

Decision 05-06-038 June 30, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application by
AMERICATEL CORPORATION dba 1010 123
AMERICATEL (U 5918 C), and ALMENDRAL,
S.A. for Authority to Transfer Control of an
Authorized Telecommunications Carrier.

Application 05-01-030
(Filed January 28, 2005)

OPINION GRANTING PETITION FOR MODIFICATION

I. Summary

This order grants the Petition for Modification of Decision (D.) 05-03-033 filed by Americatel Corporation (Americatel) and Almendral, S.A. (Almendral) (Petitioners). Petitioners seek removal of the requirement in that decision that Almendral (the indirect acquirer of Americatel) have on deposit in a United States bank at least \$25,000. They claim that because they have assets of \$337 million and cash of \$12 million in the nation of Chile, the requirement is an unnecessary administrative burden. In the narrow circumstances presented here, we believe Almendral need not make the \$25,000 deposit. This decision is limited to the facts of this case and shall not serve as precedent in future cases.

II. D.05-03-033 and the Petition for Modification

In D.05-03-033, we allowed Almendral to acquire indirect control of Americatel pursuant to Pub. Util. Code § 854. The transaction involved a stock purchase at the parent corporation level, in which the acquirer, Almendral, will remain two steps removed from the company offering resold long distance

telephone service in California, Americatel. Americatel will remain a switchless reseller doing business in California.¹

Prior to the transaction, Americatel's parent corporation was a Chilean corporation named Empresa Nacional de Telecomunicaciones, S.A. (ENTEL Chile). Telecom Italia International N.V. held a controlling interest in ENTEL Chile. In the transaction we approved in D.05-03-033, Almendral acquired Telecom Italia's interest in ENTEL Chile, and with it control of Americatel.

Americatel's business and personnel will not change as a result of the transaction. As we stated in D.05-03-033,

Almendral will acquire a 54.76 percent voting interest in ENTEL Chile from Telecom Italia. As a result, Almendral will hold a controlling interest in Americatel. The transaction will occur at the holding company level and will not result in any transfer or assignment of the operating authority held by Americatel, movement of Americatel's customers, or change in Americatel's name, rates, terms or conditions. Americatel's existing management and technical team will continue to manage its own day-to-day operations in the United States. Thus, the change will not be apparent to Americatel's customers

Because Almendral is a Chilean company headquartered in that country, D.05-03-033 imposed a \$25,000 deposit requirement to ensure that Almendral demonstrated its financial responsibility in the U.S. Almendral and Americatel filed a Petition for Modification seeking removal of this \$25,000 requirement. They assert that because of their extensive cash and assets in Chile, Almendral should be excused from this requirement. They cite administrative burden:

¹ A switchless reseller does not construct, operate, or lease switches and related equipment, and does not switch telephone lines.

Although the amount of the required deposit is not substantial, the obligation for Almendral, a Chilean corporation, to establish a U.S. bank account and maintain the deposit balance is, nevertheless, an administrative burden.

Petitioners also assert that because Almendral has significant assets in Chile (as described in D.05-03-033), the deposit requirement is unnecessary.

III. Discussion

This application seeks permission for a stock transaction under Public Utilities Code § 854. We established the \$25,000 deposit requirement in a different context: for an applicant seeking a certificate of public convenience and necessity (CPCN) to act as a long distance reseller in California.² In the CPCN situation, an applicant is seeking to initiate a new business, or enter a new line of business. Under § 854, in contrast, an applicant is seeking to merge, acquire or control either directly or indirectly a public utility doing business in California.

Here, while Almendral is acquiring, through a stock transaction, indirect control of Americatel, Americatel is already in business in California. Almendral is not seeking to enter the telecommunications business in the first instance. None of Americatel's services, management or rates will change, and the change will be transparent to customers.

In some § 854 cases, we impose the same rules on the applicant as we do for a CPCN application. Thus, for example, in D.00-02-029, we required the acquirer to demonstrate that it had "a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up

² D.91-10-041, 1991 Cal. PUC LEXIS 696 (imposing financial obligation) and D.93-05-010, 1993 Cal. PUC LEXIS 381 (modifying obligation downward to \$25,000).

costs.”³ However, in that case, the acquirer was purchasing the assets and CPCNs of the telecommunications reseller.

Here, Almendral is acquiring Telecom Italia’s interest in ENTEL Chile, and with it control of Americatel. Thus, Almendral is and will be removed from the day-to-day operations of Americatel. Almendral is not attempting to start up a new telecommunications carrier. When we imposed the \$25,000 requirement, we said we were doing so to cover a new switchless reseller’s start-up costs:

After reviewing all the evidence in this proceeding and applying a certain amount of common sense, we conclude that the minimum financial requirement for switchless resellers may be reduced to \$25,000, plus any deposits required by the underlying [interexchange carrier], an amount corresponding to our finding of a typical switchless reseller's start-up costs.⁴

Under the specific circumstances of this case, the need for a \$25,000 deposit is not apparent. Almendral has substantial assets in Chile. Americatel is a going concern. Thus, we are not presented with a situation in which a new company is starting up a switchless reseller. We therefore modify D.05-03-033 to remove the \$25,000 requirement, and we therefore grant the petition for modification.

IV. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The draft decision denied the petition for modification. Based upon the comments Almendral/Americatel filed on May 19, 2005, we have decided that under the narrow circumstances

³ D.00-02-039, *mimeo.*, p. 3, 2000 Cal. PUC LEXIS 73, at *3.

⁴ D.93-05-010, 1993 Cal. PUC LEXIS 381, at *23.

presented here, Almendral need not make the \$25,000 deposit required in D.05-03-033. We have modified the draft decision to explain this change in outcome.

V. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.05-03-033, the Commission imposed the following condition on Almendral:

As a condition of the granting of this application, within 30 days of the effective date of this decision, Almendral shall furnish paperwork to the Administrative Law Judge and the Commission's Telecommunications division, 505 Van Ness Avenue, 3rd Floor, San Francisco, Ca 94102 (Attention: Joseph McIlvain) certifying that it has deposited – or already has on deposit – at least \$25,000 in a FDIC – insured U.S. bank account.

2. Almendral is acquiring Telecom Italia's interest in ENTEL Chile, and with it control of Americatel.

3. Almendral is not attempting to start up a new telecommunications carrier.

4. Americatel is already a switchless reseller of telecommunications service in California.

5. As a result of the transaction, none of Americatel's services, management or rates will change, and the change will be transparent to customers.

6. A \$25,000 deposit is not necessary to cover the switchless reseller's start-up costs in this case, since Americatel is already a going concern.

Conclusions of Law

1. The Commission has the authority pursuant to Pub. Util. Code § 854 to take such action, as a condition of a transfer, as the public interest may require.
2. The Petition for Modification should be granted.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 05-03-033 filed by Americatel Corporation and Almendral, S.A. (Almendral) is granted.
2. Application 05-01-030 is closed.

This order is effective today.

Dated June 30, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Commissioner John A. Bohn, being necessarily absent,
did not participate.