

RECEIVED

OCT 13 2006

PUBLIC SERVICE COMMISSION

October 12, 2006

VIA FEDERAL EXPRESS

Mr. Brent Kirtley  
Public Service Commission of Kentucky  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Tel: (202) 637-2200 Fax: (202) 637-2201  
www.lw.com

FIRM / AFFILIATE OFFICES

Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Milan	Silicon Valley
Moscow	Singapore
Munich	Tokyo
New Jersey	Washington, D.C.

**RE:** Matrix Telecom, Inc. and Americatel Corporation  
Notice of Pro Forma Transfer of Control and Debt Financing

Dear Mr. Kirtley:

Matrix Telecom, Inc. (“Matrix”) and Americatel Corporation (“Americatel”) (together, “the Companies”), by their attorneys, pursuant to the Rules of the Public Service Commission of Kentucky (“Commission”), advise the Commission of a transaction that will result in (i) a *pro forma* transfer of control of two reseller telecommunications companies authorized to operate in Kentucky and (ii) the issuance of debt by the Companies, the pledging of their assets and the pledging of the stock held in them by their common parent. As described below, the Companies have entered into a Credit Agreement (the “Credit Agreement”) dated September 14, 2006, along with EnergyTRACS Acquisition Corp. (“EnergyTRACS,” the immediate parent of the Companies), HBK Investments, L.P. (“HBK,” the Arranger and Administrative Agent), and PCRL III Investments L.P. (the “Lender”).

Based on a review of Kentucky law, it is the Companies’ understanding that no state regulatory approval to complete the Transaction is required in Kentucky. Accordingly, the Companies submit this letter in order to ensure the continuing accuracy of Kentucky’s records. An original and one (1) copies of this letter, along with one (1) further copy for date-stamp and return are enclosed. Please date-stamp the extra copy of this letter and return it in the self-addressed, stamped envelope provided for that purpose.

The Companies further state as follows:

**I. THE COMPANIES**

**A. Matrix**

Matrix is a Texas corporation with principal offices located at 2207 Commerce Street, Dallas, Texas 75201, tel. (214) 432-1447. 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 service in all 50 states and the District of Columbia. In Kentucky, Matrix is authorized to operate as a non-facilities based reseller of local exchange and interexchange services, pursuant to authority granted in Filing No. TFS2005-00386 on May 11, 2005 and in Case No. 90-270 on March 13, 1991. Matrix is also authorized to provide facilities-based and/or resold interexchange and/or competitive local exchange telecommunications services across the nation.

## **B. Americatel**

Americatel is a Delaware corporation with principal offices located at 4045 N.W. 97<sup>th</sup> Avenue, Miami, Florida 33178, tel. (305) 717-0200 (main number). Serving the needs of United States customers with connections to Latin America and the Caribbean, Americatel provides international and domestic facilities-based and resold long distance services, including “dial around” casual calling (*i.e.*, 1010XXX) service and presubscribed 1+ calling services, in each of the 48 contiguous states. In Kentucky, Americatel is authorized to operate as a reseller of interexchange services pursuant to authority granted in Utility No. 5136900 on March 1998.

## **C. Ownership of the Companies**

Platinum Equity, LLC (“Platinum Equity”), a limited liability company formed under the laws of Delaware and headquartered in Beverly Hills, California, has indirectly held 100 percent of the equity of Matrix since 1999, and 95 percent of the equity of Americatel since July 2006. Platinum Equity is a global firm specializing in the merger, acquisition and operation of companies that provide services and solutions to customers in a broad range of business markets, including information technology, telecommunications, and logistics, manufacturing, and entertainment distribution. Since its founding in 1995, Platinum Equity has acquired more than 60 businesses with more than \$12 billion in aggregate revenue at the time of acquisition. Platinum Equity currently holds its interests in Matrix and Americatel through its wholly-owned subsidiary, EnergyTRACS.

## **II. DESIGNATED CONTACTS**

Inquiries or copies of any correspondence, orders, or other materials pertaining to this Petition should be directed to:

Richard R. Cameron  
Berin M. Szoka  
LATHAM & WATKINS LLP  
555 11<sup>th</sup> Street, N.W., Suite 1000  
Washington, D.C. 20004  
(202) 637-2200 (Tel)  
(202) 637-2201 (Fax)  
[richard.cameron@lw.com](mailto:richard.cameron@lw.com)  
[berin.szoka@lw.com](mailto:berin.szoka@lw.com)

Copies of any correspondence should also be sent to the following designated representatives of Matrix and Americatel, respectively:

Scott Klopack  
Vice President of Regulatory Affairs  
and General Counsel  
Matrix Telecom, Inc.  
2207 Commerce Street  
Dallas, Texas 75201  
(214) 432-1468 (Tel)  
(214) 432-1576 (Fax)  
sklopack@matrixvalue.com

Victor A. Lago  
Vice President & General Counsel  
Americatel Corporation  
4045 N.W. 97th Avenue  
Miami, Florida 33178  
(305) 717-0299 (Tel)  
(305) 716-8833 (Fax)  
vlago@americatel.net

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

The Companies will implement certain debt financing arrangements payable at a term of more than one year, pledge their assets as collateral for the debt, and have their stock pledged as further collateral, all pursuant to the Companies' September 14, 2006 Credit Agreement. In addition, in connection with this financing arrangement and as required by the Credit Agreement, the Companies will implement a minor corporate reorganization under which EnergyTRACS will transfer the stock it holds in the Companies to a newly-formed, wholly owned subsidiary of EnergyTRACS, without affecting ultimate control of the Companies by Platinum Equity.

#### **A. Issuance of Debt, Encumbrance of Assets, and Pledge of Stock**

The Credit Agreement is structured in two phases. The first phase, currently in effect, will have a maximum term of 364 days. During this phase, the Companies are jointly and severally liable co-borrowers for debt obligations of up to \$90 million, consisting of a \$40 million term loan and a \$50 million revolving credit facility. This debt is guaranteed by Platinum Equity, EnergyTRACS, and Matrix Telecom of Virginia, Inc. ("Matrix of Virginia"), all affiliates of the Companies. None of the Companies' stock or assets are being used to secure the debt in the first phase. During this first phase, the Companies must secure the regulatory approvals necessary to implement the second phase of the Credit Agreement. If these regulatory approvals have not been secured within 180 days, the Companies will be in default under the terms of the Credit Agreement, and face termination of the financing arrangement by the Lender.

In the second phase, which will be implemented upon receipt of all necessary regulatory approvals, the Companies will pledge all of their assets as collateral for this indebtedness, and will have their stock pledged as further collateral. The Companies will continue to act as co-borrowers, and will remain jointly and severally liable for the entire debt, but the first phase guarantees of the debt by Platinum Equity, EnergyTRACS, and Matrix of Virginia will terminate. This structure will remain in place through the maturity date of the Credit Agreement, which is September 14, 2011.

The terms of each Financing are expected to be substantially as follows:

**Funding Providers:** HBK is an alternative investment firm, headquartered in Dallas, Texas, with offices in New York, London, Tokyo, and Hong Kong. HBK commenced operations in October 1991 with the launch of HBK Fund L.P. Today, HBK manages approximately \$10 billion in equity capital, ranking it as one of the largest hedge fund managers in the world. The Lender, PCRL III Investments, L.P., is an investment fund managed by HBK.

**Amount:** \$90 million. This consists of a \$40 million term loan and a \$50 million revolving credit facility.

**Maturity:** For the first phase, the debt will be limited to a maximum term of 364 days, or until September 13, 2007. If state approvals are not obtained, all debt must be paid no later than the end of the 364-day term, and the financing arrangement will terminate.<sup>17</sup> If all necessary regulatory approvals are obtained, however, the parties will implement the second phase of the Credit Agreement, and the financing arrangement will extend until its full maturity date, which is September 14, 2011, or five years from the date of the Credit Agreement.

