

TC00-116

In the Matter of \_\_\_\_\_ IN THE MATTER OF THE  
\_\_\_\_\_  
APPLICATION OF TELERG  
\_\_\_\_\_  
NETWORK SERVICES, INC. FOR A  
\_\_\_\_\_  
CERTIFICATE OF AUTHORITY TO  
\_\_\_\_\_  
PROVIDE TELECOMMUNICATIONS  
\_\_\_\_\_  
SERVICES, INCLUDING LOCAL  
\_\_\_\_\_  
EXCHANGE SERVICES, IN SOUTH  
\_\_\_\_\_  
DAKOTA

## DATE \_\_\_\_\_

## MEMORANDA

8/2	00	Filed and docketed;
8/3	00	Weekly Filing;
11/3	00	Surety Bond;
12/7	00	Order Granting COA;
12/7	00	Docket Closed



TC00-116

RECEIVED

AUG 02 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

August 1, 2000

SENT VIA OVERNIGHT MAIL

South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Re: Application of Telergy Network Services, Inc. to Provide  
Local Exchange and Interexchange Services

To The South Dakota Public Utilities Commission:

Please find enclosed for filing with the Board, an original and ten copies of Telergy Network Services, Inc.'s ("Telergy") application for Issuance of a Certificate of Authority to provide facilities-based and resold local telecommunications services in South Dakota exchanges currently served by QWEST Communications, Inc. (formerly US WEST). Also enclosed, is a check in the amount of \$250.00 to cover the application fee for deposit into the gross receipts tax fund established pursuant to SDCL § 49-1A-2.

Also enclosed are Exhibits A through G of the application. As you will note, Exhibits D and E, which include financial records for Telergy, are filed under seal and are marked "Confidential and Proprietary Information." We respectfully request that all information contained therein remain confidential and proprietary and disclosed only to staff members directly involved in this case. We further ask that all pleadings or filings that incorporate, reference, or attach these documents or any portion thereof, be submitted under Seal.

Also enclosed is a duplicate of this letter. Kindly date-stamp the duplicate and return in the postage paid envelope provided. If you have any questions about this application, please contact me.

Sincerely,

Jennifer Bunnell  
Manager, Regulatory Compliance  
Telergy Network Services, Inc.

cc: Theresa Atkins, Esq.

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Application of )  
 )  
Telergy Network Services, Inc. )  
 )  
For a Certificate of Authority )  
to Provide Local Exchange )  
and Interexchange Services as )  
Facilities-Based Provider and Reseller )

Docket No. \_\_\_\_\_

RECEIVED

AUG 22 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

APPLICATION FOR CERTIFICATE OF AUTHORITY

Telergy Network Services, Inc. ("Telergy" or "Company"), pursuant to the Telecommunications Act of 1996, SDCL §49-31-3 and Chapter 20:10:24 of the Telecommunications Service Rules, hereby files this Application for a Certificate of Authority ("COA") from the South Dakota Public Utilities Commission ("Commission") and hereby requests that the Commission grant Telergy authority to provide competitive telecommunications services in the form of resale and facilities-based, local exchange and interexchange services within the State of South Dakota. In support thereof, Telergy provides the following information, as required by South Dakota Telecommunications Service Rules §20:10:24:02 and §20:10:32:03.

Company Information

- (1) The complete legal name, principal address, telephone number, facsimile number and website of the Company is:

Telergy Network Services, Inc.  
One Telergy Parkway  
East Syracuse, New York 13057  
Telephone: (315) 362-2000 or (877) 835-3749  
Facsimile: (315) 362-5399  
Website: www.telergy.net



(2) Telergy is a privately-held corporation organized under the laws of the State of New York on May 26, 1998, with 100% of its stock held by Telergy Operating, Inc. Telergy is qualified to do business in the state of South Dakota. A copy of Telergy's certificate of incorporation, amendment thereto and certificate of authority to transact business in South Dakota are attached hereto as *Exhibit A*.

(3) The name, address, telephone number, facsimile number and Email address of the Management Contact is:

Theresa Atkins, Assistant General Counsel  
Telergy Network Services, Inc.  
One Telergy Parkway  
East Syracuse, New York 13057  
Telephone: (315) 362-2882  
Facsimile: (315) 362-2635  
Email: tatkins@telergy.net

(4) The name and address of Telergy's current registered agent in the State of South Dakota is:

National Registered Agents, Inc.  
300 South Phillips Avenue  
Suite 300  
Sioux Falls, SD 57102

(5) The officers and directors of Telergy are listed below. Each has his primary place of business at One Telergy Parkway, East Syracuse, New York 13057.

Brian P. Kelly	President and Director
Kevin J. Kelly	Vice President and Director
Brian P. Kelly	Secretary
Kevin J. Kelly	Treasurer
William M. Kelly, Jr.	Executive Vice President and Director

(6) The names and addresses of each of Telergy Network Services, Inc.'s subsidiaries are as follows: TAS, Inc.

East Syracuse, New York 13057  
One Telergy Parkway

Telergy Network Services of Virginia, Inc.  
One Telergy Parkway  
East Syracuse, New York 13057

Telergy MidAtlantic, LLC  
One Telergy Parkway  
East Syracuse, New York 13057

(7) An Organization Chart showing Telergy's affiliates and corporate structure is hereby included as *Exhibit B* for the Commission's review.

**Description of Services**

(8) Telergy will offer flat rate and message rate local service, together with a line of features comparable to what is offered by the LEC to residential customers. Telergy will provide business services including basic business lines, analog and digital PBX trunk services, Centrex services, shared tenant services, digital data service, private line service, data services, foreign exchange service, ISDN, ADSL, ATM and Frame Relay services.

(9) In addition, Telergy will offer supplemental services, including various optional features, such as three way calling and call forwarding; Directory Assistance and Operator Services, such as call rejection and call ID; Promotional Trials; and Contract Services. Telergy will also offer intraLATA and interLATA local and long distance services.

(10) Telergy has not entered into a final interconnection agreement ("agreement") with the Incumbent Local Exchange Carrier in South Dakota, however, the Company plans to do so within

six (6) months from the date of this application and will submit said agreement to the Board, detailing the exact manner in which it will provide its services. The Illustrative Long Distance Tariff is enclosed as Exhibit C.

## Demonstration of Technical and Operational Ability

(11) The Company has a highly qualified Network operations team, all of whom have extensive experience in the telecommunications industry by developing and operating state-of-the-art telecommunications, networks and equipment. Telergy Network Services, Inc. possesses all the necessary capabilities to operate as a provider of local and long distance services. Telergy is successfully providing a wide range of telecommunications services in New York and Rhode Island on a resale and facilities-based basis.

Consequently, the quality of service that Telergy's local exchange and long distance customers receive will be at least equivalent to that provided by these LECs. As the foregoing illustrates, Telergy is certainly technically qualified to provide local exchange and long distance services in South Dakota. The Illustrative Long Distance Tariff is enclosed as *Exhibit C*.

## Waivers and Regulatory Compliance

(12) Telergy respectfully requests that the Commission grant it the following waivers:

- (1) A waiver of SOUTH DAKOTA ADMIN. RULE 20:10:32:03(12)(c) which requires a telecommunications company to provide, with its written application, a copy of any request for interconnection made by the Company to any local exchange carrier. As stated herein at paragraph number "10", Telergy has not entered into a final interconnection agreement ("agreement") with the Incumbent

Local Exchange Carrier in South Dakota, however, the Company plans to do so within six (6) months from the date of this application and will submit said agreement to the Commission, detailing the manner in which it will provide services.

- (2) A waiver of SOUTH DAKOTA ADMIN. RULE 20:10:32:03(13) regarding a tariff or price list indicating the prices, terms, and conditions of each contemplated local service offering. Based on the fact that until such time as Telergy has entered into its interconnection agreements with incumbent LEC(s), it will not be able to detail the exact manner in which it will provide its local exchange and interexchange services. Prior to providing local and long distance services, Telergy will file the Local Tariff with the Board describing all the rates, terms and conditions for its services. Telergy's services will satisfy the minimum standards established by the Commission. The Company will file and maintain Tariff in the same manner and form as required of local exchange telecommunications companies with which Telergy seeks to compete. Telergy will meet the minimum basic local standards, including quality of service and billing standards required of all Competitive Local Exchange Carriers regulated by the Commission. Prior to providing Local Service, Telergy will file final tariffs with the Commission describing the terms and conditions of its services.
- (3) A waiver of SOUTH DAKOTA ADMIN. RULE 20:10:32:03(8) regarding the item of providing a service area map. Telergy's location of service will

mirror the service areas of the incumbent LECs. Therefore, the Company has not submitted a service territory map with this application. Telergy hereby adopts and concurs in the service area maps of QWEST as they exist today and may exist in the future. As the boundaries of the maps of this incumbent local exchange carrier changes, so will the boundaries of the service territory of Telergy. Telergy will file a service area territory map at a later date if deemed necessary by the Commission.

### **Geographic Areas of Service**

(13) Telergy plans to provide local and long distance intrastate telecommunications services to the public on a statewide basis that will mirror the service areas of the incumbent local exchange telephone companies ("LECs"). Telergy's local calling area will duplicate that of QWEST (formerly known as "US WEST"), a description of which can be found, for the purpose of informing the public, in the local telephone directory.

### **Financial Information**

(14) Telergy Network Services, Inc. has sufficient financial capability to provide the requested telecommunication services, the financial capability to maintain these services, and the financial capability to meet its lease and ownership obligations. The Company is positioned to add significant revenue growth while having a majority of its expenses fixed in nature. Telergy has full support and commitment to financial backing from its parent company, Telergy Operating, Inc. in addition to full support from Telergy, Inc. which is Telergy Operating, Inc.'s parent company. The organization chart previously referred to as *Exhibit B*, demonstrates the parent company's

relationship to each of its affiliates. The consolidated balance sheets of Telergy, Inc. and its subsidiaries for 1998 and 1999 are hereby included as *Exhibit D*.

(15) The 1997-1999 consolidated statements of operations of Telergy, Inc. and Subsidiaries are also attached as *Exhibit E*.

**Customer Service**

(16) Telergy understands the importance of effective customer service for local service consumers. Telergy's Customers may reach its Customer Care Department twenty-four hours a day, seven days a week. The Company's Customer Care Department may be reached by dialing toll-free 800-889-6716 or by writing to:

Ms. Christine Borreggine  
Telergy Network Services, Inc.  
Attn: Customer Care Department  
One Telergy Parkway  
East Syracuse, New York 13057.  
[Information@telergy.net](mailto:Information@telergy.net)  
[www.telergy.net](http://www.telergy.net)

(17) The toll-free number for billing inquiries is printed on the customers' monthly billing statements. A description of how the Company will handle customer billings and service matters, together with a specimen copy of the Company's invoice, are attached as *Exhibit F*.

**Authorizations and Licenses**

(18) Telergy is currently providing telecommunications services in New York and Rhode Island. Telergy has applications for competitive local exchange and long distance services pending in the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan,

Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Nevada North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Tennessee Utah, Washington, Wisconsin and Wyoming.

(19) Telergy Network Services, Inc. has approved applications in New York, Massachusetts (all forms), New Hampshire (local and long distance), Rhode Island (all forms), New Jersey (all forms), Vermont (all forms), District of Columbia (local and facilities-based), Pennsylvania (all forms except Competitive Access Provider), Delaware (all forms), West Virginia (all forms), Virginia (all forms), Connecticut (resale only), Florida (all forms), Montana (all forms) and Texas (all forms).

(20) Telergy is licensed, by authority of the Offices of the Secretary of State in each of the fifty (50) states, to do business and has never been denied registration or certification by any state to which it has applied.

**Demonstration of Marketing Ability**

(21) Telergy has an in-house Marketing Department. Telergy is currently in the process of developing newspaper and radio advertising campaign, together with other print and media promotions. At this time, Telergy has no intention to directly solicit potential customers via telemarketing or door-to-door solicitations. Customer premise solicitation, if any, will be limited to business customers.

(22) Telergy combines high quality service with very competitive rates, flexible end user billing, professional customer service and excellent management reporting to meet the individualized needs of its targeted customers.

### Competitive Services

(23) Telergy's services are designed to compete with other carriers by meeting the specialized data communications needs of consumers from both a service and price perspective. Telergy marketing will increase consumer awareness of competitive alternatives and will place subtle pressure on other service providers to improve rates and services. In addition, competition provides consumers with a wider selection of products and services from which to choose.

(24) Telergy's proposed intraLATA and interLATA local and long distance services will be provided at a standard which is at least comparable to that of the incumbent local exchange and long distance customers receive will be at least equivalent to that provided by these LECs. As the foregoing illustrates, Telergy is certainly technically qualified to provide local exchange and long distance services in South Dakota.

### Managerial Ability

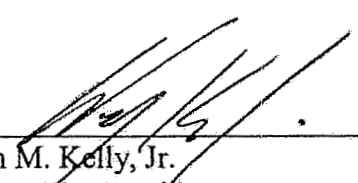
(25) The Applicant possesses the managerial ability and technical competency to provide the proposed competitive telecommunications services as demonstrated by the fact that the members of Telergy's senior management team have extensive experience in the telecommunications industry. These executives have both highly effective management skills and considerable telecommunications expertise. The backgrounds of these key employees are provided in *Exhibit G*, and constitute evidence that Telergy possesses the managerial qualifications required to provide the requested to provide local and long distance service in South Dakota.



ORIGINAL

WHEREFORE, Telergy Network Services, Inc. respectfully requests that the Commission grant it a Certificate of Authority to provide local exchange and intrastate interexchange telecommunications services within the State of South Dakota.

Submitted this 31st day of July, 2000

  
\_\_\_\_\_  
William M. Kelly, Jr.  
Executive Vice President  
Telergy Network Services, Inc.

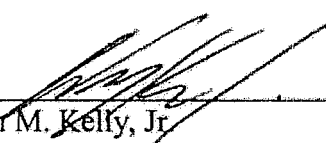
VERIFICATION

William M. Kelly, Jr., Affiant, being duly sworn according to law, deposes and says that:

He is the Executive Vice President of Telergy Network Services, Inc.

That he is authorized to and does make this affidavit for said corporation;

That the facts set forth in this Application are true and correct to the best of his knowledge, information and belief and that he expects said corporation to be able to prove the same at any hearing hereof.

  
\_\_\_\_\_  
William M. Kelly, Jr.  
Executive Vice President  
Telergy Network Services, Inc.

State of New York                    )  
  ) ss:  
County of Onondaga                )

Sworn and subscribed to before me this 31st day of \_\_\_\_\_, July, 2000

  
\_\_\_\_\_  
Notary Public

My commission expires

ISABELLA D. LAWSON  
Notary Public in the State of New York  
Qualified in Onondaga Co. No. 01LA5070347  
My Commission Expires December 9, 2000

**ORIGINAL**

**APPLICATION OF**

**Telergy Network Services, Inc.**

**Exhibit A**

**Certificate of Incorporation, Amendment and Certificate of Authority**

# State of South Dakota



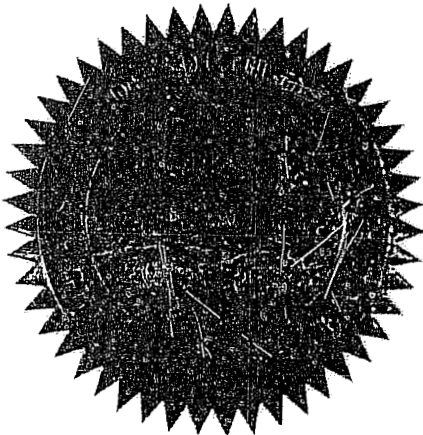
## OFFICE OF THE SECRETARY OF STATE

### Certificate of Authority

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of **TELERGY NETWORK SERVICES, INC. (NY)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

**ACCORDINGLY** and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this January 28, 2000.



Joyce Hazeltine  
Secretary of State



Secretary of State  
State Capitol  
500 E. Capitol Ave.  
Pierre SD 57501  
Phone 605-773-4844  
Fax 605-773-4550

FILE NO. \_\_\_\_\_  
RECEIPT NO. \_\_\_\_\_

RECEIVED

JAN 27

S.D. SEC. 17-1

### Application for Certificate of Authority

Pursuant to the provisions of SDCL 47-8-7, the undersigned corporation hereby applies for a Certificate of Authority to transact business in the State of South Dakota and for that purpose submits the following statement:

(1) The name of the corporation is Telergy Network Services, Inc.  
(exact corporate name)

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state is \_\_\_\_\_

(3) State where incorporated New York Federal Taxpayer ID# 16-1554071

(4) The date of its incorporation is May 26, 1998 and the period of its duration, which may be perpetual, is perpetual

(5) The address of its principal office in the state or country under the laws of which it is incorporated is One Telergy Parkway, East Syracuse, NY Zip Code 13057  
mailing address if different from above is: \_\_\_\_\_ Zip Code \_\_\_\_\_

(6) The street address, or a statement that there is no street address, of its proposed registered office in the State of South Dakota is 300 South Philips Avenue, Suite 300, Sioux Falls, SD Zip Code 57102  
and the name of its proposed registered agent in the State of South Dakota at that address is National Registered Agents, Inc.

(7) The purposes which it proposes to pursue in the transaction of business in the State of South Dakota are: (state specific purpose)  
All forms of telecommunication services

(8) The names and respective addresses of its directors and officers are:

Name	Officer Title	Street Address	City	State	Zip
Please see attached Addendum					

(9) The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class is:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
<u>200</u>	<u>Common</u>		<u>No Par</u>

(10) The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
200	Common		No Par

(11) The amount of its stated capital is \$ 200.00  
Shares issued times par value equals stated capital. In the case of no par value stock, stated capital is the consideration received for the issued shares.

(12) This application is accompanied by a CERTIFICATE OF FACT or a CERTIFICATE OF GOOD STANDING duly acknowledged by the Secretary of State or other officer having custody of corporate records in the state or country under whose laws it is incorporated.

(13) That such corporation shall not directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

(14) That such corporation, as a consideration of its being permitted to begin or continue doing business within the State of South Dakota, will comply with all the laws of the said State with regard to foreign corporations.

The application must be signed, in the presence of a notary public, by the chairman of the board of directors, or by the president or by another officer.

I DECLARE AND AFFIRM UNDER THE PENALTY OF PERJURY THAT THIS APPLICATION IS IN ALL THINGS, TRUE AND CORRECT.

Dated 6/29 19 99

[Signature]  
(Signature)  
Executive Vice President, William M. Kelly, Jr.  
(Title)

STATE OF New York  
COUNTY OF Onondaga

I, William M. Kelly, Jr., a notary public, do hereby certify that on this 29 day of June, 1999, personally appeared before me William M. Kelly, Jr. who, being by me first duly sworn, declared that he/she is the Executive Vice President of Teleergy Network Services, Inc. that he/she signed the foregoing document as officer of the corporation, and the statements therein contained are true.

4/15/00  
My Commission Expires

[Signature]  
Notary Public

Notarial Seal

\*\*\*\*\*  
The Consent of Appointment below must be signed by the registered agent listed in number six.

**ADDENDUM**  
**OF**  
**TELERGY NETWORK SERVICES, INC.**

**CORPORATE OFFICERS:**

President	Brian P. Kelly	One Telergy Parkway East Syracuse, NY 13057
Vice President	Kevin J. Kelly	One Telergy Parkway East Syracuse, NY 13057
Secretary	Brian P. Kelly	One Telergy Parkway East Syracuse, NY 13057
Treasurer	Kevin J. Kelly	One Telergy Parkway East Syracuse, NY 13057

**DIRECTORS:**

Chairperson	Brian P. Kelly	One Telergy Parkway East Syracuse, NY 13057
Director	Kevin J. Kelly	One Telergy Parkway East Syracuse, NY 13057
Director	William M. Kelly, Jr.	One Telergy Parkway East Syracuse, NY 13057

### Consent of Appointment by the Registered Agent

Tina Leland, Assistant Secretary for  
1, National Registered Agents, Inc., hereby give my consent to serve as the registered  
(name of registered agent)  
agent for Telergy Network Services, Inc.  
(corporate name)

Dated January 20 192020

Tina Leland  
(signature of registered agent)

The proper filing fee must accompany the application. Make checks payable to the Secretary of State.

#### FEE SCHEDULE

Authorized capital stock of	25,000	or less	\$ 90
Over \$25,000 and not exceeding	100,000		110
Over \$100,000 and not exceeding	500,000		130
Over \$500,000 and not exceeding	1,000,000		150
Over \$1,000,000 and not exceeding	1,500,000		200
Over \$1,500,000 and not exceeding	2,000,000		250
Over \$2,000,000 and not exceeding	2,500,000		300
Over \$2,500,000 and not exceeding	3,000,000		350
Over \$3,000,000 and not exceeding	3,500,000		400
Over \$3,500,000 and not exceeding	4,000,000		450
Over \$4,000,000 and not exceeding	4,500,000		500
Over \$4,500,000 and not exceeding	5,000,000		550

For each additional \$500,000, \$40 in addition to \$550.

For purposes only of computing fees under this section, the dollar value of each authorized share having a par value shall be equal to par value and the value of each authorized share having no par value shall be equal to one hundred dollars per share. The maximum amount charged under this subdivision may not exceed sixteen thousand dollars.

#### FILING INSTRUCTIONS:

The application must be signed, in the presence of a notary public, by the chairman of the board of directors, or its president, or any other officer. One original and one photocopy of the application must be submitted.

The application must be accompanied by an original, currently dated, CERTIFICATE OF FACT or a CERTIFICATE OF GOOD STANDING from the Secretary of State in the state where incorporated. A photocopy of a certificate is not acceptable. It should be dated within ninety (90) days of submitting it to our office.

South Dakota law requires every corporation to continuously maintain a resident of this state as the registered agent (number six on the application). The registered agent's address is considered the registered office address of the corporation in South Dakota. A complete street address must be listed for service of process.

The Consent of Registered Agent portion must be signed by the South Dakota registered agent.

Mail the application, certificate, and filing fee to the Secretary of State, Corporate Division, 500 E. Capitol Avenue, Pierre, SD 57501-5070. The duplicate and a Certificate of Authority will be returned for your records.



CERTIFICATE OF INCORPORATION

of

TELERGY COMMUNICATIONS, INC.

Under Section 402 of the Business Corporation Law of the State of New York

The undersigned, being a natural person over sixteen years of age, for the purpose of forming a corporation under Section 402 of the Business Corporation Law, affirms the information set forth in this Certificate under the penalties of perjury:

FIRST: The name of the corporation is:

TELERGY COMMUNICATIONS, INC.

SECOND: The purposes for which this corporation is formed are to engage in any lawful acts or activities for which corporations may be organized under the Business Corporation Law of the State of New York, provided that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

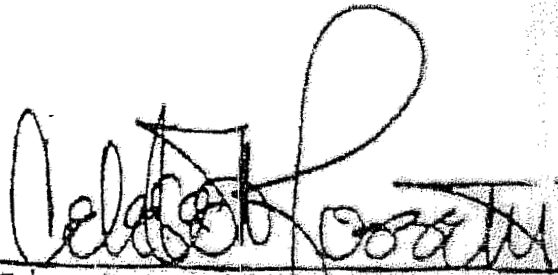
THIRD: The office of the corporation shall be located in Onondaga County, New York.

FOURTH: The aggregate number of shares which the corporation shall have authority to issue is 200 common shares without par value, all of which shall be of one class.

FIFTH: The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served against the corporation is One Telergy Parkway, East Syracuse, New York 13057.

SIXTH: Directors of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages because of their breach of duty as directors unless such liability is based upon a judgment or other final adjudication adverse to the director which establishes (i) that the director's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) that the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) that the director's acts violated Section 719 of the New York Business Corporation Law. If the New York Business Corporation Law is amended to authorize the further elimination or limitation of the liability of directors, the liability of a director of the corporation, in addition to the limitation on personal liability established by this Certificate shall be further limited to the fullest extent permitted by the amended New York Business Corporation Law.

IN WITNESS WHEREOF, I have signed this Certificate of Incorporation on this 26th day of May, 1998, and affirm under the penalties of perjury that the statements contained in this Certificate of Incorporation are true.

A handwritten signature in black ink, appearing to read 'Celeste A. Rossetti', written over a horizontal line.

Celeste A. Rossetti, Incorporator  
c/o Bond, Schoeneck & King, LLP  
111 Washington Avenue  
Albany, New York 12210

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

TELERGY COMMUNICATIONS, INC.

*Under Section 805 of the Business Corporation Law*

The undersigned, President and Secretary of Telergy Communications, Inc. (the "Corporation"), hereby certify:

1. The name of the Corporation is TELERGY COMMUNICATIONS, INC.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on May 26, 1998.
3. The Certificate of Incorporation is amended at paragraph "FIRST" as authorized by Section 801 of the Business Corporation Law to change the name of the Corporation to "TELERGY NETWORK SERVICES, INC."
4. Paragraph "FIRST" of the Certificate of Incorporation which refers to the corporate name is amended and substituted to read in full as follows:

"FIRST: The name of the corporation is: TELERGY NETWORK SERVICES, INC."

5. The Amendment to the Certificate of Incorporation was authorized by unanimous written consent of the Board of Directors followed by written consent of the sole Shareholder of the Corporation.

IN WITNESS WHEREOF, this certificate has been subscribed on the 8<sup>th</sup> day of  
June, 1998, by the undersigned who affirm that the statements made herein are true under the  
penalties of perjury.

*Sam Tilly*  
name: President

*Tim Tilly*  
name: Secretary

APPLICATION OF

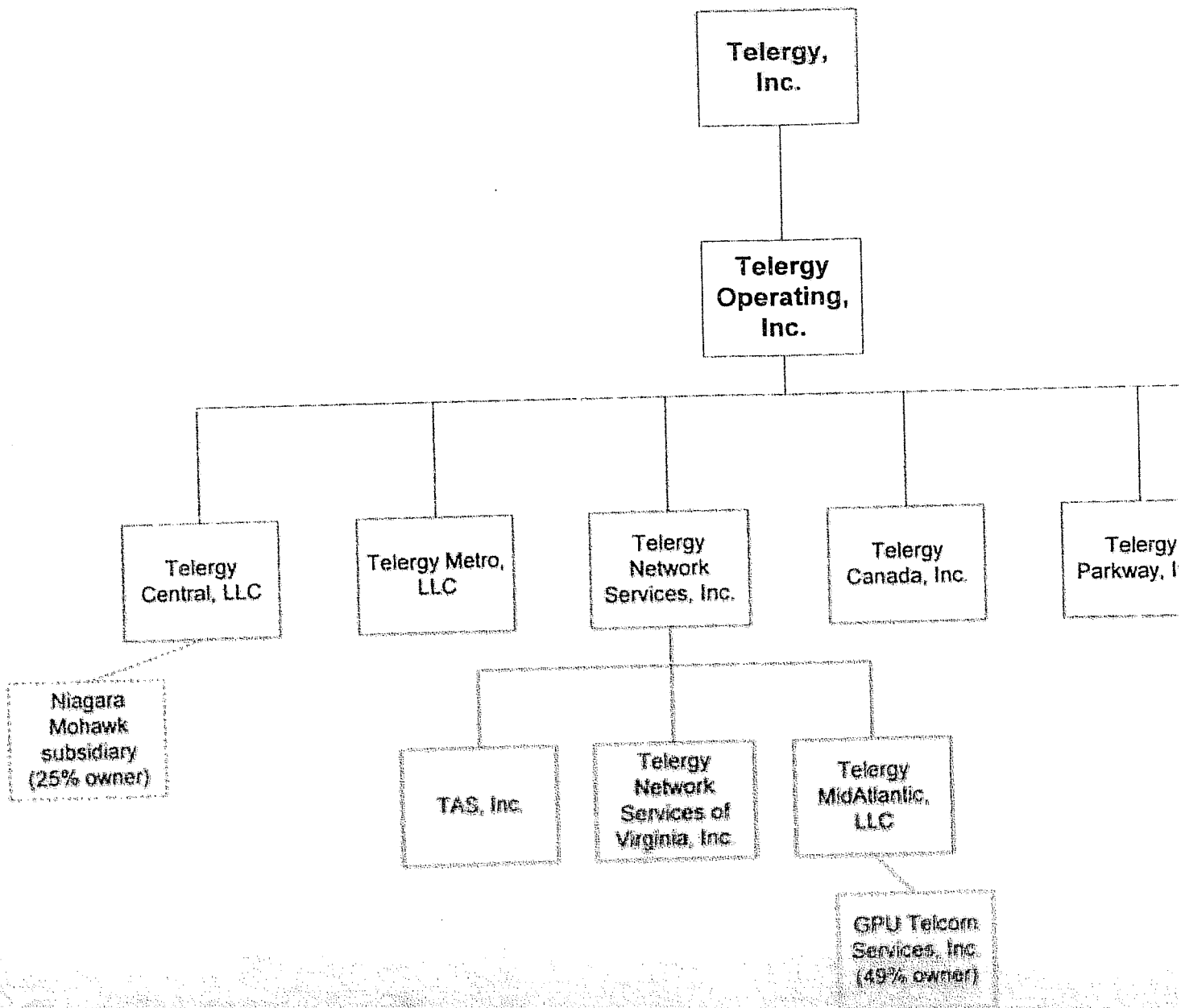
Telergy Network Services, Inc.

**Exhibit B**

Organization Chart

# CONTINUATION

1 -



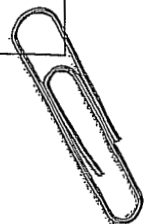


Continuation

# 2

# of pages

\_\_\_\_\_



ORIGINAL

APPLICATION OF

Telergy Network Services, Inc.

**Exhibit C**

Illustrative Long Distance Tariff

Specialized Common Carrier Service  
Regulations and Rates

of

**TELERGY NETWORK SERVICES, INC.**

This Tariff includes the rates, charges, terms and conditions of Service for the provision of Long Distance Switched Intrastate Telecommunications Services by TELERGY NETWORK SERVICES, INC. (hereinafter "Telergy" or "Company") between locations within the State of South Dakota.

---

Date of Issue:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

**CHECK SHEET**

The title page and pages of this Tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised pages, as named below, comprise all changes from the original Tariff and are currently in effect as of the date on the bottom of this page. This Tariff is for illustrative purposes only. Issue and effective dates are not applicable in this Tariff.

SECTION	PAGE	REVISION	SECTION	PAGE	REVISION
Title Page		Original	3	1	Original
Table of Contents	1	Original		2	Original
	2	Original		3	Original
Concurring Carriers		Original		4	Original
Tariff Format		Original		5	Original
Explanation of Symbols		Original		6	Original
1	1	Original		7	Original
	2	Original		8	Original
	3	Original		9	Original
	4	Original		10	Original
	5	Original		11	Original
	6	Original		12	Original
2	1	Original		13	Original
	2	Original		14	Original
	3	Original		15	Original
	4	Original		16	Original
	5	Original		17	Original
	6	Original	4	1	Original
	7	Original		2	Original
	8	Original		3	Original
	9	Original		4	Original
	10	Original		5	Original
	11	Original		6	Original
	12	Original		7	Original
	13	Original		8	Original
	14	Original		9	Original
	15	Original	5	1	Original
	16	Original	6	1	Original
	17	Original			

\*Denotes pages filed with this revision

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.

One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**TABLE OF CONTENTS**

	<u>Page</u>
TITLE PAGE	
CHECK SHEET	
TABLE OF CONTENTS	
CONCURRING, CONNECTING AND OTHER PARTICIPATING CARRIERS	
EXPLANATION OF SYMBOLS	
Section 1.0. DEFINITIONS.....	1
Section 2.0. RULES AND REGULATIONS	
2.1. Undertaking of Telergy.....	1
2.2. Use of Service.....	1
2.3. Description and Limitations of Services.....	2
2.4. Other Terms and Conditions.....	4
2.5. Liability.....	6
2.6. Cancellation of Service by a Customer.....	9
2.7. Cancellation for Cause by the Company.....	9
2.8. Minimum Period.....	12
2.9. Assignment or Transfer.....	12
2.10. Payment Arrangements.....	12
2.11. Tax Adjustments.....	13
2.12. Calculation of Distance.....	14
2.13. Recognized National Holidays.....	15
2.14. Special Customer Arrangements.....	15
2.15. Inspection.....	15
2.16. Testing and Adjustment.....	15
2.17. Interconnection with Other Carriers.....	15
2.18. Customer Provided Equipment.....	16
2.19. Restoration of Service.....	16
2.20. Flexible Pricing.....	16
2.21. Deposits.....	17
2.22. Advance Payments.....	17
2.23. Credit Allowances for Interruption of Service.....	17

Date of Issue:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
 One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

## TABLE OF CONTENTS (CONT'D)

	<u>Page</u>
Section 3.0. SERVICE DESCRIPTIONS AND RATES	
3.1. General.....	1
3.2. Timing of Calls.....	1
3.3. Switched and Dedicated Voice Services.....	2
3.4. Foreign Exchange Service.....	8
3.5. Digital Data Service.....	9
3.6. Private Line Service.....	11
3.7. Frame Relay Service.....	11
3.8. ATM Service.....	16
3.9. Non-Recurring Charges.....	17
Section 4.0. MISCELLANEOUS SERVICE OFFERINGS	
4.1. Pre-Paid Calling Card Service.....	1
4.2. Travel Card Services.....	2
4.3. School and Libraries Discount Program.....	4
4.4. Health Care Provider Support Program.....	6
4.5. Directory Assistance.....	9
4.6. Operator Services.....	9
Section 5.0. PROMOTIONS	
5.1. General.....	1
Section 6.0. CONTRACT SERVICES	
6.1. General.....	1

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**CONCURRING CARRIERS**

NONE

**CONNECTING CARRIERS**

NONE

**OTHER PARTICIPATING CARRIERS**

NONE

---

Date of Issue:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**TARIFF FORMAT**

Sheet Numbering – Sheet numbers appear in the upper right hand corner of the page. Sheets are numbered sequentially and from time to time new pages may be added to the Tariff. When a new page is added between existing pages, a decimal is added to the preceding page number. For example, a new page added between Sheets 3 and 4 would be numbered 3.1.

Paragraph Numbering Sequence – There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
- 2.1.
- 2.1.1.
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a).
- 2.1.1.A.1.(a).1.
- 2.1.1.A.1.(a).1.(i).
- 2.1.1.A.1.(a).1.(i).(1).

Check Sheets – When a Tariff filing is made with the Commission, an updated check sheet accompanies the Tariff filing. The check sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision; all revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it. The Tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.



**EXPLANATION OF SYMBOLS**

- (C) To signify changed listing, rule or condition which may affect rates or charges.
- (D) To signify discontinued material, including listing, rate, rule or condition.
- (I) To signify an increase.
- (M) To signify material relocated from or to another part of the Tariff schedule with no change in text, rate, rule or condition.
- (N) To signify new material including listing, rate, rule, or condition.
- (R) To signify reduction.
- (S) To signify reissued material.
- (T) To signify change in wording of text but not change in rate, rule or condition.
- (Z) To signify a correction.

---

**SECTION 1-DEFINITIONS**

For the purpose of this Tariff, the following definitions will apply:

Access Line

An arrangement which connects the Customer's telephone to a Telergy designated Switching Center or Point of Presence.

Alternate Access

Alternate Access is a form of Local Access except that the provider of the Service is an entity other than the Local Exchange Carrier, authorized or permitted to provide such Service. The charges for Alternate Access may be subject to private agreement rather than published or special Tariff if permitted by applicable governmental rules.

Authorization Code

A numerical sequence which enables a Customer to access the Carrier and which is used by the Company to identify the Customer for billing purposes.

Authorized User

A person, firm, corporation or other entity that either is authorized by the Customer to receive or send communications or is placed in a position by the Customer, either through acts or omissions, to send or receive communications.

Bandwidth

The total frequency band, in hertz, allocated for a channel.

Business Service

Service will be classified as Business Service where the use is primarily or substantially of a business, professional, institutional, or otherwise occupational nature. Determination as to whether or not a Customer's Service should be classified as Business will be based on the character or use to be made of the Service. The practice of advertising a telephone number in newspapers, business cards, or on trucks shall be a contributing, but not an exclusive factor in determining the classification of service.

