

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AmericaTel Corporation (U5918C), Matrix Telecom, Inc. (U5227C) and Impact Telecom, Inc. (U7179C) For Approval of the Transfer of Control of AmericaTel Corporation and Matrix Telecom, Inc.

Application 13-02-018
(Filed February 22, 2013)

DECISION AUTHORIZING TRANSFER OF CONTROL**1. Summary**

Applicants AmericaTel Corporation (AmericaTel), Matrix Telecom, Inc. (Matrix) and Impact Telecom, Inc. (Impact) are granted approval to consummate a transaction whereby Impact will acquire indirect control of both AmericaTel and Matrix. All three companies have previously been awarded certificates of public convenience and necessity to provide specific types of telecommunication services. Application 13-02-018 is closed.

2. Parties to the Transaction

AmericaTel Corporation (AmericaTel) is a Delaware corporation, with principal offices located at 433 E. Las Colinas Blvd, Suite 400, Irving, Texas 75039. AmericaTel is directly owned by MTAC Holding Corporation (Parent Company), which in turn is owned by EnergyTRACS Acquisition Corp. (Seller). AmericaTel provides domestic and international facilities-based and resold long distance services in 49 states. In California, AmericaTel holds a certificate of public convenience and necessity (CPCN) to

operate as a reseller of interexchange services pursuant to authority issued in Decision (D.) 97-12-128.

AmericaTel has had compliance issues in the past which have now been resolved. In 2008, AmericaTel self-reported a potential violation involving unauthorized charges on customer invoices. (Application, Exhibit F.) In 2010, in response to the self-report, the Commission issued an Order Initiating Investigation into AmericaTel, and in 2011 the Commission approved a settlement pursuant to which AmericaTel agreed to pay a fine of \$503,000. (D.11-05-008.) AmericaTel has been fined \$750 by the state of Nevada for failure to timely file an annual report and an annual licensing fee in Nevada. In addition, Platinum Equity, LLC (Platinum), the indirect parent company of AmericaTel and Matrix has in the past acquired other telecommunication companies such as NextiraOne, LLC and Billing Concepts, Inc. that have been found liable for violations of law or have entered into court-approved stipulations regarding possible violations more than five years ago. (Response to An Administrative Law Judge Requests filed on April 17, 2013 (Response).)

Matrix Telecom, Inc. (Matrix) is a Texas corporation with principal offices located at 433 E. Las Colinas Blvd, Suite 400, Irving, Texas 75039. Like its affiliate AmericaTel, Matrix is owned by Parent Company which in turn is owned by Seller. Matrix is a provider of domestic and international communications services including local, long distance, and toll-free voice services and a range of other services in all 50 states and the District of Columbia. In California, Matrix is authorized to provide resold interexchange services pursuant to authority granted in D.90-10-062. In 2005, Matrix was granted a CPCN to provide non-facilities based, resold local exchange telecommunications services. (D.05-11-006.) In 2007, the CPCN was expanded to include limited

facilities-based telecommunications services. (D.07-06-043.) Matrix also owns Matrix Telecom of Virginia, Inc., which is licensed only in Virginia.

In its application, Matrix identified several minor regulatory compliance issues from the past six years. First, Matrix has acquired the assets of Comtel Telcom Assets LP, an entity that in 2010 entered into a Consent Decree with the Federal Communications Commission (FCC) for failure to contribute to the Universal Service Fund. (Application, Exhibit F.) Second, Matrix settled a consumer complaint case in Pennsylvania for \$82.48. (Application, Exhibit F.) Third, Matrix has been fined \$500 for failure to timely file an annual report in Nevada. (Application, Exhibit F.)

In 2011, AmericaTel and Matrix responded to a Letter of Inquiry from the FCC concerning possible instances of unauthorized charges on customer invoices. (Application, Exhibit F.) The FCC acknowledged receipt and has not issued a Notice of Apparent Liability or other communication. (Application, Exhibit F.)

