentioned previously be returned to the contact indicated. Upon cancellation of its CC&N, Americatel will no longer be authorized to provide telecommunications services in Arizona. Therefore, Americatel will no longer be subject to the requirements of Decision No. 61054.

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

- The Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transactions in this Application;
- That Matrix file an updated tariff, within thirty (30) 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 Americatel tariff.

16. Staff believes the Commission's Slamming and Discontinuance Rules all apply to this transaction. However, based on the above, Staff recommends the following:

- A waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases 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;
- A waiver of A.A.C. R14-2-1107(A)(2), which governs a telecommunications company's verification that all affected customers have been notified of the proposed discontinuance of service and that all affected customers will have access to an alternative interexchange service provider.
- A waiver of A.A.C. R14-2-1107(B), which requires that the Applicant publish legal notice of the application in all counties affected by the application describing with particularity the substance of the application.

CONCLUSIONS OF LAW

1. Matrix Telecom, Inc. and Americatel Corporation are public service corporations within the meaning of Article XV of the Arizona Constitution.

1 Necessity granted in Decision No. 61054 to provide competitive interLATA/intraLATA resold
2 telecommunications services in Arizona is hereby cancelled.

3 IT IS FURTHER ORDERED that effective with the filing by Matrix Telecom, Inc. and
4 Americatel Corporation of the affidavit with Docket Control informing the Commission the
5 transaction-related activities are completed, Americatel Corporation's tariffs on file with the
6 Commission are hereby cancelled.

7 IT IS FURTHER ORDERED that Matrix Telecom, Inc. file an updated tariff, within thirty
8 (30) days of the effective date of a Decision in this matter, to incorporate the rates, terms and
9 conditions of service that were included in the Americatel Corporation tariff.

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

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

13
14
15 CHAIRMAN

COMMISSIONER

16
17 COMMISSIONER

COMMISSIONER

COMMISSIONER

18
19 IN WITNESS WHEREOF, I, JODI JERICH, Executive
20 Director of the Arizona Corporation Commission, have
21 hereunto, set my hand and caused the official seal of this
22 Commission to be affixed at the Capitol, in the City of
23 Phoenix, this _____ day of _____, 2015.

24 _____
JODI JERICH
EXECUTIVE DIRECTOR

25
26 DISSENT: _____

27 DISSENT: _____

28 SMO:MAC:vsc\WVC

1 SERVICE LIST FOR: MATRIX TELECOM, INC. AND AMERICATEL CORPORATION
2 DOCKET NOS.: T-03228A-14-0407 AND T-03517A-14-0407
3

4 Mr. Thomas M. Forte
5 Consultant to Impact Telecom Companies
6 Technologies Management, Inc.
7 2600 Maitland Center Parkway
8 Suite 300
9 Maitland, FL 32751

10 Mr. Steven M. Olea
11 Director, Utilities Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Ms. Janice M. Alward
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Mr. Dwight Nodes
21 Acting Chief Administrative Law Judge, Hearing Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007
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