Call

A completed connection between the Calling and Called Stations.

Called Station

The telephone number called.

Calling Card

A pre-paid Service which allows a customer to purchase minutes of long distance Service.

Calling Station

The telephone number from which a Call originates.

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**SECTION 1-DEFINITIONS (cont'd)**Central Office

An operating office of the Company where connections are made between telephone exchange lines.

Channel or Circuit

A dedicated communications path between two or more points having a bandwidth or Transmission Speed specified in this Tariff and selected by a Customer.

Commission

The South Dakota Public Utilities Commission.

Company or Carrier

Telergy Network Services, Inc. ("Telergy")

Customer

The person, firm, corporation or governmental unit which orders Service - either for its own use, as a resale Carrier or as a non-profit manager of a sharing group - and which is responsible for the payment of charges and for compliance with Company Tariff regulations. The term Customer also includes an entity that remains presubscribed to the Company Service after its account(s) are removed from the Company's billing system, subsequently continues to use the Company's network, and is billed by a Local Exchange Carrier for such use, or otherwise uses Service for which no other Customer is obligated to compensate the Company.

Customer Premises/Customer's Premises

Locations designated by a Customer where Service is originated/terminated whether for its own communications needs or for the use of its resale Customers.

Customer Provided/Premise Equipment (CPE)

Telecommunications equipment that is provided by the Customer and is located at the Customer's residence or place of business.

Dedicated Access/Special Access

Dedicated Local Access between the Customer's Premises or Serving Wire Center and the Company's Point of Presence for origination or termination of Calls.

DS-0

Digital Signal Level 0 Service using a 64 Kbps signal.

DS-1

Digital Signal Level 1 Service using a 1.544 Mbps signal.

---

SECTION 1-DEFINITIONS (cont'd)Due Date

The date on which payment is due.

Equal Access

A form of dialed access provided by Local Exchange Carriers whereby interexchange calls dialed by the Customer are automatically routed to the Company's network. Presubscribed Customers may also route interexchange calls to the Company's network by dialing an access code supplied by the Company.

Exemption Certificate

A written Customer designation which certifies that its dedicated facility should be exempted from the monthly Special Access Surcharge because the Service:

- (a) terminates on a device incapable of connecting Telergy's network with the local exchange network;
- (b) is associated with a Switched Access Service that is subject to Carrier Common Line charges;
- (c) constitutes a Private Line facility used for Telex Service or radio or television transmissions;
- (d) is an open-end termination in a Local Exchange Carrier's switch of an FX line; or
- (e) is a termination that could not make use of a Local Exchange Carrier's common lines.

Facilities

Includes, in the aggregate or otherwise, but is not limited to, the following:

Channels, lines, communications paths, apparatus, devices, systems, equipment, accessories.

FCC

Federal Communications Commission

Contract Services

Individual Case Basis (ICB) determinations involve situations where complex Customer-specific arrangements are required to satisfactorily serve the Customer. The nature of such Service requirements makes it difficult or impossible to establish general Tariff provisions for such circumstances. When it becomes possible to determine specific terms and conditions for such offerings, they will be offered pursuant to such terms and conditions.

Installation or Connection

The connection of a Circuit, Dedicated Access line, or port, or new, changed or additional Service.

Interexchange Service

That portion of a communications channel between a Telergy-designated Point of Presence in one exchange and a Point of Presence in another exchange.

---

Date of Issue:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 1-DEFINITIONS (cont'd)**

Interruption

A condition whereby the Service or a portion thereof is inoperative, beginning at the time of notice by the Customer to Telergy that such Service is inoperative and ending at the time of restoration.

Kbps

Kilobits per second.

LATA (Local Access Transport Area)

A geographic area established by the US District Court for the District of Columbia in Civil Action No. 17-49, within which a Local Exchange Carrier provides communication Services.

Local Access

The Service between a Customer Premises and a Telergy designated Point of Presence.

Local Access Provider

Local Access Provider means an entity providing Local Access.

Local Exchange Carrier (LEC)

The local telephone utility that provides local telephone, local exchange and access Services.

Mbps

Megabits per second.

Multiplexing

Multiplexing, or "muxing," is the sequential combining of lower bit rate Private Line Services onto a higher bit rate Private Line Service for more efficient facility capacity usage or vice versa.

NA

Not available.

NECA

National Exchange Carriers Association.

---

Date of Issue:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 1-DEFINITIONS (cont'd)**

Non-Recurring Charges

Non-Recurring Charges are one-time charges.

Point of Presence (POP)

A Company-designated location where a facility is maintained for the purpose of providing access to its Service.

Private Line

A dedicated transmission channel furnished to a Customer without intermediate switching arrangements for full-time Customer use.

Private Line Service

A dedicated full-time transmission Service utilizing Dedicated Access arrangements.

Rate Center

A specified geographical location used for determining mileage measurements.

Residence Service

Service will be classified as residence service where any business use is merely incidental and where the major use is of a social or domestic nature.

Restore

To make Service operative following an interruption by repair, reassignment, re-routing, substitution of component parts, or otherwise, as determined by the Carrier(s) involved.

Service

Service means any or all Service(s) provided pursuant to this Tariff.

Service Commitment Period

The term elected by the Customer and stated on the Service order during which Telergy will provide the Services subscribed to by the Customer.

Special Promotional Offerings

Special trial offerings, discounts, or modifications of its regular Service offerings which the Company may, from time to time, offer to its Customers for a particular Service. Such offerings may be limited to certain dates, times, and locations.

---

Date of Issue:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 1-DEFINITIONS (cont'd)**

Start of Service Date

The Requested Service Date or the date Service first is made available by Telergy, if different.

Switched Access Origination/Termination

Where access between the Customer and the Interexchange Carrier is provided on Local Exchange Carrier Feature Group circuit and the connection to the Customer is a LEC-provided Business or Residential access line. The cost of switched Feature Group access is billed to the Interexchange Carrier.

Tariff

The current Long Distance Intrastate Services Tariff and effective revisions thereto filed by Telergy with the Commission.

Travel Card

A card issued by the Company which enables a Telergy Customer to access the Telergy network from any touch tone phone by dialing Telergy's access number. Services charged to the Telergy Travel Card will be billed to the Customer's established Telergy account.

Travel Card Call

A service whereby the Customer or Authorized User dials all the digits necessary to route and bill a call placed from a location other than his/her residence or normal place of business. Service is accessed via a "1-800" (toll-free) or other access code dialing sequence.

Twelve O'clock

In designating time, 12:00 a.m. refers to 12:00 Midnight and 12:00 p.m. refers to 12:00 Noon.

United States

The forty-eight states contained within the mainland United States, the District of Columbia, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

VF

VF is voice frequency or voice-grade Service designed for Private Line Service. Normal transmission is in the 300 hertz to 3000 hertz frequency band.

---

**SECTION 2-RULES AND REGULATIONS****2.1. Undertaking of Telergy**

The Rules and Regulations set forth in this Tariff shall apply only to the extent not inconsistent with South Dakota Codified Law, including but not limited to SDCL 49-31-5 and Chapters 20:10:05 through 20:10:10 of South Dakota's Administrative Rules or other such Rules, Regulations or Orders of the Commission. In all respects, the Company agrees to comply with the South Dakota Codified Laws and all other Rules, Regulations or Orders of the Commission.

Telergy's services and facilities are furnished for communications originating within the United States under terms of this Tariff. The Company's services and facilities are available twenty-four (24) hours per day, seven (7) days per week. Telergy arranges for installation, operation, and maintenance of the communications services provided in this Tariff for Customers in accordance with the terms and conditions set forth under this Tariff. Telergy may act as the Customer's agent for ordering access connection facilities provided by other Carriers or entities, when authorized by the Customer, to allow connection of a Customer's location to the Telergy network.

**2.2. Use of Service**

Services provided under this Tariff may be used by the Customer for any lawful telecommunications purpose for which the service is technically suited.

2.2.1. The Services offered herein may be used for any lawful purpose, including Residential, Business, governmental, or other use. There are no restrictions on sharing or resale of Services. However, the Customer remains liable for all obligations under this Tariff notwithstanding such sharing or resale and regardless of the Company's knowledge of same. THE COMPANY SHALL HAVE NO LIABILITY TO ANY PERSON OR ENTITY OTHER THAN THE CUSTOMER AND ONLY AS SET FORTH IN THIS TARIFF. The Customer shall not use or permit others to use the Service in a manner that could interfere with or degrade Services provided to others or that could harm the facilities or network of the Company or others.

2.2.2. Service furnished by the Company may be arranged for joint use or authorized use. The joint user or authorized user shall be permitted to use such Service in the same manner as the Customer, but subject to the following:

2.2.2.A. One joint user or authorized user must be designated as the Customer; and

2.2.2.B. All charges for the Service will be computed as if the Service were to be billed to one Customer. The joint user or authorized user which has been designated as the Customer will be billed for all components of the Service and will be responsible for all payments to the Company. In the event that the designated Customer fails to pay the Company, each joint user or authorized user shall be liable to the Company for all charges incurred as a result of its use of the Company's Service.

---

**Date of Issue:****Issued By:**

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**Effective Date:**



---

**SECTION 2-RULES AND REGULATIONS**

**2.2. Use of Service (cont'd)**

- 2.2.3. In addition to the other provisions in this Tariff, Customers reselling Company Services shall be responsible for all interaction and interface with their own subscribers or Customers. The provision of the Service will not create a partnership or joint venture between Telergy and the Customer, and will not result in a joint communications Service offering to the Customers of either Telergy or the Customer.
- 2.2.4. Service furnished by the Company shall not be used for any unlawful or fraudulent purposes.
- 2.2.5. The Customer will be billed directly by the LEC for certain Dedicated Access arrangements selected by the Customer for the provisioning of direct access arrangements. In those instances where the Company, at the Customer's request may act as agent in the ordering of such arrangements, the Company will bill the Customer Local Access charges.
- 2.2.6. Any Customer who obtains Service from the Company for the Customer's provision of a regulated or unregulated service to a Customer's clients or patrons, shall acquire sufficient facilities to support the Customer's service offering without exploiting the Company's Services or Facilities and without degrading the Company's Service or impairing the integrity of the Company's Network and Facilities.

**2.3. Description and Limitations of Services**

- 2.3.1. Services provided pursuant to this Tariff may be utilized only for the transmission of communications by Customers consistent with the terms of this Tariff, the Rules and Regulations of the Commission, and the requirements of the Communications Act of 1934, as amended.
- 2.3.2. The Company may require a Customer to sign an Application Form and to establish credit worthiness as a condition precedent to the initial establishment of Service. The Application shall state the date on which Service shall begin and type of service, the type of facilities required, and any special arrangements related thereto.
- 2.3.3. Any member of the general public (including any natural person or legally organized entity such as a corporation, partnership, or governmental body) is entitled to obtain Service under this Tariff, provided that Telergy reserves the right to deny Service: (A) to any Customer that, in Telergy's reasonable opinion, presents an undue risk of nonpayment and refuses to comply with the deposit requirements set forth in Section 2.10.C in circumstances in which Telergy has reason to believe that the use of the Service would violate the provisions of this Tariff or any applicable Law or if any applicable Law restricts or prohibits provision of the Service; or (B) if insufficient

---

**SECTION 2-RULES AND REGULATIONS****2.3. Description and Limitations of Services (Cont'd)****2.3.3. (cont'd)**

facilities are available to provide the Service (in such cases Telergy shall take reasonable efforts to accommodate the needs of all potential Customers by means of facility improvements or purchases of capacity, if such efforts will, in Telergy's opinion, provide Telergy with a reasonable return on its expenditures), but only for so long as such unavailability exists.

2.3.4. Telergy, when acting at the Customer's request and as its authorized agent, will make reasonable efforts to arrange for service requirements, such as Special Routing, Diversity, Alternate Access, or Circuit Conditioning.

2.3.5. Service is offered in Equal Access exchanges subject to the availability of facilities and the provisions of this Tariff. Telergy reserves the right to refuse to provide Service to or from any location where the necessary facilities and/or equipment are not available.

2.3.6. Service may be discontinued upon written notice to the Customer if:

2.3.6.A. The Customer is using the Service in violation of this Tariff; or

2.3.6.B. The Customer is using the Service in violation of the Law or Federal, State or Local Regulations, Rules, Orders or Policies.

2.3.7. Service begins on the date that billing becomes effective and is provided on the basis of a minimum period of at least one (1) month, twenty-four (24) hours per day. For the purposes of computing charges in this Tariff, a month is considered to have thirty (30) days.

2.3.8. Service will be provided until canceled by the Customer. The Customer may cancel service at any time upon notice to the Company, consistent with the Commission's Rules and Regulations and the terms of the Tariff and/or any applicable contract.

2.3.9. Nothing herein, or in any other provision of this Tariff, or in any marketing materials issued by the Company, shall give any person any ownership, interest, or proprietary right in any code or 800 or other number issued by the Company to its Customers.

2.3.10. The Company reserves the right to discontinue furnishing Services or billing options, upon written notice, when necessitated by conditions beyond its control. Conditions beyond the Company's control include, but are not limited to, a Customer's having call volume or a calling pattern that, in the Company's opinion, is likely to be detrimental to the network or the Company's provision of Service or that results, or may result, in network blockage or other Service degradation which may adversely affect Service to the calling party, the Customer, or other subscribers of the Company.

---

**SECTION 2-RULES AND REGULATIONS****2.3. Description and Limitations of Services (cont'd)**

- 2.3.11. Service may be discontinued by the Company, without notice to the Customer, by blocking traffic to or from certain cities, or NXX exchanges, or by blocking calls using certain Customer authorization codes such as Calling Card codes, when the Company deems it necessary to take such action to prevent unlawful use of its Service, to prevent Service degradation to other subscribers of the Company, and to ensure the integrity and reliability of the network. The Company will restore Service as soon as it can be provided without undue risk.
- 2.3.12. Except as otherwise provided in this Tariff or as specified in writing by the party entitled to receive Service from the Company, notices may be given orally or in writing to the person or persons whose name(s) and Business address(es) appear on the executed Service order by personal service or regular mail. By written notice, Telergy or the Customer may change the party to receive notice and/or the address to which such notice is to be delivered. In the event no Customer or Telergy address is provided in the executed Service order, notice shall be given to the last known Business address of the Customer or Telergy, as appropriate.
- 2.3.13. The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connection.
- 2.3.14. The Company reserves the right to discontinue service, limit service, or to impose requirements on Customers as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material affect on the Business or economic feasibility of providing service, as determined by Telergy in its reasonable judgment.

**2.4. Other Terms and Conditions**

- 2.4.1. The name(s) of the Customer(s) desiring to use the Service must be stipulated in the application for Service.
- 2.4.2. The Customer agrees to operate the Company provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void the Company liability for interruption of Service and may make the Customer responsible for damage to equipment pursuant to Section 2.4. below.
- 2.4.3. The Customer agrees to return to the Company all Company-provided equipment delivered to the Customer within five (5) days of termination of the Service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to the Customer, normal wear and tear only expected. The Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to the Customer's failure to comply with this provision.

---

Date of Issue:  
Issued By:Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

SECTION 2-RULES AND REGULATIONS

## 2.4. Other Terms and Conditions (cont'd)

- 2.4.4. A Customer shall not use any service mark or trademark of the Company or refer to the Company in connection with any product, equipment, promotion, or publication of the Customer without prior written approval of the Company.
- 2.4.5. In the event suit is brought or an attorney is retained by the Company to enforce the terms of this Tariff, the Company shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, Court costs, costs of investigation and other related expenses incurred in connection therewith. In any such proceeding, the amount of collection costs, including attorneys' fees, due the Carrier will be determined by the Court.
- 2.4.6. The provision of Service will not create a partnership or joint venture between the Company and the Customer nor result in joint Service offerings to their respective Customers.
- 2.4.7. The rate or volume discount level applicable to a Customer for a particular Service or Services shall be the rate or volume discount level in effect at the beginning of the monthly billing period applicable to the Customer for the particular Service or Services. When a Service is subject to a minimum monthly charge, a Recurring Charge or Non-Recurring charge for Intrastate Service, only one (1) such charge shall apply per account and that charge shall be the Intrastate charge. In the event that Service was provided for less than a month, monthly recurring charges will be pro-rated.
- 2.4.8. Service requested by the Customer and to be provided pursuant to this Tariff, shall be requested on Company Service Order forms in effect from time to time (collectively referred to as "Service Orders").
- 2.4.9. If an entity other than the Company (e.g., another Carrier or a supplier) imposes charges on the Company in connection with a Service provided to the Customer, that entity's charges will be passed through to the Customer.
- 2.4.10. The Service Commitment Period for any Service shall be established by the Service Order relevant thereto and commence on the Start of Service Date. Upon expiration, each Service Commitment Period for such Service shall automatically be extended unless a written notice of termination by either Company or the Customer is sent to the other party. The charges for Interexchange Service during any such extension shall not exceed the then current Company month-to-month charges applicable to such Service.

---

Date of Issue:  
Issued By:Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.5. Liability**

- 2.5.1. Except as provided otherwise in this Tariff, the Company shall not be liable to the Customer or any other person, firm or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any Law, Order, Regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, preemption of existing Services to restore service in compliance with the Commission's Rules and Regulations, or circumstances described in this Section.
- 2.5.2. With respect to the Services contained herein and except as otherwise provided herein, the Company's liability shall not exceed an amount equal to the charge applicable to a one (1) minute Call to the Called Station at the time the affected Call was made. If the initial minute rate is higher than the additional minute rate, the higher rate shall apply. For those Services with monthly recurring charges, the Company's liability is limited to an amount equal to the proportionate monthly recurring charges for the period during which Service was affected.
- 2.5.3. The Company is not liable for any act or omission of any other Company or Companies, including any Company affiliate, that is a participating or concurring Carrier, furnishing a portion of the Service or facilities, equipment, or Services associated with such Service.
- 2.5.4. The Customer is responsible for taking all necessary legal steps for interconnecting the Customer-provided terminal equipment with the Company facilities. The Customer shall ensure that the signals emitted into the Company's network do not damage Company equipment, injure personnel or degrade Service to other Customers. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall comply with applicable LEC signal power limitations.
- 2.5.5. The Company may rely on Local Exchange Carriers or other third parties for the performance of other Services such as Local Access. Upon the Customer's request and execution and delivery of appropriate authorizing documents, the Company may act as agent for the Customer in obtaining such other Services. The Customer's liability for charges hereunder shall not be reduced by untimely Installation or non-operation of Customer provided facilities and equipment.
- 2.5.6. The failure to give notice of default, to enforce or insist upon compliance with any of the terms or conditions herein, the waiver of any term or conditions herein, or the granting of an extension of time for performance by the Company or the Customer, shall not constitute the permanent waiver of any term or condition herein. Each of the provisions shall remain at all times in full force and effect until modified in writing.

