



PUBLIC NOTICE

Federal Communications Commission
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DA 01-742
March 23, 2001

**Telergy, Inc. and Affiliated Companies Seek Commission Determination of
"Exempt Telecommunications Company" Status Under the Public Utility Holding
Company Act**

NSD File No: ETC 01-06

Pleading Cycle Established

Comments Due: April 6, 2001 Reply Comments Due: April 13, 2001

On March 7, 2001, Telergy, Inc. and its affiliate companies Telergy Operating, Inc., Telergy Network Services, Inc., Telergy Network Services of Virginia, Inc., TNS of California, Inc., Telergy MidAtlantic, LLC, Telergy Central, LLC, and Telergy Metro LLC (collectively, Telergy Companies), pursuant to section 34(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA), as added by section 103 of the Telecommunications Act of 1996, Pub. L. No. 104-104, filed an application requesting a Commission determination that each is an exempt telecommunications company (ETC).

The application states that Telergy Inc. is a privately owned Delaware corporation and the holding company of the following entities.¹ Telergy Operating, Inc. is a privately owned Delaware corporation and a wholly owned subsidiary of Telergy, Inc. Telergy Network Services, Inc. is a privately owned New York corporation and a wholly owned subsidiary of Telergy Operating, Inc. Telergy Network Services of Virginia, Inc. is a privately owned Virginia corporation and a wholly owned subsidiary of Telergy Network Services, Inc. TNS of California, Inc. is a privately owned California corporation and a wholly owned subsidiary of Telergy Network Services, Inc. Telergy Central, LLC is a New York Limited Liability Company that is owned 75% by Telergy Operating, Inc. and 25% by Niagara Mohawk Energy Marketing, Inc., a New York corporation and a wholly owned subsidiary of Niagara Mohawk Power Corporation (NMPC). NMPC is a public utility holding company registered under the PUHCA. Telergy Metro LLC is a New York Limited Liability Company that is wholly owned by Telergy Operating, Inc. Telergy MidAtlantic, LLC is a New York Limited Liability Company that is 51% owned by Telergy Network Services, Inc. and 49% owned by GPU Telcom Services, Inc., a Delaware corporation and an affiliate of Jersey Central Power & Light Company (Jersey Central),

¹ Telergy, Inc. is also the holding company of Telergy East, LLC, which has already been granted ETC status (see *Public Notice*, NSD File No. ETC-00-34, DA-00-1989 (rel. Aug. 30, 2000)).

Metropolitan Edison Company (Metropolitan) and Pennsylvania Electric Company (Pennsylvania Electric). Jersey Central, Metropolitan and Pennsylvania Electric are public utility holding companies registered under PUHCA.

The application states that Telergy Companies, either directly or through their subsidiary companies, are engaged exclusively in the business of providing telecommunications services or products subject to the jurisdiction of the Commission and/or products or services that are related or incidental to the provision of such products or services within the meaning of PUHCA Section 34(a)(1). More specifically, the Telergy Companies were formed to construct, own and operate a domestic U.S. fiber optic telecommunication network providing transport and other telecommunications and related services for carriers and end users using conduits, facilities and rights-of-ways acquired from, among other entities, various public utility holding companies, including but not limited to Niagara Mohawk Power Corporation, Consolidated Edison, Inc., Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company GPU, Inc. The application further states that in the future, Telergy may engage in other activities that fall within the categories stated in Section 34(a)(1)(A)-(D) of PUHCA. The Telergy Companies directly or through their respective telephone operating subsidiaries provide facilities-based integrated broadband telecommunication services and high bandwidth fiber optic capacity throughout the United States, primarily in the northeast.

In accordance with 47 C.F.R. section 1.5004, if the Commission does not issue an order denying an ETC application within 60 days of receipt of the application, in this case by May 6, 2001, the application will be deemed granted as a matter of law. In accordance with 47 C.F.R. section 1.5003, a person applying in good faith for a Commission determination of ETC status is deemed to be an ETC from the date of receipt of the application, in this case, March 3, 2001, until the date of Commission action pursuant to 47 C.F.R. section 1.5004. In accord with 47 C.F.R. section 1.5005, the Secretary of the Commission is now notifying the Securities and Exchange Commission (SEC) that the Applicant is deemed to be an exempt telecommunications company. In the event that the Commission issues an order within 60 days of receipt of the application denying the application, the Secretary will so notify the SEC. Otherwise, the Commission will take no further action to grant this application.

This proceeding is considered a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. sections 1.1200 - 1.1206. Persons wishing to file comments, regarding the adequacy or accuracy of the Applicant's application requesting status, as an ETC must do so no later than **April 6, 2001**. All comments should also be served on the Applicants. Reply comments must be filed no later than **April 13, 2001**.

Interested parties should file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW, Room TW-A325, Washington, D.C. 20554. Parties should also send one copy to ITS, at 1231 20th Street, NW, Washington, D.C. 20036 and two copies to Carmell Weathers, Common Carrier Bureau, Network Services Division, FCC, 445 12th Street, SW, Room 6-A207, Washington, D.C. 20554. All filings concerning any matters referenced in this Public Notice should refer to NSD file number **ETC-01-06**.

The application will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The application may also be purchased from the Commission's copy

contractor, International Transcription Service, Inc. (ITS), 1231 20TH Street, NW, Washington, DC 20036, telephone 202-857-3800, facsimile 202-857-3805, TTY 202-293-8810.

For further information, contact Carmell Weathers, (202) 418-2325 (voice), cweather@fcc.gov or Marty Schwimmer, (202) 418-2320 (voice), mschwimm@fcc.gov, of the Network Services Division, Common Carrier Bureau. The TTY number is (202) 418-0484. You may also find more information about Exempt Telecommunications Companies at the NSD web site: <http://www.fcc.gov/ccb/nsd/documents/ETC.html>.

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