Impact Telecom, Inc. (Impact) is a Nevada corporation with principal offices located at 9250 East Costilla Ave., Suite 400, Greenwood Village, Colorado 80112. Impact provides wholesale domestic and international telecommunications services. Impact is a privately-held corporation. Impact has redundant facilities which are located in New York City, Los Angeles, Atlanta, Philadelphia and Dallas. Impact also interconnects providers from all over the world, including competitive local exchange carriers (CLECs), incumbent local exchange carriers (ILECs) and voice over internet protocol (VoIP) providers. In 2010, the Commission granted Impact a CPCN to provide resold telephone service. (D.10-01-002.)

3. The Proposed Transaction

Under the terms of the Stock Purchase Agreement (Agreement), which is attached to the application as confidential Exhibit D, Impact will acquire control over both AmericaTel and Matrix. Impact has proposed two transaction structures, both of which result in Impact having indirect control of both companies. In the first structure, Parent Company would continue to control AmericaTel and Matrix, and Impact would acquire Parent Company. In the second structure, AmericaTel would be transferred to a new subsidiary of Impact. Parent Company would retain control of Matrix and Parent Company would be transferred to Impact. Under both proposed structures, the transaction would be accomplished through equity transfers. (Application at 5.)

Following the transfer, each company (AmericaTel and Matrix) will continue to serve their respective existing customers. Existing customers will continue to receive the same service at the same rates, terms and conditions of service. There will be no change to the operating authority of AmericaTel, Matrix or Impact in California. Applicants also assert that the proposed transfer will “reinforce the status of AmericaTel and Matrix as viable competitors.” (Application at 6.)

No protests were filed against this Application.

4. Discussion

When reviewing transactions under Section 854(a), the primary standard for approval is whether a transaction should be approved under Section 854(a), is whether the transaction will be “adverse to the public interest.”¹ As part of the Commission’s determination, and where a

¹ See D.03-12-033 at 6; D.01-06-007 at 15.

company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, the Commission applies the same requirements that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of \$100,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or a related business.

Here, all three companies involved in the transaction already hold CPCNs.

In addition, the applicants have provided information that reflects that the proposed change in ultimate ownership of AmericaTel and Matrix will not adversely impact the operations or financial status of AmericaTel or Matrix. Applicants have also provided information that demonstrates that the acquiring company, Impact, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carriers.

Information provided about Impact's management team under Exhibit A to the application, and in the Response demonstrates that management has significant experience in the telecommunications industry.

Applicants also state that to the best of their knowledge, with certain exceptions discussed below, no one associated with or employed by applicants as an affiliate, officer, director, partner, or owner of more than 10% of any of them: (a) was previously associated with a telecommunications carrier that filed for bankruptcy; (b) was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; (c) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000 *et seq.* of the California Business and Professions Code, or for any

actions which involved misrepresentations to consumers; or (d) is currently under investigation for similar violations.

The Commission requires that applicants disclose any involvement of officers or directors with telecommunications carriers that have declared bankruptcy so that the Commission can avoid granting authority to companies that are unlikely to survive and provide customers with certainty. Bob Beaty, President and Chief Executive Officer of Impact, was involved in guiding ICG Communications through bankruptcy. However, based on Beaty's considerable experience in the industry (23 years) and his seven years at the helm of Impact, this is not the type of bankruptcy-related experience that raises concerns about the viability of Impact. Over ten years have passed since ICG filed bankruptcy and ICG emerged from bankruptcy in 2002.

As Exhibit F to the Application disclosed, Matrix and AmericaTel have previously had regulatory compliance issues. In addition, affiliates of Matrix and AmericaTel have had regulatory compliance issues. None of these items is material in nature to this application. Regulatory compliance with the identified matters by Matrix and AmericaTel will not be adversely affected by the transfer to Impact. In addition, Impact has had no regulatory compliance issues in the last five years.

For financial qualifications, the applicants have attached confidential financial statements for each of the applicants. For AmericaTel, applicants included unaudited financial statements for 2011 and 2012 including statements of operations, balance sheets, and cash flow statements. For Impact, applicants submitted unaudited financial statements for 2011 and 2012 consisting of balance sheets and income statements. For Matrix, applicants submitted unaudited financial statement for 2011 and 2012, consisting of income statements, balance

sheets, and cash flow statements. The financial statements reflect that Impact continues to have sufficient operating revenue to meet the Commission's requirements for acquiring a CPCN. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect the financial status of AmericaTel or Matrix.

We find that applicants have demonstrated that Impact has the financial and technical qualifications to acquire AmericaTel and Matrix.

We also find that the transaction is consistent with the public interest. There will be no immediate changes to the services that AmericaTel and Matrix provide as a result of the transfer. Applicants represent that AmericaTel and Matrix will continue to operate in the same manner after the transaction is completed as it operates today. The applicants also assert that there will be no interruption or disruption of service to customers. The transaction will thus be seamless for California customers of AmericaTel and Matrix. Finally, the applicants note that the transfer of control will enable AmericaTel and Matrix to become stronger competitors in the California market. Increased competition will benefit consumers and the telecommunications marketplace. Accordingly, we find that the transaction is consistent with the public interest.

5. California Environmental Quality Act (CEQA) Compliance

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The proposed transaction does not constitute a "project" under CEQA, California Public Resources Code, Section 21000 *et seq.*

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Categorization and Need for Hearings

In ALJ-Resolution 176-3298, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, the Commission concludes that a public hearing is not necessary at this time, and the preliminary determinations in ALJ-Resolution 176-3298 therefore will not be altered.

8. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Jeanne M. McKinney is the assigned Administrative Law Judge in this proceeding.

9. Request to File Under Seal

Pursuant to Rule 11.4, Applicants filed a motion for leave to file Exhibits C and D to the application as confidential materials under seal. Applicants represent that the information is competitively sensitive and proprietary and disclosure could place them at an unfair business disadvantage if disclosed. The motion is unopposed. We grant Applicants' motion to treat Exhibits C and D to the application as confidential.

Findings of Fact

1. AmericaTel is a Delaware corporation.
2. Matrix is a Texas corporation.
3. Impact is a Nevada corporation.
4. In D.97-12-128, the Commission granted a CPCN to AmericaTel to resell interexchange telecommunications services in California.

5. Through D.90-10-062, D.05-11-006, and D.07-06-043, the Commission granted a CPCN to Matrix to provide limited facilities-based telecommunications services in California.

6. In D.10-01-002, the Commission granted a CPCN to Impact to provide resold telephone service in California.

7. The proposed transaction will result in Impact becoming the ultimate parent of AmericaTel and Matrix.

8. The applicants have demonstrated that they have sufficient financial resources and the technical expertise to operate as providers of telecommunications services in California.

9. No new construction is being proposed in the application.

10. Other than certain non-material exceptions detailed in the application, no one associated with or employed by applicants as an affiliate, officer, director, partner, or owner of more than 10% of any of them: (a) was previously associated with a telecommunications carrier that filed for bankruptcy; (b) was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; (c) was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000 et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers; or (d) is currently under investigation for similar violations.

11. The applicants have filed a motion for leave to file under seal confidential materials in Exhibits C and D.

12. There is no opposition to this application.

Conclusions of Law

1. The Commission applies the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of local exchange and interexchange services, as it does to an initial applicant for authority to provide such services.

2. Impact meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.

3. The indirect transfer of control of AmericaTel and Matrix proposed in the application would not be adverse to the public interest.

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

5. The application should be approved.

6. The matter is uncontested, and the decision accordingly should be effective on the date it is signed.

7. Applicants' request to treat Exhibits C and D to the application as confidential should be granted.

O R D E R**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 854(a), the indirect transfer of control of AmericaTel Corporation (U5918C) and Matrix Telecom, Inc. (U5227C) to Impact Telecom, Inc. (U7179C) in accordance with the documents and agreement submitted in conjunction with Application 13-02-018, is authorized.

2. The unopposed motion of AmericaTel Corporation (U5918C), Matrix Telecom, Inc. (U5227C), and Impact Telecom, Inc. (U7179C) to file confidential

documents in Exhibits C and D to the application is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than Commission staff, the assigned Commissioner, the assigned Administrative Law Judge, an Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by the Applicants or as ordered by a court of competent jurisdiction. If Applicants believe that it is necessary for this information to remain under seal for longer than two years, Applicants may file a new motion at least 30 days before the expiration of this limited protective order.

3. Application 13-02-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.