**Interest:** The interest rate in the arrangement will be in line with market conditions and the terms of the arrangements are equivalent to those offered for other, similarly-situated borrowers.

**Security:** During the first phase, no assets of the Companies will be pledged as collateral for the debt. Rather, both Matrix and Americatel will covenant that they will not pledge their assets to secure any other debt. If this “negative pledge” covenant is breached, that breach would constitute an event of default under the Credit Agreement. In addition, as explained above, the debt is being guaranteed by Platinum Equity, EnergyTRACS, and Matrix of Virginia, for a maximum of 364 days.

As explained above, and assuming all necessary regulatory approvals are obtained, these guarantees will be replaced in the second phase of the Credit Agreement, when each Petitioner will grant a security interest in all of its assets and have its stock pledged, both to the extent permitted by law, as collateral for the debt.

---

<sup>17</sup> If the Companies fail to obtain the regulatory approvals described herein by the required dates, the Lenders could declare a default, causing the financing arrangement to terminate sooner than 364 days.

**Use of Proceeds:** The Companies plan to use the proceeds of this financing arrangement to introduce new services, expand into new markets and to allow more consumers to benefit from competitive services more quickly and efficiently, and to refinance existing indebtedness. As jointly and severally liable co-borrowers, the benefits and obligations of the proposed arrangements apply equally to each of the Companies, which share mutual and reciprocal obligations and neither will be given any undue advantage over the other.

## **B. Corporate Reorganization**

In preparation for the implementation of the second phase, described above, and as required by the Lender, EnergyTRACS must transfer the stock of the Companies to MTAC Holding Corporation (“MTAC”), a Delaware corporation and a newly-formed, wholly-owned subsidiary of EnergyTRACS.<sup>18</sup> This reorganization is depicted in the organizational charts contained in Exhibit A. Ultimate control of the Companies by Platinum Equity will not change as a result of this minor corporate reorganization.

## **IV. PUBLIC INTEREST STATEMENT**

The Transaction will serve the public interest by enabling the Companies to better utilize their available funds, to introduce new services, expand into new markets and to allow more consumers to benefit from competitive services more quickly and efficiently. Further, the Transaction will actively serve the public interest in promoting competition among telecommunications carriers because the Companies will have the opportunity to strengthen their competitive position through access to greater financial resources. The Companies will have a greater ability to bring high-quality competitive telecommunications services to citizens of Kentucky.

The terms and conditions of the Credit Agreement, as described, are advantageous to the Companies, because the Companies’ combined financial resources and negotiating strength allowed them to obtain more advantageous financial terms than either would have been able to obtain independently, and the Credit Agreement is the result of extensive negotiations in a highly-competitive financing market. The structuring of the transaction in two phases allows the Companies to obtain necessary short-term financing immediately, while providing the Companies the necessary time to obtain the state regulatory approvals necessary for the Companies to issue debt with a term greater than one year and to secure that debt through the pledging of their assets and stock. During the first phase, because Platinum Equity is guaranteeing the Companies’ debt, the Lender will have the ultimate recourse to the Companies’ common parents and will therefore be less likely to seek recourse against either Petitioner should the other default.

Both Matrix and Americatel compete in Kentucky and other markets with numerous other interexchange carriers and enhanced service providers as well as the incumbent

---

<sup>18</sup> The Companies will be in default under the terms of the Credit Agreement, and face termination thereof, if all such approvals are not received within 90 days, or by December 13, 2006.

local exchange carrier and other competitive local exchange carriers. Both the Companies are non-dominant carriers, and are not subject to rate of return regulation. In addition, because of the highly competitive environment in which both companies operate, the rates charged to customers are subject to market discipline and the services offered generally are available from numerous other carriers. As a result, the source of funds and capital structure of Matrix and Americatel would have little effect on customers in Kentucky or elsewhere. In the unlikely event that the capital structure for either company becomes too costly and rates rise, customers may simply migrate to other carriers with preferred rates. Thus, any adverse consequences from the financing decisions impact shareholders, not customers, and any favorable consequences benefit both its shareholders and consumers through higher profits, lower rates, and better services.

Moreover, because the public interest is best served by assuring the presence of numerous telecommunications competitors in Kentucky, it is important to provide such competitors with the flexibility to arrange financing in the manner they deem most appropriate to carry on business so long as there is no adverse impact on the public. To deny such flexibility would discourage new competitors from entering the state and would encourage existing competitors in the state to seek a more favorable regulatory environment elsewhere, neither of which would enhance the public interest. Given the challenges facing competitive telecommunications carriers, the availability of funds to the Companies in this manner would benefit Kentucky consumers.

Finally, these financing arrangements will be transparent to consumers and consumers will benefit from the continued receipt of quality telecommunications services that are priced competitively.

## V. CONCLUSION

Again, this letter constitutes notification to the Commission of a transaction for which the Companies believe no approval is required. For the reasons stated above, the Companies respectfully submit that the Transaction will service public interest, convenience and necessity. Questions regarding this letter may be directed to the undersigned.

Respectfully submitted,

MATRIX TELECOM, INC.  
AMERICATEL CORPORATION

By Their Counsel:

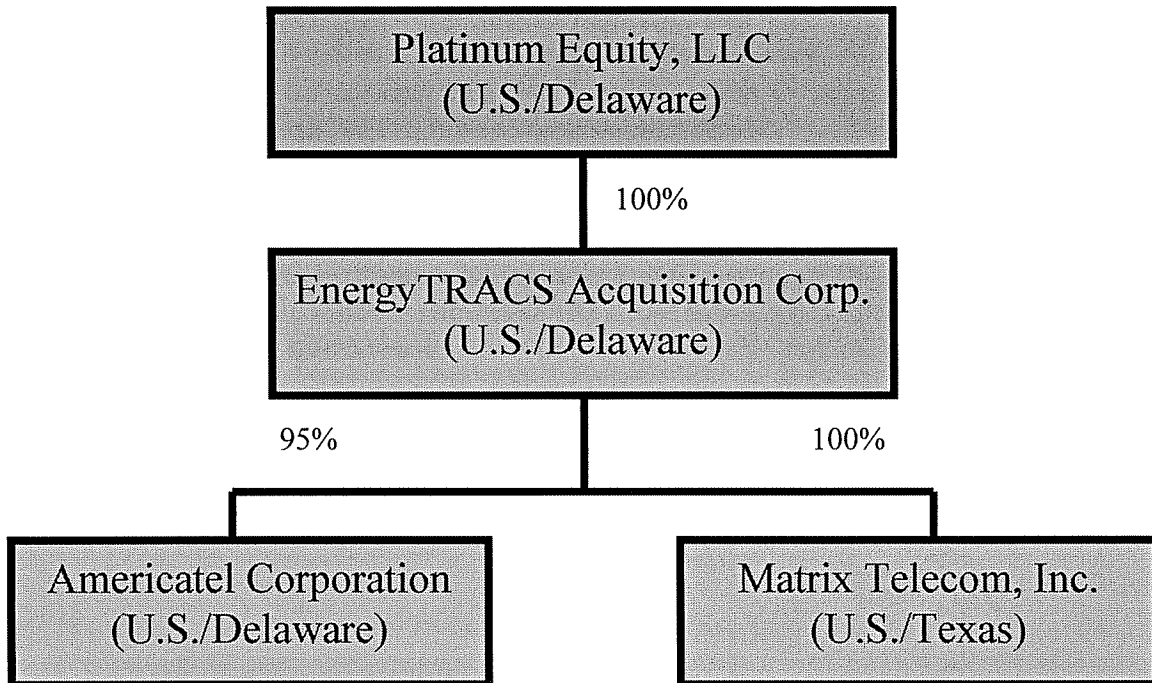


---

Richard R. Cameron  
Berin M. Szoka  
Latham & Watkins LLP  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004  
(202) 637-2200

EXHIBIT A

**Ownership Pre-transaction**  
Showing Citizenship and  
State of Incorporation



**Ownership Post-transaction**  
Showing Citizenship and  
State of Incorporation

