BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of TRINSIC COMMUNICATIONS, INC., TOUCH 1 COMMUNICATIONS, INC., AND ANY SUCCESSOR OF INTEREST, INCLUDING A CHAPTER 7 BANKRUPTCY TRUSTEE AND MATRIX TELECOM, INC. Joint Petition for Approval of a Transfer of Assets.	DOCKET NO. 2007-0091

DECISION AND ORDER NO. 23458

Filed May 23, 2007

At 2 o'clock P .M.

Karen Higashi

Chief Clerk of the Commission

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KAREN HIGASHI
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Karen Higashi

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In the Matter of the Application of TRINSIC COMMUNICATIONS, INC., TOUCH 1 COMMUNICATIONS, INC., AND ANY SUCCESSOR OF INTEREST, INCLUDING A CHAPTER 7 BANKRUPTCY TRUSTEE AND MATRIX TELECOM, INC. Joint Petition for Approval of a Transfer of Assets.	Docket No. 2007-0091 Decision and Order No. 23458

DECISION AND ORDER

By this Decision and Order, the commission grants TRINSIC COMMUNICATIONS, INC. ("Trinsic Communications"), TOUCH 1 COMMUNICATIONS, INC. ("Touch 1"), and any successor in interest of either, including a Chapter 7 bankruptcy trustee (collectively, "Trinsic"), and MATRIX TELECOM, INC. ("Matrix") (together with Trinsic, the "Petitioners") approval to transfer control of Trinsic's assets used to provide local and long distance telecommunications services to Matrix, subject to certain conditions stated herein.

I.

Introduction

On April 10, 2007, Petitioners filed their Joint Petition for Approval of a Transfer of Assets ("Joint Petition"), pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and the

Rules of the Commission. In their Joint Petition, Petitioners request expedited authority to transfer control of Trinsic's assets used to provide local and long distance telecommunications services to Matrix ("Proposed Transaction").

Petitioners served copies of the Joint Petition on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate").[1] On May 9, 2007, the Consumer Advocate filed its Statement of Position ("Consumer Advocate Statement of Position"), which states that it does not object to approval of the Proposed Transaction.[2]

II.

Background

A.

Overview of Subject Entities

1.

Trinsic

Trinsic Communications, a Delaware corporation, and Touch 1, an Alabama corporation, are both wholly owned subsidiaries of Trinsic, Inc., a Delaware corporation, which was founded in January 1998 as Z-Tel Technologies, Inc. Trinsic provides circuit-switched local and long-distance telephone services in 49 states and the District of Columbia.

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[1]The Consumer Advocate is an ex officio party to this docket pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

[2]See Consumer Advocate Statement of Position at 1.

In Hawaii, Trinsic holds commission-issued authority to provide resold local exchange and interexchange services.[3]

Trinsic provides residential and business local and long distance telecommunications services in combination with enhanced communications features accessible through the telephone, the Internet, and certain personal digital assistants. These Trinsic services include a suite of proprietary Internet-based and voice-activated functions called "Trinsic Center," which feature voicemail, "Find Me," "Notify Me," caller identification, call forwarding, three-way calling, call waiting, and speed dialing services, as well as a "Personal Voice Assistant," which utilizes voice-recognition technology so that users can access secure, online personal address books from any phone using simple voice commands in order to, among other things, send voice e-mails, find contact information and dial numbers.

At the end of 2006, Trinsic served approximately 150,000 residential and business customers, in addition to approximately 23,000 stand-alone presubscribed long distance customers, primarily by reselling wholesale long distance services and "local wholesale" services purchased from the Bell Operating Companies and other large incumbent local exchange carriers. In addition, in 2004, Trinsic began offering "voice

[3]The commission granted Trinsic Communications authority to provide local exchange service in Decision and Order No. 19318, filed on April 19, 2002, in Docket No. 01-0428, and to provide interexchange service in Decision and Order No. 16961, filed on April 29, 1999, in Docket No. 99-0047.

over Internet protocol" ("VoIP") services as an alternative to its other traditional circuit-switched service offerings.

On February 7, 2007, as a result of changes to its cost structure resulting from, among other things, the elimination of incumbent local exchange carriers ("ILEC") unbundled network element platform ("UNE-P") offerings, Trinsic was forced to seek bankruptcy relief.[4]

2.

Matrix

Since 1999, Matrix, a Texas corporation, has been an indirect wholly-owned subsidiary of Platinum Equity, LLC ("Platinum Equity"), a Delaware limited liability company headquartered in Beverly Hills, California. 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 telecommunications, information technology, 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.

Matrix provides competitive integrated communications services, including local, 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

[4]See Section II.B., infra.

services, chiefly to enterprise customers throughout the United States. Matrix holds commission-issued authority to provide resold local exchange and resold interexchange services in Hawaii.[5] In 2005, Matrix completed the acquisition of certain assets from Global Crossing Telecommunications, Inc. ("GC") primarily consisting of the customer base of GC's Small Business Group.

Matrix is also affiliated with Americatel Corporation ("Americatel") and soon will be affiliated with Startec Global Operating Company ("Startec"), both Delaware corporations. Platinum Equity has indirectly controlled Ameritcatel since it acquired indirect ownership of 95 percent of its equity in July 2006. 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, with a particular emphasis on serving the needs of United States customers with connections to Latin America and the Caribbean. In addition, Platinum Equity will soon obtain indirect control of Startec, which provides long distance, Internet, and other communications services in over 45 states and internationally.

[5]Matrix is authorized to operate as a reseller of telecommunications services, including local exchange service, pursuant to a Certificate of Authority issued in Decision and Order No. 21882, filed on June 20, 2005, in consolidated Docket Nos. 05-0063 and 05-0077. By Decision and Order No. 23447, the Commission granted conditional approval of an expansion to Matrix's Certificate of Authority to allow Matrix full, facilities-based authority. See Decision and Order No. 23447, filed on May 18, 2007, in Docket No. 2007-0007.

The parties expect the Startec merger to close later this year, following receipt of necessary regulatory approvals.

B.

Description of Bankruptcy Proceedings

On February 7, 2007, Trinsic and its affiliates filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Alabama ("Bankruptcy Court"; "Bankruptcy Proceedings"). Trinsic ultimately determined that a successful business reorganization would not be possible and on March 21, 2007, following a Court-supervised auction, entered into an Asset Purchase Agreement ("Asset Purchase Agreement") for the sale of its assets to Tide Acquisition Corporation ("Tide").[6] The Asset Purchase Agreement requires the sale to be completed on or before June 4, 2007, a deadline approved by the Bankruptcy Court. Petitioners request that the commission approve their Joint Petition "as expeditiously as possible in advance of that date in order to allow them to meet their contractual obligations."[7]

C.

Description of Proposed Transaction

On March 21, 2007, Trinsic and Tide entered into an Asset Purchase Agreement, under which Tide would acquire the

[6] See Section II.C., infra.

[7] Joint Petition at 2.

assets of Trinsic used to provide telecommunications services, as well as Trinsic's customer accounts across the nation, including in Hawaii. Tide subsequently assigned its rights under the Asset Purchase Agreement to Matrix.

Petitioners anticipate that this sale will be seamless and transparent to Trinsic's customers. Under the terms of the Asset Purchase Agreement, as assigned, Matrix will acquire Trinsic's entire local and long distance customer base, together with its rights and responsibilities under contracts necessary to operate Trinsic's business, Trinsic's real and personal property, equipment, fixtures, intellectual property, trademarks, and most other Trinsic assets. The closing of the Proposed Transaction is subject to the necessary regulatory approvals, including approval of this Joint Petition.[8]

Petitioners make several representations in support of their Joint Petition. First, Petitioners represent that "[t]he proposed transaction will serve the public interest in Hawaii."[9] Petitioners explain that Trinsic "can no longer continue to provide services to its customers," and that "[i]n the absence of a sale of its assets and customer base to another carrier, such as Matrix, each Trinsic customer would lose service and be forced

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[8]The Asset Purchase Agreement states that the closing of the Proposed Transaction is contingent on, among other things, the condition that "there shall not be in effect any statute, rule, regulation, executive Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby[.]" Asset Purchase Agreement, art. IX, § 9.1(a), at 34.

[9]Joint Petition at 7.

to seek out a carrier independently that can replicate its existing services."[10] Thus, Petitioners state that "the sale of Trinsic's assets to Matrix will ensure that Trinsic's customers continue to receive high-quality telecommunications services without interruption or disruption that would otherwise be caused by their original chosen carrier's bankruptcy."[11] Petitioners assert that "the proposed sale of Trinsic's assets to Matrix will cause no interruption in services to customers," and that "[n]o existing service will be discontinued, reduced, or impaired as a result of the sale of these assets."[12] Petitioners further assert that "this transaction will not affect rates for, or terms or conditions of, any service being provided by Trinsic to customers in Hawaii," and that "Matrix will continue to provide service to these customers using the Trinsic names, possibly on a co-branded basis."[13]

Second, Petitioners represent that "the transaction will strengthen competition in Hawaii by helping Matrix's business to grow."[14] Petitioners explain that "[a]s Matrix's

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[10]Joint Petition at 7.

[11]Joint Petition at 7; see also id. at 3 ("The proposed sale of its assets to Matrix provides an opportunity to ensure continuity of service to Trinsic's customers.").

[12]Joint Petition at 6; see also id. at 2 ("The [P]roposed [T]ransaction will cause no interruption in service to customers. No existing service will be discontinued, reduced, or impaired as an immediate result of the sale of these assets.").

[13]Joint Petition at 6; see also id. at 3 ("[T]his transaction will have no immediate impact on the rates for any services Trinsic currently provides to any customer.").

[14]Joint Petition at 7.

presence in Hawaii expands, Matrix will be better able to achieve economies of scale and scope, which will permit it to offer lower prices, maintain and improve service quality, and launch new services."[15] Thus, Petitioners state that "Matrix will become a stronger competitor, bringing more of the well-recognized benefits of vigorous competition to telecommunications customers throughout Hawaii."[16]

Third, Petitioners represent that "the transaction will benefit customers by permitting Matrix to integrate Trinsic's proprietary technologies, described above, into its own services to create new, 'best-of-class' offerings."[17] Petitioners state that "the sale will ensure that the benefits of Trinsic's customers currently enjoy remain available to them, and also may become available to Matrix's existing customers, benefiting the entire merged customer base."[18]

Finally, Petitioners represent that they "will comply with [Federal Communications Commission ("FCC")] rules, 47 C.F.R. § 64.1120(e)(1-3), and [HAR] § 6-80-123 requiring Matrix to provide at least 30 days' written notice to each customer affected by this transaction, to certify to the FCC that it has provided such notice, and to provide such notice to the commission and Consumer Advocate."[19]

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[15]Joint Petition at 7.

[16]Joint Petition at 7.

[17]Joint Petition at 7.

[18]Joint Petition at 7.

[19]Joint Petition at 7.

D.

Consumer Advocate's Position

In its Statement of Position, the Consumer Advocate states that it does not object to the commission's approval of the Proposed Transaction to transfer the assets of Trinsic to Matrix. The Consumer Advocate also states that, consistent with Petitioners' assertions, "Matrix should . . . be required to confirm that Matrix provides notice to Trinsic customers with the name of the new service provider clearly stated, and all customer communication should identify the name of the entity from whom service is being ordered and provided to mitigate any customer confusion as to who is the service provider."[20]

E.

Waiver of Financial Statement

The commission waives the financial statement requirement under HAR § 6-61-105(c)(1).

II.

Discussion

HRS § 269-19 states:

> No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public . . . without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition,

[20]Consumer Advocate Statement of Position at 9.

> encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

The purpose of HRS § 269-19 is to safeguard the public interest.[21]

Moreover, under HRS § 269-7(a), the commission is empowered to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Accordingly, the commission, under HRS § 269-7(a), has the authority to examine any and all transactions of the public utility that affect or may affect the public that it serves.

Having reviewed the record of this docket, the commission finds the Proposed Transaction to be reasonable and in the public interest. The commission's decision regarding this matter is based on, among other things, Petitioners' representations that the Proposed Transaction will: (1) be seamless and transparent to Trinsic's customers; (2) serve the public interest in Hawaii because it will cause no interruption in services to customers, no existing services will be discontinued, reduced, or impaired as a result of the sale of these assets, and the transaction will not affect rates for, or terms or conditions of, any service being provided by Trinsic to customers in Hawaii; (3) strengthen competition in Hawaii by

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[21] See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (Haw. 1973).

helping Matrix's business to grow through economies of scale and scope that will permit it to offer lower prices, maintain and improve service quality, and launch new services; and (4) benefit customers by permitting Matrix to integrate Trinsic's proprietary technologies into its own services to create new, "best-of-class" offerings. Accordingly, the commission approves the Proposed Transaction, subject to the following conditions.

The commission finds that the Consumer Advocate's recommendations that Matrix should be required to notify Trinsic customers with the name of the new service provider clearly stated, and that all customer communication should identify the name of the entity from whom service is being ordered and provided, to be reasonable and appropriate, and consistent with commission rules, specifically HAR §§ 6-80-123 and 129(14). Therefore, Petitioners are required to provide 30 days' written notice to each customer affected by the Proposed Transaction, and provide certification of such notice to the commission and the Consumer Advocate.

The commission also finds that in order for Petitioners to fulfill their above-summarized representations (namely, that the Proposed Transaction will be seamless and transparent to Trinsic's customers, will cause no interruption, discontinuance, reduction, or impairment of services to customers, will permit Matrix to become a stronger competitor, and will provide increased options to Trinsic's and Matrix's customers), Matrix must have an appropriate Certificate of Authority. Therefore, as a condition of the commission's approval of the Proposed

Transaction, Matrix must comply with all conditions required by Decision and Order No. 23447 to obtain its expanded Certificate of Authority.

Finally, the commission determines that Trinsic should surrender its Certificate of Authority because at the closing of the Proposed Transaction, Trinsic will not be providing the services authorized by its Certificate of Authority. Therefore, as a condition of the commission's approval of the Proposed Transaction, Trinsic must pay the applicable commission fees for its revenues for calendar years 2006 and 2007, file its 2007 annual financial report, and surrender its Certificate of Authority.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Transaction is approved, pursuant to HRS §§ 269-7(a) and 269-19, and subject to the following conditions, unless further ordered by the commission.

2. Petitioners are required to provide 30 days' written notice to each customer affected by the Proposed Transaction, and provide certification of such notice to the commission and the Consumer Advocate. The written notice shall clearly state the name of the new service provider, and all customer communications should identify the name of the entity from whom service is being ordered and provided.

3. Matrix must comply with all conditions required by Decision and Order No. 23447 to obtain its expanded Certificate of Authority.

4. Trinsic must pay the applicable commission fees for its revenues for calendar years 2006 and 2007, file its 2007 annual financial report, and surrender its Certificate of Authority.

5. Petitioners shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii MAY 2 3 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Nichole K. Shimamoto
Nichole K. Shimamoto
Commission Counsel

2007-0091.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23458 upon the following, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY 23 2007