

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

Application of )  
**Comtel Telecom Assets LP** and )  
**Matrix Telecom, Inc.** ) Case No: \_\_\_\_\_  
for Transfer of Certain Assets and Customer )  
Base )

**APPLICATION FOR AUTHORITY TO  
TRANSFER ASSETS AND CUSTOMER BASE**

COME NOW Comtel Telecom Assets LP (“Comtel”) and Matrix Telecom, Inc. (“Matrix” and together with Comtel, the “Applicants”), pursuant to Section 392.300 RSMo. 2000 and 4 CSR 240-3.520, hereby respectfully request Missouri Public Service Commission (“Commission”) authority to effect an acquisition and transfer of certain assets currently owned by Comtel to Matrix (the “Transfer”). Applicants seek such Commission authority to enable Matrix to begin serving certain Comtel subscribers in Missouri immediately upon a grant of the instant Application. Since Matrix already holds a Certificate of Service Authority (“CSA”), the CSA of Comtel is not being transferred to Matrix and, therefore, Comtel requests that its CSA and tariffs be cancelled upon notification by Applicants that the Transfer was completed.

In support of this Application, Applicants state as follows:

**I. IDENTIFICATION OF APPLICANTS**

1. The full legal name, address, telephone number and facsimile number of Applicants are:

**Comtel Telecom Assets LP**  
433 E. Las Colinas Boulevard, Suite 1300  
Irving, Texas 75039  
972-910-1900 (Tel)  
866-418-9749 (Fax)

- and -

**Matrix Telecom, Inc.**

7171 Forest Lane, Suite 700  
Dallas, Texas 75230  
214-432-1447 (Tel)  
214-432-1576 (Fax)

Communications concerning this Application should be directed to:

Mark W. Comley  
Newman, Comley & Ruth P.C.  
Monroe Bluff Executive Center  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, Missouri 65102-0537  
573-634-2266 (Tel)  
573-634-3306 (Fax)  
comleym@ncrpc.com

With copies to

Russell M. Blau  
Tamar E. Finn  
Brett P. Ferencak  
Bingham McCutchen LLP  
2020 K Street, NW  
Washington, DC 20006  
202-373-6000 (Tel)  
202-373-6001 (Fax)  
russell.blau@bingham.com  
tamar.finn@bingham.com  
brett.ferenchak@bingham.com

## **II. DESCRIPTION OF APPLICANTS**

### **A. Comtel Telcom Assets LP**

2. Comtel is a limited partnership organized under the laws of the State of Texas. The principal office for Comtel is located at 433 Las Colinas Blvd. E., Suite 1300, Irving, TX 75039. Comtel is majority owned by Comtel Assets Corp., which in turn is wholly owned by Denham Commodity Partners Fund III LP, a private equity fund. Comtel is authorized to do business in

Missouri under the following names: VarTec Telecom, Excel Telecommunications, VarTec Solutions and Clear Choice Communications. Comtel's Certificate of Good Standing from the Missouri Secretary of State is attached hereto as Exhibit A. Comtel's Registrations of Fictitious Name were filed by Comtel in Case No. TA-2006-0214 and are incorporated by reference pursuant to 4 CSR 240-2.060(1)(G).

3. Comtel completed the acquisition of substantially all of the assets of VarTec Telecom, Inc. and certain of its subsidiaries in June 2006 and continues to operate those assets. Comtel provides intrastate, interstate and international long distance services throughout the continental United States and local exchange services in the District of Columbia and all states except Alaska, Connecticut, Hawaii and Rhode Island. Comtel is authorized to provide interexchange telecommunications services in every state and local exchange and exchange access telecommunications services in the District of Columbia and every state except Alaska, Hawaii, and Virginia (in Virginia, Comtel's affiliate, Comtel Virginia LLC is authorized to provide telecommunications services). In Missouri, Comtel is authorized to provide basic local exchange and interexchange telecommunications services pursuant to CSAs granted in Case No. TA-2006-0214 on February 6, 2006.<sup>1</sup> Comtel is also authorized by the FCC to provide interstate and international telecommunications services.

