

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation
by Florida Public Service
Commission of IXC Certificate
No. 7491 and ALEC Certificate
No. 7490 issued to Telergy
Network Services, Inc.,
effective 7/22/02.

DOCKET NO. 020589-TP
ORDER NO. PSC-02-1232-PAA-TP
ISSUED: September 9, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING CANCELLATION OF ALTERNATIVE LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATES DUE TO
CHAPTER 7 BANKRUPTCY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

Telergy Network Services, Inc. (Telergy) currently holds
Certificate of Public Convenience and Necessity No. 7491, issued by
the Commission on July 18, 2000, authorizing the provision of
Interexchange Telecommunications (IXC) service and Certificate of
Public Convenience and Necessity No. 7490, issued by the Commission
on February 2, 2001, authorizing the provision of Alternative Local
Exchange (ALEC) Service.

DOCUMENT NUMBER-DATE

09481 SEP-98

FPSC-COMMISSION CLERK

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing ALEC and IXC service.

On October 26, 2001, Telergy filed for Chapter 11 Bankruptcy Protection, which was converted to a Chapter 7 Bankruptcy proceeding on December 10, 2001. Chapter 7 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362, which continues after to conversion to a Chapter 7 proceeding. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt. However, in this case, the company has requested cancellation of its certificate. Under those circumstances, this Commission is free to do so. We note that the Division of the Commission Clerk and Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.

Accordingly, we find it appropriate to cancel IXC Certificate No. 7491 and ALEC Certificate No. 7490, effective July 22, 2002. If Telergy's certificate is canceled in accordance with this Order, Telergy shall immediately cease and desist providing Interexchange Telecommunications and Alternative Local Telecommunications services in Florida. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.335, Florida Statutes.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Telergy Network Services, Inc.'s Certificate No. 7491 to provide Interexchange Telecommunications services and Certificate No. 7490 to provide Alternative Local Exchange Telecommunications services are hereby canceled, effective July 22, 2002. It is further

ORDERED that the outstanding Regulatory Assessment Fees should not be sent to the Comptroller's Office for collection. The Division of the Commission Clerk and Administrative Services, instead, shall request permission to write-off the uncollectible amount. It is further

ORDERED that if Telergy Network Services, Inc.'s Certificate Nos. 7491 and 7490 are canceled in accordance with this Order, that entity shall immediately cease and desist providing Interexchange Telecommunications and Alternative Local Exchange services in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 9th Day
of September, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 30, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.