

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

July 27, 2010

IN RE:

**JOINT APPLICATION OF COMTEL TELCOM ASSETS
LP, MATRIX TELECOM, INC., AND AMERICATEL
CORPORATION FOR APPROVAL (1) OF THE
TRANSFER OF CUSTOMERS FROM COMTEL TELCOM
ASSETS LP TO MATRIX TELECOM, INC. AND (2) FOR
MATRIX TELECOM, INC. AND AMERICATEL
CORPORATION TO PARTICIPATE IN CERTAIN
FINANCING ARRANGEMENTS**

**DOCKET NO.
10-00060**

**ORDER APPROVING TRANSFER OF CUSTOMER BASE
AND CERTAIN FINANCING ARRANGEMENTS**

This matter came before Chairman Sara Kyle, Director Eddie Roberson and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 7, 2010 for consideration of the *Joint Application for Approval of Customer Base Transfer and Participation in Financing Arrangements* ("Joint Application") filed on April 12, 2010 by Comtel Telcom Assets LP ("Comtel"), Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel" and together with Comtel and Matrix, the "Applicants"). The Applicants request approval for (1) Comtel to transfer its Tennessee customer base to Matrix, including pre-approval of the customer notification letter, and (2) Matrix and Americatel to enter into certain financing arrangements.

Comtel is a Texas limited liability partnership that provides intrastate, interstate and international long distance services across the continental United States and both local exchange

and interexchange telecommunications services in several states. Comtel is majority owned by Comtel Assets Corp., which in turn is wholly owned by Denham Commodity Partners Fund III LP, a private equity fund. In Tennessee, Comtel is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 98-00732, as amended by Docket No. 05-00287 on April 19, 2006. Comtel is also authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services.

Matrix is a Texas corporation that 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. Matrix is authorized to provide telecommunications service in all fifty states and the District of Columbia. In Tennessee, Matrix is authorized to provide facilities-based and/or resold competitive local exchange telecommunications services pursuant to Authority Order in Docket No. 07-00003 issued on May 22, 2007 and Docket No. 05-00083 issued on June 30, 2005, respectively, and resold interexchange telecommunications service pursuant to Authority Order in Docket No. 95-03125 issued on October 13, 1995. Matrix is also authorized by the FCC to provide interstate and international long distance services.

Americatel is a Delaware corporation 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 prescribed 1+ calling services, in each of the forty-eight contiguous states. Through common parent holding company ownership, Americatel and Matrix are affiliated service providers. In Tennessee, Americatel is authorized to operate as a reseller of telecommunications services pursuant to authority granted in Case No. 98-00065 on February 2, 1999.

THE JOINT APPLICATION

A. Description of Transfer of Assets and Customers

Pursuant to an Asset Purchase Agreement (“Agreement”) dated as of March 13, 2010 between Matrix and Comtel, the Applicants propose to complete a transaction (“Transaction”) through which Matrix will acquire certain assets of Comtel, including Comtel’s customer bases and substantially all of the assets used in Comtel’s provision of telecommunications services. As a result of the proposed Transaction, Matrix will replace Comtel as the service provider in Tennessee. The Transaction is expected to close in the second quarter of this year.

Although the proposed Transaction will involve a transfer of customers, immediately following the proposed Transaction, all of those customers 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. As a result, the proposed Transaction will be seamless and virtually transparent to customers served by Comtel in terms of the services that they currently receive.

B. Description of Financing Arrangement

In connection with the above referenced transfer of customer base, in order to finance part of the consideration of the Transaction, the Applicants expect that Matrix will obtain seller financing from Comtel for which Americatel would act as a co-guarantor and pledge certain assets as security. The financing is expected to consist of a secured promissory note in the initial principal amount of up to \$17 million (the “Seller Note”). The Seller Note would be subordinate only to Matrix’s and Americatel’s current senior lender under the terms of their existing credit facility (the “Senior Credit Facility”), which will remain the same.¹ The Seller Note will be secured by a second priority lien on all collateral pledged under the Senior Credit Facility, which

¹ Matrix and Americatel obtained approval for the Senior Credit Facility in Docket No. 07-00213 (December 6, 2007).

is substantially all of the assets of Matrix and Americatel. The Seller Note is expected to have a maturity of the earlier of (a) twenty-four months from closing of the Transaction and (b) the payment in full, in cash, of the Senior Credit Facility. The interest rate is expected to be ten percent per year.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-112 (2004) applies to the transaction described in the *Joint Application* because it results in the transfer of assets from one Tennessee certificated carrier to another. Regarding the transfer of authority, Tenn. Code Ann. § 65-4-112 (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Because the transaction involves a transfer of customers, TRA Rule 1220-4-2-.56(2)(d) additionally applies to the transaction. The rule provides:

1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

Regarding the proposed financing transaction, Tenn. Code Ann. § 65-4-109 (2004) provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

The panel found that the proposed Transaction is in the public interest because it will ensure that the affected customers will benefit from the continuity of high quality, uninterrupted interstate and international telecommunications services. The panel further found that the proposed Transaction will be almost seamless and virtually transparent to customers served by Comtel in terms of the services that they currently receive. The panel also found that the customer notification letter filed with the Authority on April 12, 2010 conforms with TRA Rule 1220-4-2-.56(2)(d), contingent upon the Applicants providing the FCC self-certification letter as required by TRA Rule 1220-4-2-.56(2)(d)(1). Thereafter, the panel unanimously voted to: (1) approve the *Joint Application* and transfer of customers pursuant to Tenn. Code Ann. § 65-4-112 (2004) and TRA Rule 1220-4-2-.56(2)(d), contingent upon approval by the FCC; (2) consistent with TRA Rule 1220-4-2-.56(2)(d), approve the customer notification letter filed on April 12, 2010, contingent upon the Applicants filing a copy of the FCC's self-certification letter as required by TRA Rule 1220-4-2-.56(2)(d)(1); and (3) approve the request of Comtel to cancel its Certificate of Public Convenience and Necessity effective upon notice to the Authority that the transaction has been completed and that all of Comtel's customers have been transferred to

Matrix. The Applicants should also file with the Authority any documentation from the FCC regarding subsequent action on the transfer.

Regarding the requested financing transaction in the *Joint Application*, the panel found that: (1) this financing is subject to Authority approval pursuant Tenn. Code Ann. § 65-4-109 (2004); (2) the transaction is being made in accordance with the laws enforceable by this agency; and (3) the transaction is in the public interest because it will ensure that the assigned customers continue to receive uninterrupted interstate and international services. Thereafter, the panel voted unanimously to approve the financing transaction set out in the *Joint Application*.

IT IS THEREFORE ORDERED THAT:

1. The transfer of assets of Comtel Telcom Assets LP to Matrix Telecom, Inc. as described in the *Joint Application for Approval of Customer Base Transfer and Participation in Financing Arrangements* and discussed herein is approved, contingent upon approval of the Federal Communications Commission. The Applicants shall file with the Authority any documentation related to the action of the Federal Communications Commission in this regard.


2. The customer notification letter is approved, contingent upon the filing of the Federal Communications Commission self-certification letter as required under TRA Rule 1220-4-2-.56(2)(d)(1).

3. Comtel Telcom Assets LP's Certificate of Public Convenience and Necessity is cancelled effective upon notice to the Tennessee Regulatory Authority that the transaction has been completed and that all of Comtel's customers have been transferred.


4. The financing transaction as described in the *Joint Application for Approval of Customer Base Transfer and Participation in Financing Arrangements* and discussed herein is approved.

5. The authorization and approval given hereby shall not be used by any party, including but not limited to any lending party, for the purpose of inferring an analysis or assessment of the risks involved.

6. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.



Sara Kyle, Chairman



Eddie Roberson, Director



Kenneth C. Hill, Director