

Ruth Nettles

100174

From: Ferenchak, Brett P. [Brett.Ferenchak@bingham.com]
Sent: Tuesday, April 06, 2010 10:43 AM
To: Filings@psc.state.fl.us
Subject: Matrix Telecom, Inc. Petition for Waiver
Attachments: Matrix- FL Petition for Slamming Waiver.pdf

- a. Brett P. Ferenchak
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- b. New Docket: Petition of Matrix Telecom, Inc. for Waiver of Rule 25-4.118, F.A.C., Local, Local Toll or Toll Provider Selection Regarding Authorization and Verification of Changes in Telecommunications Providers and Other Such Relief as Proper and Necessary
- c. Matrix Telecom, Inc.
- d. 14 Pages Total (includes transmittal letter, Petition, exhibit and verifications)
- e. Petition of Matrix Telecom, Inc. for Waiver of Rule 25-4.118, F.A.C.

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April 6, 2010

Via Electronic Filing

Ann Cole
Commission Clerk and Administrator Services
Florida Public Service Commission
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Tallahassee, Florida 32399-0850
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Re: Petition of Matrix Telecom, Inc. for Waiver of Rule 25-4.118, F.A.C., Local, Local Toll or Toll Provider Selection Regarding Authorization and Verification of Changes in Telecommunications Providers and Other Such Relief as Proper and Necessary

Dear Ms. Cole:

On behalf of Matrix Telecom, Inc. ("Matrix"), enclosed please find a Request For Waiver of Rule 25-4.118, F.A.C., Local, Local Toll or Toll Provider Selection Regarding Authorization and Verification of Changes in Telecommunications Providers and Other Such Relief as Proper and Necessary. The Petition is being filed in connection with the transfer of assets and customers from Comtel Telcom Assets LP (together with Matrix, the "Parties") to Matrix.

Should you have any questions, please do not hesitate to contact Brett Ferenchak at (202) 373-6697.

Respectfully submitted,

s/ Brett P. Ferenchak

Russell M. Blau
Tamar E. Finn
Brett P. Ferenchak

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

Petition of :
 :
Matrix Telecom, Inc. :
 :
For Waiver of Rule 25-4.118, F.A.C., : 100174
Local, Local Toll or Toll Provider : Docket No.
Selection Regarding Authorization and :
Verification of Changes in :
Telecommunications Providers and Other :
Such Relief as Proper and Necessary :

WAIVER REQUEST

Matrix Telecom, Inc. (“Matrix” or “Assignee”), by its undersigned counsel and pursuant to Rule 25-24.455(4), Florida Administrative Code, and Section 120.542, Florida Statutes, requests that the Florida Public Service Commission (“Commission”) grant a waiver of Rule 25-4.118, Florida Administrative Code, and any other regulations deemed applicable, regarding authorization and verification of changes in telecommunications providers. This Waiver Request is made in connection with a transaction where Matrix will acquire substantially all of the assets and customers of Comtel Telcom Assets LP (“Comtel” or “Assignor”) (the “Transfer” or “Transaction”). As a result of the Transfer, Comtel’s current customers and the assets to support the provision of services to those customers will be transferred to Matrix, which will become the service provider for those customers. As described below, because the rates, terms or conditions of the services being received by customers will not change as a result of the assignment, the proposed Transfer will be virtually transparent to customers of Comtel in terms of the services that those customers receive.

Matrix and Comtel (jointly the “Parties”) respectfully request expedited treatment and consideration of this Waiver Request. Expeditious approval of this Waiver Request will allow

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Assignee to promptly assume responsibility for the provision of telephone services to customers of Assignors. Therefore the Parties respectfully request that approval of this Waiver Request be granted on an expedited basis.

In support of this filing, the Parties provide the following information:

I. DESCRIPTION OF THE PARTIES

A. Matrix Telecom, Inc.

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 Florida, Matrix is authorized to provide competitive local exchange telecommunications services pursuant to CLEC Certificate No. 8586 granted in Order Nos. PSC-05-0555-PAA-TX (May 20, 2005) and PSC-05-1126-FOF-TX(Nov. 8, 2005) in Docket No. 050248-TX, and interexchange telecommunications services pursuant to IXC Certificate No. 2495 granted in Docket No. 940688 on October 13, 1994,. Matrix is also authorized by the FCC to provide interstate and international long distance services.

B. Comtel Telecom Assets LP

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 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 Florida, Comtel is authorized to provide (1) competitive local exchange telecommunications services pursuant to CLEC Certificate Nos. 5687 (using d/b/a VarTec Telecom and Clear Choice Communications), 4695 (using d/b/a Excel Telecommunications) and 4699 (using d/b/a VarTec Solutions), which were transferred to Comtel pursuant to Order Nos. PSC-05-1241-PAA-TX (Dec. 19, 2005) and PSC-06-0040-CO-TI (Jan. 13, 2006) issued in Docket No. 050648-TA and (2) long distance telecommunications services pursuant to IXC Registration Nos. TK025 (using d/b/a VarTec Telecom and Clear Choice Communications), TK028 (using d/b/a Excel Telecommunications) and TK029 (using d/b/a VarTec Solutions). Comtel is also authorized by the FCC to provide interstate and international telecommunications services.

II. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this filing should be directed to the following.

For Petitioners:

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With copies to:

Scott M. Klopach
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7171 Forest Lane, Suite 700
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Fax: 214-432-1576
sklopach@matrixbt.com

and:

Jonathan Dennis
Senior Vice President, General
Counsel and Secretary
Comtel Assets Inc., the G.P. of
Comtel Telcom Assets LP
d/b/a Excel Telecommunications
433 E. Las Colinas Boulevard
Suite 1300
Irving, Texas 75039
Fax: 866-418-9749
jdennis@excel.com

III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS

Pursuant to an Asset Purchase Agreement (“Agreement”) dated as of March 13, 2010, between Matrix and Comtel, the Parties propose to complete a transaction (“Transaction”) through which Matrix will acquire certain assets of Comtel, including Comtel’s customer base 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 Florida. Subject to receipt of the required regulatory approvals, the Transaction is expected to close in the second quarter of this year (the “Closing Date”).

Matrix emphasizes 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, and under the same brand names. 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 A. 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.

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.¹ Matrix's operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.

IV. REQUEST FOR WAIVER

Pursuant to Rule 25-4.118, Florida Administrative Code, a customer's local exchange or interexchange telecommunications service provider shall not be changed without the customer's authorization. To make such a change, the carrier must either: (1) obtain a letter of agency from the customer requesting the change; (2) obtain confirmation from the subscriber via a customer-initiated call; or (3) utilize an independent third party to verify the subscriber's order. The requirements of Rule 25-4.118 are applicable to interexchange carriers through incorporation by reference in Rule 25-24.490.

¹ In Virginia, intrastate telecommunications services are provided by Matrix's subsidiary, Matrix Telecom of Virginia, Inc.

Matrix respectfully requests a waiver of Rule 25-4.118 so that Assignor may transfer to Assignee its customer accounts in Florida without Assignee securing authorization and verification from each of the more than approximately 8,400 pre-subscribed long distance, approximately 635 local exchange customers, and approximately 300 commercial customers of Comtel in Florida.² Obtaining authorization and verification from each of the affected customers would be a burdensome process and impose an undue hardship on the Parties.

The Parties will comply with the Federal Communications Commission's ("FCC's") rules governing the sale of a carrier's customer base. 47 C.F.R. § 64.1120(e). These rules require that every affected subscriber of Comtel receive at least 30 days prior written notice of the proposed transfer to Matrix; and that Comtel certify to the FCC that it has provided at least 30 days written notice to each subscriber affected by this transaction. 47 C.F.R. § 64.1120(e)(1-3). Written notice of the transaction and of the customer base transfer will be provided to Comtel's Florida customers via First Class mail at least 30 days prior to the anticipated closing date pursuant to Section 64.1120(e) of the FCC's rules.³ A sample of the customer notice letter is provided as Exhibit A.

In the interest of assuring a seamless and uninterrupted service, following completion of the migration of customers to Matrix, all of the affected customers will continue to receive service from Matrix under the same rates, terms and conditions as currently provided by Comtel. Matrix intends to adopt the Comtel tariffs currently on file with the Commission and will continue to serve customers under the terms set forth in those tariffs for the immediate

² Comtel also has approximately 14,500 casual calling customers in Florida that use Comtel's dial-a-round long distance services.

