

LATHAM & WATKINS LLP

September 22, 2006

Ms. Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Dear Ms. Dillon:

Enclosed herein for filing on behalf of Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel"), please find the original and thirteen (13) copies of a Joint Petition seeking the Commission's *expedited* approval, to the extent necessary, to participate in certain debt financing arrangements and for a minor corporate reorganization resulting in a *pro forma* change of control of Petitioners as more fully set forth in the Petition. Please stamp and return to me in the enclosed envelope the copy provided for that purpose. Also enclosed herein is the required fee of \$50.

Exhibits A and B to Petitioners' filing are being provided under seal, in accordance with Commission practice. These exhibits contain financial data for Petitioners. This type of data is not normally made available to the public. Moreover, given the competitive nature of the telecommunications market, public disclosure of these documents would likely provide competitors with information that could be used in the market against Petitioners. Therefore, Petitioners respectfully request that these Exhibit be accorded confidential treatment and not be made a part of the public record in this proceeding or otherwise disclosed to the public.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

Berlin Szoka

Berlin M. Szoka
Attorney For Matrix Telecom, Inc.
and Americatel Corporation

Attachment

PAID T.R.A.	
Chk #	323481
Amount	50.00
Rcvd By	SS
Date	9/25/06

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**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of the Joint Petition of)	
)	
Matrix Telecom, Inc.)	
and)	
Americatel Corporation)	Docket No.
)	
for Approval of Certain Financing)	
Arrangements and a <i>Pro Forma</i>)	
Transfer of Control)	
)	

PETITION

Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel") (collectively, "Petitioners"), by their attorneys, hereby petitions the Tennessee Regulatory Authority ("TRA") pursuant to T.C.A. §§ 65-4-109 and 65-4-113 for approval, to the extent it may be necessary, for (1) certain debt financing arrangements, pursuant to a Credit Agreement (the "Credit Agreement") dated September 14, 2006, among Petitioners, EnergyTRACS Acquisition Corp. ("EnergyTRACS," the immediate parent of the Petitioners), HBK Investments, L.P. ("HBK," the Arranger and Administrative Agent), and PCRL III Investments L.P. (the "Lender"); and (2) a *pro forma* transfer of control as part of a minor corporate restructuring.

I. SUMMARY OF AUTHORITY SOUGHT

1. Petitioners request that the TRA authorize them (i) to issue debt payable at a period more than twelve months after the date thereof, (ii) to encumber their assets both within and without the State of Tennessee as collateral for such debt, (iii) to have their stock pledged as further collateral for such debt; and (iv) to implement a minor internal corporate

reorganization in connection with the issuance of this indebtedness resulting in a *pro forma* transfer of control of the Petitioners.

2. The Credit Agreement is structured in two phases. In the first phase, which will last for a maximum of 364 days, Petitioners act as jointly and severally liable co-borrowers for new debt obligations of up to \$90 million, consisting of a \$40 million term loan and up to \$50 million in revolving credit. EnergyTRACS, Platinum Equity, LLC (“Platinum Equity”), Petitioners’ ultimate parent, and Matrix Telecom of Virginia, Inc. (“Matrix of Virginia”), a subsidiary of Matrix, are guaranteeing Petitioners’ debt. The Petitioners are not pledging or encumbering any of their assets in connection with this first phase.
3. In the second phase, upon receipt of all necessary regulatory approvals,¹ Petitioners will pledge all of their assets as collateral for this indebtedness and will have their stock pledged as further collateral. Concurrently, the first phase guarantees described above will terminate.
4. In preparation for this second phase, and as required by the Lender, EnergyTRACS must transfer the stock of the Petitioners to MTAC Holding Corporation (“MTAC”), a Delaware corporation, and a newly-formed, wholly-owned subsidiary of EnergyTRACS.² Ultimate control of Petitioners by Platinum Equity will not change as a result of this minor corporate reorganization.

In support of this Application, Petitioners provide the following information:

¹ Petitioners will be in default under the terms of the Credit Agreement, and face termination thereof, if all such approvals are not received within 180 days, or by March 13, 2007.

² Petitioners will be in default under the terms of the Credit Agreement, and face termination thereof, if all such approvals are not received within 90 days, or by December 13, 2007.

