

DT 00-044

TELERGY NETWORK SERVICES, INC.

**Petition for Authority to Provide
Local Telecommunications Services**

Order Nisi Granting Authorization

O R D E R N O. 23,532

July 6, 2000

On March 1, 2000, Telergy Network Services, Inc. (TNS) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995. On June 5, 2000, TNS filed additional information.

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed TNS's petition for compliance with these standards. Staff reports

that the company has provided all the information required by Puc 1304.02. The information provided supports TNS's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of TNS as a New Hampshire CLEC.

TNS has requested a waiver of any reporting requirements. Staff recommends denying the waiver.

We find that TNS has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of TNS in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because TNS has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, TNS agreed to abide by Bell Atlantic's present and future rates for intraLATA

switched access or to charge a lower rate. If, at any point, TNS seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. The Commission will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they, in turn, pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the Tact.

We note that as new competitors enter the market, greater pressure is put on the 603 area code, so long as today's antiquated number assignment process remains in effect. Accordingly, we will require that TNS request and use numbers responsibly and conservatively, and to join in exploring alternative mechanisms to use existing numbers as efficiently as possible and thereby avert the need for a new area code. By granting this authority TNS is required to comply with our orders on number conservation including Order No. 23,385 issued January 7, 2000 and Order No. 23,392 issued January 27, 2000 as well as further orders issued by the Commission concerning this matter.

Based upon the foregoing, it is hereby

ORDERED NISI, that TNS's petition for authority to provide switched and non-switched intrastate local exchange

telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, inter alia to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that Telergy Network Services, Inc. is required to comply with our Order No. 23,385 issued January 7, 2000, Order No. 23,392 issued January 27, 2000, and further orders issued by the Commission concerning number conservation; and it is

FURTHER ORDERED, that the request for waiver of the reporting requirements is denied since revenues generated in New Hampshire must be filed with the Commission on an annual basis as part of the New Hampshire Public Utilities Commission Annual Report; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than July 13, 2000 and to be documented by affidavit filed with this office on or before July 24, 2000; and it is

FURTHER ORDERED, that all persons interested in responding to this Order Nisi shall submit their comments or file a written request for a hearing on this matter before the Commission no later than July 24, 2000; and it is

FURTHER ORDERED, that this Order Nisi shall be

effective August 7, 2000, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this sixth day of July, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary