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Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.ecodev.state.mo.us/psc/>

February 7, 2000

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Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

FILED³

FEB 08 2000

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TA-2000-361

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Nathan Williams
Assistant General Counsel
(573) 751-8702
(573) 751-9285 (Fax)

NW/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

FEB 08 2000

Missouri Public
Service Commission

In the Matter of the Application of Matrix)
Telecom, Inc. for a Certificate of Service)
Authority to provide Intrastate)
Interexchange Telecommunications)
Services, for Designation as a Competitive)
Telecommunication Company, and for)
Waiver of Certain Statutory and)
Regulatory Provisions.)

Case No. TA-2000-361

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission ("Commission") grant Matrix Telecom, Inc. ("Applicant") a certificate to provide interexchange telecommunications services. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. (See §§ 392.430 and 392.440, RSMo 1994).

2. Staff also recommends that the Commission classify the Applicant and its services as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. (See §392.361.2 RSMo 1994). All the services a competitive company provides must be classified as competitive. (See §392.361.3 RSMo 1994).

3. Staff further recommends that the Commission approve the waivers listed in the Notice of Application. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392 RSMo. (See §§ 392.361.3 and 392.420 RSMo 1994 and § 392.185 RSMo Supp. 1999). As explained more fully below and in Appendix A, because the tariff under which Matrix Telecom, Inc. is currently providing service—Tariff File No. 9600471 approved in Case No. TO-96-240—includes waivers that were not included in the Notice of Application issued in this case, the Staff recommends that the Commission, with the exception of the waivers listed, approve Matrix Telecom, Inc.'s continued operation under the tariff the Commission approved for it in Case No. TO-96-240 (Tariff File No. 9600471), but order Matrix Telecom, Inc. to file a revised tariff sheet 1 to reflect the waivers approved in this case.

4. In Case No. TM-2000-247, now pending before the Commission, Applicant sought Commission approval of the transfer of all Applicant's stock to a new shareholder. As part of that case the Staff reviewed Cases Nos. TA-91-237 and TO-96-240 regarding Applicant. The Staff was unable to locate a Commission Order granting Applicant a certificate of service authority to provide interexchange telecommunications services. This issue was raised to Applicants' counsel and Matrix Telecom, Inc. was also unable to locate a certificate. On December 9, 1999, Matrix Telecom, Inc. filed an application seeking such service authority which became this case. The Staff found nothing in the Commission's records that indicate misfeasance in Applicant's failure to already have a certificate of service authority.


5. The Staff determined the following facts from reviewing the Commission's files for Cases Nos. TA-91-237 and TO-96-240. By Order dated October 22, 1991, in Case No. TA-91-237 the Commission granted a certificate of authority to a Texas partnership named Matrix

Telecom for the provisioning of interexchange telecommunications services effective upon the filing of its tariff. The Commission approved that tariff on December 13, 1991, with an effective date of December 15, 1991. In the file for that same case also appears an adoption notice filed January 1, 1994, whereby the Texas corporation Matrix Telecom, Inc. (Applicant herein) adopts the tariff filed by the Matrix Telecom partnership that was approved on December 13, 1991. With that filing also appears a letter from a Texas attorney and a certificate of authority to conduct business in Missouri issued by the Missouri Secretary of State. The letter apparently erroneously refers to the certificate issued by the Secretary of State as the certificate of service authority for the Texas corporation. As stated above, neither Staff nor Applicant could locate an Order granting a certificate of service authority to the corporation Matrix Telecom, Inc. for these services. In the other case file—TO-96-240—the Staff found a tariff filing to implement a name change from Matrix Telecom to Matrix Telecom, Inc. and to implement new tariff rates (Tariff File No. 9600471). The Staff found no other Commission files relating to Matrix Telecom.

WHEREFORE, the Staff recommends that the Commission grant Matrix Telecom, Inc. a certificate to provide interexchange telecommunications services, grant Applicant competitive classification, approve Applicant's continued operation under the tariff this Commission approved in Case No. TO-96-240 (Tariff File No. 9600471) with a requirement the Applicant file a revised tariff sheet 1 conforming the waivers listed in the tariff to those listed in the Notice of Application, and approve the waivers listed in the Notice of Application.

Respectfully submitted,

DANA K. JOYCE
General Counsel

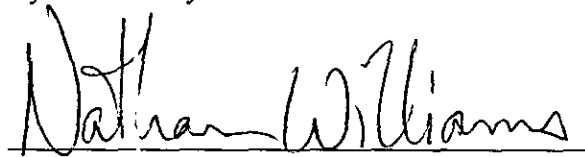


Nathan Williams
Assistant General Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 7th day of February 2000.