4. Upon completion of the Transaction and the migration of customers to Matrix, Comtel will no longer offer telecommunications services in Missouri and, therefore, Comtel requests that its CSAs be cancelled upon notification from the Applicants that the Transaction was completed.

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<sup>1</sup> Comtel d/b/a VarTec Telecom and Comtel d/b/a Excel Telecommunications hold CSAs to provide basic local exchange and interexchange telecommunications services. Comtel d/b/a VarTec Solutions and Comtel d/b/a Clear Choice Communications hold CSAs to provide interexchange telecommunications services.

**B. Matrix Telecom, Inc.**

5. Matrix is a Texas corporation with principal offices located at 7171 Forest Lane, Suite 700, Dallas, Texas 75230. Established in 1991, Matrix is a competitive provider of integrated communications services including local, 1+ long distance and toll-free voice services plus a wide range of data services, such as dedicated Internet access, frame relay and point-to-point transmission services, chiefly to enterprise customers. Matrix is authorized to provide telecommunications service in all 50 states and the District of Columbia. In Missouri, Matrix is authorized to provide competitive basic local telecommunications services pursuant to an order issued on October 25, 2005 in Case No. CA-2005-0393, and competitive interexchange services pursuant to an order issued on January 18, 2004 in Case No. XA-2004-0238. Matrix is also authorized by the FCC to provide interstate and international long distance services. A certificate of good standing for Matrix from the Missouri Secretary of State is attached hereto as Exhibit B. Upon completion of the Transaction, Matrix will register the d/b/a's VarTec Telecom, Excel Telecommunications and Clear Choice Communications with the Missouri Secretary of State and will make the necessary filings with the Commission associated with adding those d/b/a's.

6. Matrix is unaware of any pending customer complaints associated with the Company's provision of service in Missouri.

7. A CONFIDENTIAL copy of Matrix's most recent financial statements are provided as **Exhibit C** under separate seal with a request for confidential treatment as proprietary information as defined in 4 CSR 240-2.135(1)(A). Pursuant to 4 CSR 240-2.135(2)(A), which provides that "no order from the commission is necessary before a party in any case pending before the commission may designate material as proprietary or highly confidential and such information shall be protected as

provided in this rule,” Matrix requests that the Commission hold the filing of its financial statements on a confidential basis.

### **III. DESCRIPTION OF TRANSACTION**

8. Pursuant to an Asset Purchase Agreement (“Agreement”) dated as of March 13, 2010, between Matrix and Comtel, Applicants propose to complete a transaction (“Transaction”) through which Matrix will acquire certain assets of Comtel, including Comtel’s customer bases and substantially all of the assets used in Comtel’s provision of telecommunications services. As a result of the proposed Transaction, Matrix will replace Comtel as the service provider in Missouri. Subject to receipt of the required regulatory approvals, the Transaction is expected to close in the second quarter of this year (the “Closing Date”).

9. Applicants emphasize that although the proposed Transaction will involve a transfer of customers, immediately following the proposed Transaction, all of those customers will continue to receive service from Matrix under the same rates, terms and conditions as the services currently provided. As a result, the proposed Transaction will be almost seamless and virtually transparent to customers served by Comtel in terms of the services that they currently receive. All of the affected customers will receive notice in compliance with the rules of this Commission and Federal Communications Commission. A sample of the notice that will be sent to customers is provided as **Exhibit D**. The Customers will be notified via letter that states (a) the quality of service to the Customers will remain the same; (b) Matrix will continue to provide service to the Customers with the same or better services and rates currently provided to them by Comtel; (c) the Customers have the right to switch to the carrier of their choice; (d) the Customers may contact either Matrix or Comtel via a toll free number with any questions regarding the switchover; and (e) the information required by 4 CSR 240-3.520(2)(G). Moreover, because Matrix is acquiring substantially all of the assets of Comtel necessary to provide service to the

transferred customers, Matrix will have all of the assets required to continue to provide high-quality services to the customers it acquires. A CONFIDENTIAL copy of the Agreement is attached hereto as **Exhibit E**, under separate seal with a request for confidential treatment as proprietary information as defined in 4 CSR 240-2.135(l)(A). Pursuant to 4 CSR 240-2.135(2)(A), which provides that “no order from the commission is necessary before a party in any case pending before the commission may designate material as proprietary or highly confidential and such information shall be protected as provided in this rule,” the Applicants request that the Commission hold their filing of the Agreement on a confidential basis.

10. Matrix is well-qualified to provide service to Comtel’s customers. Matrix currently provides local and long distances telecommunications services in all states except Alaska, and in the District of Columbia.<sup>2</sup> Matrix’s operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.

#### **IV. INAPPLICABILITY OF CARRIER VERIFICATION RULES**

11. Pursuant to 4 CSR 240-33.150(4), upon approval of this Application by the Commission, Matrix may submit or execute a change in a subscriber’s provider of telecommunications service on behalf of such subscriber without obtaining authorization and verification in accordance with the procedures prescribed in 4 CSR 240-33.150(2) and 4 CSR 240-33.150(3), provided that such change is made in connection with the transfer of the Missouri purchased assets to Matrix pursuant to the Agreement, and provided further that Matrix has complied with the requirements prescribed in 4 CSR 240-33.150(4).

#### **V. PUBLIC INTEREST, CONVENIENCE AND NECESSITY**

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<sup>2</sup> In Virginia, intrastate telecommunications services are provided by Matrix’s subsidiary, Matrix Telecom of Virginia, Inc.

12. The proposed transaction described above will serve the public interest by ensuring that the assigned customers enjoy continuity of high-quality telecommunications service. In particular, the assignment of Comtel's customers, together with the transfer of other assets required to serve those customers, will ensure that the customers continue to receive uninterrupted interstate and international services. The customers will be served by carriers with significant technical, managerial and financial resources.

13. Given the increasingly complex and competitive nature of the telecommunications and capital markets and for other business reasons, Applicants seek to complete the proposed transaction as soon as possible. Accordingly, Applicants respectfully request that the Commission process, consider, and approve this Application as expeditiously as possible.

#### **VI. NO TAX IMPACT**

14. The proposed transfer of assets will have no impact upon the revenues of the political subdivisions in which any structure, facility or equipment of the companies involved are located.

#### **VII. PENDING ACTIONS OR FINAL UNSATISFIED JUDGMENTS**

15. The Applicants state that none of them has any pending actions or unsatisfied judgments or decisions associated with any state or federal agency that involve customer service or customer rates, which action, judgment or decision has occurred within three (3) years of the date of this Application.

#### **VII. NO OVERDUE ANNUAL REPORTS OR ASSESSMENT FEES**

16. The Applicants have no overdue annual reports or assessment fees due in Missouri.

#### **VIII. REQUEST FOR WAIVER OF HEARING**

17. Inasmuch as time is of the essence, Applicants respectfully request expeditious approval of the Application.

## **IX. REQUEST FOR CANCELLATION OF COMTEL'S CSAs**

18. Following the Transaction, Matrix will hold Comtel's assets and assume Comtel's telecommunications operations in Missouri. Therefore, Comtel requests that, pursuant to 392.410.5 RSMo. 2000 and upon notification from the Applicants that the Transaction has been completed, the Commission cancel Comtel's CSAs to provide telecommunications services.

**WHEREFORE**, Applicants, Comtel and Matrix, respectfully request the Commission to issue its Order Approving the transfer of certain of Comtel's telecommunications service assets, specifically a portion of Comtel's customer base, to Matrix, and granting such other relief as is reasonable in the circumstances.

Respectfully submitted,

/s/ Mark W. Comley

Mark W. Comley #28847  
Newman, Comley & Ruth P.C.  
Monroe Bluff Executive Center  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, Missouri 65102-0537  
573-634-2266 (Tel)  
573-634-3306 (Fax)  
comleym@ncrpc.com

Counsel for the Applicants

April 28, 2010



## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 28<sup>th</sup> day of April, 2010, to:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**/s/ Mark W. Comley**  
Mark W. Comley

## VERIFICATIONS

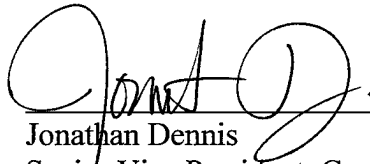
**VERIFICATION**

STATE OF TEXAS :

: ss.

