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April 27, 2010

**Via Email & Overnight Courier**

Oregon Public Utility Commission  
Attn: Filing Center  
550 Capitol Street, N.E.  
Suite 215  
Salem, OR 97301-2551  
PUC.FilingCenter@state.or.us

**Re: Petition of Comtel Telcom Assets LP to Waive the Notification Time  
Periods of OAR 860-032-020(11)**

Dear Sir or Madam:

On behalf of Comtel Telcom Assets LP, enclosed please find the signed original and one (1) copy of the Petition of Comtel Telcom Assets LP to Waive the Notification Time Periods of OAR 860-032-020(11) that was electronically filed on April 27, 2010. This Petition is also being filed by email.

Please date-stamp the enclosed extra copy of this filing and return it in the attached self-addressed, postage prepaid envelope provided. Should you have any questions, please do not hesitate to contact Brett Ferenchak at (202) 373-6697.

Respectfully submitted,



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

Boston  
Hartford  
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London  
Los Angeles  
New York  
Orange County  
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A/73337170.1

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

In the Matter of the :  
 :  
Petition of Comtel Telcom Assets LP to : Docket No: \_\_\_\_\_  
Waive the Notification Time Periods of :  
OAR 860-032-020(11) :

**PETITION TO WAIVE NOTIFICATION TIME PERIODS**

Comtel Telcom Assets LP (“Comtel”), by its counsel and pursuant to OAR 860-032-020(16), respectfully files this petition requesting that the Public Utility Commission of Oregon (“Commission”) waive the 90 day customer notification requirement in OAR 860-032-0020(11)(a) and the 90 day filing requirement in OAR 860-032-0020(11)(b) so that Comtel can complete the transfer of its customer base to Matrix Telecom, Inc. (“Matrix” and together with Comtel, the “Parties”) on or after June 30, 2010.

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

**I. DESCRIPTION OF THE PARTIES**

**A. Comtel Telcom 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 Oregon, Comtel is authorized to provide is authorized to provide intraexchange and interexchange services pursuant to authorities transferred to Comtel by Order No. 06-210 issued in Dockets CP 1315, CP 1316 and CP 1317 on April 27, 2006.<sup>1</sup> Comtel is also authorized by the FCC to provide interstate and international telecommunications services.

**B. 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 Oregon, Matrix is designated as a competitive telecommunications provider and authorized to provide intraexchange and interexchange services pursuant to authority granted in Order No. 05-599 in Docket CP 1281. Matrix is also authorized by the FCC to provide interstate and international long distance services.

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<sup>1</sup> Order No. 06-210 transferred to Comtel the authorities granted to (1) VarTec Solutions, Inc. in Order No. 00-270 issued in Docket CP 791, (2) Vartec Telecom, Inc. in Order No. 01-1008 issued in Docket CP 975, and (3) Excel Telecommunications, Inc. in Order No. 02-219 issued in Docket CP 1025.

## **II. CONTACTS**

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

For Parties:

Russell M. Blau  
Tamar E. Finn  
Brett P. Ferenchak  
Bingham McCutchen LLP  
2020 K Street, NW  
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tamar.finn@bingham.com  
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With copies to:

Scott M. Klopach  
General Counsel  
Matrix Telecom, Inc.  
7171 Forest Lane, Suite 700  
Dallas, TX 75230  
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 Blvd., 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 bases 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 Oregon.

Subject to receipt of the required regulatory approvals, the Transaction is expected to close in the second quarter of this year (the “Closing Date”).

The Parties emphasize 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 applicable brand name. 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.

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.<sup>2</sup> Matrix’s operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise. 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.

All of the affected customers will receive notice in compliance with the rules of this Commission and Federal Communications Commission (“FCC”). A sample of the notice that will be sent to customers is provided as Exhibit A. While this Customer Notification complies with the requirements of 47 C.F.R. § 64.1120(e) and OAR 860-032-020(5), the Parties intend to complete the transaction within 90 days, and, therefore, Comtel is requesting a waiver of the notification time periods in Section IV below. The Parties intend to send the notice to Oregon customers on April 30, 2010 and, therefore, customers will only receive 60 days prior notice of the transfer.

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<sup>2</sup> In Virginia, intrastate telecommunications services are provided by Matrix’s subsidiary, Matrix Telecom of Virginia, Inc.

**IV. REQUEST FOR WAIVER OF NOTIFICATION TIME PERIODS IN OAR 860-032-0020(11)**

As stated above, the Parties intend to complete the transaction in less than 90 days, currently planned to occur on June 30, 2010. To the extent that customer base transfers between competitive providers are subject to OAR 860-032-0020(11), Comtel requests a waiver of the 90 day notification periods to customers and the Commission in OAR 860-032-0020(11)(a) and (b), respectively, so that the Parties can complete this multi-state transaction on or after June 30, 2010 as the Parties intend to mail the notice to Oregon customers on April 30, 2010.

