



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: July 23, 2002
TO: Blanca Bayó, Director, Division of the Commission Clerk & Administrative Services
FROM: Paula Isler, Division of Competitive Markets & Enforcement *Pji*
RE: Docket No. 020589-TP

On July 22, 2002, the Division of the Commission Clerk & Administrative Services received a letter from Telergy Network Services, Inc., requesting cancellation of its certificates due to filing for bankruptcy protection. I called the company's Co-General Counsel, Ms. Thersa Atkins, who advised that since its IXC and ALEC certificates were issued by the Commission, the company had not provided service to customers in Florida. Ms. Atkins subsequently faxed me a copy of Telergy's FCC application for discontinuance of service, which was approved by the FCC on January 22, 2002.

Based on this information, please document the July 22, 2002 letter and copy of the December 11, 2001 FCC application for discontinuance of service in Docket No. 020589-TP. In addition, the docket title should be changed to reflect that this is now a bankruptcy cancellation and the suffix should be changed from TX to TP. Let me know if you have any questions.

Attachments

cc: Office of the General Counsel (K. Peña)

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- GCL _____
- OPC _____
- MMS _____
- SEC
- OTH _____

DOCUMENT NUMBER-DATE

07702 JUL 24 08

FPSC-COMMISSION CLERK

Paula Isler

From: Paula Isler
Sent: Tuesday, July 23, 2002 4:05 PM
To: Kay Flynn
Cc: Nonnye Grant; Ruth Nettles
Subject: FW: Telergy Network Services, Inc. (TJ389 and TX450)

Hi Kay. I got the copy of Telergy's letter requesting cancellation of their certificates due to bankruptcy. I then called Thersa Atkins Co-General Counsel with Telergy and discussed this with her. Ms. Atkins subsequently faxed me a copy of the company's FCC application for discontinuance of service and which lists the Chapter 11 bankruptcy case number. I will forward a copy to CCA to be placed in the docket file. In the meantime, please have the docket title changed to the following:

Bankruptcy Cancellation by the Florida Public Service Commission for IXC Certificate No. 7491 and ALEC Certificate No. 7490 issued to Telergy Network Services, Inc., Effective July 22, 2002.

Nonnye, please mark TJ389 and TX450 as having filed for bankruptcy.

Thanks.

-----Original Message-----

From: Paula Isler
Sent: Monday, July 22, 2002 12:05 PM
To: Kay Flynn
Subject: RE: Telergy Network Services, Inc. (TJ389 and TX450)

OK, thanks.

-----Original Message-----

From: Kay Flynn
Sent: Monday, July 22, 2002 12:04 PM
To: Paula Isler
Subject: Telergy Network Services, Inc. (TJ389 and TX450)

Paula, we just received a letter from Telergy advising they filed for Chapter 11 last October, and it was converted to Chapter 7 in December, that all customers have been "successfully transitioned" to other service providers and all network assets sold to either Dominion Telecom, Inc. or Con Ed Communications, Inc. in April.

I see we have Docket 020589-TX open to cancel their ALEC cert for RAF nonpayment.

I'll send you a copy of this letter so you can advise what to do.

Kay

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Application of Telergy Network Services, Inc.,)
Telergy Metro, LLC, and Telergy Central, LLC)
)
)
For Authority Pursuant to)
Section 214 of the Communications)
Act of 1934, as Amended)
to Discontinue the Provision of)
Domestic and International)
Telecommunications Services)

CC Docket No. _____

SECTION 63.71 APPLICATION OF TELERGY

Telergy Network Services, Inc., Telergy Metro, LLC, and Telergy Central, LLC (collectively, the "Telergy carriers"), pursuant to Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. Section § 214(a), and Sections 63.71 and 63.19 of the Federal Communications Commission's ("Commission" or "FCC") rules, 47 C.F.R. § 63.71, § 63.19, request authority to discontinue domestic and international telecommunications service offerings to their remaining customers, including but not limited to local, long distance, international, switched access, DSL, private line, and Internet access services. The Telergy carriers make the following statements in support of the instant application:

1. The Telergy carriers are non-dominant, facilities-based service providers. The carriers have facilities located in the State of New York and New Jersey and are authorized to provide all forms of domestic interstate and international telecommunications services. The Telergy carriers also are authorized to provide local and long distance intrastate services on

either a resale or facilities-based basis in 46 states. The Telergy carriers' principal place of business is One Telergy Parkway, East Syracuse, New York 13057.

2. Due to financial and other constraints caused by current telecommunications market conditions, the Telergy carriers decided in September to focus on the business market and to discontinue all residential customer offerings. Accordingly, Telergy Network Services, Inc. filed a discontinuance application with the FCC on September 26, 2001 requesting authority to discontinue services to all residential customers by November 1, 2001. On November 14, 2001, Telergy Network Services, Inc. refiled this application with the FCC due to the fact that the application could not be located by the FCC. A copy of that application is attached as Exhibit A.¹ Telergy Network Services, Inc. respectfully requests that the Commission place that application on Public Notice as soon as possible, but no later than the Public Notice of the instant application.

3. Pursuant to Section 63.71 of the Commission's rules, and the New York Public Service Commission's Mass Migration Guidelines, Telergy Network Services, Inc. notified its residential customers of the discontinuance of its residential services. In addition, Telergy Network Services, Inc. published the required notice in the local newspapers of those areas affected. Most of its residential customers have already been transitioned to other carriers, and Telergy Network Services, Inc. continues to work towards transitioning the remaining residential customers. As of December 1, 2001, Telergy Network Services, Inc. had approximately 100 remaining active residential accounts, mostly travel card customers, all of which are in the State of New York.

¹ FCC approval is required for discontinuance of interstate services. Residential service offerings include interstate access; therefore, Telergy Network Services, Inc. filed a discontinuance application with the FCC.

4. Despite efforts to save the Telergy carriers by targeting only the business market, the financial condition of the Telergy carriers continued to deteriorate. Thus, on October 26, 2001, the Telergy carriers and their parent companies, Telergy Operating, Inc. and Telergy, Inc., filed for protection pursuant to Chapter 11 of Title 11 of the United States Code in the U.S. Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"). The Telergy carriers and other Telergy, Inc. affiliates seeking Chapter 11 protection have continued in the possession of their respective properties and the management of their respective businesses as debtors-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The cases are being jointly administered for procedural purposes only under case number 01-66379.² The Telergy carriers obtained an order from the Bankruptcy Court providing for the company's interim use of cash collateral and immediately began seeking debtor-in-possession financing from third party sources which would permit them to operate for the foreseeable future under Chapter 11.

5. Despite intensive negotiations and discussions with potential lenders, the Telergy carriers were unable to secure postpetition financing to fund operations of their businesses. As a result, the Telergy carriers determined that it is in the best interests of their estates, creditors, and all parties in interest to make application to the Bankruptcy Court to convert these Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code. On December 10, 2001, the Bankruptcy Court orally granted Telergy carriers' motion to convert their Chapter 11 cases to a Chapter 7 liquidation on a provisional basis pending a hearing and entry of a final written order scheduled for Friday, December 14, 2001.

² By their attorneys, the Telergy entities holding FCC international and domestic Section 214 authorizations that experienced a *pro forma* involuntary transfer of control and/or assignment as a result of the Chapter 11 filings, notified the FCC by letter of those facts on October 31, 2001.

6. Several times during the negotiation process for their debtor-in-possession financing, counsel for the Telergy carriers provided updates to FCC staff concerning the companies' progress in obtaining additional financing. During the negotiation process, all indications were that it was likely that new investors were going to provide debtor-in-possession financing to the companies. However, on December 10, 2001 the Telergy carriers learned that they would not reach an agreement with new investors. Consequently, the companies have concluded that they must liquidate their assets and, therefore, cease providing services to their remaining customers. The Telergy carriers believe that they will be able to continue service for 30 days to allow for the transition of customers; however, they may be able to continue providing service for a period longer than 30 days, depending on the rulings by the Bankruptcy Court.

7. Until such time that the Telergy carriers knew that a new financing was not going to be realized, it was impracticable to begin the process of discontinuing service to all their customers because the investors would only provide financing if the companies were operating with customers. However, upon learning that the companies would not obtain the needed financing, the companies immediately began implementing the procedures to comply with the FCC's discontinuance requirements, including filing the instant application. Moreover, the Telergy carriers are providing immediate notice to their customers concerning the discontinuance of their services pursuant to Section 63.71 of the FCC's rules.³ They began contacting all customers by telephone and/or discontinuance notices as of December 11, 2001.

8. The Telergy carriers presently have approximately 4500 business accounts that will be affected by the instant round of discontinuances, not including those residential

³ The Telergy carriers' notification letter to their customers is attached to this application as Exhibit B.

customers in the State of New York that Telergy Network Services, Inc. currently is transitioning.⁴ Most of these business end user customers are located in the State of New York.⁵ The Telergy carriers also have approximately 6 carrier customers that purchase finished service, 19 carrier and 12 non-carrier dark fiber customers, and 4 non-carrier private line customers. While most of the customers that will be affected by the Telergy carriers' discontinuance of service are located in the State of New York, the carriers also provide some long distance services on a resale basis in Connecticut, Florida, Illinois, Massachusetts, New Jersey, Ohio, Pennsylvania, Rhode Island, and Texas. The carriers have begun transitioning all of these customers to other carriers as well.