COUNTY OF DALLAS :

I, Jonathan Dennis, state that I am Senior Vice President, General Counsel, and Secretary of Comtel Assets Inc., sole general partner of Comtel Telcom Assets LP ("Comtel"), a party to the foregoing filing; that I am authorized to make this Verification on behalf of Comtel; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document with respect to Comtel are true and correct to the best of my knowledge, information, and belief.



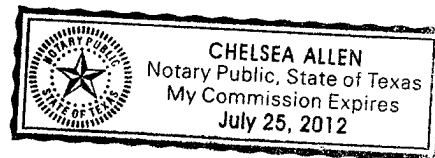
Jonathan Dennis  
Senior Vice President, General Counsel, and  
Secretary  
Comtel Assets Inc., General Partner of  
Comtel Telcom Assets LP

Sworn and subscribed before me this 18 day of March, 2010.



Notary Public

My commission expires: 7/25/2012



**VERIFICATION**

STATE OF TEXAS :

: ss.

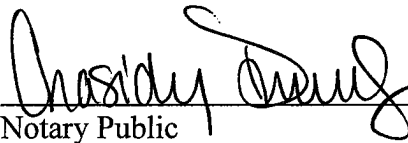
COUNTY OF DALLAS :

I, Scott M. Klopach, state that I am General Counsel of Matrix Telecom, Inc. ("Matrix"), a party to the foregoing filing; that I am authorized to make this Verification on behalf of Matrix; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document with respect to Matrix are true and correct to the best of my knowledge, information, and belief.



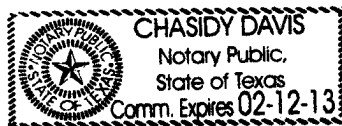
\_\_\_\_\_  
Scott M. Klopach  
General Counsel  
Matrix Telecom, Inc.

Sworn and subscribed before me this 22 day of March, 2010.



\_\_\_\_\_  
Notary Public

My commission expires:



**EXHIBIT A**

**Certificate of Good Standing for Comtel Telecom Assets, LP**

# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**COMTEL TELCOM ASSETS LP**

using in Missouri the name

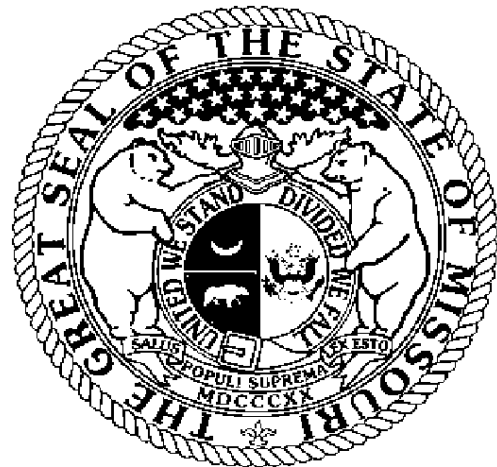
**COMTEL TELCOM ASSETS LP  
LF0680410**

a TEXAS entity was created under the laws of this State on the 22nd day of August, 2005, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 27th day of April, 2010

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State



Certification Number: 12782532-1    Reference:  
Verify this certificate online at <https://www.sos.mo.gov/businessentity/soskb/verify.asp>