II. THE COMPANIES

A. Description of Matrix and Authority Held in Tennessee

5. Matrix is a Texas corporation with principal offices located at 2207 Commerce Street, Dallas, Texas 75201, tel. (214) 432-1447. Established in 1991, 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, chiefly to enterprise customers. Matrix is authorized to provide service in all 50 states and the District of Columbia. In Tennessee, Matrix is authorized to operate as a reseller of telecommunications services, including local exchange service, per Docket No. 05-00083 (June 30, 2005) and Case Number 95-03215 (October 13, 1995). Matrix is also authorized to provide facilities-based and/or resold interexchange and/or competitive local exchange telecommunications services across the nation. Matrix acquired in 2005, and now serves, the small business customer base of Global Crossing Telecommunications, Inc., in Tennessee, per Case No. 05-C-0370 (May 10, 2005), and throughout the nation.

B. Description of Americatel and Authority Held in Tennessee

6. Americatel is a Delaware corporation with principal offices located at 4045 NW 97th Avenue, Miami, Florida 33178, (tel) 305-717-0200 (main number), (fax) 305-716-8833. Americatel also has an office at 60 Hudson Street, New York, New York 10013. Serving the needs of United States customers with connections to Latin America and the Caribbean, Americatel provides international and domestic facilities-based and resold long distance services, including “dial around” casual calling (*i.e.*, 1010XXX) service and presubscribed 1+ calling services, in each of the 48 contiguous states. In Tennessee,

Americatel is authorized to resell telecommunications services per Case No. 98-00065, issued on February 2, 1999.

C. Ownership of the Petitioners

7. Platinum Equity, a limited liability company formed under the laws of Delaware and headquartered in Beverly Hills, California, has indirectly held 100 percent of the equity of Matrix since 1999, and 95 percent of the equity of Americatel since July 2006. Platinum Equity is a global firm specializing in the merger, acquisition and operation of companies that provide services and solutions to customers in a broad range of business markets, including information technology, telecommunications, and logistics, manufacturing, and entertainment distribution. Since its founding in 1995, Platinum Equity has acquired more than 60 businesses with more than \$12 billion in aggregate revenue at the time of acquisition. Platinum Equity currently holds its interests in Matrix and Americatel through its wholly-owned subsidiary, EnergyTRACS.

III. DESIGNATED CONTACTS

8. Inquiries or copies of any correspondence, orders, or other materials pertaining to this Petition should be directed to:

Richard R. Cameron
Berin M. Szoka
LATHAM & WATKINS LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200 (Tel)
(202) 637-2201 (Fax)
richard.cameron@lw.com
berin.szoka@lw.com

9. Copies of any correspondence should also be sent to the following designated representatives of Matrix and Americatel, respectively:

Scott Klopach
Vice President of Regulatory Affairs
and General Counsel
Matrix Telecom, Inc.
2207 Commerce Street
Dallas, Texas 75201
(214) 432-1468 (Tel)
(214) 432-1576 (Fax)
sklopach@matrixvalue.com

Victor A. Lago
Vice President & General Counsel
Americatel Corporation
4045 97th Avenue
Miami, Florida 33178
(305) 717-0299 (Tel)
(305) 716-8833 (Fax)
vlago@americatel.net

IV. DESCRIPTION OF THE TRANSACTION

10. Petitioners seek authority to implement certain debt financing arrangements payable at a term of more than one year, to pledge their assets as collateral for the debt, and to have their stock pledged as further collateral, all pursuant to the terms of the 2006 Credit Agreement. In addition, in connection with this financing arrangement and as required by the Credit Agreement, Petitioners seek authority to implement a minor corporate reorganization under which EnergyTRACS will transfer the stock it holds in the Petitioners to MTAC, a newly-formed, wholly-owned subsidiary of EnergyTRACS, without affecting ultimate control of Petitioners by Platinum Equity. In support of these requests, Petitioners state as follows:

A. Issuance of Debt, Encumbrance of Assets, and Pledge of Stock

11. The Credit Agreement is structured in two phases. The first phase, currently in effect, will have a maximum term of 364 days. During this phase, Petitioners are jointly and

severally liable co-borrowers for debt obligations of up to \$90 million, consisting of a \$40 million term loan and a \$50 million revolving credit facility. This debt is guaranteed by Platinum Equity, EnergyTRACS, and Matrix of Virginia, all affiliates of Petitioners. None of the Petitioners' stock or assets are being used to secure the debt in the first phase. During this first phase, Petitioners must secure the regulatory approvals necessary to implement the second phase of the Credit Agreement. If these regulatory approvals have not been secured within 180 days, Petitioners will be in default under the terms of the Credit Agreement, and face termination of the financing arrangement by the Lender.

