



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

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TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER) *AS*  
OFFICE OF THE GENERAL COUNSEL (ELLIOTT) *JAE*

RE: DOCKET NO. 020589-TP - 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.

AGENDA: SEPTEMBER 3, 2002 - REGULAR AGENDA - PROPOSED AGENCY  
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020589.RCM

### CASE BACKGROUND

- 07/18/00 - This company obtained Florida Public Service Commission ALEC Certificate No. 7490 and on August 28, 2000, the company obtained IXC Certificate No. 7491.
- 02/02/01 - The Commission received the company's payment for the 2000 Regulatory Assessment Fees (RAF) and reported no revenues for both certificates for the period ended December 31, 2000.
- 12/12/01 - The Division of the Commission Clerk & Administrative Services mailed the 2001 RAF notice. Payment was due January 30, 2002.
- 02/21/02 - The Office of the General Counsel mailed a delinquent notice to the company via certified mail. The US

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Postal Service returned the receipt, which showed the delinquent notice was signed for and delivered.

- **05/03/02** - Staff wrote the company and explained that payment for the 2001 RAF had still not been received. Staff explained that in order to avoid a docket being established, payment should be received within 15 working days.
- **07/22/02** - The Commission received a letter from the company dated July 19, 2002, advising that its Chapter 11 bankruptcy case had been converted to a Chapter 7 case. The letter also explained that because it had no customers and the Federal Communications Commission had approved its application for discontinuance of service on January 22, 2002, the company requested cancellation of its certificates.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Telergy Network Services, Inc.'s request for cancellation of its IXC Certificate No. 7491 and its ALEC Certificate No. 7490 due to bankruptcy?

**RECOMMENDATION:** Yes. The Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7491 and its ALEC Certificate No. 7490 with an effective date of July 22, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the year 2001 for each certificate, 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. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications and alternative local exchange services in Florida. (Isler; Elliott)

**STAFF ANALYSIS:** Rules 25-24.474 and 25-24.820, Florida Administrative Code, establish the requirements for cancellation of Interexchange Carrier (IXC) and Alternative Local Exchange (ALEC) certificates, respectively. Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

On October 26, 2001, Telergy Network Services, Inc. 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 total liquidation of the business entity. The filing of a bankruptcy petition under Chapter 7 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Upon such filing, an interim Trustee in Bankruptcy is immediately appointed who has the duty to collect and secure the non-exempt assets of the debtor and distribute them to creditors in the manner set forth in the Bankruptcy Code. Secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. Regulatory fees and penalties owed by a company to the

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Florida Public Service Commission are not secured debts and, as a practical matter, are uncollectible in a Chapter 7 proceeding.

The Commission is prevented by the automatic stay provision of the Bankruptcy Code from taking action against this company for its failure to pay regulatory assessment fees. Although the Commission does not typically grant a cancellation of a telecommunications certificate when there is an outstanding balance, a cancellation can be granted in this case, since the company requested cancellation of its certificate. However, it should be noted that the Division of the Commission Clerk & Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection.

Therefore, staff believes the Commission should grant the company a bankruptcy cancellation of its IXC Certificate No. 7491 and its ALEC Certificate No. 7490 with an effective date of July 22, 2002. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the 2001 and 2002 RAFs, including statutory penalty and interest charges for the year 2001 for each certificate, 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. If the certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing interexchange telecommunications and alternative local exchange services in Florida.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed. (Elliott)

**STAFF ANALYSIS:** Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.