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Decision 98-10-005 October 8, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Approval of Share Transfer From
Matrix Telecom, Inc. A Texas Corporation, To
AvTel Communications, Inc., A Delaware
Corporation.

Application 98-03-037
(Filed March 24, 1998)

ORIGINAL

O P I N I O N

Summary

By this decision, we grant the joint application of Matrix Telecom, Inc. (Matrix) and AvTel Communications, Inc. (AvTel), collectively referred to as applicants, for approval of share transfers from Matrix to AvTel.

Parties

Matrix, formerly Miga, Inc., a Texas corporation authorized to do business in California, having its principal place of business at 8721 Airport Freeway, North Richland Hills, Texas 76180, is the holder of a Certificate of Public Convenience and Necessity (CPCN) issued pursuant to Commission Decision (D.) 90-12-062, December 19, 1990, authorizing Matrix to act as a reseller of interLATA telecommunications services offered by communications common carriers in California.

AvTel is a publicly traded Delaware corporation having its principal place of business at 8721 Airport Freeway, North Richardland Hills, Texas 76180.

The Transaction

The management of Matrix has determined that it is in the best interests of the company to have Matrix become a subsidiary of AvTel through what is known as a "reverse acquisition" (i.e., Matrix is actually acquiring AvTel). Under

the terms of the acquisition, one hundred percent (100%) of Matrix shares will be acquired by AvTel in exchange for eighty percent (80%) of the issued and outstanding shares of AvTel. As a result of the exchange, Matrix will become a wholly owned subsidiary of AvTel.

The transaction does not involve a transfer of control because under the transfer, Matrix will hold the controlling interest in AvTel, and the corporate officers, directors, and ultimate controlling ownership of Matrix remain unchanged. Matrix will remain the operating entity providing the authorized telecommunications services, and there will be no change in the manner in which those services will be provided in the state.

In Resolution ALJ 176-2990 dated April 9, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2990.

Financial Information

As part of the application, the applicants have provided a copy of the balance sheet (unaudited) and Consolidated Statements of Operations (unaudited) for AvTel and subsidiaries as of December 31, 1995, 1996, and 1997. These documents indicate that AvTel possesses more than \$25,000 cash or cash equivalent to pay necessary charges involved in providing the services authorized to be furnished by Matrix under the authority granted it by this Commission.

Discussion

The transaction for which approval is sought involves only a change in corporate structure of each of the parties and the relationship between them, but no change in the day-to-day operations of either party. Following approval of

the exchange of stock, Matrix will continue to provide in its own name the services authorized by D.90-12-062 under the same terms and conditions as before the exchange, and the transaction will be "seamless" or "transparent" to Matrix's customers.

A LEXIS/NEXIS search into the background of each of the parties revealed that an article appeared in the May 9, 1997 edition (Vol. 20; No. 37; p. 12) of the "Dallas Business Journal," indicating that during the year prior to the appearance of that article, Matrix paid at least \$51,000 to federal and state regulators over allegations that the company "slammed" customers, or switched their long distance service without their permission. Further, California Public Utilities Commission (CPUC) records indicated that in September 1996, the CPUC fined Matrix \$13,500 for switching the long distance service of a northern California couple and for failing to respond to a formal complaint that the couple filed. In addition, the Commission ordered Matrix to pay the couple's litigation expenses, along with \$700.20 for service charges they paid and for "unauthorized excessive rates." (See D.96-09-096.)

The LEXIS/NEXIS search also indicates that on December 12, 1996, under Federal Communications Commission (FCC) File No. ENF-96-02, Matrix entered into a consent decree with the FCC under the terms of which Matrix paid the FCC \$40,000 in settlement of a Notice of Apparent Liability based on the FCC's determination that Matrix had "apparently willfully violated the [FCC's] PIC [Primary Interexchange Carrier] rules and order." by changing the PIC designated without the customer's authorization.

We note from the LEXIS/NEXIS and Commission records that Matrix apparently took prompt action to correct the situations which led to the incidents giving rise to the charges described above, and no charges of slamming or other violations appear of record since that time. We are, of course, concerned that

Matrix has previously been found to have been engaged in slamming, and under no circumstances do we condone such behavior; however, we believe the record indicates a subsequent honest, successful effort by Matrix to correct its marketing deficiencies. While we have reason to believe and fully expect that Matrix will not have a repeat of the type of circumstances that led to its previous difficulties with this Commission, we will monitor its activities and, in the event of any violation of California law or Commission rules, regulations, or orders, will not hesitate to take swift and severe corrective and punitive action, including the possibility of fines and/or suspension or revocation of its authority to provide telecommunications services within this state.

Generally, the Commission's Executive Director has the authority to approve unopposed applications such as this. However, in this instance, because of Matrix's enforcement action by this Commission against Matrix for switching the long distance service of consumers without their authorization, the Executive Director has determined that the full Commission should act to approve this transaction.

Findings of Fact

1. No protests or other objections to the application were filed.
2. Matrix and AvTel seek approval for share transfers from Matrix to AvTel.
3. The transfer is, in reality, a "reverse acquisition" in which AvTel will acquire 100% of Matrix shares of stock in exchange for 80% of the issued and outstanding shares of AvTel. As a result of the exchange, Matrix will become a wholly owned subsidiary of AvTel.
4. There will be no change in the management of Matrix, and it will continue to provide the same services at the same rates and under the same terms and conditions and under the same name as before the transaction.

5. Financial information furnished reveals that AvTel possesses at least \$25,000 cash or cash equivalent to pay necessary charges involved in providing the services authorized to be furnished by Matrix under the authority granted it by this Commission.

6. The change in control does not appear to be adverse to the public interest.

7. The corporate identification number of Matrix, U-5227-C, should be retained and continued to be used by Matrix in the caption of all original filings with the Commission, and in the titles of other pleadings filed in existing cases.

8. Matrix has a history with the Commission of changing the service provider of at least one telephone service subscriber without authority, i.e., "slamming."

Conclusions of Law

1. No hearing on the application is necessary.

2. The transfer for which authority is sought relates only to corporate relationship between Matrix and AvTel.

3. As a result of the transfer of control, no changes will occur in the rates, terms, or conditions of service or management of the entity providing the authorized services.

4. The transfer will have no adverse impact on the public interest.

5. Matrix will retain corporate identification number U-5227-C, and will continue to use it in the caption of all original filings with the Commission and in the titles of all other pleadings filed in existing cases.

6. Matrix will continue to provide authorized services under tariffs now on file with the Commission.

7. Matrix's operations should be monitored to prevent any recurrence of slamming by it.

8. The application should be approved.

O R D E R

IT IS ORDERED that:

1. The application seeking the transfer of 100% of Matrix Telecom, Inc. (Matrix) in exchange for 80% of the issued and outstanding stock of AvTel Communications, Inc. is approved.
2. Matrix shall continue to provide the same services authorized by Decision 90-12-062 under tariffs currently on file with the Commission.
3. Matrix shall retain corporate identification number U-5227-C, and shall continue to use it in the caption of all original filings with the Commission and in the titles of all other pleadings in existing cases.
4. The parties shall notify the Commission within thirty (30) days after completion of the transaction, and shall provide the Commission with the name and address of the official custodian of the records of the transaction.
5. Matrix shall notify the Commission within thirty (30) days of the receipt of any complaint, formal or informal, from whatever source, concerning or alleging slamming by it.
6. The issues presented in Application (A.) 98-03-037 are resolved.

A.98-03-037 ALJ/RLR/avs *

7. A.98-03-037 is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners