

DT 99-157

MATRIX TELECOM, INC.

**Stock Purchase Agreement Between Matrix Telecom, Inc., Avtel
Communications, Inc., and Matrix Acquisition Holdings
Corporation**

Order Approving the Stock Purchase

O R D E R N O. 23,383

January 7, 2000

I. PROCEDURAL HISTORY AND BACKGROUND

The Petitioner, MATRIX TELECOM, Inc. (Matrix), filed a Notification of Stock Purchase Agreement with the Commission in September, 1999. The notification explained that 100% of the common stock shares of Matrix, a foreign corporation and provider of intrastate interexchange telecommunications services in New Hampshire, were being transferred to Matrix Acquisition Holdings Corporation (MAHC), a Delaware Corporation and wholly-owned subsidiary of Energy TRACS Acquisition Corporation (ETAC). Matrix is currently a wholly owned subsidiary of AvTel Communications, Inc.; likewise ETAC is a wholly owned subsidiary of Platinum Equity Holdings, LLC (Platinum).

MAHC was formed after the execution of the Stock Purchase Agreement between AvTel, Matrix and ETAC. The contemplated stock transfer involves 100% of the issued and outstanding common stock of Matrix being delivered to MAHC.

Matrix will continue in existence under the laws of Texas.

In a previous docket, this Commission found that the company demonstrated the financial, managerial and technical ability to offer intrastate toll services in New Hampshire. *See Re Matrix Telecom of New Hampshire, Inc.*, 78 NH PUC 560 (1993).

In Order No. 21,789 this Commission authorized Matrix to reorganize and transfer its operating authority from Matrix Telecom of New Hampshire (MTNH) to Matrix Telecom, Inc. The transfer took place after Matrix fully registered with the New Hampshire Secretary of State. The Commission found that the transaction would result in no net harm as there would be no changes in rates or service. *See Re Matrix Telecom of New Hampshire, Inc.*, 80 NH PUC 551 (1995).

II. THE FILING

The filing represents notification from Matrix, AvTel and ETAC that the common stock of Matrix will be transferred to MAHC once regulatory approval is received. The parties represent that customers will not be affected by the transfer, that Matrix will continue to operate under its own name and will continue to provide high quality telecommunications services to the public. The filing also contends that the transfer, given Platinum's involvement as a

corporate parent, brings "significant financial and business resources to the Company". It is alleged that Platinum will provide management expertise as well as operating and growth-oriented capital to Matrix.

Finally, the filing suggests that the proposed transaction will result in some change of management and officers of Matrix but the Company would continue to possess the technical, managerial, and financial resources necessary to provide low-cost and reliable telecommunication services in New Hampshire.

The filing, however, does imply that AvTel will be petitioning the Commission to operate as a telecommunication service provider in the State. Once AvTel receives operating authority from the Commission, it is proposed that AvTel will then assume responsibility for servicing Matrix's current business market customers. In a letter dated November 18, 1999, from counsel for the parties, it was indicated that no transfer of customers would take place until all certificates of service and approvals were obtained. The filing also anticipates that a new tariff would be filed to introduce new products and rates in the near future.

III. COMMISSION ANALYSIS

Pursuant to RSA 374:33, the acquisition by a utility

or public holding company of more than 10 percent of the stocks or bonds of a public utility or public utility holding company incorporated in or doing business in this state requires Commission approval. This Commission must find that the "acquisition is lawful, proper and in the public interest." RSA 374:33.

Based upon the filing we conclude that there is no reason to withhold our approval. We do, however, believe that there is a potential problem with the proposal as it relates to AvTel taking over the business customers. Pursuant to RSA 374:28-a any practice that changes a consumer's telecommunications service carrier without the customer's knowledge or consent is prohibited. While we recognize that no change is to occur until AvTel is certified, it is our responsibility to ensure that all customers are protected against slamming. We therefore, require Matrix to notify its New Hampshire business customers of the prospective change.

With the slamming issue resolved we find that the stock transfer is lawful, proper and in the public interest.

Based upon the foregoing, it is hereby

ORDERED, that the Petition to transfer stock of Matrix, a wholly owned subsidiary of AvTel to MAHC is granted; and it is

FURTHER ORDERED, that MAHC shall adopt the currently effective tariff of Matrix; and it is

FURTHER ORDERED, that MAHC shall file a compliance tariff with the Commission within 30 days of this order, in accordance with N.H. Admin. Rules, Puc 1601.04(b); and it is

FURTHER ORDERED, that MAHC shall notify its New Hampshire business customers, within 60 days of this order, of the proposed plan to have AvTel provide services.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary