

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20th day of March, 2008.

In the Matter of the Joint Application of Americatel)
Corporation and Startec Global Operating Company) **Case No. TM-2008-0146**
for Approval of a Pro Forma Merger) **Tariff No. YX-2008-0531**

**ORDER APPROVING MERGER, RECOGNIZING ADOPTION OF
FICTITIOUS CORPORATE NAME AND APPROVING TARIFF**

Issue Date: March 20, 2008

Effective Date: March 31, 2008

Syllabus: This order approves a proposed corporate restructuring plan whereby Americatel Corporation (“Americatel”) and Startec Global Operating Company (“Startec”) would be merged to form a business entity known as “Americatel Corporation d/b/a Startec.” The order also recognizes the company’s adoption of this fictitious corporate name and approves the proposed tariff filed to reflect the name change.

Background and Procedural History

According to the verified pleadings in this case, Americatel is a Delaware corporation headquartered in Florida which is authorized to provide various forms of telecommunications services in the continental United States and has been certificated to provide intrastate interexchange telecommunications services in Missouri for over ten years.¹ Startec is a Delaware corporation headquartered in Maryland which is authorized to provide various forms of telecommunications services throughout the continental United

¹ See Case No. TA-98-315 (decided Mar. 13, 1998).

States and Hawaii and has been certificated to provide resold intrastate interexchange telecommunications services in Missouri for about ten months.²

On November 6, 2007, Americatel and Startec filed a verified Joint Application for Approval of *Pro Forma* Restructuring with the Commission seeking the Commission's approval of a *pro forma* corporate restructuring plan whereby Americatel and Startec would be merged on or about March 31, 2008, with Americatel emerging as the surviving entity. They also requested that the Commission cancel Startec's existing tariff and certificate of service authority and grant a waiver of the Commission's rules governing changes to a customer's telecommunications carrier to the extent they were inconsistent with the FCC's rules governing the sale of a carrier's customer base.

On December 14, 2007, the joint applicants filed a verified first amended application containing supplemental information about the companies involved, which was required by the Commission's rules but was evidently inadvertently omitted from the original application. On January 25, 2008, the joint applicants filed a letter with the Commission apprising it of certain additional details of a separate transaction involving Startec's immediate corporate parent. This was followed, on February 20, 2008, by the filing of a verified second amended application, in which the joint applicants withdrew their original request for a waiver of the Commission's anti-slamming rules since they had already met all Missouri anti-slamming and notice requirements by submitting their proposed customer notice to Staff and mailing it to their customers at least 30 days in advance of the proposed merger.

The second amended application also slightly changed the proposed *pro forma* corporate restructuring plan. As originally proposed, Startec would have ceased to exist

² See Case No. TA-2007-0366 (decided May 16, 2007).

after the merger and its existing tariff and certificate of service authority would be cancelled. The surviving company (Americatel) would then provide telecommunications services to Startec's former customers pursuant to Americatel's existing operating authority in Missouri using the same network, billing systems, customer service operations, rates, terms, and conditions previously used by Startec, but would use the Startec brand name for those customers. As modified after discussions with Staff, the companies would still merge with Americatel surviving and serving the Missouri customers of both Americatel and Startec, but Americatel would adopt the fictitious corporate name "Americatel Corporation d/b/a Startec." Then Americatel's existing customers would continue to be served under the Americatel brand name, while Startec's existing customers would continue to be served under the Startec brand name. And rather than being cancelled, Startec's existing tariff and certificate of service authority would remain in force after being modified to reflect the name change.³ In short, the joint applicants now propose that Americatel serve its Missouri customers pursuant to two separate certificates and tariffs, each reflecting the brand name under which each such customer is served.

Staff's Recommendation

Staff filed its verified recommendation and memorandum regarding the second amended application on February 29, 2008. Staff indicates that the application substantially complies with the Commission Rules setting forth the procedural filing requirements for applications in general,⁴ as well as those for telecommunications company applications specifically seeking approval of mergers or consolidations,⁵ in addition to the

³ The joint applicants subsequently filed Tariff No. YX-2008-0531, which reflects the name change and contains an appropriate adoption notice.

⁴ See 4 CSR 240-2.060(1).

⁵ See 4 CSR 240-3.525.

rules governing the contents of applications for recognition of utility company name changes and setting forth filing requirements for telecommunications company tariffs.⁶

Staff's recommendation and supporting memorandum also demonstrate that after examining the proposed merger transaction, Staff has concluded that it is not detrimental to the public interest and recommends it be approved. Specifically, Staff notes that the transaction involves only competitively classified companies, that the affected customers have received advance notice thereof, and that the transaction will be transparent to Missouri customers inasmuch as they will continue to receive service at the same rates they have been paying and under the same terms and conditions unless they choose to switch to a different telecommunications services provider. Staff further recommends approval of the joint applicants' request for recognition of their adoption of the fictitious name "Americatel Corporation d/b/a Startec," and also recommends approval of Tariff No. YX-2008-0531 with an effective date of March 31, 2008. The Office of the Public Counsel, which is the other party to this case (there were no intervenors), has not filed any recommendations of its own and has not opposed Staff's recommendations.

Decision

Substantively, mergers such as this are governed by Section 392.300.1, RSMo 2000, which provides that no telecommunications company may "sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system" or directly or indirectly merge or consolidate its "line or system, or franchises, or any part thereof" with any other corporation, person, or public utility without first obtaining permission from the Commission. Under that statute, "[t]he

⁶ These regulations include 4 CSR 240-2.060(5), 4 CSR 240-3.020(1), and 4 CSR 240-3.545(20).

Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.”⁷ Based on the information provided in the verified application, and upon the verified recommendation and memorandum of Staff, which are hereby admitted into evidence, the Commission finds that the merger transaction involving Americatel and Startec is not detrimental to the public interest and that their joint application shall be approved. The Commission also approves the joint applicants’ request for recognition of their adoption of the fictitious name “Americatel Corporation d/b/a Startec.” The Commission further finds that Tariff No. YX-2008-0531, which reflects this name change, shall be approved.

IT IS ORDERED THAT:

1. The Joint Application for Approval of *Pro Forma* Restructuring filed by Americatel Corporation and Startec Global Operating Company on November 6, 2007, as amended on December 14, 2007 and February 20, 2008, is granted.
2. The Commission acknowledges that the surviving entity of the merger transaction, Americatel Corporation, will henceforth be doing business in Missouri under both its own name (Americatel) and a fictitious name (Startec), and recognizes the company’s adoption of that fictitious corporate name for the limited purpose of using it in connection with serving present and future customers of the telecommunications services provider formerly known as Startec Global Operating Company.
3. Tariff No. YX-2008-0531 is approved to become effective on March 31, 2008.

The tariff approved is:

P.S.C. Missouri No. 1
First Revised Adoption Sheet, Replacing Original Adoption Sheet

⁷ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *State ex rel. City of St. Louis v. Pub. Serv. Comm’n*, 73 S.W.2d 392, 400 (Mo banc 1934)).

Second Revised Sheet 1, Replacing First Revised Sheet 1

4. This order shall become effective on March 31, 2008.
5. This case may be closed on April 1, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton, Appling,
and Jarrett, CC., concur

Lane, Regulatory Law Judge