

Decision 99-11-037

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Matrix Telecom, Inc. (U-5227-C), AvTel Communications, Inc. and Matrix Acquisition Holdings Corp. for approval of a Stock Purchase Agreement and Related Transactions.

Application 99-09-051
(Filed September 30, 1999)

OPINION

I. Summary

By this order we grant Matrix Telecom, Inc. (Matrix), AvTel Communications, Inc. (AvTel), and Matrix Acquisition Holdings Corp. authority for AvTel to sell all of the issued and outstanding common stock of Matrix to Matrix Acquisition Holdings Corp. This transfer of control is made pursuant to the terms and conditions of the stock purchase agreement attached to the application.

II. Categorization

Applicants have requested that this matter be categorized as ratesetting and that no hearings are necessary. By Resolution ALJ 176-3024, dated October 7, 1999, the Commission preliminarily determined that this was a ratesetting proceeding, and determined that no hearings were expected. Notice of this application appeared in the Commission's Daily Calendar of October 4, 1999. With no filed protests there is no reason to hold a public hearing and no reason to change the preliminary determinations made in Resolution ALJ 176-3024.

III. Jurisdiction

The application has been filed pursuant to Pub. Util. Code §§ 851-854. Pub. Util. Code § 854 precludes any person or corporation from transferring the control of any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The additional criteria needed for authority to transfer control of a utility set forth in subsections (b) and (c) of § 854 are not applicable in this instance because neither Matrix nor Matrix Acquisition Holding Corp. have gross annual California revenues exceeding \$500 million.

IV. The Parties

Matrix, a wholly owned subsidiary of AvTel, is a Texas corporation qualified to do business in California. The principal offices of Matrix are located in Ft. Worth, Texas. Matrix was granted a Certificate of Public Convenience and Necessity (CPCN) to provide intrastate interexchange telecommunications services in California. This authority was granted pursuant to Decision (D.) 98-03-081. That decision also assigned Matrix its corporate identification number (U-5227-C).

In addition to the services it provides to California customers, Matrix obtained the necessary authority from other jurisdictions to provide resold telecommunications services in the 48 contiguous states. Matrix is also authorized by the Federal Communications Commission to provide interstate and international services.

AvTel is a publicly held corporation organized under the laws of Delaware. AvTel owns 100% of the issued and outstanding common stock of Matrix.

Matrix Acquisition Holdings Corp., a Delaware Corporation, is a wholly owned subsidiary of Energy TRACS Acquisition Corp. (ETAC), which, in turn, is

a wholly owned subsidiary of Platinum Equity Holdings, LLC (Platinum). The principal offices of Matrix Acquisition Holdings Corp. are located in Ft. Worth, Texas.

V. The Transaction

Matrix, AvTel, and Matrix Acquisition Holdings Corp. seek authority for AvTel to sell all of the issued and outstanding common stock of Matrix to Matrix Acquisition Holdings Corp. pursuant to the provisions of the Stock Purchase Agreement entered into between Matrix, AvTel, and ETAC. The Stock Purchase Agreement was assigned by ETAC to Matrix Acquisition Holdings Corp. with the consent of AvTel.

Matrix will retain the residential customer base currently being serviced by Matrix and AvTel will assume responsibility for servicing the business market customers. However, Matrix's business market customers will not be transferred to AvTel until AvTel obtains the necessary Commission CPCN to provide telecommunications service and approval to transfer the business customers from Matrix to AvTel. AvTel, in the process of changing its name to NetLojix Communications, Inc., will seek such Commission authority through a separate application. Matrix will continue to serve these business customers until AvTel obtains the necessary Commission authority.

Approval of this proposed transaction will enable Matrix and Platinum to realize significant economic and marketing efficiencies in the provision of high quality, low-cost telecommunications services and to compete effectively in the competitive telecommunications marketplace. It will also provide Matrix with financial resources far in excess of what it presently has available.

The transfer of control will be made in a seamless fashion that will not affect the current residential customers of Matrix. Matrix will continue to provide high quality, affordable telecommunications services in the same

manner as it has operated since it obtained its CPCN. Initially, Matrix's California residential customers will notice no change in the rates, terms or conditions of services they receive after the transaction is consummated. Matrix will continue to operate under the name Matrix.

In a situation where a company not possessing a CPCN desires to acquire control of a company that does possess a CPCN, we apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since Matrix possesses a CPCN to act as a reseller of interexchange telecommunications services within California, we will apply the requirements for such authority to Matrix Acquisition Holdings Corp.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to act as a switchless¹ reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent (as described in D.91-05-010, 41 CPUC2d 505 at 520 (1991)); reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

¹ D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from a local exchange carrier; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.96-06-069 noted that it is possible to control, operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone.

To demonstrate its satisfaction of the financial resource requirement, Matrix Acquisition Holdings Corp. submitted a copy of ETAC's, its parent corporation, June 30, 1999 unaudited financial statements. This financial information was submitted under seal pursuant to Pub. Util. Code § 583 and General Order 66-C. The management qualifications and technical competence requirements have been satisfied given that Matrix previously satisfied these requirements upon the grant of its CPCN and because the proposed transfer of control will not result in a major change in officers, directors, or management of Matrix. Hence, Matrix Acquisition Holdings Corp. meets the Commission's requirements to provide the requisite service.

No new construction is being proposed. Accordingly, there is no possibility that the proposed transaction contemplated herein may have any significant impact on the environment.

Applicants have requested expedited approval of this application by Executive Director approval. Ordering Paragraph 1 of D.87-10-035 provides in relevant part that the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers and radiotelephone utilities for authority to transfer assets or control under Pub. Util. Code §§ 851-854.²

Pursuant to the above-cited decision, the Executive Director on an expedited basis should approve this application because this application is noncontroversial and because this application involves nondominant telecommunications carriers.

² 25 CPUC2d 459 at 462 (1987).

Findings of Fact

1. Resolution ALJ 176-3024 determined that this was a ratesetting proceeding and determined that no hearings were expected.
2. Notice of this application appeared in the Commission's Daily Calendar of October 4, 1999.
3. No protests were filed.
4. This application has been filed pursuant to Pub. Util. Code §§ 851-854.
5. Matrix, AvTel, and Matrix Acquisition Holdings Corp, seek authority for AvTel to transfer control of Matrix to Matrix Acquisition Holdings Corp. through the transfer of all issued and outstanding common stock of Matrix from AvTel to Matrix Acquisition Holdings Corp.
6. Applicants submitted confidential financial information regarding applicants' businesses under seal pursuant to Pub. Util. Code § 583 and General Order 66-C.
7. Matrix will continue to operate as Matrix.
8. Matrix and Matrix Acquisition Holdings Corp. meets the Commission's requirements to provide the requisite service.
9. No new construction is being proposed.
10. Matrix is a nondominant telecommunications carrier.
11. The Executive Director may grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer control under Pub. Util. Code §§ 851-854.

Conclusions of Law

1. The proposed transfer of control is not adverse to the public interest.
2. It can be seen with certainty that the proposed transfer will not have an adverse impact on the environment.

3. After the acquisition of control, Matrix will be a wholly owned subsidiary of Matrix Acquisition Holdings Corp. and will continue to exercise, in its current name, the authority granted by its CPCN.

4. The financial information placed under seal should remain under seal.

5. This application is noncontroversial and should be granted by the Executive Director.

6. Public convenience and necessity require the granting of this application to be effective on the date signed.

7. The application should be granted to the extent provided in the following order.

O R D E R

IT IS ORDERED that:

1. AvTel Communications, Inc. is authorized to sell and transfer all of the issued and outstanding common stock of Matrix Telecom, Inc. (Matrix) to Matrix Acquisition Holdings Corp. in accordance with the terms and conditions described in the application.

2. Matrix shall be responsible for prior and future collected and uncollected fees and surcharges applicable to fund the Universal Lifeline Telephone Service (Pub. Util. Code § 879; Resolution T-16245, dated December 3, 1998); California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; Decision (D.) 98-12-073 and Resolution T-16234, December 17, 1998); Commission User Fee (Resolution M-4796); the California High Cost Fund-A (Pub. Util. Code § 739.30; Resolution T-16242, December 3, 1998); California High Cost Fund-B (Resolution T-16244, December 3, 1998); and the California Teleconnect Fund (D.96-10-066), including any fees and surcharges which Matrix may not have yet collected.

3. The corporate identification number U-5227-C assigned to Matrix shall continue to be used by Matrix, and shall be included in all original filings with the Commission and in the titles of other pleadings filed in existing cases.

4. All data placed under seal in this proceeding shall remain sealed for a period of one year from the date of this order. The sealed data should not be made accessible or disclosed to anyone other than Commission staff during the one-year time period except on the execution of a mutually acceptable nondisclosure agreement or on further order or ruling of the Commission or the Administrative Law Judge then designated as the Law and Motion Judge.

5. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

6. Application 99-09-051 is closed.

This order is effective today.

Dated November 5, 1999, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director