12. In the second phase, which will be implemented upon receipt of all necessary regulatory approvals, Petitioners will pledge all of their assets as collateral for this indebtedness, and will have their stock pledged as further collateral. Petitioners will continue to act as co-borrowers, and will remain jointly and severally liable for the entire debt, but the first phase guarantees of the debt by Platinum Equity, EnergyTRACS, and Matrix of Virginia will terminate. This structure will remain in place through the maturity date of the Credit Agreement, which is September 14, 2011.

13. The terms of each Financing is expected to be substantially as follows:

- **Funding Providers:** HBK is an alternative investment firm, headquartered in Dallas, Texas, with offices in New York, London, Tokyo, and Hong Kong. HBK commenced operations in October 1991 with the launch of HBK Fund L.P. Today, HBK manages approximately \$10 billion in equity capital, ranking it as one of the largest hedge fund managers in the world. The Lender, PCRL III Investments, L.P., is an investment fund managed by HBK.

- **Amount:** \$90 million. This consists of a \$40 million term loan and a \$50 million revolving credit facility.
- **Maturity:** For the first phase, the debt will be limited to a maximum term of 364 days, or until September 13, 2007. If state approvals are not obtained, all debt must be paid no later than the end of the 364-day term, and the financing arrangement will terminate.³ If all necessary regulatory approvals are obtained, however, the parties will implement the second phase of the Credit Agreement, and the financing arrangement will extend until its full maturity date, which is September 14, 2011, or five years from the date of the Credit Agreement.
- **Interest:** The interest rate in the arrangement will be in line with market conditions and the terms of the arrangements are equivalent to those offered for other, similarly-situated borrowers.
- **Security:** During the first phase, no assets of the Petitioners will be pledged as collateral for the debt. Rather, both Matrix and Americatel will covenant that they will not pledge their assets to secure any other debt. If this “negative pledge” covenant is breached, that breach would constitute an event of default under the Credit Agreement. In addition, as explained above, the debt is being guaranteed by Platinum Equity, EnergyTRACS, and Matrix of Virginia, for a maximum of 364 days.

³ If the Petitioners fail to obtain the regulatory approvals described herein by the required dates, the Lenders could declare a default, causing the financing arrangement to terminate sooner than 364 days.

As explained above, and assuming all necessary regulatory approvals are obtained, these guarantees will be replaced in the second phase of the Credit Agreement, when each Petitioner will grant a security interest in all of its assets and have its stock pledged, both to the extent permitted by law, as collateral for the debt.

- ***Use of Proceeds:*** Petitioners plan to use the proceeds of this financing arrangement to introduce new services, expand into new markets and to allow more consumers to benefit from competitive services more quickly and efficiently, and to refinance existing indebtedness. As jointly and severally liable co-borrowers, the benefits and obligations of the proposed arrangements apply equally to each of the Petitioners, which share mutual and reciprocal obligations and neither will be given any undue advantage over the other.
- ***Credit Agreement; Audited Balance Sheet and Operating Statement Provided Under Seal.*** Petitioners provide as Exhibit A the Credit Agreement and as Exhibit B Matrix's and Americatel's audited balance sheets and operating statements. These Exhibits are being provided under seal, in accordance with TRA rules. Petitioners are privately-held companies and, therefore, this type of data is not normally made available to the public. Moreover, given the competitive nature of the telecommunications market, public disclosure of these documents would likely provide competitors with information that could be used in the market against Petitioners. Therefore, Petitioners respectfully request that Exhibits A and B be accorded confidential

treatment and not be made a part of the public record in this proceeding or otherwise disclosed to the public.