**EXHIBIT B**

**Certificate of Good Standing for Matrix Telecom, Inc.**

# STATE OF MISSOURI



Robin Carnahan  
Secretary of State

**CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**MATRIX TELECOM, INC.**

using in Missouri the name

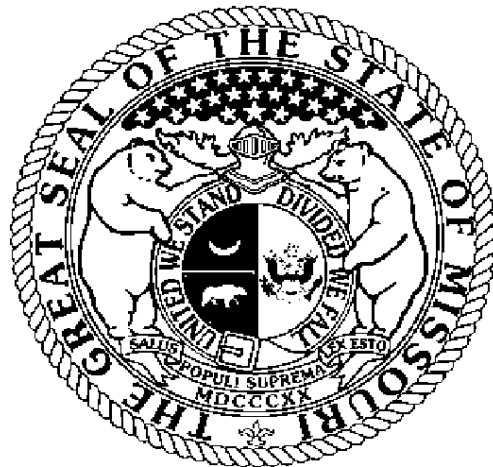
**MATRIX TELECOM, INC.  
F00399876**

a TEXAS entity was created under the laws of this State on the 18th day of August, 1994, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 28th day of April, 2010

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State



Certification Number: 12785632-1    Reference:  
Verify this certificate online at <https://www.sos.mo.gov/businessentity/soskb/verify.asp>



**EXHIBIT D**

Sample Customer Notification Letter

## IMPORTANT INFORMATION ABOUT YOUR SERVICE

Dear Excel Telecommunications, VarTec Telecom or Clear Choice Communications Customer,

Excel Telecommunications, VarTec Telecom and Clear Choice Communications (the "Companies") and Matrix Telecom, Inc. ("Matrix") are pleased to advise you that Matrix will acquire certain assets and customers of Companies' telecommunications business in your area. Following completion of the transaction, the service you currently receive from Excel Telecommunications, VarTec Telecom or Clear Choice Communications will continue under their brand names, which were acquired by Matrix. Matrix prides itself on its ability to build long-term relationships with its customers and looks forward to serving you.

Subject to approval by the Federal Communications Commission and state regulators, the transaction is expected to be completed **on or after [DATE]**, at which time Matrix will assume ownership of the Excel Telecommunications, VarTec Telecom and Clear Choice Communications brands and will become your service provider as described above. **Please note that you are not required to do anything to continue receiving the high-quality service you have come to expect at the same competitive rates you currently pay, and your telephone number will not change as a result of the transfer.** In addition, Matrix will pay any carrier change charges associated with the transfer of your account to Matrix. If you have arranged a preferred carrier freeze through your local carrier with respect to any services involved in this transfer, this freeze will be removed in order to transition the services to Matrix; following the transfer, you must contact your local carrier or, if Excel Telecommunications or VarTec Telecom is your local carrier, Matrix to reinstate the freeze. Notice of any future changes in rates, terms and conditions of service will be provided to you by mail or in your bill, or as otherwise provided in your service contract, if you have one.

Matrix is dedicated to earning and keeping your business. We are confident that this transaction will strengthen the quality of services that you receive from the Companies today. We recognize that you have the right to change providers at any time provided another service provider is available, and subject to the terms of your service contract, if you have one. A listing of other carriers providing service in your area may be obtained from the Missouri Public Service Commission's website. We hope, however, that you choose to remain a customer with Matrix doing business as Excel Telecommunications, VarTec Telecom and Clear Choice Communications, and thereby continue to enjoy under Matrix the same high-quality communications services you currently receive from the Companies. If you do want to select another provider, you should contact that provider directly. Assuming you do not transfer your service to a different provider by **[DATE]**, Matrix will become your service provider on or after **[DATE]**.

Prior to and after the actual transfer date, Excel Telecommunications, VarTec Telecom or Clear Choice Communications will continue to be responsible for all customer service inquiries, complaints, billing issues and service questions, and you should contact the Companies' customer services representatives at the following numbers:

Excel Local: 1-877-668-0808

VarTec Local: 1-800-708-7395

Excel Long Distance: 1-800-875-9235

VarTec Long Distance: 1-800-583-6767

Clear Choice Support: 1-800-668-4872

Please continue to use these customer service contacts following the transfer.

Excel Telecommunications, VarTec Telecom and Clear Choice Communications thank you for your business and Matrix looks forward to providing you with superior products and services for many years to come.

Sincerely,

Excel Telecommunications  
VarTec Telecom  
Clear Choice Communications  
Matrix Telecom, Inc.