9. The Telergy carriers are committed to assisting all of their customers in transitioning them to new carriers. Accordingly, the Telergy carriers are providing their customers a contact phone number with information concerning the discontinuance and the need to elect another local and/or long distance service provider, as well as verbal communications for customers that fail to elect a service provider within the designated time frame. If on-net customers fail to elect a new carrier upon their discontinuance of services, the Telergy carriers will apply a "soft dial tone" to their lines, which will notify any affected customer attempting to make a call to call Telergy immediately, while still enabling customers to dial 911. In addition, the Telergy carriers are negotiating with Verizon and other competitive carriers to accept any on-net customers that fail to elect a new carrier upon their discontinuance of services to avoid interruption of local service for these customers.

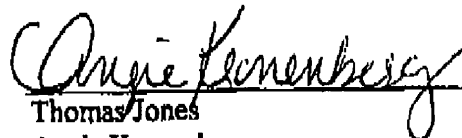
⁴ As mentioned, all residential customers were notified of their discontinuance in September.

⁵ For the Commission's convenience, the Mass Migration Plan the Telergy carriers are filing with the New York Public Service Commission is attached as Exhibit C.

10. The Telergy carriers respectfully request FCC authority to discontinue both domestic and international services by January 11, 2001.⁶ Simultaneously with this filing, the Telergy carriers are sending the necessary notifications and the instant application with the state public utility commissions and their respective governors where customers are being discontinued. The Telergy carriers also are sending this application to the Secretary of Defense, to the attention of the Special Assistant for Telecommunications.

11. For the foregoing reasons, the FCC should approve the Telergy carriers' application to discontinue domestic and international telecommunications services by January 11, 2001.

Respectfully submitted,



Thomas Jones
Angie Kronenberg
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 328-8000 (tel.)
(202) 887-8979 (fax)

Theresa Atkins
Co-General Counsel
Telergy Network Services, Inc.
One Telergy Parkway
East Syracuse, New York 13057
(315) 362-2882 (tel.)
(315) 362-2635 (fax)

Dated: December 11, 2001

⁶ To the extent necessary, the Telergy carriers request that the Commission waive the 60-day customer notice requirement found in Section 63.19 of the FCC's rules for their international services.

Bankruptcy Filing Information

Entity and Case Number:

Telergy, Inc.	01-66379
Telergy Operating, Inc.	01-66380
Telergy Parkway, Inc.	01-66381
Telergy Canada, Inc.	01-66382
Telergy Metro, LLC	01-66383
Telergy Network Services of Virginia, Inc.	01-66384
TAS, Inc.	01-66385
TNS of California, Inc.	01-66386
Telergy Network Services, Inc.	01-66387
Telergy Central, LLC	01-66388

Filing date and location:

October 26, 2001 – Chapter 11
December 10, 2001 – Conversion to Chapter 7 (order dated 12/14/01)

United States Bankruptcy Court
Northern District of New York
10 Broad Street
Utica, NY 13502

Judge assigned:

Hon. Stephen D. Gerling

Chapter 7 Trustee assigned:

Michael J. Balanoff, Esq.
Green & Seifler
One Lincoln Center, Suite 900
110 West Fayette Street
Syracuse, New York 13202
(315) 422-1391 Main Reception
(315) 422-3549 Main Fax Number



ORIGINAL

JUL 22 AM 9:26
DISTRIBUTION CENTER

TJ389
TX450

July 19, 2002

Dear Public Service or Public Utility Commission:

On October 26, 2001, Telergy Network Services, Inc., its parent and several affiliates, filed for Chapter 11 protection under the U.S. Bankruptcy Code. Those cases were converted to Chapter 7 on December 14, 2001. The Federal Communications Commission approved Telergy's petition to discontinue all forms of telecommunications services on January 22, 2002. All customers have been successfully transitioned to other service providers and all Telergy network assets were sold to either Dominion Telecom, Inc. or Con Ed Communications, Inc., on April 10, 2002.

Please cancel any applicable Certificates Telergy has granting authority to provide telecommunications services in your state. Please cancel any applicable tariffs Telergy has in effect in your state. Please note that our records indicate no activity in your state for the 2001 fiscal year.

Thank you for your consideration. If you have any questions please feel free to contact the Franchise at 315-422-1391 or Theresa Atkins at 315-362-2882.

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DIVISION OF
COMPETITIVE SERVICES

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up to Paula Isler

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REC. COMMISSION CLERK