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.5. Liability (cont'd)**

2.5.7. The Company shall not be liable to the Customer or any other person, firm or entity in any respect whatsoever as a result of mistakes, accidents, errors, omissions, interruptions, delays, or defects in Service (collectively "Defects"). Defects caused by or contributed to, directly or indirectly, by act or omission of the Customer or its Customer(s), affiliate(s), agent(s), representative(s), invitee(s), licensee(s), successor(s) or assign(s), or which arise from or are caused by the use of facilities or equipment of Customer or related parties, shall not result in the imposition of any liability whatsoever upon the Company, and the Customer shall pay to the Company any reasonable costs, expenses, damages, fees or penalties incurred by the Company as a result thereof, including costs of Local Access Providers' labor and materials. In addition, all or a portion of the Service may be provided over facilities of third parties, and the Company shall not be liable to the Customer or any other person, firm or entity in any respect whatsoever arising out of Defects caused by such third parties. THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR BUSINESS INTERRUPTION, FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF ANY DEFECTS OR ANY OTHER CAUSE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS TARIFF, THE COMPANY'S TOTAL LIABILITY, IF ANY, WITH REGARD TO THE DELAYED INSTALLATION OF THE COMPANY'S FACILITIES OR COMMENCEMENT OF SERVICE SHALL NOT EXCEED ONE THOUSAND DOLLARS (\$1,000). THIS WARRANTY AND THESE REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF AN INTERRUPTION IN SERVICE, OR ANY DEFECT IN THE SERVICE WHATSOEVER, NEITHER TELERGY NOR ANY AFFILIATED OR UNAFFILIATED THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF THE SERVICE, SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER.

Date of Issue:  
Issued By:Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.5. Liability (cont'd)**

- 2.5.8. In the event of routing of Calls by Telergy to public safety answering points or municipal Emergency Service providers, Telergy's total liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by the Customer as the direct result of Telergy's action, or failure to act, in routing the call; or (b) the sum of One Thousand Dollars (\$1,000.00).
- 2.5.9. In the event parties other than the Customer (e.g., Customer's clients/patrons) shall have use of the Service directly or indirectly through the Customer, then the Customer agrees to forever indemnify and hold Telergy and any affiliated or unaffiliated third-party provider or Operator of facilities employed in provision of the Service harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties arising out of or relating to any Defects.
- 2.5.10. In the event that Telergy is required to perform a Circuit redesign due to inaccurate information provided by the Customer or, circumstances in which such costs and expenses are caused by the Customer or reasonably incurred by Telergy for the benefit of the Customer, the Customer is responsible for the payment of all such charges.
- 2.5.11. Telergy is not liable for any defacement of, or damage to, the premises of a Customer resulting from the furnishing of services or the attachment of instruments, apparatus, and assorted wiring furnished by Telergy on such Customer's premises or by the installation or removal thereof, when such defacement or damage is not the result of Telergy's negligence. No agents or employees of other participating Carriers shall be deemed to be agents or employees of Telergy without authorization.
- 2.5.12. The Customer shall indemnify, defend and hold harmless the Company, including the costs of reasonable attorney's fees, against:
- 2.5.12.A. Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content transmitted over the Company's facilities or equipment;
  - 2.5.12.B. Claims for patent infringement arising from combining or connecting the Company's facilities or equipment with facilities, equipment, apparatus or systems of the Customer; and
  - 2.5.12.C. All other claims, including, without limitation, claims for damage to any Business or property, or injury to, or death of, any person, arising out of any act or omission of the Customer, the Customer's agents or Authorized Users, in connection with any service or facilities or equipment provided by the Company.

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.6. Cancellation of Service by a Customer**

- 2.6.1. The Customer may have service discontinued upon written notice to the Company. The Company shall hold the Customer responsible for payment of all bills for service furnished until the cancellation date specified by the Customer or until the date that the written cancellation notice is received, whichever is later.
- 2.6.2. If a Customer cancels a Service Order before the Service begins, before completion of the minimum period, or before completion of some other period mutually agreed upon by the Customer and the Company, a charge will be levied upon the Customer for the nonrecoverable portions of expenditures or liabilities incurred expressly on behalf of the Customer by the Company and not fully reimbursed by Installation and monthly charges. If, based on a Service Order by a Customer, any construction has either begun or been completed, but no Services provided, the nonrecoverable costs of such construction shall be borne by the Customer. If a Customer has entered into a Term Contract with the Company, i.e. a contract for 1, 2 or 3 years or some other specified Term, and cancels service before the expiration of the Term, the Customer shall be assessed a termination charge unless a new contract is entered into by the Customer and the Company. Unless otherwise provided in this Tariff, the termination charge shall be equal to fifty percent (50%) of the average monthly billings for the prior six (6) months multiplied by the number of months remaining on the Term. Notwithstanding the above, a cancellation charge may or may not be assessed, if at the time of cancellation, the Customer and the Company are able to negotiate modified terms acceptable to the Company.

**2.7. Cancellation for Cause by the Company**

- 2.7.1. Upon nonpayment of any sum owing to the Company, or upon a violation of any of the provisions governing the furnishing of Service under this Tariff, the Company may, upon written notification to the Customer, without incurring any liability, discontinue the furnishing of such Service. Customer shall be deemed to have canceled Service as of the date of such disconnection and shall be liable for any cancellation charges set forth in this Tariff.
- 2.7.2. Without incurring any liability, the Company may discontinue the furnishing of Service(s) to a Customer immediately and without notice if, consistent with Commission Rules and Regulations, the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Services under the following circumstances:
- 2.7.2.A. If the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of common Carrier communications Services or its planned use of Service(s),
- 2.7.2.B. If the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of

---

Date of Issue:  
Issued By:Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:



---

**SECTION 2-RULES AND REGULATIONS****2.7 Cancellation for Cause by the Company (cont'd)****2.7.2.B. (cont'd)**

Customer communications Services, or its planned use of the Company Service(s);

2.7.2.C. If the Customer states that it will not comply with a request of the Company for reasonable security for the payment for Service(s);

2.7.2.D. If the Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's communications Services to which the Customer either subscribes or had subscribed or used;

2.7.2.E. Immediately upon written notice to the Customer of any sum thirty (30) days past due;

2.7.2.F. For Dishonored Checks, the Customer whose check or draft is returned unpaid for any reason, after two (2) attempts at collection, shall be subject to discontinuance of service in the same manner as provided for nonpayment of overdue charges;

2.7.2.G. For Lack of Use, the Company, by written notice to the Customer, may discontinue service in the same manner as provided for nonpayment of overdue charges if after sixty (60) days the service has not been used;

2.7.2.H. For any violation of Law or of any of the provisions governing the furnishing of service under this Tariff, the Customer shall be subject to discontinuance of service, without notice, for any violation of any Law, Rule, Regulation or Policy of any government authority having jurisdiction over service, or by reason of any Order or decision of a Court or other government authority having jurisdiction which prohibits the Company from furnishing such service;

2.7.2.I. For the Company to comply with any Order or request of any governmental authority having jurisdiction, the Customer shall be subject to discontinuance of service, without notice, for the Company to comply with any order or request of any governmental authority having jurisdiction;

2.7.2.J. For unauthorized or unlawful use of Travel Service numbers and Authorization Codes: Travel Service numbers and Authorization Codes are issued only by the Company to the Customer and may not be sold or otherwise distributed without the written consent of the Company. Any unauthorized or unlawful use of such numbers or codes shall result in the immediate termination of service without notice;

---

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.7 Cancellation for Cause by the Company (cont'd)**

- 2.7.3. The discontinuance of Service(s) by the Company pursuant to this Section does not relieve the Customer of any obligations to pay the Company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein shall not be exclusive and the Company shall, at all times, be entitled to all rights available to it under either Law or Equity;
- 2.7.4. The liability of the Company for damages of any nature arising from errors, mistakes, omissions, interruptions, or delays of the Company, its agents, servants, or employees, in the course of establishing, furnishing, rearranging, moving, terminating, maintaining, restoring, or changing the service or facilities or equipment shall not exceed an amount equal to the charges applicable under this Tariff (calculated on a proportionate basis where appropriate) to the period during which such error, mistake, omission, interruption or delay occurs;
- 2.7.5. In no event shall the Company be liable for any incidental, indirect, special, or consequential damages (including lost revenue or profits) or any kind whatsoever regardless of the cause or foreseeability thereof;
- 2.7.6. When the services or facilities of other common Carriers are used separately or in conjunction with the Company's facilities or equipment in establishing connection to points not reached by the Company's facilities or equipment, the Company shall not be liable for any act or omission of such other common Carriers or their agents, servants or employees;
- 2.7.7. If the Company is prohibited, by governmental authority, from furnishing any Service or portion thereof, or if any material rate or term contained herein and relevant to the affected Service is substantially changed by Order of the highest Court of competent jurisdiction to which the matter is appealed, the Commission, or other Local, State or Federal government authority, upon thirty (30) days prior written notice, the Company shall have the right, without liability, to cancel the affected portion of the Service;
- 2.7.8. If Service has been discontinued for nonpayment or as otherwise provided herein and the Customer wishes that Service be continued, then the Service shall, at the Company's discretion, be restored when all past due amounts are paid or the event giving rise to the discontinuance (if other than nonpayment) is corrected. A Service Order Charge may apply.

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.8. Minimum Period**

The minimum period for which services are provided and for which rates and charges are applicable is one (1) month unless otherwise specified in this Tariff or mutually agreed to by contract. When a Service is discontinued prior to the expiration to the minimum period, charges are applicable, whether the Service is used or not.

**2.9 Assignment or Transfer**

All Service(s) provided under this Tariff is directly or indirectly controlled by the Company and neither the Customer nor its Authorized Users may transfer or assign the use of Service without the express prior written consent of the Company. Such transfer or assignment shall only apply where there is not interruption of the use or location of the Service. All terms and conditions contained in this Tariff shall apply to all such permitted transferees or assignees, as well as all conditions of Service.

**2.10. Payment Arrangements**

2.10.1. The Customer is responsible for payment of all charges for Services furnished to the Customer or its joint or authorized users. This responsibility is not changed due to any use, misuse, or abuse of the Customer's Service or Customer-provided equipment by third parties, the Customer's employees, or the public.

2.10.2. The Company's bills are due upon receipt. Amounts not paid within thirty (30) days from the date of the invoice will be considered past due. Customers will be assessed a late fee on past due amounts in the amount of the lesser of one and one-half percent (1 1/2%) per month or the maximum lawful rate under applicable State Law. If a Customer presents an undue risk of nonpayment at any time, the Company may require a deposit or other conditions for continued service. Customers will be charged a fee of \$25.00 for checks returned from the bank unpaid.

2.10.3. Unless prohibited by law, in determining whether a Customer presents an undue risk of nonpayment, the Company may consider the following factors:

- 2.10.3.A. The Customer's payment history (if any) with the Company and its affiliates;
- 2.10.3.B. The Customer's ability to demonstrate adequate ability to pay for the Service;
- 2.10.3.C. The credit and related information provided by the Customer, lawfully obtained from third parties or publicly available; and
- 2.10.3.D. The information relating to the Customer's management, owners and affiliates (if any).

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

SECTION 2-RULES AND REGULATIONS

## 2.10. Payment Arrangements

## 2.10.3. (cont'd)

Customers who present such an undue risk may be required at any time to provide the Company a security deposit, in cash or the equivalent of cash, up to an amount equal to the applicable Installation Charges, if any, and/or up to two (2) months actual or estimated Usage Charges for the Service to be provided. Such applicants or Customers may also be required, at anytime, whether before or after the commencement of Service, to provide such other assurances of, or security for, the payment of the Company's charges for its Services as the Company may deem necessary, including, without limitation, advance payments for Service, third party guarantees of payment, pledges or other grants of security interests in the Customer's assets, and similar arrangements. The required deposit or other security may be increased or decreased by the Company, as it deems appropriate, in the light of changing conditions. In addition, the Company shall be entitled to require such an applicant or Customer to pay all of its bills within a specified period of time, and to make such payments in cash or the equivalent of cash. Interest on cash deposits will be paid or credited to the Customer's account while the deposit is held by the Company, at the prevailing rate(s) set by the Commission. Such deposit may be refunded to the Customer's account and will be available annually upon demand of the Customer.

2.10.4. Disputes with respect to charges must be presented to the Company in writing within thirty (30) days from the date the invoice is rendered or such invoice will be deemed to be correct and binding on the Customer. If a bank returns a check or draft that a Customer has submitted for payment of charges, the Customer will be charged a fee of \$25.00 dishonored check charge.

2.10.5. If a LEC charges the Company a Special Access surcharge, the Company will bill the Customer the surcharge beginning on the effective date of such surcharge for Special Access arrangements presently in Service. The Company will cease billing the Special Access surcharge upon receipt of an Exemption Certificate or if the surcharge is removed by the LEC.

2.10.6. In the event the Company incurs fees or expenses, including attorneys' fees, in collecting or attempting to collect any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

## 2.11. Tax Adjustments

2.11.1. All stated charges in this Tariff are computed by the Company exclusive of any Federal, State, or Local use, excise, gross receipts, sales or privilege taxes, duties, fees, or similar liabilities (other than general income or property taxes) whether charged to or against the Company or its Customer. Such taxes, fees, etc. shall be paid by the Customer in addition to the charges stated in this Tariff. All such taxes, duties, and fees shall each be shown as a separate line item on the Customer's monthly invoice.

---

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-1749

Effective Date:

## SECTION 2-RULES AND REGULATIONS

### 2.11. Tax Adjustments (cont'd)

2.11.2. A surcharge is imposed on all charges for Service originating at addresses in states which levy a gross receipts tax on the Company's operations. This surcharge is composed of a factor of the gross receipts tax and taxes imposed directly or indirectly upon the Company as measured by the gross receipts payments or revenues of intrastate access charge and will be shown as a separate line item on the Customer's monthly invoice.

### 2.12. Calculation of Distance

Usage charges for all mileage sensitive products are based on the airline distance between servicing wire centers associated with the originating and terminating points of call.

The servicing wire centers of a call are determined by the area codes and exchanges of the origination and destination points.

Airline mileage, where mileage is the basis for rating calls, is obtained by using the "V" and "H" coordinates assigned to each rate center and contained in AT&T Tariff FCC No. 10 and NECA Tariff FCC No. 4 or successor Tariffs. To determine the airline distance between any two (2) locations, proceed as follows:

- 2.12.1. Obtain the "V" and "H" coordinates for each location. The "V" coordinate is the first four (4) digits in the "VH" column. The "H" coordinate is the next four (4) digits.
- 2.12.2. Obtain the difference between the "V" coordinates of each of the locations. Obtain the difference between the "H" coordinates.
- 2.12.3. Square each difference obtained in step B. above.
- 2.12.4. Add the square of the "V" difference and the "H" difference obtained in step C. above.
- 2.12.5. Divide the sum of the square by ten (10). Round to the next higher whole number, if any fraction is obtained.
- 2.12.6. Obtain the square root of the whole number result obtained above. Round to the next higher whole number if any fraction is obtained. This is the airline mileage.

Formula:

$$\sqrt{\frac{(V_1 V_2)^2 + (H_1 H_2)^2}{10}}$$

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:

---

**SECTION 2-RULES AND REGULATIONS****2.13. Recognized National Holidays**

The following are the Company's Recognized National Holidays determined at the location of the calling station:

New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day

**2.14. Special Customer Arrangements**

In cases where a Customer requests a special or unique arrangement, which may include engineering, conditioning, installation, construction, facilities, assembly, purchase or lease of facilities and/or other special Services not offered under this Tariff, the Company, at its option, may provide the requested Services. Appropriate recurring charges and/or non-recurring charges and other terms and conditions will be developed for the Customer for the provisioning of such arrangements.

**2.15. Inspection**

The Company may, upon notice, make such tests and inspections as may be necessary to determine that the requirements of this Tariff are being complied with in the installation, operation or maintenance of Customer or Company equipment. The Company may interrupt the Service at any time, without penalty to the Customer, because of departure from any of these requirements.

**2.16. Testing and Adjustment**

Upon reasonable notice, the Channels provided by the Company shall be made available to the Company for such tests and adjustments as may be necessary to maintain them in satisfactory condition; no interruption allowance will be granted for the time during which such tests and adjustments are made.

**2.17. Interconnection with Other Carriers**

2.17.1. Service furnished by the Company may be interconnected with Services or facilities of other authorized communications common Carriers and with private systems, subject to technical limitations established by the Company. Service furnished by the Company is not part of a joint undertaking with such other common Carriers or systems. The Company does not undertake to provide any special facilities, equipment, or Services to enable the Customer to interconnect the facilities or the equipment of the Company with Services or facilities of other common Carriers or with private systems.

---

## SECTION 2-RULES AND REGULATIONS

### 2.17. Interconnection with Other Carriers (cont'd)

2.17.2. Interconnection with the Services or facilities of other common Carriers shall be under the applicable terms and conditions of this Tariff and the other common Carrier's Tariffs or under contract.

### 2.18. Customer-Provided Equipment

The Company's Service and facilities may be used with or terminated in terminal equipment or communications systems such as a CSU, Multiplexer, PBX, key system, single line telephone, or pay telephone. Such terminal equipment shall be furnished and maintained at the expense of the Customer. The Customer is responsible for all costs at its premises, including personnel, wiring, electrical power, and the like incurred in the use of the Company's service. When such terminal equipment is used, the equipment shall comply with the generally accepted minimum protection criteria standards of the telecommunications industry.

### 2.19. Restoration of Service

The use and restoration of Service in emergencies shall be in accordance with the Federal Communications Commission's Rules and Regulations to the extent it is applicable, which specifies the priority system for such activities.

### 2.20. Flexible Pricing

Unless otherwise prohibited by Law, Flexible Pricing sets minimum and maximum rates that can be charged for telephone service. The Company may change a specific rate within the range of the established minimum and maximum rates on one (1) day's notice to Customers and the South Dakota Public Utilities Commission.

Conditions:

- 2.20.1. The Company reserves the right to change prices at any time subject to regulatory requirements by filing a revised Rate Attachment with the Commission.
- 2.20.2. Individual written notice to Customers of rate changes shall be made in accordance with Commission Rules and Regulations. Where there are no Rules and Regulations, notification will be made in a manner appropriate to the circumstances involved.
- 2.20.3. A rate shall not be changed unless it has been in effect for at least thirty (30) days.
- 2.20.4. A Customer can request that the Company disconnect service that is provided under the Flexible Pricing due to a price increase. The Customer will be credited for the difference between the new price and the old price retroactive to the effective date of the price increase if the Customer notifies the Company of its desire to disconnect service within twenty (20) days of receiving notification of the price increase.

---

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:



---

**SECTION 2-RULES AND REGULATIONS****2.21. Deposits**

Consistent with the Law(s) and the Commission's Rules and Regulations, the Company reserves the right to examine the credit record of the Customer. If the Customer's financial condition is unknown or unacceptable to the Company, the Customer may, in certain circumstances, be required to provide the Company with a security deposit, which the Company may apply against overdue charges. The amount of the security deposit shall not exceed two (2) month's estimated usage, may vary with the Customer's credit history and projected usage, and be collected and maintained in accordance with the Commission Rules and Regulations. The fact that a security deposit has been made in no way relieves the Customer from the prompt payment of bills upon presentation.

Interest on cash deposits will be paid or credited to the Customer's account while the deposit is held by the Company, at the prevailing rate(s) set by the Commission.

**2.22. Advance Payments**

For Customers from whom the Company determines an advance payment is necessary, Telergy reserves the right to collect an amount not to exceed two (2) month's estimated charges as an advance payment for service. This will be applied against the next month's charges and a new advance payment may be collected for the next month, if necessary.

**2.23. Credit Allowances for Interruption of Service**

Credit allowances for interruptions of Service which are not due to the Company's inspection or testing, to the negligence of the Customer, or to the failure of channels, equipment and/or communications systems provided by the Customer, are subject to the general liability provisions set forth in this Tariff.

It shall be the obligation of the Customer to notify the Company immediately of any interruption in service for which a credit allowance is desired by the Customer. Before giving such notice, the Customer shall ascertain that the trouble is not within its control, or is not in wiring or equipment, if any, furnished by the Customer.

For the purposes of credit computation, every month shall be considered to have thirty (30) days. The Customer shall be credited for an interruption of one (1) day (24 hours) or more at the rate of 1/30<sup>th</sup> of the monthly charge for the services affected for each day that the interruption continues.

Credit Formula:

$$\text{Credit} = A/30 \times B$$

A= outage time in days

B= total monthly charge for affected service

---

Date of Issue:

Issued By:

Brian P. Kelly, as President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

Effective Date:



---

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES****3.1. General**

Telergy offers Switched and Dedicated Service including direct dialed (1+) Services, 800 Services, Foreign Exchange Services, and Data Services. Telergy also offers special programs including Travel Card Service, pre-paid Calling Cards, a college 800 Service program, term and volume discount programs, and a discount program for Schools and health care providers. All the Services are for use with communications originating and terminating within the United States under the terms of this Tariff.

Direct dial Service is offered from originating locations within the mainland United States, Alaska, Hawaii, Puerto Rico and the U.S Virgin Islands.

Inbound toll-free Service is available to Customers served from locations within the mainland United States. Originating locations for calls placed to the Company's toll-free number Services must be within the mainland United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

Customers are billed based on their use of Telergy's network and/or services. Charges may vary by service offering, mileage band, class of Call, and/or Call duration.

**3.2. Timing of Calls**

3.2.1. Long distance usage charges are based on the actual usage of Telergy's network. When the called party picks up a Call is determined by hardware answer supervision in which the local Telephone Company sends a signal to the switch or the software utilizing audio-tone detection. For billing purposes, Calls are billed on conversation minutes and begin when the called party answers and ends when the calling party hangs up. No charge will apply to incomplete Calls, which include "ring busy" and "ring no answer" Calls, and such incomplete Calls will not be knowingly charged to the Customer and, if charged in error, will be refundable to the Customer. Telergy will determine that a Call has been established by signal from the local Telephone Company.

3.2.2. Unless otherwise stated in this Tariff, duration of calls are expressed in 6-second increments and billed in 6-second increments. All calls are rounded to the next highest 6-second period. Except for Calling Cards, no minimum period of time is required.

3.2.3. When answer supervision is unavailable and Telergy has received a reasonable claim from the end user for a refund of Telergy's charges for an uncompleted Call, Telergy will reimburse the end user for the charges that Telergy has billed for that Call.

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

## SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)

## 3.3. Switched and Dedicated Voice Services

## 3.3.1. Outbound Long Distance Service

Telergy's Outbound Long Distance Service is a "1+" direct dial Service available for Customer use 24 hours a day, seven days a week. Service is accessed through standard Business or Residential switched or dedicated access lines. The Customer is responsible for obtaining suitable access from the Customer's Local Exchange Carrier. All costs incurred in the installation and use of local access lines is the responsibility of the Customer. A number of Service Plans are available to the Customer. Rates, billing increments, volume discounts and qualifications, if applicable, vary by plan and are provided in the following sections.

3.3.1.A. Switched Outbound Service

3.3.1.A.1. Switched outbound Service permits outward calling utilizing premium switched Feature Group D access on both the originating and terminating end.

3.3.1.A.2. The following is a list of Telergy Interstate Switched Outbound Usage Plans. All plans are billed in six (6) second increments with no minimum length of call. These rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. Rates may vary depending on length of contract and whether the Customer has a contract for local intrastate Service under the Company's applicable Tariff.

Switched Outbound Service-Rate per Minute				
	Minimum	Maximum	Actual	
			IntraLATA	InterLATA
Residential	\$0.02	\$0.15	\$0.0850	\$0.0990
Business				
Month to Month	\$0.02	\$0.15	\$0.065	\$0.085
One Year	\$0.02	\$0.15	\$0.065	\$0.079
Three Year	\$0.02	\$0.15	\$0.065	\$0.075
Home Business Agent Plan	\$0.02	\$0.15	\$0.065	\$0.085

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

## SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)

## 3.3. Switched and Dedicated Voice Services (cont'd)

## 3.3.1. Outbound Long Distance Service (cont'd)

3.3.1.B. Dedicated Outbound Service

3.3.1.B.1. Dedicated Outbound Service permits outward calling to stations in diverse service areas. Dedicated Outbound Service is distinguished from other services by the existence of a dedicated, special access connection on one end. Dedicated Outbound Service is available to Business Customers only and requires a minimum one-year commitment.

3.3.1.B.2. The following is a list of Interstate Dedicated Outbound Usage Plans. All plans are billed in six (6) second increments with no minimum length of call. These rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. Rates may vary depending on length of contract and whether the Customer has a contract for local intrastate Service under the Company's applicable Tariff.

Dedicated Outbound Service-Rate per Minute				
	Minimum	Maximum	Actual	
Business			IntraLATA	InterLATA
<i>Month to Month</i>	\$0.02	\$0.15	N/A	N/A
<i>One Year</i>	\$0.02	\$0.15	\$0.049	\$0.049
<i>Three Year</i>	\$0.02	\$0.15	\$0.045	\$0.045

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.3. Switched and Dedicated Voice Services (cont'd)****3.3.2. Inbound Long Distance ("800") Service**

3.3.2.A. Basic Inbound Long Distance Service permits inward calling (via 800 codes) to a specific location on either a switched or dedicated basis. Switched Inbound Service utilizes premium switched, Feature Group D access on both ends. Dedicated Inbound Service permits inward calling (via 800 codes) to a specific location featuring the use of a dedicated, special access type connection on the terminating end. Dedicated Inbound Service is available to Business Customers only and requires a minimum one-year commitment.

3.3.2.B. Enhanced "800" Service is a supplement to Basic Inbound Long Distance Service and offers a variety of calling options. Customers who subscribe to Enhanced "800 Service" may be subject to a Non-Recurring set-up charge and incur recurring monthly charges in addition to the regular Basic Inbound Long Distance usage charges set forth below.

	Minimum	Maximum	Actual
Nonrecurring Setup Charge	\$25.00	\$75.00	\$50.00
Monthly Recurring Charge	\$20.00	\$50.00	\$31.25

The following is a brief description of the Enhanced "800 Service" options available:

**Message Referral:** Provides Customers who disconnect an existing Toll Free Service with a recording that informs callers that the Toll Free number has been disconnected and/or refers them to a new number.

**Call Area Selection:** Allows the Customer to specify from where Toll Free calls can be received. Permissive Selection of one or more originating areas can be made at the domestic state, NPA, LATA, or NXX level. Call Blockage may be designated to any subset of the Permissive Selection at the State, LATA, NPA, or NXX level.

**Call Distributor:** Allows a Customer to spread their incoming traffic evenly over their Dedicated Access lines in a trunk group. Customers can specify either ascending, descending, most idle, or least idle.

---

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.3. Switched and Dedicated Voice Services (cont'd)****3.3.2. Inbound Long Distance ("800") Service (cont'd)**

**Route Completion:** Allows a Toll Free Dedicated Access line Customer to control potential congestion of calls by sending the overflow to a pre-defined alternate routing group (Dedicated Access, WATS Access lines, or Switched Access lines). Route Completion will route traffic from dedicated access lines to dedicated access lines or dedicated access lines to switched access lines. Once the traffic is routed to a Switched Access line, the Call is terminated regardless of busy signal. This feature does not include functionality to re-route from switched access lines. The final route choice in the plan must be switched termination. Additionally, all trunk groups within a specified overflow route must terminate within the same provider Switch.

**Geographic Routing:** Allows Toll Free Customers to define two or more originating routing groups and to arrange the Calls from a single Toll Free number placed to different routing groups at different locations.

**TOD (Time of Day Routing):** Allows the Customer to arrange for Calls to a single Toll Free number to be routed to different locations based on the time of day.

**DOW (Day of Week Routing):** Allows Customers to arrange for Calls to a single Toll Free number to be routed to different locations based on the day of the week.

**DOY (Day of Year):** Allows Customers to arrange for Calls to a single Toll Free number to be routed to different locations based on a Customer specified holiday.

**% ALL (Percent Allocation):** Allows the Toll Free Customer to route Calls for each originating routing group to two or more terminating locations based upon a Customer specified percentage basis.

**Identification Services (No Charge):**

**Dialed Number Identification Service (DNIS):** Permits a Customer with multiple Toll Free numbers terminating on the same location to identify the specific Toll Free number that was dialed.

**Real-Time ANI:** Allows a Customer to receive the telephone number of the calling party as a component of the call setup.

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.3. Switched and Dedicated Voice Services (cont'd)****3.3.2. Inbound Long Distance ("800") Service (cont'd)****3.3.2.C. Switched Inbound Usage Rates**

The following is a list of Telergy Intrastate Switched Inbound Usage Plans. All plans are billed in six (6) second increments with no minimum length of Call. These rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. Rates may vary depending on length of contract and whether the Customer has a contract for local intrastate Service under the Company's applicable Tariff.

<b>Switched Inbound Service-Rate per Minute</b>				
	<b>Minimum</b>	<b>Maximum</b>	<b>Actual</b>	
			<b>IntraLATA</b>	<b>InterLATA</b>
<b>Residential</b>	\$0.02	\$0.15	\$0.0850	\$0.1190
<b>Business</b>				
<i>Month to Month</i>	\$0.02	\$0.15	\$0.065	\$0.085
<i>One Year</i>	\$0.02	\$0.15	\$0.065	\$0.079
<i>Three Year</i>	\$0.02	\$0.15	\$0.065	\$0.075

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.3. Switched and Dedicated Voice Services (cont'd)****3.3.2. Inbound Long Distance ("800") Service (cont'd)****3.3.2.A. Dedicated Inbound Usage Rates**

The following is a list of Intrastate Dedicated Usage Plans. All plans are billed in six (6) second increments with no minimum length of Call. These rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. Rates vary depending on length of contract and whether the Customer has a contract for intrastate local Service under the Company's applicable Tariff.

<b>Dedicated Inbound Service-Rate per Minute</b>				
	<b>Minimum</b>	<b>Maximum</b>	<b>Actual</b>	
			<b>IntraLATA</b>	<b>InterLATA</b>
<b>Business</b>				
<i>Month to Month</i>	\$0.02	\$0.15	N/A	N/A
<i>One Year</i>	\$0.02	\$0.15	\$0.049	\$0.049
<i>Three Year</i>	\$0.02	\$0.15	\$0.045	\$0.045

---

**SECTION 3 – SERVICE DESCRIPTIONS AND RATES (cont'd)****3.4. Foreign Exchange Service**

Foreign Exchange Service enables a Customer to obtain local exchange Service in a Central Office other than the Central Office which normally serves the Customer's location.

**3.4.1. Terms and Conditions**

- 3.4.1.A. The Subscriber to exchange Service furnished from a foreign Central Office is required to subscribe to exchange Service in the normal Central Office when the foreign Central Office is neither adjacent to the normal Central Office nor within the Local Calling Area of the normal Central Office.
- 3.4.1.B. A Measured Rate Foreign Exchange line terminating in a station may be classified as an auxiliary line when the Subscriber is furnished a measured rate individual line or PBX trunk on the same premises from the same Central Office or from a Central Office with the same primary calling area.
- 3.4.1.C. A Foreign Exchange line classified as an Individual line or PBX trunk may be listed in the alphabetical directory that covers the area in which the Subscriber is located or in the alphabetical directory that covers the area in which the serving Central Office is located. The free listing privileges for a Foreign Exchange line classified as an individual line or trunk are the same as for any other individual line or trunk.
- 3.4.1.D. Foreign Exchange will be offered on an ICB basis.

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749



---

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.5. Digital Data Service**

Digital Data Service is a Private Line Service which provides for simultaneous two-way transmission of digital signals at synchronous speeds of 2.4, 4.8, 9.6, 19.2 and 56 kbps between two or more points within a LATA. All circuits will be routed through a Central Office that contains a digital cross connect system.

**3.5.1. Definitions**

Bit - The term "bit" denotes the smallest unit of information in the binary system of notation.

Channel Service Unit/Data Service Unit - Channel Service and Data Service Units provide the interface to a Customer terminal. They provide functions such as signal translation, data regeneration, control signaling, reformatting and timing. This interface is used with 4-wire local distribution channel for speeds up to 56 kbps.

Primary Channel - This term refers to a Digital Data Service Channel to the Customer premises.

Secondary Channel - This term refers to an independent low speed derived companion channel operating with the primary channel for a Digital Data Service channel to the Customer premises.

Channel Termination - A Channel Termination is a 4-wire transmission path between the Customer premises and the Customer's serving wire center where Digital Data Service exists.

Interoffice Channel - An Interoffice Channel is a 4-wire transmission path between the serving wire centers where Digital Data Service capability is available.

**3.5.2. Regulations**

3.5.2.A. Digital Data Service (DDS) is available where facilities permit.

3.5.2.B. Channel terminations must have technically compatible Customer provided equipment at both ends.

3.5.2.C. Mileage measurements for DDS are based on the airline distance using longitude and latitude coordinates between the serving wire centers.

3.5.2.D. When two Subscriber locations are served by separate serving Central Offices on a 2-point service, appropriate interoffice channel rates apply between the two serving offices. Non-Recurring installation fees and charges may apply.

3.5.2.E. A maximum of 20 legs are allowed on one multi-point circuit and must be bridged in the same DDS location. All legs of a multi-point circuit must be the same transmission speed.

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.5. Digital Data Service (cont'd)****3.5.3. Charges**

In addition to regular Nonrecurring Charges, a Channel Termination installation charge also applies, plus monthly Channel Termination, Channel Mileage, as well as InterOffice Channel and Bridging Charges, where applicable. There is an additional charge to change a speed of an existing connection. Digital Data Services will be offered on an ICB basis.

**3.5.4. Multi term Discounts**

Multi-term Discount Plans are available for a commitment period of 3, 5, 7 or 10 years. The length of the period is selected by the Customer and a termination liability applies if Service is terminated during the selected commitment period. The discount plans apply only to the monthly rate for channel termination and interoffice channels. Nonrecurring charges and optional feature monthly rates are not included in the Multi-term Discount.

A Multi-term Discount Plan provides that the applicable monthly rates, as set forth herein, are reduced by a fixed percentage. The amount of the discount percentage differs based on the length of the selected commitment as follows:

Commitment	Discount %
36 months	10%
60 months	20%
84 months	22%
120 months	26%

The discount percentage is applied to the currently effective channel termination and interoffice channel monthly rates. Such rates may change during the commitment period, thereby causing an increase or decrease in the rates applicable to the Customer.

**3.5.5. Termination Liability**

If the Service is disconnected in whole or in part prior to the end of the selected commitment period, the Customer is liable for a termination liability charge unless a new commitment period and contract is entered into by the Customer as provided in this Tariff. Termination liability charges apply to each Service disconnected or, in the case of cancellation of a Multi-term Discount Plan, to each Service which has been included in the cancelled Multi-term Discount Plan.

Termination liability charge is 50% of the applicable monthly rates for the selected commitment period applied as follows:

$$\text{Termination Charge} = \text{Multi-Term Discount Plan Monthly Rate} \times \text{Number of Months Remaining} \times 50\% \text{ of the Multi-Term Plan}$$

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**SECTION 3 - SERVICE DESCRIPTIONS AND RATES (cont'd)****3.6. Private Line Service**

Private Line Service provides a scaleable range of capacity offerings between two Telergy Points of Presence. Telergy will offer asynchronous double per BH capacity consisting of DS1 (1.544 mb/s) and DS3 (44.736 mb/s) Service as well as a full complement of SONET synchronous services from OC-1 (51.84 mb/s) to OC-192 (9.95 gb/s).

