

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telergy Network Services, Inc., Telergy
Metro, LLC, and Telergy Central, LLC
Section 63.71 Joint Application to Discontinue
Domestic Telecommunications Services
NSD File No. W-P-D-547

ORDER

Adopted: January 14, 2002

Released: January 14, 2002

By the Common Carrier Bureau:

1. On December 11, 2001, Telergy Network Services, Inc., Telergy Metro, LLC, and Telergy Central, LLC (Telergy) filed a joint application to discontinue providing domestic telecommunications services, pursuant to section 214(a) of the Communications Act of 1934, as amended, and section 63.71 of the Federal Communications Commission's (FCC or Commission) rules. In this Order, we extend the period for the Bureau to consider comments and to rule with finality on Telergy's application, and in the meantime, we deny Telergy authority to discontinue service.

BACKGROUND AND DISCUSSION

2. Telergy provides local, long distance, international, switched access, DSL, private line, and Internet access services in New York, Connecticut, Florida, Illinois, Massachusetts, New Jersey, Ohio, Pennsylvania, Rhode Island, and Texas. On October 26, 2001, the Telergy carriers and their parent companies, Telergy Operating, Inc. and Telergy, Inc., filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code in the Northern District of New York. On December 11, 2001, Telergy filed an application with the FCC for authority to discontinue providing the aforementioned services.

1 47 U.S.C. § 214(a).

2 47 C.F.R. § 63.71.

3 The application states that the Telergy carriers are authorized to provide local and long distance intrastate service on either a resale or facilities-based basis in forty-six (46) states.

4 See In re Telergy, Inc., et al., Ch. 11, Case Nos. 01-66379 through 01-66388 (N.D.N.Y.).

3. By Public Notice dated December 14, 2001, the Commission notified the public that in accordance with 47 C.F.R. § 63.71(c), Telergy's application for discontinuance authority would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Telergy that the grant would not be automatically effective.⁵ Accordingly, the automatic grant date for this application would be January 14, 2002. To this date, the Commission has received opposition to Telergy's application from at least thirteen (13) customers and interested parties. However, due to the FCC's new screening procedures for incoming mail, adopted since September 11, 2001, some customer comments were apparently timely filed, but were not properly routed to FCC staff working on this matter.

4. On December 14, 2001, the Bankruptcy Court converted Telergy's Chapter 11 cases to liquidation proceedings under Chapter 7 of the Bankruptcy Code, and ordered the United States Trustee's Office to appoint an interim Chapter 7 trustee (Interim Trustee).⁶ The Court gave the Interim Trustee thirty-one (31) days from December 14th to operate Telergy and market its assets.

5. The Bureau is aware that since Telergy filed its application, a number of customers have successfully migrated to other carriers. However, a number of affected customers filed comments asserting that they have had insufficient time to find alternative service providers. For example, a number of business customers, including an ISP with over twenty thousand (20,000) customers, a telecommunications hardware manufacturer, and an international bank with six thousand five hundred (6,500) offices in seventy-eight (78) countries have all requested that Telergy maintain service until at least mid March.⁷ Moreover, the record indicates that the precipitous discontinuance of service at this time is likely to adversely impact public convenience and necessity to a significant degree. Specifically, the New York State Unified Court System, the New York State Office for Technology, several New York State hospitals, and two university campuses rely on Telergy as their telecommunications service provider, and report that they are facing significant migration problems.⁸

6. On January 11, 2002, the Bankruptcy Court heard and granted the Interim Trustee's motion to extend his authority to operate the company for an additional week. Accordingly, it appears that service to customers will be provided during that period. In addition, the Bankruptcy Court has apparently been advised of certain negotiations that may affect Telergy's ability to provide service to customers in the future.

⁵ *Comments Invited on Telergy Network Services, Inc., Telergy Metro, LLC, and Telergy Central, LLC Application to Discontinue Domestic Telecommunications Services*, Public Notice, NSD File No. W-P-D-547, DA 01-2009 (rel. Dec. 14, 2001).

⁶ *See Order Converting Cases to Liquidation Proceedings Under Chapter 7 of Title 11 of the United States Code*, Case Nos. 01-66379 through 01-66388 (N.D.N.Y.).

⁷ Opposition of eVISION INTERNET SOLUTIONS GROUP, LTD. (January 2, 2002); Opposition of PPC (December 21, 2001); and Opposition of HSBC Bank USA (January 5, 2002).

⁸ Opposition of the State of New York Unified Court System (December 27, 2001); Opposition of the State of New York Department of Public Service (December 27, 2001); Opposition of the State of New York Office for Technology (December 27, 2001); Opposition of The State University of New York at Oswego (December 27, 2001); and Opposition Utica College of Syracuse University (January 4, 2002).

7. Given the status of the bankruptcy court proceedings, and due to the complications in the Bureau's receipt of timely-filed comments, the Bureau has decided to extend the thirty-one (31) day notice period for one additional week, *i.e.* until midnight, January 22, 2002.⁹ This date will now constitute the automatic date on which authority to discontinue would be granted absent a further order by the Commission. However, given the significant public interest considerations implicated, the Bureau expects to issue an order addressing the merits of the application prior to January 22nd. Notwithstanding this extension for the Bureau to consider comments and to issue its substantive order, Telergy is authorized to discontinue services to any customers who have successfully migrated to other carriers.

ORDERING CLAUSE

8. Accordingly, pursuant to sections 1, 4(1), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(1), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Telergy to discontinue domestic telecommunications as it relates to its customers who have failed to migrate their services to other carriers IS DENIED until at least midnight, January 22, 2002, pending further order by the Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Chief,
Common Carrier Bureau

⁹ Although the Commission intends to extend this proceeding one week from the date of this order, Monday, January 21, 2002 is the national holiday celebrating Martin Luther King, Jr.'s birthday. Accordingly, the new automatic grant date is January 22, 2002. *See* 47 C.F.R. § 1.4(j).