

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**May 30, 2000**

**CASE NO: TM-2000-247**

**Office of the Public Counsel**

P.O. Box 7800

Jefferson City, MO 65102

**Mark P. Johnson**

Sonnenschein Nath & Rosenthal

4520 South Main Street, Suite 1100

Kansas City, MO 64111

**General Counsel**

Missouri Public Service Commission

P.O. Box 360

Jefferson City, MO 65102

**Judith A. Riley**

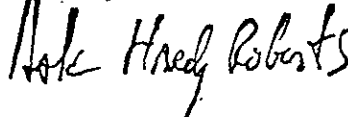
Telecom Professionals, Inc.

2912 Lakeside Drive, Suite 100

Oklahoma City, OK 73120

**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**

**Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of       )  
Matrix Telecom, Inc., AvTel Communications,    )  
Inc., and Matrix Acquisition Holdings Corp.    ) Case No. TM-2000-247  
for Approval of a Stock Purchase Agreement    )  
and Related Transactions.                        )

**ORDER GRANTING MOTION TO DISMISS**  
**FOR LACK OF JURISDICTION**

Matrix Telecom, Inc. (Matrix), AvTel Communications, Inc. (AvTel),<sup>1</sup> and Matrix Acquisition Holdings Corp. (Matrix Holdings), (together referred to as the Applicants), filed a joint application on September 22, 1999, requesting Commission approval of a proposed agreement to sell all of the issued and outstanding common stock of Matrix to Matrix Holdings. Matrix is a wholly owned subsidiary of AvTel. Matrix Holdings is wholly owned by Energy TRACS Acquisition Corp. (TRACS), which is, in turn, wholly owned by Platinum Equity Holdings, LLC (Platinum). The immediate transaction entails the transfer of ownership of Matrix from AvTel to Matrix Holdings.

The Staff of the Missouri Public Service Commission (Staff) filed a Motion to Dismiss Application on December 14, 1999. Staff's motion asserts that the Commission lacks jurisdiction over the proposed transaction. Staff referenced Section 392.300.1, RSMo 1994, which provides, in part:

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<sup>1</sup> The application indicated that AvTel Communications, Inc., is in the process of changing its name to NetLojix Communications, Inc.

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

Section 386.020(51), RSMo Supp. 1999, defines "telecommunications company" as follows:

"Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state.

Staff states that in Public Service Commission v. Union Pac. R. Co., 197 S.W. 39, 40-42 (Mo. banc 1917), the Missouri Supreme Court construed the same statutory language found in Section 392.300.1, RSMo 1994, but applicable to railroads and common carriers, and held that the language "was evidently intended to provide against a disposition of their property by steam and street railroads and common carriers, charged with duties to the public . . ." Id. at 41. (Emphasis added).

Staff states that the proposed transaction is similar to that in In the Matter of the Application of Feist Long Distance, Inc., Telecom Resources, Inc. d/b/a TRINetwork, Inc., and Advanced Communications Group, Inc., for Approval of Transfers of Control, Case No. TM-2000-146, wherein the Commission determined it did not have jurisdiction. There, as is proposed here, the stock of a foreign

telecommunications company was transferred from one foreign corporation to another, and such a transaction does not fall within the Commission's jurisdiction.

Staff contends that Section 392.300.2, RSMo 1994, is also inapplicable to the current transaction. Section 392.300.2, RSMo 1994, provides, in part:

Except where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state. . . .

Staff argues that this section is inapplicable because Matrix, as a Texas corporation, is not a telecommunications company that is incorporated under Missouri law.

No other party responded to Staff's motion to dismiss the application.

Upon review of Staff's Motion to Dismiss, and the official case file, the Commission concludes that it does not have jurisdiction to consider the transactions for which Applicants seek approval. The Commission finds that the Motion to Dismiss Application should be granted.

**IT IS THEREFORE ORDERED:**

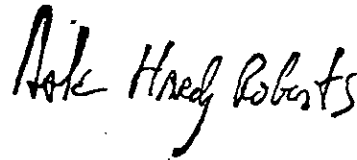
1. That the Motion to Dismiss Application filed by the Staff of the Missouri Public Service Commission is granted.
2. That the Joint Application of Matrix Telecom, Inc. (Matrix), AvTel Communications, Inc. (AvTel), and Matrix Acquisition

Holdings Corp. (Matrix Holdings), for approval of a proposed agreement to sell all of the issued and outstanding common stock of Matrix to AvTel and Matrix Holdings, is dismissed.

3. That this order shall become effective on June 9, 2000.

4. That this case may be closed on June 12, 2000.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Vicky Ruth, Regulatory Law Judge,  
by delegation of authority pursuant  
to 4 CSR 240-2.120(1) (November 30,  
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 30th day of May, 2000.

FYI: To Be Issued By Delegation

ALJ/Sec'y: Ruth Joyce

Date Circulated 5-24 Return by 5-30  
10am

CASE NO. TM-2000-247

[Signature]  
Lumpkin, Chair

[Signature]  
Crumpton, Commissioner

[Signature]  
Murray, Commissioner

[Signature]  
Schenenauer, Commissioner

[Signature]  
Drainer, Vice-Chair

STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 30<sup>th</sup> day of May 2000.

[Signature]

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