Private Line Service will be priced at ICB rates based on a combination of distance, number of terminations, term, quality, and percent on-net.

**3.7. Frame Relay Service (FRS)****3.7.1. Service Description**

Frame Relay Service (FRS) is an enhanced form of packet switching which uses variable length packets to connect multiple local area networks (LANs) for data transmission. FRS allows multiple users to communicate with one another through voice or data transmission. FRS provides flexible connectivity using Permanent Virtual Circuits (PVCs) implemented over dedicated digital access lines and high-performance packet-mode networks. Access to FRS is over a dedicated, digital circuit which typically is DS0 (56/64kbps), DS1 (T1), or DS3 (T3). Multiple PVCs can be established over a given access line, providing simultaneous logical connections to various remote locations. Each PVC can carry bursts of data at near the full speed of the access line. Frame Relay Service is available throughout the United States where digital local access is available.

Each Port Connection provides a Subscriber with one Network Address and one Permanent Virtual Circuit as standard:

- A. 56kbps Port Connection - provides 56kbps access to FRS. Subscriber must purchase a dedicated 56kbps line.
- B. DS1 Port Connection - provides DS1kbps access to FRS. Subscriber must purchase a dedicated 1.544mbps line.
- C. Fractional DS1 Port Connection - provides 128, 256, 384, 512 or 768 Kbps access to FRS. Subscriber must purchase DS1 Service.

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

---

**SECTION 3- SERVICE DESCRIPTIONS AND RATES (cont'd)****3.7. Frame Relay Service (FRS) (cont'd)****3.7.2. Definitions**

- 3.7.2.A. ATM - an international high-speed, high-volume, packet-switched transmission protocol standard that supports integrated voice, video and data communications. ATM uses short uniform 53 byte cells to divide data into packets for ultra fast switching through the network. The 53 byte cells contain 5-byte destination address headers and 48 data bytes.
- 3.7.2.B. Committed Information Rate (CIR) - the statistical measurement of throughput on a PVC over time, measured in bits per second. The CIR is the rate at which the network agrees to accept data from the user, and the rate at which the network commits to transfer data under normal operating conditions.
- 3.7.2.C. Port - a network entry or exit point on the Frame Relay switch that connects to the Company's Frame Relay network.
- 3.7.2.D. 56kbps Port Connection - an interface on the Frame Relay network which terminates a Subscriber's 56kbps circuit.
- 3.7.2.E. DS1 Port Connection - an interface on the Frame Relay network which terminates a Subscriber's 1.544mbps circuit.
- 3.7.2.F. Network Address- the numeric characters representing the origination or destination point for each dedicated circuit accessing the Frame Relay network, numbered in telephone number format. One Network Address is standard with one Frame Relay Port Connection.
- 3.7.2.G. Permanent Virtual Circuit (PVC) - a communications channel which connects one location to another location, and allows transmission of sequenced data packets through a network. One PVC is standard with one Frame Relay Port Connection.
- 3.7.2.H. Additional PVCs - allows establishment of communications channels between multiple locations while maintaining a high degree of flexibility in configuring the network.
- 3.7.2.I. Network Map - the complete configuration of Frame Relay port connections and PVCs, as defined by the interconnectivity of network addresses and data channels.

**3.7.3. Rate Element Charges**

Frame Relay will be offered on an ICB basis, and has three rate elements:

- 3.7.3.A. Local Access Facilities
- 3.7.3.B. Ports
- 3.7.3.C. a Permanent Virtual Circuit (PVC). (Additional PVCs are available at additional cost.)

**SECTION 3- SERVICE DESCRIPTIONS AND RATES (cont'd)****3.7. Frame Relay Service (FRS) (cont'd)****3.7.4. Local Access**

Local Access Facilities must be obtained to access Frame Relay Service. The rates for the Local Access Facilities are set forth in the Company's local Tariff or by ICB.

**3.7.5. Port Speed**

Port speed is selected to accommodate the various PVCs that use a particular port. The speed represents the highest attainable data rate into or out of the location at any point in time. Available speeds range from 56 Kbps to 1.536 Mbps. A Frame Relay port connection provides the physical interface into the network and provides the logical termination of PVCs assigned to that port. A host port should have sufficient capacity to handle the highest data rate anticipated for that port.

**3.7.6. Permanent Virtual Circuits (PVC)**

The PVC connects the Customer's specific end-points on the interexchange network. Each PVC is assigned a Committed Information Rate (CIR), which is the average minimum data rate the network will allocate to the PVC under normal operating conditions. The data transmission rate for a PVC can be greater than the CIR when excess capacity is available on the port and on the network. When this excess capacity exists, an average data rate above the CIR may be achieved up to the port capacity. Data sent across a virtual connection in excess of that connection's CIR will be marked discard eligible in the event of network congestion, and will be delivered only if the instantaneous demand for output on a transmission channel is equal to or less than the capacity of the queue for that channel.

PVCs may be either asymmetrical (one-way) or symmetrical (two-way). Symmetrical (two-way) traffic requires the use of one symmetrical PVC or two asymmetrical PVCs.

---

**SECTION 3- SERVICE DESCRIPTIONS AND RATES (cont'd)****3.7. Frame Relay Service (FRS) (cont'd)****3.7.7. Frame Relay Service Objectives****3.7.7.A. Network Availability**

Network availability is measured as the total number of minutes in a billing month during which core network PVC routes are available to exchange data between the two network infrastructure node end points, divided by the total number of minutes in a billing month. A lapse in network availability is calculated commencing with the date on which the Customer informs the Company of Service non-availability, and ends on the date of Service restoration. The PVC route will be measured from infrastructure port to infrastructure port and will not include the Customer premises equipment (CPE) or local access facilities.

The Company engineers its network to achieve availability of 99.9% for networks designed with ten or more network sites and a fully meshed network topology or star network topology in which each remote site has PVCs connected to at least two network hubs engineered to a separate infrastructure node. In all other instances, the Company engineers its network to achieve availability of at least 99.5%.

**3.7.7.B. Frame Delivery**

Frame delivery measures the percentage of Customer's Frame Relay packets delivered from the Company's network ingress port to the network egress port. This percentage will not include packet delivery failures attributable to local access facilities or CPE.

The Company engineers its network to achieve a frame delivery level of 99.9% of frames within a Customer's CIR, and 99.0% of frames above a Customer's CIR. These delivery rates apply for networks designed with ten or more network sites and a fully meshed network topology or star network topology in which each remote site has PVCs connected to at least two network hubs engineered to a separate infrastructure node. In all other instances, the Company engineers its network to achieve a frame delivery level of 99.0%.

**3.7.7.C. Network Latency**

Network latency measures the elapsed time, in milliseconds, required for one data cell (frame relay packets converted to ATM cells on the Company's backbone network) to be delivered from the Customer's Frame Relay Service network ingress port to the network egress port. Packet delivery failures attributable to Local Access Facilities or CPE are not included.

The Company engineers its network to achieve a one-way network latency of 65 milliseconds. This parameter applies for networks designed with ten or more network sites and a fully meshed network topology or star network topology in which each remote site has PVCs connected to at least two network hubs engineered to a separate infrastructure node. In all other instances, the Company engineers its network to achieve a network latency of 75 milliseconds.

---

**SECTION 3- SERVICE DESCRIPTIONS AND RATES (cont'd)****3.7. Frame Relay Service (FRS) (cont'd)****3.7.8. Frame Relay Service – Standards and Objective Exclusions**

The standards described above do not include periods of non-attainment resulting in whole or in part from one or more of the following causes:

- Any act or omission on the part of the Customer, its contractors, or any other entity over which the Customer exercises control or has the right to exercise control;
- Scheduled maintenance;
- Labor strikes;
- *Force Majeure* events beyond the control of the Company (including, but not limited to, acts of God, government regulation and national emergency); and,
- Any act or omission on the part of a third party including, but not limited to, the local access provider.

**3.7.9. Minimum Service Terms**

The minimum Service requirement is one month for domestic Service and one year for international Service.

**3.7.10. Termination of Service**

Customers must provide the Company with 30 days written notice before terminating Frame Relay Service. Customers terminating Service prior to fulfilling their term commitment will be assessed a termination liability equal to one hundred percent (100%) of the monthly recurring charge for each access line, port and PVC Service terminated, multiplied by the number of months remaining in the first year of the term plan, plus fifty percent (50%) of the monthly recurring charges for each circuit canceled, multiplied by the number of months remaining in the term plan after the first year. The Customer will not have any termination liability if it subscribes to another Company Service of the same or greater monthly revenues and volume, and with a term no less than the remaining months of the term plan or one year, whichever is greater, at the same time the notice of termination is received. The Customer will also be liable for a pro-rata amount of any waived installation charges based on the number of months remaining in the term plan.

---

**SECTION 3- SERVICE DESCRIPTIONS AND RATES (cont'd)****3.8. Asynchronous Transfer Mode (ATM) Service****3.8.1. Service Description**

ATM is a networking technology standard for high-speed, high-capacity voice, data text and video transmission. ATM simplifies information transfer and exchange by putting information into fixed-length packets called cells. These cells allow any type of information - voice, data, high-speed local area network (LAN) interconnection, or video to be transmitted over almost any type of digitized communications medium (fiber optics, copper wire, cable). ATM is physically accessed through PVCs on circuits with access speeds from T1 (1.544mbps) to OC-12 (622.08mbps).

**3.8.2. Classes**

There are 5 classes of Service for ATM:

- A. Constant bit rate (CBR) - a premium voice and video Service for constant delivery. The cell rate is constant with time. CBR applications are quite sensitive to cell delay variation.
- B. Variable bit rate - non-real time (VBR-NRT) - a premium data Service. This class allows users to send traffic at a rate that varies with time depending on the availability of user information.
- C. Variable bit rate - real time (VBR-RT) - a premium data Service. This class is similar to VBR-NRT but is designed for applications that are sensitive to cell delay.
- D. Available bit rate (ABR) - this class of ATM Service provides rate-based flow control and is aimed at data traffic such as file transfer and email. Depending upon the state of congestion in the network, the source is required to control its rate. The users are allowed to declare a minimum cell rate, which is guaranteed to the connection by the network.
- E. Unspecified bit rate (UBR) - a standard data Service for non-time-sensitive data. The class is the catch-all "other" class. There is no guarantee that the cells will even be delivered. ATM provides the carrier with the option of dropping certain cells if the network gets congested.



---

**SECTION 3- SERVICE DESCRIPTIONS AND RATES (cont'd)****3.8. Asynchronous Transfer Mode (ATM) (cont'd)****3.8.2. Classes (cont'd)**

ATM supports 2 connection types:

- Point-to-point - connections of this type can be unidirectional (one-way) or bi-directional (two-way).
- Point-to-multipoint - connections of this type are unidirectional only.

**3.8.3. Rates**

ATM Service will be priced at ICB rates based on a combination of distance, number of terminations, term, and Class.

**3.9. Non-Recurring Charges**

In addition to any charges by the Company's underlying network providers, one-time Non-Recurring service and installation charges may apply. These charges remain constant for all Customers, regardless of volume, time of day, mileage or any other factor. These charges are for coordination of services only and are in addition to any associated costs charged by outside vendors. These charges are billed to the Customer after the work is performed and may be waived under Special Customer Arrangements. These charges may include, but are not limited to:

- Service Order Charge
- Central Office Line Charge
- Premise Visit Charge
- Rewire Charge
- Record Order Charge
- Channel Termination Installation Charge
- Any other applicable installation charges.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES****4.1. Pre-Paid Calling Card Service****4.1.1. General**

Pre-paid Calling Card Service allows a Customer to purchase minutes of long distance Service in units for purposes of use or resale to a distributor or end-user, via a pre-paid Calling Card. One unit equals one intraLATA domestic minute; the units applicable to non-domestic Calls will be provided by the Company upon request. The holder of the pre-paid Card is assigned a PIN number for each pre-paid Calling Card and a toll free number for Customer Service.

Pre-paid Calling Cards are available in 30 and 60 unit cards. Cards are available with the Telergy logo or, for an additional fee, a customer may choose to have a customized logo placed on the card (i.e.; Company logo, School logo, non-profit organization symbol). The Customer must provide camera-ready artwork for the pre-paid Calling Card logo. Pricing for cards with a customized logo will vary depending on color, graphic design and artwork required. Customers choosing the customized logo option must order a minimum of 200 cards.

**4.1.2. Pre-paid Calling Card Rate Schedule**

Pre-paid Calling Card rates per unit are based on the volume commitment of the contract. All rates are based on a flat billing system of one (1) unit increments. Calls with a duration of one (1) domestic minute or less will be charged for one (1) full unit.

Pre-paid Calling Cards are also available with a Customized Logo. Rates vary depending on artwork required.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.2. Travel Card Services****4.2.1. General**

Travel Card Service allows callers to utilize Telergy's Service when calling from a location other than their billed-to-number. Travel Card Service is offered 24 hours a day, seven days a week to all valid terminating locations. Access to Travel Card Service is via a toll-free number. The Customer must input a valid Authorization Code in addition to the destination number with area code. Travel Card Service rates apply to calls placed to locations in mainland United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

Telergy offers two distinct Travel Card Services: Enhanced Travel Card Service and Basic Travel Card Service. Enhanced Travel Card Service offers a variety of calling options including information services such as sports, weather and horoscopes, as well as calling options such as conference calling and three way Calls. Basic Travel Cards offer only the ability to place a Call.

- Enhanced Travel Card Service may be accessed by dialing 800-950-0370.
- Basic Travel Card Service may be accessed by dialing 888-624-1391.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.2. Travel Card Services (cont'd)****4.2.2. Rates and Charges****4.2.2.A. Enhanced Travel Card Rates**

Enhanced Travel Card rates are based on a flat rate billing system in six (6) second increments with a minimum of one (1) minute per Call. Calls with a duration of less than one (1) minute will be charged for a full one (1) minute Call. Enhanced Travel Card Service offers a per minute flat rate with no access charge.

**4.2.2.B. Basic Travel Card Rates**

Basic Travel Card rates are based on a flat rate billing system in six (6) second increments with a minimum of one (1) minute per Call. Calls with a duration of under one (1) second will not be billed. Calls with a duration of greater than one (1) second and less than one (1) minute will be charged for a full one (1) minute Call.

**4.2.2.B.1. Basic Travel Card Plan**

The Basic Travel Card Plan offers a per minute flat rate with no access charge.

**4.2.2.B.2. High Volume Basic Travel Card Plan**

The High Volume Basic Travel Card Plan requires a minimum monthly commitment in long distance billings, and offers a per minute flat rate with no access charge.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.3. Schools and Libraries Discount Program****4.3.1. General**

The Schools and Libraries Discount Program permits eligible schools (public and private, grades Kindergarten through 12) and libraries to purchase the Company's Services offered in this Tariff and the Company's local Tariff at a discounted rate, in accordance with the Rules adopted by the Federal Communications Commission (FCC) in its Universal Service Order 97-157, issued May 8, 1997 and applicable State Order. The Rules are codified at 47 Code of Federal Regulation (C.F.R.) 54.500 et. seq. As indicated in the Rules, the discounts will be between 20 and 90 percent of the pre-discount price, which is the price of Services to schools and libraries prior to application of a discount. The level of discount will be based on an eligible school or library's level of economic disadvantage and by its location in either an urban or rural area. A school's level of economic disadvantage will be determined by the percentage of its students eligible for participation in the national school lunch program; a library's level of economic disadvantage will be calculated on the basis of school lunch eligibility in the public school district in which the library is located. A non-public school may use either eligibility for the national school lunch program or other federally approved alternative measures to determine its level of economic disadvantage. To be eligible for the discount, schools and libraries will be required to comply with the terms and conditions set forth in the Rules. Discounts are available only to the extent that they are funded by the Federal Universal Service Fund. Schools and libraries may aggregate demand with other eligible entities to create a consortium.

**4.3.2. Regulations****4.3.2.A. Obligation of eligible schools and libraries:****Requests for Service:**

- 4.3.2.A.1. Schools and libraries and consortia shall participate in a competitive bidding process for all Services eligible for discounts, in accordance with any state and local procurement rules.
- 4.3.2.A.2. Schools and libraries and consortia shall submit requests for Services to the Schools and Libraries Corporation, as designated by the FCC, and follow established procedures.
- 4.3.2.A.3. Services requested will be used for educational purposes.
- 4.3.2.A.4. Services will not be sold, resold or transferred in consideration for money or any other thing of value.

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.3. Schools and Libraries Discount Program (cont'd)****4.3.2. Regulations (cont'd)****4.3.2.B. Obligations of the Company**

- 4.3.2.B.1. The Company will offer discounts to eligible schools and libraries on commercially available telecommunications Services contained in this Tariff. Some Services contained in this Tariff may be excluded from the discount program, in accordance with the Rules.
- 4.3.2.B.2. The Company will offer services to eligible Schools, Libraries and consortia at prices no higher than the lowest price it charges to similarly situated non-Residential Customers for similar Services (lowest corresponding price).
- 4.3.2.B.3. In competitive bidding situations, the Company may offer flexible pricing or rates other than in this Tariff, where specific flexible pricing arrangements are allowed, subject to Commission approval.

**4.3.3. Discounted Rates for Schools and Libraries**

- 4.3.3.A. Discounts for eligible schools, libraries and consortia shall be set as a percentage from the pre-discount price, which is the price of Services to schools and libraries prior to application of a discount. The discount rate will be applied to eligible intrastate Services purchased by eligible schools, libraries or consortia.
- 4.3.3.B. The discount rate is based on each school or library's level of economic disadvantage as determined in accordance with the FCC Order or other federally approved alternative measures (as permitted by the Rules) and by its location in either an urban or rural area.
- 4.3.3.C. The discount matrix for eligible schools, libraries and consortia set forth below:

**\*\*Voice Mail Services ineligible for discount.**

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		
HOW DISADVANTAGED	% DISCOUNT LEVEL	
% of students eligible for national School lunch program	Urban Discount	Rural Discount
<1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.4. Health Care Providers Support Program****4.4.1. General**

The purpose of the Health Care Providers Support Program is to enable public and non-profit rural health care providers to have access to telecommunications Services necessary for the provision of health care services at rates comparable to those paid for similar Services in urban areas. The Health Care Providers Support Program offers eligible public and non-profit health care providers located in rural areas reduced rates for Company intrastate Services available in this Tariff and the Company's local Tariff. Such Services must be purchased in accordance with the Rules adopted by the Federal Communications Commission (FCC) in its Universal Service Order 97-157 issued May 8, 1977, and the Commission. The FCC Rules are codified at 47 Code of Federal Regulation (C.F.R.) 54.601 et. seq., and any amendments made thereto.