B. *Pro Forma* Transfer of Control

14. In preparation for the implementation of the second phase, described above, EnergyTRACS must transfer the stock of the Petitioners that it currently holds to MTAC, a newly-formed, wholly-owned subsidiary of EnergyTRACS. MTAC will be an intermediate holding company between Petitioners and EnergyTRACS, which will then hold its equity interests in Petitioners indirectly. This reorganization is depicted in the organizational charts contained in Exhibit C. This minor corporate reorganization, which is required by the Credit Agreement, will minimize the effect of the Credit Agreement on other unregulated subsidiaries of EnergyTRACS. Ultimate control of Petitioners will not change and will remain with Platinum Equity, and thus this reorganization will effect only a *pro forma* transfer of control.
15. Other than the addition of the intermediate holding company, the proposed reorganization will not change Petitioners' ownership, management or day-to-day operations in Tennessee. Matrix and Americatel will continue to provide competitive resold telecommunications services to their customers in Tennessee. The regulated services and tariff conditions of Matrix and Americatel will not change as a result of the proposed transaction.

V. PUBLIC INTEREST ANALYSIS

16. Approving this Application will serve the public interest by enabling Petitioners to better utilize their available funds, to introduce new services, expand into new markets and to allow more consumers to benefit from competitive services more quickly and efficiently.

Further, approving these financing arrangements will actively serve the public interest in promoting competition among telecommunications carriers because Petitioners will have the opportunity to strengthen their competitive position through access to greater financial resources. Petitioners will have a greater ability to bring high-quality competitive telecommunications services to Tennessee consumers.

17. The terms and conditions of the Credit Agreement, as described, are advantageous to Petitioners, because Petitioners' combined financial resources and negotiating strength allowed them to obtain more advantageous financial terms than either would have been able to obtain independently, and the Credit Agreement is the result of extensive negotiations in a highly-competitive financing market. The structuring of the transaction in two phases allows Petitioners to obtain necessary short-term financing immediately, while providing Petitioners the necessary time to obtain the state regulatory approvals necessary for Petitioners to issue debt with a term greater than one year and to secure that debt through the pledging of their assets and stock. During the first phase, because Platinum Equity is guaranteeing the Petitioners' debt, the Lender will have the ultimate recourse to the Petitioners' common parents and will therefore be less likely to seek recourse against either Petitioner should the other default.
18. Both Matrix and Americatel compete in Tennessee and other markets with numerous other interexchange carriers and enhanced service providers as well as the incumbent local exchange carrier and other competitive local exchange carriers. Both Petitioners are non-dominant carriers, and are not subject to rate of return regulation. In addition, because of the highly competitive environment in which both companies operate, the rates charged to customers are subject to market discipline and the services offered

generally are available from numerous other carriers. As a result, the source of funds and capital structure of Matrix and Americatel would have little effect on customers in Tennessee or elsewhere. In the unlikely event that the capital structure for either company becomes too costly and rates rise, customers may simply migrate to other carriers with preferred rates. Thus, any adverse consequences from the financing decisions impact shareholders, not customers, and any favorable consequences benefit both its shareholders and consumers through higher profits, lower rates, and better services.

19. Moreover, because the public interest is best served by assuring the presence of numerous telecommunications competitors in Tennessee, it is important to provide such competitors with the flexibility to arrange financing in the manner they deem most appropriate to carry on business so long as there is no adverse impact on the public. To deny such flexibility would discourage new competitors from entering the state and would encourage existing competitors in the state to seek a more favorable regulatory environment elsewhere, neither of which would enhance the public interest. Given the challenges facing competitive telecommunications carriers, the availability of funds to Petitioners in this manner would benefit Tennessee consumers.
20. Finally, these financing arrangements will be transparent to consumers and consumers will benefit from the continued receipt of quality telecommunications services that are priced competitively. The proposed financing arrangements – and related encumbrance of assets and pledges of stock as security – will not change Petitioners' ownership, management or day-to-day operations in Tennessee, nor affect their financial status. Matrix and Americatel will continue to provide competitive resold telecommunications

services to their customers in Tennessee. The regulated services and tariff conditions of Matrix and Americatel will not change as a result of the proposed transaction. Platinum Equity will maintain ultimate control over Petitioners.

V. CONCLUSION


For the reasons stated above, Petitioners respectfully submit that the public interest, convenience and necessity would be furthered by granting this Application. Accordingly, Petitioners respectfully request that the TRA grant *expedited* approval, to the extent necessary, for the issuance of debt, the encumbrance of their Tennessee assets, the pledge of the Petitioners' stock, and the minor corporate reorganization resulting in a *pro forma* transfer of control of Petitioners in connection with their participation in those financing arrangements described herein relief as the TRA may deem appropriate.

RESPECTFULLY SUBMITTED THIS 22nd day of September, 2006.

Respectfully submitted,

MATRIX TELECOM, INC.
AMERICATEL CORPORATION

By Their Counsel:

A handwritten signature in black ink, appearing to read "BERIN SZOKA", is written over a horizontal line.

Richard R. Cameron
Berin M. Szoka
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200

EXHIBIT A
CREDIT AGREEMENT

CONFIDENTIAL: FILED UNDER SEAL

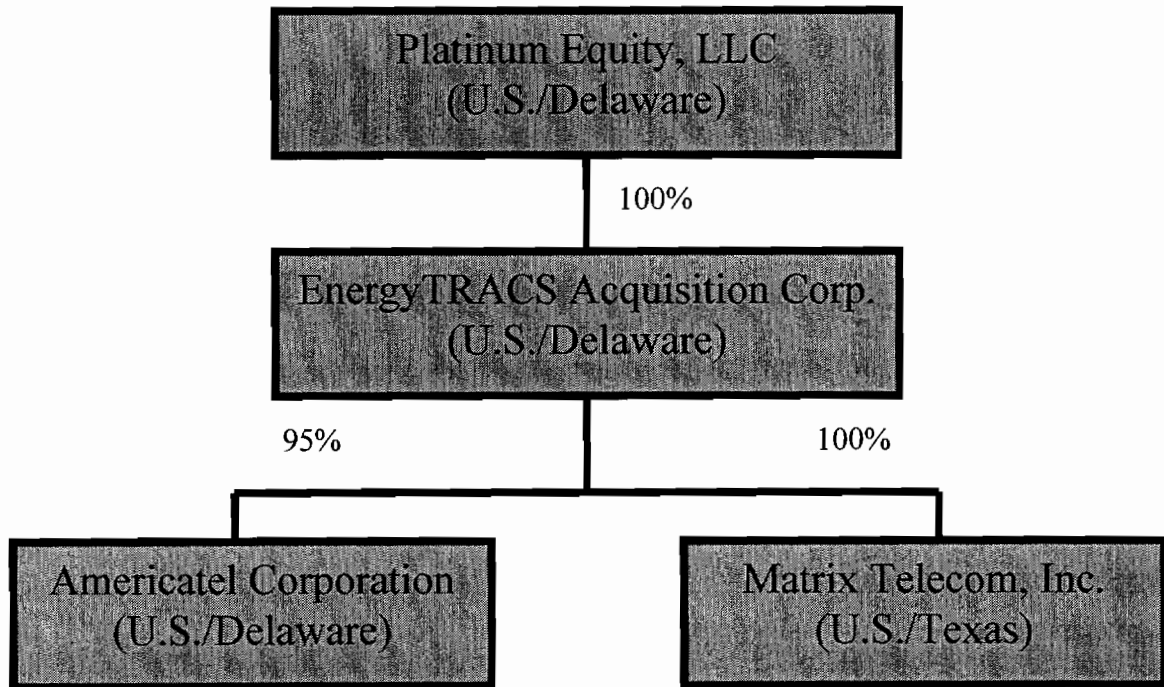
EXHIBIT B

**AUDITED BALANCE SHEET AND OPERATING STATEMENTS OF
MATRIX TELECOM, INC. AMERICATEL CORPORATION**

CONFIDENTIAL: FILED UNDER SEAL

EXHIBIT C

Ownership Pre-transaction
Showing Citizenship and
State of Incorporation



Ownership Post-transaction
Showing Citizenship and
State of Incorporation