³ 47 C.F.R. § 64.1120(e).

future, although Matrix reserves the right to make changes consistent with its contractual obligations and subject to state law.

V. PUBLIC INTEREST CONSIDERATIONS

The basis for granting a waiver for telecommunications carriers is set forth in Section 120.542, Florida Statutes, and Rule 25-24.455(4), Florida Administrative Code. Under Section 120.542 a request for waiver must demonstrate that the purpose of the underlying statute will otherwise be served if waiver of the rule is granted and that enforcement of the rule would result in substantial hardship or violate principle of fairness. Similarly, under Rule 25-24.455(4), the Commission may consider whether the petition is in the public interest, whether market forces obviate the need for the provision in a particular instances, and whether reasonable alternative regulatory methods may service the same purpose.

In the circumstances described in this Petition, it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. Rule 25-4.118 does not prescribe any means of authorizing a carrier change that is necessitated by a mass migration of customers as part of an asset transfer. It would be unfair to hold Matrix to requirements that plainly do not address its particular situation and with which it cannot reasonably comply. The Parties are providing for a seamless transition while ensuring that customers understand available choices with the least amount of disruption and confusion; thus, the requirements of the rules are satisfied. The customers will receive at least 30 days notice of the transfer and be afforded the opportunity not to participate. The Parties believe that if prior authorization is required in this case, customers may fail to respond to a request for authorization, neglect to select another carrier, and thus lose their service.

Grant of this Waiver Request 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 will ensure that the customers continue to receive uninterrupted local, intrastate, interstate and international services. The customers will be served by carriers with significant technical, managerial and financial resources.

VI. REQUEST FOR EXPEDITED REVIEW

The Parties seek to complete the proposed Transaction as expeditiously as possible in order to minimize customer confusion and realize the benefits of the proposed Transaction. Accordingly, Matrix respectfully requests that the Commission expedite the processing of this Waiver Request and grant the requested authority as soon as possible to permit the Parties to consummate the Transaction.

VII. CANCELLATION OF COMTEL'S AUTHORIZATIONS

Upon completion of the Transaction, Matrix will assume all of Comtel's telecommunications operations in Florida at which time Comtel will no longer need its authorizations to provide telecommunications services. To the extent possible in this Docket, Comtel requests that the Commission cancel Comtel's CLEC Certificates and IXC Registrations to provide telecommunications services upon notification by the Parties that the Transaction was completed.

VIII. CONCLUSION

WHEREFORE, Matrix requests that the Commission grant the request for a waiver of Rule 25-4.118 on an expedited basis, and grant additional relief as may be proper and necessary under the circumstances. Further, Comtel requests that, upon receipt of notification from the

Parties that the Transaction was completed, the Commission cancel Comtel's authorizations to provide telecommunications services.

Respectfully submitted,

s/ Brett P. Ferenchak

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Counsel for the Parties

Dated: April 6, 2010

EXHIBIT A

Sample Customer Notice

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. 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.

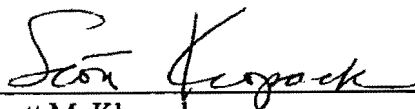
VERIFICATION

STATE OF TEXAS :

: ss.

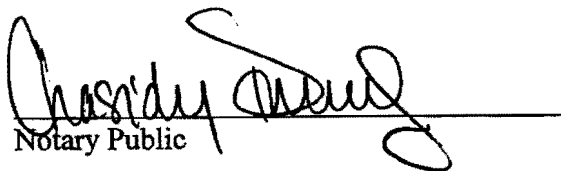
COUNTY OF DALLAS :

I, Scott M. Klopack, 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.

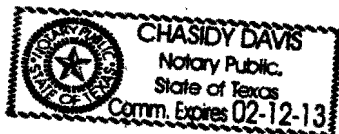


Scott M. Klopack
General Counsel
Matrix Telecom, Inc.

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


Notary Public

My commission expires:



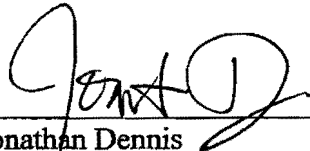
VERIFICATION

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