MEMORANDUM

RECEIVED

To: Missouri Public Service Commission Official Case File
Case No: TA-2000-361
Applicant: Matrix Telecom Inc.

FEB - 7 2000
DH 1:40 PM
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

From: Shawnee Claiborn-Pinto
Telecommunications Department

SP

Wire Header 2-7-00
Utility Operations Division/Date

Wm TK Hoar 2/7/00 NW 2/7/00
General Counsel's Office/Date

Subject: Staff Recommendation for Approval of Certificate

Date: 2/4/00

Date Assigned: 12/9/99

The Telecommunications Department Staff (Staff) recommends the applicant be granted the following certificate(s), as indicated below.

- certificate to provide interexchange telecommunications services.
 - certificate to provide local exchange telecommunications services.*
- *local exchange authority should be restricted to dedicated, private line services.

Staff also recommends the applicant receive competitive classification and approval of the waivers listed in the Notice. Additionally, Staff recommends the Commission approve the applicant's operation under the tariff previously approved in Case TO-96-240.

Matrix Telecom Inc. is currently providing service under an approved tariff (TO-96-240). But note, the tariff lists 6 waivers not listed in the Notice. Therefore, Staff recommends the Commission direct the company to file a revised tariff sheet 1, reflecting the waivers the company lists on its current application, and that are contained in the Notice.

Application contains the following:	
<input checked="" type="checkbox"/>	Proper Secretary of State authorization
<input checked="" type="checkbox"/>	Request for classification as a competitive telecommunications company.
<input checked="" type="checkbox"/>	All requested waivers are listed in the Notice and all requested waivers have previously been granted to other competitive companies.

Is there an attachment to this recommendation indicating any additional recommendations or special considerations? Yes No

Matrix Telecom Inc. did not receive a certificate of service authority after its incorporation, though the Matrix Telecom partnership did have a certificate (TO-91-237).

This fact came to light as a result of Case TM-2000-247. Upon reviewing case TM-2000-247, General Counsel Staff noticed that Matrix Telecom Inc. did not have a certificate to provide interexchange services. Apparently, after its incorporation in 1994 (Case TA-91-237), Matrix Telecom Inc., did not receive a certificate to provide interexchange services (although the Matrix Telecom partnership did have a certificate). General Counsel Staff informed Matrix Telecom Inc. that he could not locate a Commission Order granting a certificate of authority to Matrix Telecom Inc. As a result, Matrix Telecom Inc. filed an application to provide interexchange services in the current case. An explanation is contained in the Motion to Dismiss Case TM-2000-247, paragraphs 11 and 12 (attached).

From	Initials	Date	Revised
S. Claiborn-Pinto	SCP	2/4/00	
Wm. Voight	WV	2-7-00	
Mr. VanEschen	VE	2/7	
Mr. Henderson	WH	2-7-00	
Legal	WKH	2/7/00	

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

DEC 14 1999

Missouri Public
Service Commission

In the Matter of the Joint Application of)
Matrix Telecom, Inc., AvTel)
Communications, Inc., and Matrix)
Acquisition Holdings Corp. for Approval)
of a Stock Purchase Agreement and)
Related Transactions.)

Case No. TM-2000-247

MOTION TO DISMISS APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by counsel,
and for its Motion to Dismiss Application states:

1. The Applicants have asked for expedited treatment requesting in paragraph 16 of their Application that the Commission act as soon as possible in order to permit the Applicants to consummate their agreement no later than December 31, 1999.
2. The Application states that Matrix Telecom, Inc. (Matrix) is a Texas Corporation wholly-owned by AvTel Communications, Inc. (AvTel), a Delaware Corporation.
3. The Application states that Matrix Acquisition Holdings Corporation (Matrix Holdings) is a Delaware Corporation that is wholly-owned by Energy TRACS Acquisition Corporation (TRACS) which in turn is wholly-owned by Platinum Equity Holdings, LLC (Platinum).
4. Attached to the Application as Exhibit 4 is a stock purchase agreement between AvTel and TRACS whereby AvTel is to sell all the stock of Matrix to TRACS.

5. Attached to the Application as Exhibit 3 is AvTel's consent to assignment to Matrix Holdings of TRACS' rights under the foregoing stock purchase agreement.
6. Under section 6.2.2 of the stock purchase agreement Matrix Holdings is to transfer the business customers of Matrix to AvTel after AvTel has obtained the required regulatory approval for such a transfer.
7. Section 392.300.1, RSMo. 1994, in part, provides:

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. 1998, 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.

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 § 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).

8. Matrix is operating in Missouri under a tariff for resold interexchange telecommunications services. The immediate transaction entails the transfer of ownership of Matrix from AvTel to Matrix Holdings. At some indeterminate future date, business customers of Matrix--not franchise, facilities or system (property)--are to be transferred to AvTel after it obtains all necessary regulatory agency approval for the transfer. The staff has found nothing indicating AvTel is presently providing any telecommunications services in the State of Missouri although Applicants' counsel has related that AvTel is providing telecommunications services in other states. This 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. This transaction does not fall within the ambit of the foregoing statutory provision.

9. Section 392.300.2, RSMo. 1994, in part, provides:

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

10. As was the case with § 392.300.1, RSMo. 1994, § 392.300.2, RSMo. 1994, is also inapplicable. Section 392.300.2, RSMo. 1994, is inapplicable because Matrix is

not a telecommunications company that is "organized or existing under or by virtue of the laws of this state" as it is not a Missouri domestic corporation. See *Public Service Commission v. Union Pacific Railroad Company*, 197 S.W. 39, 41 (Mo. Banc 1917) (Same statutory language regarding Commission jurisdiction over railroads construed to mean Missouri domestic corporations); see also Case No. TM-2000-146.

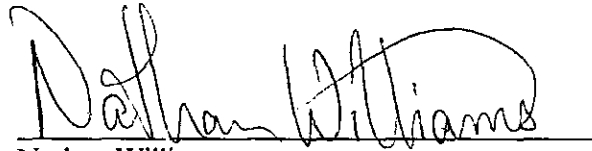
11. In reviewing Cases Nos. TA-91-237 and TO-96-240 regarding Matrix Telecom, as discussed in more detail in the paragraph following, the Staff was unable to locate a Commission Order granting Matrix Telecom, Inc. a certificate of service authority to provide interexchange telecommunications services. This issue was raised to Applicants' counsel and Matrix Telecom, Inc. was also unable to locate a certificate. On December 9, 1999, in Case No. TA-2000-361, Matrix Telecom, Inc. filed an application seeking such service authority. The Staff has found nothing in the Commission's records that indicate misfeasance in the corporation's failure to already have a certificate of service authority.
12. The Staff determined the following facts from reviewing the Commission's files for Cases Nos. TA-91-237 and TO-96-240. By Order dated October 22, 1991, in Case No. TA-91-237 the Commission granted a certificate of authority to a Texas partnership named Matrix Telecom for the provisioning of interexchange telecommunications services effective upon the filing of its tariff. The Commission approved that tariff on December 13, 1991, with an effective date of December 15, 1991. In the file for that same case also appears an adoption notice filed January 1, 1994, whereby the Texas corporation Matrix Telecom, Inc. adopts

the tariff filed by the Matrix Telecom partnership that was approved on December 13, 1991. With that filing also appears a letter from a Texas attorney and a certificate of authority to conduct business in Missouri issued by the Missouri Secretary of State. The letter apparently erroneously refers to the certificate issued by the Secretary of State as the certificate of service authority for the Texas corporation. As stated above, neither Staff nor Matrix Telecom, Inc. could locate an Order granting a certificate of service authority to the corporation Matrix Telecom, Inc. for these services. In the other case file—TO-96-240—the Staff found a tariff-filing to implement a name change from Matrix Telecom to Matrix Telecom, Inc. and to implement new tariff rates (Tariff File No. 9600471). The Staff found no other Commission files relating to Matrix Telecom.

WHEREFORE, for all the foregoing reasons, the Staff prays the Commission to dismiss the Joint Application of Matrix Telecom, Inc., AvTel Communications, Inc., and Matrix Acquisition Holdings Corp. for Approval of a Stock Purchase Agreement and Related Transactions.

Respectfully submitted,

DANA K. JOYCE
General Counsel



Nathan Williams
Assistant General Counsel
Missouri Bar No. 35512

Attorney for the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 14th day of December, 1999.



**Service List for
Case No. TA-2000-364
February 7, 2000**

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

Mark P. Johnson/Lisa C. Creighton
Sonnenschein, Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, MO 64111