**V. PUBLIC INTEREST CONSIDERATIONS**

Comtel submits that the public interest will not be harmed by the grant of the waiver of the notification time periods in OAR 860-032-0020(11). First, the proposed transaction as described above will ensure that the assigned customers enjoy continuity of high-quality telecommunications service. In particular, the assignment of Comtel's customers, together with the transfer of other assets required to serve those customers, will ensure that the customers continue to receive uninterrupted interstate and international services. Long-term, Comtel customers will benefit from being served by a carrier with significant technical, managerial and financial resources.

Second, allowing a waiver pursuant to OAR 860-032-0020(16) will permit Comtel to issues its notification letter in a nationally-coordinated manner, and is completely consistent with what the Commission stated when it adopted OAR 860-032-0020(16):

As we indicated above, these rules specify numerous timelines and requirements that may not be applicable or appropriate in every situation. To allow maximum flexibility, these rules will include a provision allowing the Commission to entertain a petition from a provider or the Staff to waive any timeline or regulation in this rule. This waiver provision will allow the participants in this proceeding to work with the rule as they develop mass migration guidelines, as discussed below. That experience should be useful in developing

guidelines that will facilitate customer migration when a provider is exiting the market.<sup>3</sup>

Given that that the proposed transition will be seamless and no customer will be required to re-apply for service, under the instant circumstances 60 days notice should be more than enough notice for Comtel's customers,. If for some reason, a customer nevertheless wants to choose another provider or to disconnect, 60 days will be more than enough time to do so. Moreover, Oregon is only one of 50 jurisdictions where this customer transfer is taking place, and reconciling the requirements of the individual states and the FCC is a significant undertaking due to the many state notification or approval requirements. Given that the FCC and the vast majority of states requires no more than 30 days notice (and none more than 60 days notice) to customers to transfer Comtel's customers to Matrix, and Oregon is the only state with a 90 day notification requirement, imposing a 90 day notice requirement would be inconsistent with the intent of OAR 860-032-0020(16).

#### **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, Comtel respectfully requests that the Commission expedite the processing of this waiver request 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 Oregon at which time Comtel will no longer need its authorizations to provide telecommunications services. To the extent possible, Comtel requests that the Com-

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<sup>3</sup> *In re Proposed Rulemaking to Amend 860-032-0001 and 860-032-0020 to Change the Meaning of "Exempt Service" and Change the Requirements/or Telecommunications Providers That Abandon or Discontinue Service in Oregon*, Docket No. AR 434, Order No. 03-084, at II (Or. P.D.C. Feb. 5,2003).

mission cancel Comtel's authorizations to provide telecommunications services upon notification by the Parties that the Transaction was completed.

## VI. CONCLUSION

Comtel submits that the information provided herein demonstrates that the public interest will be served by the expeditious grant of this petition.

WHEREFORE, for the reasons set forth above, Comtel respectfully requests that the Commission expeditiously grant this petition and waive the 90 day customer notification requirement in OAR 860-032-0020(11)(a) and the 90 day filing requirement in OAR 860-032-0020(11)(b), and instead permit Comtel (1) to give affected customers at least 60 days notice, and (2) to give the Commission such notice of the Transaction as would permit Comtel and Matrix to complete the Transaction on June 30, 2010. In addition, Comtel requests that the Commission cancel Comtel's authorizations to provide telecommunications services upon notification by the Parties that the Transaction was completed.

Respectfully submitted,



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Counsel for Parties

Dated: April 27, 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 June 30, 2010**, 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. In addition, any deposit or prepayment you have paid, if any, will be transferred with your account to Matrix.

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 June 30, 2010, Matrix will become your service provider on or after June 30, 2010.

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.

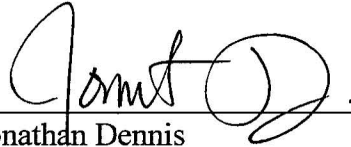
**VERIFICATION**

STATE OF TEXAS :

: SS.

COUNTY OF DALLAS :

I, Jonathan Dennis, state that I am Senior Vice President, General Counsel, and Secretary of Comtel Assets Inc., sole general partner of Comtel Telecom 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.

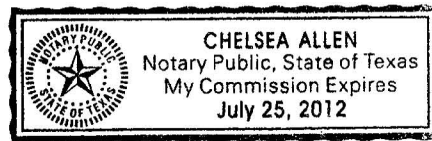


Jonathan Dennis  
Senior Vice President, General Counsel, and  
Secretary  
Comtel Assets Inc., General Partner of  
Comtel Telecom Assets LP

Sworn and subscribed before me this 18 day of March, 2010.

  
Notary Public

My commission expires: 7/25/2012



OR

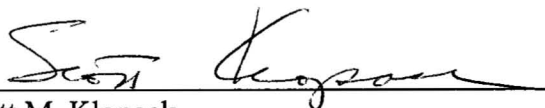
**VERIFICATION**

STATE OF TEXAS :

: ss.

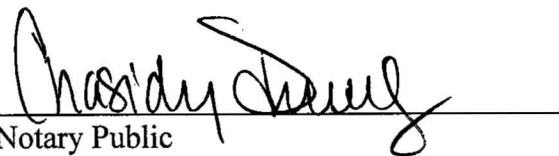
COUNTY OF DALLAS :

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:



OR