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June 18, 1998

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Americatel's Petition for Waiver
CC Docket No. 92-237

Dear Ms. Roman Salas:

Enclosed for filing, in the above-captioned proceeding, please find an original and four (4) copies of the "Petition for Waiver," on behalf of Americatel Corporation.

Please return the "stamp and return copy" to the messenger for delivery back to our office.

If you have any questions regarding this submission, please call the undersigned at (202) 414-9481.

Sincerely,

Brenda K. Pennington

Enclosure

No. of Copies rec'd 0+4
List A B C D E

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JUN 1 1998

In the Matter of	)	
	)	
Americatel Corporation	)	CC Docket No. 92-237
	)	
Request for Temporary Waiver of the Commission's Four-Digit Identification Code ("CIC") Implementation	)	

PETITION FOR TEMPORARY WAIVER

I. INTRODUCTION

Americatel Corporation ("Americatel"), by its attorneys and pursuant to 47 C.F.R. § 1.3, hereby respectfully petitions either for: (1) six additional months from July 1, 1998,[1] to transition from three-digit carrier identification codes ("CICs") to four-digit CICs and from five-digit carrier access codes ("CACs") to seven-digit CACs in the seven states which Americatel serves[2] or, alternatively, for (2) an order directing that calls using Americatel's three-digit CIC, five-digit CAC, continue being completed by the local exchange carriers ("LECs") in the markets which Americatel serves for at least an additional six

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1 *Administration of the North American Numbering Plan, Carrier Identification Codes*, CC Docket No. 92-237, Order on Application for Review, and Second Further Notice of Proposed Rulemaking, FCC 97-368 (rel. Oct. 22, 1997) ("Order on Reconsideration").

2 Currently Americatel provides service in South Florida, the Greater Chicago area, New Mexico, most of Arizona, and parts

months after July 1, 1998. This relief is being requested to enable Americatel, and/or the LECs in the markets which it serves, adequate opportunity to educate Americatel's "Spanish-only" speaking customers about the impending changes in access codes and the new dialing patterns.

In its Order on Reconsideration in CC Docket 92-237, the Commission reaffirmed the decision reached in its Second Report and Order[3] to approve an industry plan to expand Feature Group D CICs from three- to four-digits as a means of expanding the supply of available numbers. Although the FCC originally proposed six years for the transition,[4] in its Order on Reconsideration, the Commission deemed that an accelerated schedule was necessary to meet future demand for CICs.[5] Additionally, the Commission provided for a transitional period during which the use of both three- and four-digit CICs would be permitted, where technically feasible, until June 30, 1998. At that point, the telephone network would begin to convert to recognize only four-digit CICs.[6] It was envisioned that this conversion would be achieved by intercepting calls placed using

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3 *Administration of the North American Numbering Plan, Carrier Identification Codes and Petition for Rulemaking of VarTec Telecom, Inc.*, CC Docket 92-237, FCC 97-125 (rel. April 11, 1997) ("Second Report and Order").

4 *See Administration of the North American Numbering Plan, Notice of Proposed Rulemaking*, CC Docket No. 92-237, 9 FCC Rcd 2068 (1994) at ¶ 54.

5 Order on Reconsideration at ¶¶ 2, 20.

6 *Id.* at ¶ 20.

shorter CICs and CACs and diverting those calls to an educational message instructing callers about the change in dialing pattern.

Americatel is requesting that the Commission grant an extension of the transition, in one of the two ways set forth above, for at least six months, in effect continuing the permissive dialing period for Americatel's customers through December 31, 1998. This extension would enable Americatel, working closely with the LECs, the time needed to develop the appropriate network protocols, in the areas which it serves, for a Spanish language intercept message and/or other educational tools that would adequately inform Americatel's actual and potential customers, almost all of whom are Hispanic and most of whom are "Spanish-only" speaking, of the numbering changes.

Thus far, Americatel's efforts to resolve this issue with the LECs have been unsuccessful. In its Order on Reconsideration, the Commission stated that, while it will "leave to resolution by the parties decisions about who should have the ultimate responsibility of determining the content of the intercept message . . . ., [T]he Commission will resolve any disputes arising from the parties' inability to reach agreement on such matters."[7] Therefore, Americatel is seeking additional time in which to work with the LECs, with Commission intervention if necessary, to resolve this difficult situation.

Alternatively, if a reasonable solution cannot be found with the LECs, Americatel will use the additional time to

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7 *Id.* at ¶ 26.

develop, on its own, a workable solution to educate and inform Hispanic dial-around customers of the new dialing pattern. In support of this Petition, the following is respectfully shown.

II. BACKGROUND FACTS

Americatel is majority owned and controlled by Entel International BVI Corp., a wholly-owned subsidiary of Empresa Nacional de Telecomunicaciones S.A. ("Entel"). Entel is the largest long distance telecommunications company in Chile, the second largest provider of other telecommunications services in Chile, and one of the leading telecommunications companies in Latin America. Americatel was the first foreign-owned carrier to obtain a 214 License and a 310(b) Radio License from the FCC.

In 1993, Americatel began providing commercial private line services mainly among the U.S., Latin America, and the Caribbean. Having gained, through its parent company Entel, substantial knowledge of, and experience in, the very competitive access code-based long distance market in Chile, Americatel, on March 27, 1998, launched the first casual dial-around service focused specifically on the growing Hispanic population in the U.S. At present, Americatel markets to more than 4 million Hispanics in seven states.

At the time, while there existed an industry plan to lengthen CACs from five- to seven-digits, there was uncertainty as to when the plan would be implemented. For example, in November 1997, BellSouth, the LEC in one of Americatel's largest target markets (South Florida), filed a Petition for

Clarification of the Order on Reconsideration in CC Docket No. 92-237. In its Petition, BellSouth indicated that it could not convert all of its switches to block three-digit CICs at the same time and asked the FCC when it should begin blocking. Also in November 1997, VarTec Telecom and CommuniGroup filed a Petition for Review in the U.S. Court of Appeals, D.C. Circuit, seeking to overturn the FCC's decision to move to longer CICs/CACs and the Commission's decision not to grandfather three-digit CICs. In December 1997, Americatel, Excel and MCI filed a Notice of Intervention in the VarTec appeal.[8]

In addition, from January - April, 1998, long distance carriers like MCI, Excel and VarTec began making renewed requests to the FCC both to extend the permissive dialing period at least until 1999 and to intervene to resolve several transition issues, such as those related to intercept messages. Moreover, during this time, the other dial-around companies were continuing to advertise only five-digit CACs. Therefore, without a clear indication as to when the industry would finally make the transition, Americatel launched its service using its five-digit CAC. Then, two months after the launching of Americatel's service, the FCC responded to the November 1997 Petition of BellSouth in Declaratory Order, DA 98-828.[9] The FCC clarified

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8 *See VarTec, et. al v. FCC, et. al*, U.S. Court of Appeals, D.C. Cir., Case No. 97-1706. On June 3, 1998, VarTec moved to voluntarily dismiss the Court of Appeals proceeding. Americatel, on June 5, 1998, moved the Court to substitute Americatel as the Petitioner. That motion is currently being briefed.

9 *Administration of the North American Numbering Plan, Carrier Identification Codes*, CC Docket No. 92-237, Declaratory Ruling, DA 98-828 (rel. May 1, 1998).

the June 30, 1998 termination of the permissive dialing period, and ordered that the permissive dialing period be phased out by blocking three digit CICs/five digit CACs beginning July 1, 1998, and by playing an educational intercept message.[10]

Americatel is one of the few dial-around services which does not market its services through direct mailings. Instead, Americatel advertises its dial-around service, focused specifically on the Hispanic community in the U.S., in the Spanish language mass media, through radio, television, and the press, as well as at local community events.

One of the biggest challenges facing Americatel is the education of the U.S. Hispanic population to the concept of a dial-around service. While Americatel features low international rates, particularly to destinations of interest to its Hispanic customers, its advertising must also focus on how to use a dial-around service and the conditions of the service.

Moreover, because a large percentage of the calls made by Americatel's customers are international calls, another major hurdle facing Americatel is the length of the access code, which determines the length of the dialing pattern. For example, to make an international long distance call using a five-digit CAC, a caller must currently dial up to 21 numbers (depending on the lengths of the country and city codes). With the transition from five- to seven- digit CACs, Americatel's customers will now have

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10 *Id.* at ¶ 13.

to dial up to 23 numbers to use their dial-around service and take advantage of its low international long distance rates.

As stated above, a major educational tool mandated by the FCC in its Order is the use of an intercept message to assist in notifying consumers about the change in dialing pattern from five- to seven-digit CACs for dial-around carriers.[11] In fact, the Commission reaffirmed in its Declaratory Ruling its decision that any intercept message should explain that a dialing pattern change has occurred and instruct callers to contact their long distance carrier for further information.[12] While, the Commission declined to order the use of any specific intercept message,[13] it did determine that the educational intercept message was to run a minimum of six months,[14] obviously recognizing that time is needed to adequately educate and instruct consumers about the dialing pattern change.

Yet another significant difficulty which Americatel must overcome in connection with the FCC's transition requirement, is that the LECs have, to date, interpreted the Commission's decree to mean that the intercept message need only play in English. If this is indeed what transpires, Americatel (and its customers) will be denied a benefit granted to other dial-around carriers (and their customers) to have an educational

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11 Order on Reconsideration at ¶ 26.

12 Declaratory Ruling at ¶ 24.

13 *Id.* at ¶ 31, 33.

14 *Id.* at 34.

intercept message complementary to its advertising and which adequately informs its "Spanish-only" language customers of the change in dialing pattern. Unlike changes in area codes where all carriers with non-English speaking customers are equally affected by customer confusion and frustration over a change in dialing pattern, Americatel is uniquely negatively impacted by the LECs' determination to carry only English language intercept messages.

Americatel believes strongly that the FCC's decision to change to seven-digit CACs will make dial-around services less attractive, thereby thwarting competition in the long distance market and ill-serving the public interest. Therefore, Americatel is appealing the propriety of the FCC's decision. Nonetheless, Americatel realizes that the Commission's decision is moving forward towards implementation. For this reason, Americatel seeks a Commission waiver of the July 1, 1998, transition from three- digit CICs to four-digit CICs to afford it time to develop, along with LEC cooperation and assistance, the necessary network protocols to carry a Spanish language intercept message that complements Americatel's efforts at educating Hispanic customers about the conversion, through the Spanish language mass media. Alternatively, if a solution cannot be achieved with the LECs, Americatel needs the additional time to develop its own methods to disseminate information in the Spanish language and educate its "Spanish-only" speaking customers of the new dialing pattern.

Indeed, the FCC has found that it is necessary to continue to educate consumers regarding the change in dialing

pattern to access dial-around companies after the transition is complete.[15] Americatel requests that it too be afforded the time necessary to educate and instruct the Hispanic community clearly and sufficiently about the new dialing pattern.

III. WAIVER OF THE RULES IS IN THE PUBLIC INTEREST

A. Standard for Waiver

The courts have long recognized that "an agency's discretion to proceed in difficult areas through [the establishment of general rules] is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances."[16] Moreover, while the Commission is charged with promulgating rules in the "'public interest,' for a broad range of situations, such does not relieve it of an obligation to seek out the 'public interest' in individualized cases."[17] In fact, the FCC has also recognized the importance of granting waivers to telecommunications carriers demonstrating a hardship in adhering to its general rules. Indeed, in this docket, the Commission granted waivers to several small, rural LECs extending for them

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15 *Id.*

16 *See Northeast Cellular Telephone v.* FCC, 897, F.2d 1164, 1166 (D.C. Cir. 1990), Wait *Radio v. FCC*, 418, F.2d 1153, 1157 (D.C. Cir. 1969).

17 *Id.* cert. denied (it.), 409 U.S. 1027 (1972).

the date by which their networks would have to be able to process the longer CACs.[18]

Recognizing that the Commission recently denied the waiver petition of The Puerto Rico Telephone Company in this docket on the grounds that the petitioner did not demonstrate special circumstances sufficient to warrant a deviation from the general rules or that such deviation would be in the public interest,[19] Americatel shows in the succeeding section that it faces unique challenges due to the impending transition which justify the granting of its request. In addition, Americatel shows that the grant of its waiver request would afford it sufficient time to cure its problem and serve the public interest.

B. Special Circumstances Exist That Warrant Continuation of the Permissive Dialing Period

By this Petition, Americatel maintains that the public interest would be served by a continuation of the permissive dialing period of five- and seven-digit CACs for dial-around companies pursuant to an order that the LECs not block five digit CACs until after December 31, 1998, at least in those markets which Americatel services. According to Robert W. Walker, a thirty-eight year telecommunications veteran and now a consultant

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18 *Petitions for Waiver of the Four-Digit Carrier Identification Codes Implementation Schedule*, Order, DA 97-2717 (rel. Dec. 31, 1997).

19 *In the Matter of the Puerto Rico Telephone Company Petition for Temporary Waiver of the Four-Digit Carrier Identification Code Implementation Schedule*, NSD File No. 98-66, Order, DA 98-1159 (rel. June 15, 1998) at ¶ 5.

to the industry, an extension of the permissive dialing period would not disrupt the network, even if such an extension were only applied to Americatel's dial-around access code.[20]

Mr. Walker states that the most desirable method, from a technical perspective, by which to allow Americatel the additional time needed to work with the LECs to develop network protocols for a Spanish language intercept message, or to develop its own solutions to educate consumers, would be by granting a general waiver to all dial-around companies in the markets Americatel currently serves, in effect extending for at least six months the permissive dialing period.

In this way, the Hispanic educational problem could be studied and corrected to the benefit of all U.S. Hispanic users of Americatel's dial-around service without any disturbance to the network or the possibility of dropped or misplaced calls.[21] The additional time would also permit PBXs and the smaller independent LECs which were previously granted a FCC waiver to complete their technical work in order to block five-digit CACs and recognize seven-digit CACs at the beginning of 1999.

In the alternative, if the Commission will not grant a general waiver extending the permissive dialing period for all dial-around long distance carriers in Americatel's markets, the grant of an individual waiver for at least six months applied

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20 *See* Walker Affidavit, attached hereto as Exhibit A.

21 *Id.* at 1.

only to Americatel's CAC is still warranted and is also, in all likelihood, technically feasible.[22]

Courts, along with the FCC, have found that any rule of general applicability will involve particular cases of hardship for which an agency is empowered to make individual dispensations.[23] That is what is required in the instant matter. Americatel's marketing is focused specifically on the Spanish speaking community. Americatel understands that the LECs intend to carry "English-only" intercept messages. Americatel's "Spanish-only" speaking customers will not understand the English language intercept message and, upon hearing the "wrong number tone," will assume that Americatel is no longer in business or, having had an unsatisfactory experience with Americatel's dial-around service, its customers will, most likely, default to their presubscribed long distance carrier. This is particularly true because so many Hispanic telecommunications consumers are hesitant to try new long distance carriers as a result of having disproportionately been the victims of slamming and other deceptive practices.

Consequently, being a recent entrant into the dial-around market, Americatel will quickly lose its customers (many of whom are using the service for the first time or have only used the service a few times) and its significant investment in

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22 *Id.* at 2.

23 *In the Matter of MTS and WATS Market Structure Phase III,* Report and Order, CC Docket No. 78-72, 100 FCC 2d 860 (1985), and *Basic Media v. FCC,* 559 F.2d 830, 833 (D.C. Circuit 1977).

the U.S. dial-around industry. Moreover, casual dial-around will no longer be an effective alternative to the presubscribed long distance service offered by traditional long distance carriers for Spanish speaking consumers as their confidence in this service will greatly diminish. This, in turn, will thwart competition in the long distance industry and ill-serve the public interest.

According to Mr. Walker, there are a number of technical ways by which Americatel's customers can receive a Spanish intercept message. Regardless of the method chosen, Americatel should be provided an adequate opportunity to work with the LECs to develop the most efficient and effective method to provide a Spanish intercept message to its customers. However, if a solution cannot be reached through LEC cooperation and participation, Americatel must be afforded additional time to develop its own procedures to inform and educate Hispanic consumers.

Further, the granting of this waiver will not create unfairness in competition between dial-around carriers in the areas in which Americatel currently provides service. Indeed, the granting of this waiver will enhance competition in the long distance industry, to the benefit of all telecommunications customers, and thus will serve the public interest.

IV. CONCLUSION

Accordingly, the grant of the instant waiver will support competition and serve the public interest by providing Americatel the necessary time to work with the LECs to develop

the appropriate and necessary protocols to carry a Spanish language intercept message or alternatively, to develop its own methods to resolve how to educate and inform Hispanic dial-around consumers of the new dialing pattern. In this way, Americatel may continue to educate its Hispanic customers regarding the change in the dialing pattern, while maintaining the confidence of the U.S. Hispanic population in the dial-around industry.

WHEREFORE, for all of the foregoing reasons and for good cause shown, it is respectfully requested that the waiver described herein be granted and that the permissive dialing period for Americatel's five-digit CAC be extended through December 31, 1998.

Respectfully Submitted,

AMERICATEL CORPORATION

By: Judith L. Harris

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202-414-9200

June 18, 1998

AFFIDAVIT OF ROBERT W. WALKER

I, Robert W. Walker, being first duly sworn, do hereby depose and state as follows:

1. I am an independent consultant with thirty-eight years of experience in the telecommunications industry. Thirty-three of those years were with Illinois Bell Telephone Company ("Illinois Bell") and Ameritech Corporation ("Ameritech") in a wide range of executive and technical positions, including Director of Advanced Technology Deployment for Illinois Bell, Director of Technology for Ameritech Development Corporation, Director of Transmission for Illinois Bell and finally, as Director of Transport Planning for Illinois Bell, the position I held prior to my departure for Ameritech in 1993. I currently have my own consulting company, ComSource, Inc., based in Glen Ellyn, Illinois. During the past year, I have worked on a variety of technical agreements, primarily interconnection agreements, with Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Puerto Rico Telephone Company, Sprint, Southwestern Bell, Pacific Bell and US West.

2. Most recently, I have been engaged by Americatel Corporation ("Americatel") to provide assistance and advice regarding technical issues associated with the expansion of Carrier Identification Codes (CICs) from three to four digits. I submit this Affidavit in support of the waiver being requested by Americatel in the matter of Administration of the North American Numbering Plan, Carrier Identification Codses (CICs) in CC Docket No. 92-237 ("CC Docket No. 92-237").

3. The CIC expansion, as outlined in Bellcore document TR-NWT-001050, Expansion of Carrier Identification Code Capacity for Feature Group D (FGD), dated April, 1991, which is the subject of CC Docket No. 92-237, is currently in the permissive dialing phase, during which period long distance "dial around" calls can be completed using either a 3 or 4 digit CIC (a 5 or 7 digit Carrier Access Code ("CAC")) where technically possible. By Commission Order, after a two month phase-out beginning July 1, 1998,

only calls using 4 digit CICs, 7 digit CACs will be completed. Effective July 1, 1998, all calls will have to be completed using 4 digit CICs, 7 digit CACs.

4. There are currently 970 three-digit CICs, most of which are assigned. The limited four-digit expansion has made available an additional 2,970 four-digit codes, with about 1,000 of the four-digit numbers currently unassigned.

5. Since there currently exists an available reserve of unassigned four-digit CIC numbers, there is no technical reason why the permissive dialing period could not be extended or, barring that there is no technical reason, why an exception could not be made for Americatel's CIC number. The additional time would allow further private branch exchanges (PBXs) to be modified for the new four-digit codes, thus allowing more carriers to transition at the same time; moreover, it would allow additional time for customer acceptance and training.

6. There also exist at least four methods of providing Spanish Language intercept announcements to Hispanic users of Americatel's services who continue to dial a three digit CIC, five digit CAC once the transition is complete. These are identified in the attached memorandum.

I hereby swear that the foregoing is true and correct to the best of my information and belief.

Robert W. Walker

Subscribed and sworn to before me this 18th day of June, 1998.

Notary Public

My Commission Expires:
BARBARA J. SACKLER
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires March 31, 2003

While there may be variations due to switching machine age, capabilities and/or other limitations at various individual locations, it appears that there are four ways a Spanish announcement could be provided:

1. Provide both Spanish and English on the same announcement with one following the other.

   Advantages: Technically, this is relatively straightforward and an inexpensive alternative to an "English only" announcement and is not without precedent. This method could be used for all "Dial-around" service providers, especially in Hispanic communities.

   Disadvantages: The dialing instructions given in the standard intercept adopted message by the NIIF announcement are complex and somewhat lengthy. Many Hispanic callers might hang up if the English instructions precedes the Spanish version and vice versa. The determination as to which announcement would come first could be made based on the area's demographics, although such a decision would be complicated.

2. Modify the end-office to route certain mis-dialed "dial-around" calls to a generic local announcement in the Spanish language.

   Advantages: This performs the announcement function within the originating office with additional trunking or transport.

   Disadvantages: Likely the most expensive and complex method of providing Spanish announcements since each end-office would have to have the equipment available to provide this feature. In addition, each carrier would have to select whether it wanted its calls generated at each end-office to go to an English or a Spanish language announcement.

3. Modify the end-office to route 10123 calls to a centralized telco announcement location.

   Advantages: This performs the announcement function at a central location, e.g., a tandem office, thus reducing the announcement requirements to just a few channels. Specialized announcements permit maximized educational effectiveness.

   Disadvantages: This requires special routing within the end-office and trunks or dedicate facilities to the central announcement locations, which may be complex.

4. Modify the end-office to route 10123 calls to the interexchange carrier's (IXC's) announcement location.

   Advantages: This has many of the same characteristics as item three, above.

   Disadvantages: This would still require routing within the ILEC local switch and involves the cooperation and technical capability of Americatel's underlying carrier, as well as a third party.

Obviously, option one is the easiest to implement but the least effective. Options three and four can be tailored to the needs of a specific carrier so they would be more effective but are more complex to implement. Option two is the least feasible since it uses the greatest amount of announcement facilities and because such facilities may not be available in many locations.

BWW/lam