**4.4.2. Regulations**

- 4.4.2.A. To be eligible for the reduced rates, rural health care providers are required to comply with the terms and conditions set forth in the FCC rules.
- 4.4.2.B. Reduced rates are available only to the extent that they are funded by the Federal Universal Service Fund.
- 4.4.2.C. Eligible rural health care providers may aggregate demand with other entities to create a consortium. Universal service support shall apply only to the portion of eligible Services used by an eligible health care provider.
- 4.4.2.D. Responsibility of eligible health care providers:
  - 4.4.2.D.1. Rural health care providers and consortia shall participate in a competitive bidding process for all Services eligible for reduced rates in accordance with any state and local procurement rules.
  - 4.4.2.D.2. Rural health care providers and consortia shall submit requests for Services to the program Administrator, as designated by the FCC, and follow established procedures.
  - 4.4.2.D.3. Services requested must be used for purposes related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law.

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)**

**4.4. Health Care Providers Support Program (cont'd)**

**4.4.2. Regulations (cont'd)**

**D. Responsibility of eligible health care providers (cont'd)**

4.4.2.D.4. A health care provider that cannot obtain toll free access to an Internet service provider and who is eligible for support for limited toll-free access under the Rules must certify that it lacks toll-free Internet access and that it is an eligible health care provider.

4.4.2.D.5. Services cannot be sold, resold or transferred in consideration for money or any other thing of value.

**4.4.2.E. Responsibility of the Company**

4.4.2.E.1. The Company shall offer the rates and charges as specified in its Tariffs to eligible health care providers to the extent that facilities and Services are available.

4.4.2.E.2. The Company shall offer Services to eligible rural health care providers and consortia at prices no higher than the highest urban rate as defined in the FCC Order and Rules.

4.4.2.E.3. In competitive bidding situations, where specific flexible pricing arrangements are allowed, the Company may offer flexible pricing (to determine the reduced rate) subject to Commission approval.



---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.4. Health Care Providers Support Program (cont'd)****4.4.3. Rates and Charges**

The following price adjustments will be available to eligible rural health care providers, except subparagraph 3. below, which shall be available to all eligible health care providers, regardless of location:

- 4.4.3.A. A reduced rate for telecommunications Services, using a bandwidth capacity of up to 1.544 Mbps, not to exceed the highest Tariffed or publicly available rate charged to a commercial Customer for a similar Service provided over the same distance in the nearest city within the State with a population of at least 50,000.
- 4.4.3.B. An exemption from some mileage charges for any telecommunications Services, using a bandwidth capacity of up to 1.544 Mbps, that is necessary for the provision of health care services. The exempted mileage includes the distance between the rural health care provider and the most distant perimeter of the nearest city within the State with a population of 50,000 or more, less the standard urban distance, which is the maximum average diameter of all cities with populations of 50,000 or more in the state.
- 4.4.3.C. Each eligible health care provider that cannot obtain toll-free access to an Internet service provider is entitled to receive toll charge credits for toll charges imposed for connecting to an Internet service provider as per the FCC Rules. Such toll charge credits are available pursuant to applicable toll Tariffs.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.5. Directory Assistance**

Directory Assistance charges apply to each call to the Directory Assistance Service. Up to two requests may be made on each Call to Directory Assistance. The Directory Assistance charge applies to each call regardless of whether the Directory Assistance Bureau is able to furnish the requested telephone number.

Intra- and InterLATA Directory Assistance is available at an additional charge.

**4.6. Operator Services**

Operator Service is a live or automated Operator handled Service which includes Operator assisted, third party and collect calls that may be billed to the Customer's Telergy Card, LEC Calling Cards or major credit cards. The following call types are considered Operator assisted, and are subject to a per call surcharge.

- Person-to-Person
- Station-to-Station
- Third Number Billed
- Collect
- Telephone Company Card
- Commercial Credit Card
- Operator Assisted Calling Card Call
- Operator-Dialed Call

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES****4.1. Pre-Paid Calling Card Service****4.1.1. General**

Pre-paid Calling Card Service allows a Customer to purchase minutes of long distance Service in units for purposes of use or resale to a distributor or end-user, via a pre-paid Calling Card. One unit equals one intraLATA domestic minute; the units applicable to non-domestic Calls will be provided by the Company upon request. The holder of the pre-paid Card is assigned a PIN number for each pre-paid Calling Card and a toll free number for Customer Service.

Pre-paid Calling Cards are available in 30 and 60 unit cards. Cards are available with the Telergy logo or, for an additional fee, a customer may choose to have a customized logo placed on the card (i.e.; Company logo, School logo, non-profit organization symbol). The Customer must provide camera-ready artwork for the pre-paid Calling Card logo. Pricing for cards with a customized logo will vary depending on color, graphic design and artwork required. Customers choosing the customized logo option must order a minimum of 200 cards.

**4.1.2. Pre-paid Calling Card Rate Schedule**

Pre-paid Calling Card rates per unit are based on the volume commitment of the contract. All rates are based on a flat billing system of one (1) unit increments. Calls with a duration of one (1) domestic minute or less will be charged for one (1) full unit.

Pre-paid Calling Cards are also available with a Customized Logo. Rates vary depending on artwork required.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.2. Travel Card Services****4.2.1. General**

Travel Card Service allows callers to utilize Telergy's Service when calling from a location other than their billed-to-number. Travel Card Service is offered 24 hours a day, seven days a week to all valid terminating locations. Access to Travel Card Service is via a toll-free number. The Customer must input a valid Authorization Code in addition to the destination number with area code. Travel Card Service rates apply to calls placed to locations in mainland United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

Telergy offers two distinct Travel Card Services: Enhanced Travel Card Service and Basic Travel Card Service. Enhanced Travel Card Service offers a variety of calling options including information services such as sports, weather and horoscopes, as well as calling options such as conference calling and three way Calls. Basic Travel Cards offer only the ability to place a Call.

- Enhanced Travel Card Service may be accessed by dialing 800-950-0370.
- Basic Travel Card Service may be accessed by dialing 888-624-1391.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.2. Travel Card Services (cont'd)****4.2.2. Rates and Charges****4.2.2.A. Enhanced Travel Card Rates**

Enhanced Travel Card rates are based on a flat rate billing system in six (6) second increments with a minimum of one (1) minute per Call. Calls with a duration of less than one (1) minute will be charged for a full one (1) minute Call. Enhanced Travel Card Service offers a per minute flat rate with no access charge.

**4.2.2.B. Basic Travel Card Rates**

Basic Travel Card rates are based on a flat rate billing system in six (6) second increments with a minimum of one (1) minute per Call. Calls with a duration of under one (1) second will not be billed. Calls with a duration of greater than one (1) second and less than one (1) minute will be charged for a full one (1) minute Call.

**4.2.2.B.1. Basic Travel Card Plan**

The Basic Travel Card Plan offers a per minute flat rate with no access charge.

**4.2.2.B.2. High Volume Basic Travel Card Plan**

The High Volume Basic Travel Card Plan requires a minimum monthly commitment in long distance billings, and offers a per minute flat rate with no access charge.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.3. Schools and Libraries Discount Program****4.3.1.General**

The Schools and Libraries Discount Program permits eligible schools (public and private, grades Kindergarten through 12) and libraries to purchase the Company's Services offered in this Tariff and the Company's local Tariff at a discounted rate, in accordance with the Rules adopted by the Federal Communications Commission (FCC) in its Universal Service Order 97-157, issued May 8, 1997 and applicable State Order. The Rules are codified at 47 Code of Federal Regulation (C.F.R.) 54.500 et. seq. As indicated in the Rules, the discounts will be between 20 and 90 percent of the pre-discount price, which is the price of Services to schools and libraries prior to application of a discount. The level of discount will be based on an eligible school or library's level of economic disadvantage and by its location in either an urban or rural area. A school's level of economic disadvantage will be determined by the percentage of its students eligible for participation in the national school lunch program; a library's level of economic disadvantage will be calculated on the basis of school lunch eligibility in the public school district in which the library is located. A non-public school may use either eligibility for the national school lunch program or other federally approved alternative measures to determine its level of economic disadvantage. To be eligible for the discount, schools and libraries will be required to comply with the terms and conditions set forth in the Rules. Discounts are available only to the extent that they are funded by the Federal Universal Service Fund. Schools and libraries may aggregate demand with other eligible entities to create a consortium.

**4.3.2. Regulations****4.3.2.A. Obligation of eligible schools and libraries:****Requests for Service:**

- 4.3.2.A.1. Schools and libraries and consortia shall participate in a competitive bidding process for all Services eligible for discounts, in accordance with any state and local procurement rules.
- 4.3.2.A.2. Schools and libraries and consortia shall submit requests for Services to the Schools and Libraries Corporation, as designated by the FCC, and follow established procedures.
- 4.3.2.A.3. Services requested will be used for educational purposes.
- 4.3.2.A.4. Services will not be sold, resold or transferred in consideration for money or any other thing of value.

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.3. Schools and Libraries Discount Program (cont'd)****4.3.2. Regulations (cont'd)****4.3.2.B. Obligations of the Company**

- 4.3.2.B.1. The Company will offer discounts to eligible schools and libraries on commercially available telecommunications Services contained in this Tariff. Some Services contained in this Tariff may be excluded from the discount program, in accordance with the Rules.
- 4.3.2.B.2. The Company will offer services to eligible Schools, Libraries and consortia at prices no higher than the lowest price it charges to similarly situated non-Residential Customers for similar Services (lowest corresponding price).
- 4.3.2.B.3. In competitive bidding situations, the Company may offer flexible pricing or rates other than in this Tariff, where specific flexible pricing arrangements are allowed, subject to Commission approval.

**4.3.3. Discounted Rates for Schools and Libraries**

- 4.3.3.A. Discounts for eligible schools, libraries and consortia shall be set as a percentage from the pre-discount price, which is the price of Services to schools and libraries prior to application of a discount. The discount rate will be applied to eligible intrastate Services purchased by eligible schools, libraries or consortia.
- 4.3.3.B. The discount rate is based on each school or library's level of economic disadvantage as determined in accordance with the FCC Order or other federally approved alternative measures (as permitted by the Rules) and by its location in either an urban or rural area.
- 4.3.3.C. The discount matrix for eligible schools, libraries and consortia set forth below:

**\*\*Voice Mail Services ineligible for discount.**

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		
HOW DISADVANTAGED	% DISCOUNT LEVEL	
% of students eligible for national School lunch program	Urban Discount	Rural Discount
<1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749



---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.4. Health Care Providers Support Program****4.4.1. General**

The purpose of the Health Care Providers Support Program is to enable public and non-profit rural health care providers to have access to telecommunications Services necessary for the provision of health care services at rates comparable to those paid for similar Services in urban areas. The Health Care Providers Support Program offers eligible public and non-profit health care providers located in rural areas reduced rates for Company intrastate Services, available in this Tariff and the Company's local Tariff. Such Services must be purchased in accordance with the Rules adopted by the Federal Communications Commission (FCC) in its Universal Service Order 97-157 issued May 8, 1977, and the Commission. The FCC Rules are codified at 47 Code of Federal Regulation (C.F.R.) 54.601 et. seq., and any amendments made thereto.

**4.4.2. Regulations**

- 4.4.2.A. To be eligible for the reduced rates, rural health care providers are required to comply with the terms and conditions set forth in the FCC rules.
- 4.4.2.B. Reduced rates are available only to the extent that they are funded by the Federal Universal Service Fund.
- 4.4.2.C. Eligible rural health care providers may aggregate demand with other entities to create a consortium. Universal service support shall apply only to the portion of eligible Services used by an eligible health care provider.
- 4.4.2.D. Responsibility of eligible health care providers:
  - 4.4.2.D.1. Rural health care providers and consortia shall participate in a competitive bidding process for all Services eligible for reduced rates in accordance with any state and local procurement rules.
  - 4.4.2.D.2. Rural health care providers and consortia shall submit requests for Services to the program Administrator, as designated by the FCC, and follow established procedures.
  - 4.4.2.D.3. Services requested must be used for purposes related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law.

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749



---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.4. Health Care Providers Support Program (cont'd)****4.4.2. Regulations (cont'd)****D. Responsibility of eligible health care providers (cont'd)**

4.4.2.D.4. A health care provider that cannot obtain toll free access to an Internet service provider and who is eligible for support for limited toll-free access under the Rules must certify that it lacks toll-free Internet access and that it is an eligible health care provider.

4.4.2.D.5. Services cannot be sold, resold or transferred in consideration for money or any other thing of value.

**4.4.2.E. Responsibility of the Company**

4.4.2.E.1. The Company shall offer the rates and charges as specified in its Tariffs to eligible health care providers to the extent that facilities and Services are available.

4.4.2.E.2. The Company shall offer Services to eligible rural health care providers and consortia at prices no higher than the highest urban rate as defined in the FCC Order and Rules.

4.4.2.E.3. In competitive bidding situations, where specific flexible pricing arrangements are allowed, the Company may offer flexible pricing (to determine the reduced rate) subject to Commission approval.

---

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.4. Health Care Providers Support Program (cont'd)****4.4.3. Rates and Charges**

The following price adjustments will be available to eligible rural health care providers, except subparagraph 3. below, which shall be available to all eligible health care providers, regardless of location:

- 4.4.3.A. A reduced rate for telecommunications Services, using a bandwidth capacity of up to 1.544 Mbps, not to exceed the highest Tariffed or publicly available rate charged to a commercial Customer for a similar Service provided over the same distance in the nearest city within the State with a population of at least 50,000.
- 4.4.3.B. An exemption from some mileage charges for any telecommunications Services, using a bandwidth capacity of up to 1.544 Mbps, that is necessary for the provision of health care services. The exempted mileage includes the distance between the rural health care provider and the most distant perimeter of the nearest city within the State with a population of 50,000 or more, less the standard urban distance, which is the maximum average diameter of all cities with populations of 50,000 or more in the state.
- 4.4.3.C. Each eligible health care provider that cannot obtain toll-free access to an Internet service provider is entitled to receive toll charge credits for toll charges imposed for connecting to an Internet service provider as per the FCC Rules. Such toll charge credits are available pursuant to applicable toll Tariffs.

**SECTION 4-MISCELLANEOUS SERVICES AND RATES (cont'd)****4.5. Directory Assistance**

Directory Assistance charges apply to each call to the Directory Assistance Service. Up to two requests may be made on each Call to Directory Assistance. The Directory Assistance charge applies to each call regardless of whether the Directory Assistance Bureau is able to furnish the requested telephone number.

Intra- and InterLATA Directory Assistance is available at an additional charge.

**4.6. Operator Services**

Operator Service is a live or automated Operator handled Service which includes Operator assisted, third party and collect calls that may be billed to the Customer's Telergy Card, LEC Calling Cards or major credit cards. The following call types are considered Operator assisted, and are subject to a per call surcharge.

- Person-to-Person
- Station-to-Station
- Third Number Billed
- Collect
- Telephone Company Card
- Commercial Credit Card
- Operator Assisted Calling Card Call
- Operator-Dialed Call

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

---

## SECTION 5- PROMOTIONS

### 5.1. General

From time to time, the Company shall, at its option, promote subscriptions or stimulate network usage by offering to waive some or all of the nonrecurring or recurring charges for the Customer (if eligible) of target Services for a limited duration. Such promotions shall be made available to all similarly situated Customers in the target market area.

#### 5.1.1. Special Promotional Offerings

The Company may, from time to time, engage in Special Promotional Offerings or Trial Service Offerings limited to certain dates, times or locations designed to attract new Subscribers or increase Subscriber usage. Telergy will not have special promotional offerings for more than 90 days in any 12 month period. In all such cases, the rates and charges will not exceed those specified herein.

---

Date of Issue:

Effective Date:

Issued By: Brian P. Kelly, President of Telergy Network Services, Inc.  
One Telergy Parkway, E. Syracuse, NY 13057 (877) 835-3749

---

**SECTION 6 - CONTRACT SERVICES****6.1. General**

At the option of the Company, Service may be offered on an Individual Contract Basis (ICB) to meet specialized requirements of the Customer not contemplated in this tariff. The terms of each contract shall be mutually agreed upon between the Customer and Company and may include discounts off rates contained herein, waiver of recurring or nonrecurring charges, charges for specially designed and constructed services not contained in the Company's general Service offerings, or other customized features. The terms of the contract may be based partially or completely on the term and volume commitment, type of originating or terminating access, mixture of services or other distinguishing features. Service shall be available to all similarly situated Customers for a fixed period of time following the initial offering to the first contract Customer as specified in each individual contract.

ORIGINAL

APPLICATION OF

Telergy Network Services, Inc.

**Exhibit D**

1998 and 1999 Consolidated Balance Sheet

APPLICATION OF

Telergy Network Services, Inc.

Exhibit E

Consolidated Statements of Operation

CONFIDENTIAL

# [ \ ]



ORIGINAL

APPLICATION OF

Telergy Network Services, Inc.

**Exhibit F**

Customer Service Plan and Sample Invoice

**Telergy Network Services, Inc.**  
**Customer Care Plan**

**CUSTOMER ORDERS**

Customers will be required to sign a letter of agency, letter of authorization, or contract as appropriate to initiate service. Service orders will be placed by Telergy Network Services, Inc. (Telergy) to the carrier on the customer's behalf. Telergy will coordinate and supervise the installation of all customer orders.

**SECURITY DEPOSITS**

Telergy does not require deposits from customers in the normal course of its business. However, in the event that an applicant has unknown or bad credit, Telergy would reserve the right to require a reasonable deposit to protect its interests and that of its other customers. If deposits are collected, Telergy will establish an escrow account for the deposits and will handle deposits and return of deposits according to the rules and regulations of the State of South Dakota.

**BILLING**

Telergy will bill customers directly through its in-house billing Department. The customer will remit payment to Telergy. All billing credits and adjustments will be negotiated with the customer by Telergy and processed for inclusion on the next bill.

**REFUND REQUIREMENTS**

Refunds in the form of a billing credit or adjustment will be given to customers disputing a call(s) on their bill. The customer will call into the Billing Department's toll-free 800 number and give the information regarding the disputed call(s) to a billing representative. If appropriate, the representative will issue a credit or adjustment on the customer's account while the customer is still on the line with the representative.

## **COMPLAINT PROCEDURES**

Telergy understands the importance of effective customer service for local and long distance service consumers. Telergy has made arrangements for its customers to call the company at its toll-free customer service number. In addition, customers may contact the company in writing at the headquarters address. The toll-free number will be printed on the customers' monthly billing statements.

New customers will be provided information pertaining to contacting the South Dakota Public utilities Commission. Specifically, Telergy will send a letter to new customers stating:

"If you remain dissatisfied with our resolution of your complaint, you may contact the Public Utilities Commission, Consumer Affairs Division, Capitol Building, First Floor, 500 East Capitol Avenue, Pierre, South Dakota 58501-5070 at 1-800-332-1782 or (605) 773-3809."

## **TERMINATION OF SERVICE**

Customers may terminate service by arranging for service from another carrier and contacting the company for discontinuance. The customer will be billed in accordance with the service plan in effect at the time of termination, up through the final date that service is provided by the company.

## **CURRENT INTERSTATE SERVICES IN SOUTH DAKOTA**

Telergy has no subscribers in South Dakota. Telergy has not handled interstate or intrastate South Dakota traffic to date.

THANK YOU FOR CHOOSING TELERGY

Payment Due By: 07/05/00

Total Amount Due: \$3.07

Please be sure to enclose your  
remit slip to ensure timely  
posting of your payment

Amount Enclosed:

Bill Date: 06/05/00

Account Number: 00031404

Invoice #: 304994

THIS INVOICE IS DUE AND PAYABLE WITHIN 30 DAYS FROM THE BILL DATE.  
ANY OUTSTANDING BALANCES WILL BE ASSESSED A 1.5% FINANCE CHARGE.

ACCOUNT SUMMARY

Amount of Last Bill	\$1.85
Payments Received Thank You	\$0.00
Adjustments	\$0.00
Past Due Balance	\$1.85
Finance Charges	\$0.03
Total New Charges	\$1.19
Discounts	\$0.00
Total Amount Due:	<u>\$3.07</u>

A Summary of Consumer Rights is available upon request from the local commission that regulates telephone providers or from the company.

FOR MORE INFORMATION ON OUR PRODUCTS AND SERVICES, VISIT OUR WEBSITE AT [WWW.TELERGY.NET](http://WWW.TELERGY.NET)

FOR TELERGY CUSTOMER SERVICE, PLEASE CONTACT US AT 800-889-8718

FOR TELERGY BILLING INQUIRIES, PLEASE CONTACT US AT 800-707-9767

FOR TELERGY 24HR REPAIR, PLEASE CONTACT US AT 877-342-4911

## Summary Of New Charges

Bill Date: 06/05/06

Customer Number: 00031404

Invoice #: 304964

### Usage Charges

Total Usage Charges

\$0.00

### Recurring Charges

PIC-C Residential

\$1.04

Total Recurring Charges

\$1.04

### Non-Recurring Charges

Total Non-Recurring Charges

\$0.00

### Taxes/Surcharges

Federal Excise Tax

\$0.03

NY Gross Receipts Tax

\$0.01

Telecommunications Excise Tax

\$0.03

Onondaga

\$0.08

Total Taxes/Surcharges

\$0.15

**TOTAL NEW CHARGES**

**\$1.19**

*See Reverse Page*



Bill Date: 06/05/00

Customer Number: 00031404

Invoice #: 304994

## Summary Of New Charges

### Explanation of Basic and Non-Basic Services

\*\*\* The total amount due on your bill may consist of Basic and Non-Basic charges. Payment of all charges is your responsibility. Failure to pay Basic Charges (such as Flat Rate Service, Message Rate Service, local measured service, local measured units, locality rates, mileage, late payment charges on local exchange service, taxes/surcharges prorated for local exchange service portion non-published service, touchtone, local exchange service restoral charge, NSF check charge for local exchange service, construction charges for local exchange service, service order charges for local exchange service, intraLATA toll service and interregional calls unless intraLATA presubscription is offered and selective intraLATA access is available) may result in disconnection of your Basic Local Exchange telephone service for non-payment.

Basic Local Exchange telephone service will not be disconnected for non-payment if you do not pay the Non-Basic portion (800 Service, Domestic 1+Service, Canadian 1+Service, 800 Service Payphone, Directory Assistance, features, terminal equipment, inside wiring, internet service 900 calls, calls using an alternate service provider) of your bill. Failure to pay any portion of your bill may result in collection action.\*\*\*

\*\*\*Please call 1-800-707-9767 with questions\*\*\*

**ORIGINAL**

APPLICATION OF

Telergy Network Services, Inc.

**Exhibit G**

Biographies of Key Personnel

## MANAGEMENT

### Executive Officers, Directors and Key Employees

The table below shows, as of May 3, 2000, the names and ages of our executive officers, directors and key employees, and their current positions with Telergy.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Brian P. Kelly (1) .....	40	Chairman of the Board and Chief Executive Officer
J. Patrick Barrett.....	63	President and Director
Kevin J. Kelly (1) .....	40	Vice Chairman and Executive Vice President
Nicholas A. Merrick .....	37	Senior Vice President and Chief Financial Officer
Joseph Ciancaglini .....	57	Chief Operating Officer
William M. Kelly, Jr. (1) .....	34	Executive Vice President and Director
Steven D. Rubin .....	39	Senior Vice President, General Counsel and Secretary
David M. Wolf .....	39	Chief Technical Officer
Jimmy Wang .....	38	Chief Information Officer
Thomas G. Young .....	52	Vice President, Government Relations
Eugene Cho .....	29	Vice President, Corporate Finance
Barry M. Vaughn.....	43	Vice President, Sales and Marketing
Nigel S. B. Price .....	48	Vice President, Information Technology
Richard J. Oliver .....	46	Vice President, Treasurer
John F. O'Mara .....	66	Director
J. Philip Frazier .....	61	Director
Frank J. Zaccanelli .....	44	Director
Albert J. Budney, Jr. ....	52	Director
Joel-Tomas Citron .....	37	Director
Terence R. McAuliffe .....	43	Director
Vincent F. Spina .....	38	Director

(1) Brian P. Kelly, Kevin J. Kelly and William M. Kelly, Jr. are brothers.

Brian P. Kelly co-founded Telergy, Inc. in April 1995 and has been serving as Chairman of the board of directors and Chief Executive Officer since our inception. From 1986 to 1995, Mr. Kelly served as President of Telecommunications Management Systems, a telecommunications and television billing service provider specializing in the healthcare industry.

J. Patrick Barrett has been serving as President since April 1998. Mr. Barrett was elected to the board of directors in May 1999. From April 1998 until August 1999, Mr. Barrett also served as Chief Operating Officer. From October 1987, Mr. Barrett has served as Chairman and Chief Executive Officer of Carpat Investments. In addition, Mr. Barrett served as Chairman and Chief Executive Officer of Avis, Inc., Executive Vice President and Chief Financial Officer and member of the board of directors of Norton Simon, Inc., President of Carrier International Corporation, and Vice President and Chief Financial Officer of Carrier Corporation. Mr. Barrett serves as a trustee of both Syracuse and St. Lawrence Universities, director of Lincoln National Corp., and serves as Chairman of the audit committee of Lincoln National. He is also a member of the board of directors of Coyne International Enterprises Corporation.

Kevin J. Kelly co-founded Telergy, Inc. in April 1995 and has been serving as a director and an officer since our inception. Since April 1998, Mr. Kelly served as Executive Vice President and



since April 2000, has been Vice Chairman of the board of directors. From 1986 to 1995, Mr. Kelly served as Chief Executive Officer of Telecommunications Management Systems, a telecommunications and television billing service provider specializing in the healthcare industry.

Nicholas A. Merrick has been serving as Senior Vice President and our Chief Financial Officer since May 2000. From October 1997 to February 2000, Mr. Merrick served as Executive Vice President and from October 1997 to November 1998 also served as Chief Financial Officer of Excel Communications Inc., which was acquired by Telelobe. From November 1998 to February 2000, Mr. Merrick was also President and Chief Executive Officer of up2 technologies, Inc., a web hosting subsidiary of Telelobe. From March 1996 to October 1997, Mr. Merrick served as Chief Financial Officer of Telco Communications Group, Inc. until its acquisition by Excel. From August 1990 to March 1996, Mr. Merrick held several positions at The Robinson-Humphrey Company, Inc. in Atlanta, including Vice President, Corporate Finance.

Joseph Ciancaglini has been serving as our Chief Operating Officer since August 1999. Mr. Ciancaglini served as Director of Operations of Telergy Network Services from February 1999 to August 1999. From 1968 to 1999, Mr. Ciancaglini served as Director of Operations for the Central New York Region at NYNEX/Bell Atlantic, serving over a 22,000 square mile area and managing approximately 800 employees.

William M. Kelly, Jr. co-founded Telergy, Inc. in April 1995 and has been serving as an officer and director since our inception. Since April 2000, Mr. Kelly has served as Executive Vice President. From April 1995 to April 2000, Mr. Kelly served as Secretary. From 1986 to 1995, Mr. Kelly served as Chief Information Officer for Telecommunications Management Systems, a telecommunications and television billing service provider specializing in the healthcare market.

Steven D. Rubin has been serving as our Senior Vice President and General Counsel since January 2000 and Secretary since April 2000. From 1990 to 2000, Mr. Rubin served as a shareholder of the law firm of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. and a director of that firm from 1998 to 2000.

David M. Wolf has been serving as our Chief Technical Officer since April 2000. From October 1997 to April 2000, Mr. Wolf served as Vice President of Corporate Development. From 1984 to 1997, Mr. Wolf was employed by NYNEX/Bell Atlantic where he held a variety of positions including Implementation Engineer, Transmission Engineer, Switch Designer, Market Area Planner, and Advanced Customer Network Engineer. In addition, Mr. Wolf was a Director of the Telecom Institute at SUNY Institute of Technology at Utica from 1995 to 1997.

Jimmy Wang has been serving as our Chief Information Officer since March 2000. In February and March 2000, Mr. Wang served as Chief Technology Officer. From 1997 to 2000, Mr. Wang served as Director of System Development/Testing Group for AT&T Local Systems. From 1994 to 1997, Mr. Wang served as manager of AT&T Bell Labs. Mr. Wang holds a Ph.D. in operations research from Southern Methodist University.

Thomas G. Young has been serving as our Vice President, Government Relations since April 2000. From August 1995 to April 2000, Mr. Young served as our Senior Vice President of Government Relationship. From 1994 to 1995, Mr. Young served as Chairman of the New York Power Authority.

Eugene Cho has been serving as our Vice President, Corporate Finance since February 2000. From 1997 to 2000, Mr. Cho was an associate in the investment banking division of Donaldson, Lufkin & Jenrette Securities Corporation. Mr. Cho received a Masters of Business Administration from Columbia University in 1997. Prior to attending business school, Mr. Cho was an analyst in the investment banking division of Lehman Brothers Inc. Mr. Cho received a bachelors in economics from Yale University in 1992.

Barry M. Vaughn has been serving as our Vice President, Sales and Marketing since November 1999. From 1997 to 1999, Mr. Vaughn served as Director of Commercial Data Solutions for Sensis Corp., an international engineering company specializing in data telecommunications and sensors for the aviation, air defense and commercial markets. From 1979 to 1997, Mr. Vaughn held a number of marketing, technical and operational positions including Director of Marketing for Health Care Market Management, Director of Emerging Markets for the entire NYNEX region and Director of Marketing for the Central New York Region.

Nigel S. B. Price has been serving as our Vice President, Information Technology since May 1999. From 1994 to 1999, Mr. Price worked with Perot Systems as an information technology consultant. Before working at Perot Systems, Mr. Price spent 25 years with British Telecom in various management and systems development roles. At British Telecom, Mr. Price supervised the development of the GSM Network for Cellnet in the United Kingdom.

Richard J. Oliver has been serving as our Vice President, Treasurer since April 2000. From 1995 to April 2000, Mr. Oliver served as our Chief Financial Officer. From 1983 to 1995, Mr. Oliver served as Chief Financial Officer of the Touchette Corporation where he was also responsible for the operations of the computer service divisions.

John F. O'Mara has been one of our senior advisors since December 1998 and one of our directors since May 1999. Mr. O'Mara served as Regulator of the New York Public Service Commission from 1995 to 1998. Mr. O'Mara is a partner in the law firm of Davidson and O'Mara.

J. Philip Frazier has been a member of our board of directors since May 1999. From 1997 to 1998, he served as a director of Telergy Joint Venture, the predecessor of Telergy Central, LLC. Mr. Frazier has been serving as President and Chief Executive Officer of Niagara Mohawk Energy since 1996. From 1995 to 1996, Mr. Frazier was employed by Stonehedge Partners where he served as Operating Partner.

Frank J. Zaccanelli has been one of our senior advisors since June 1998 and a director since May 1999. From 1986 to 1998, Mr. Zaccanelli served as President of Hillwood Investment Company, a leading commercial real estate company controlled by the Perot family. In addition, Mr. Zaccanelli has a minority ownership in the Dallas Mavericks, where he had served as President and General Manager.

Albert J. Budney, Jr. has been a member of our board of directors since September 1999. He is currently serving as President and a director of Niagara Mohawk Holdings, Inc. From 1995 to 1999, Mr. Budney served as President and Chief Operating Officer of Niagara Mohawk Power Corporation. Before joining Niagara Mohawk, he served as Managing Vice President of UtiliCorp Power Services Group. Mr. Budney is a director of the Utilities Mutual Insurance Company, the Buffalo Niagara Partnership, and the Central New York United Way, where he is Vice Chairman. He is a member of the New York State Regional Economic Development Committee, Chairman of the Board of Governors for Princeton Class of 1968, and President of BorderNet Alliance, a joint U.S.-Canada Economic Development Organization.

Joel-Tomas Citron has been a member of our board of directors since September 1999. Since November 1999, Mr. Citron has served as Vice Chairman of MasTec, Inc. He has served as President of MasTec since May 1999 and Chief Executive Officer since October 1999. Mr. Citron was the Managing Partner of Triscope Capital LLC, a private investment partnership, from January 1998 to November 1998, Chairman of the board of directors of Proventus AB and a member of its Executive Committee of the group from January 1992 until December 1997. Mr. Citron has been a director of Neff Corporation since October 1998 and Chairman of the board of directors of American Information Systems, Inc., a provider of intranet and internet systems solutions, from September 1996 until January 1999.

Terence R. McAuliffe has been a member of our board of directors since August 1999. Since December 1995, Mr. McAuliffe has served as Chairman of American Heritage Corporation. Mr. McAuliffe is also Chairman and Chief Executive Officer of Jefferson National Title Insurance Company. In addition, Mr. McAuliffe also serves on the Board of Regents for Catholic University, National Council for Political Management at George Washington University, and was Co-Chairman of the 53rd Presidential Inaugural Committee.

Vincent F. Spina has been a member of our board of directors since April 2000. Since 1993, Mr. Spina has served as a principal of PricewaterhouseCoopers LLP where he manages the Global Human Resource Solutions group in Syracuse, New York. This group includes 28 employees consisting of actuaries, attorneys and employee benefits specialists. He also manages all phases of the actuarial valuation process, plan design and qualification and general employee benefits consulting. From 1989 to 1993, Mr. Spina served as senior consultant at PricewaterhouseCoopers LLP. Mr. Spina is Vice-Chairperson of the Empire Housing and Development Corp., is a Treasurer of the William and Mary Jackson Foundation, Inc. and is a former board member of the Syracuse Chapter of the New York Employee Benefits Conference.

TELERGY NETWORK SERVICES, INC.  
One Telergy Parkway  
East Syracuse, NY 13057

M&T  
3401 Erie Blvd. East  
Dewitt, NY 13214  
10-4/220

005569

Date July 21, 2000

Pay Amount \$250.00\*\*\*

Pay \*\*\*\*\*TWO HUNDRED FIFTY AND XX / 100 US DOLLAR\*\*\*\*\*

To The Order Of SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
., SD

Authorized Signature

⑈005569⑈ ⑆022000046⑆ 8700239901⑈

Check Date: July 21, 2000

TELERGY NETWORK SERVICES, INC.

Check No. 005569

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
APPL FEE	19.Jul.2000	00012111	250.00	0.00	250.00

TC00-116

Vendor Number	Name			Total Discounts	
00000000	South Dakota Public Utilities Commission			\$0.00	
Check Number	Date		Total Amount	Discounts Taken	Total Paid Amount
005569	21 Jul 2000		\$250.00	\$0.00	\$250.00

South Dakota Public Utilities Commission

**WEEKLY FILINGS**

For the Period of July 27, 2000 through August 2, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing. Phone: 605-773-3705 Fax: 605-773-3809

**CONSUMER COMPLAINTS**

**CT00-091 In the Matter of the Complaint filed by Earl M. Briggs, Rapid City, South Dakota, against Starlink Communications, LLC Regarding Unauthorized Billing of Services.**

The Complainant claims that he began to receive billings for service he did not authorize in March. The Complainant requests credit of all charges, \$1000 as provided by law, and compensation for his time and travel expenses if required to attend a hearing.

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Docketed: 07/27/00  
Intervention Deadline: NA

**CT00-092 In the Matter of the Complaint filed by Darrell and Bette Johnson, Brookings, South Dakota, against Sprint Communications Company L.P. Regarding Unauthorized Switching of Services and Unauthorized Billing of Long Distance Services.**

The complainants allege that their phone service was switched without authorization and that they continued to receive bills after the account had been closed. The complainants request that all Sprint charges are cancelled, to reinstate their good credit rating and compensation of \$500.00 by Sprint for the unauthorized switch if a hearing is not required. If a hearing is held they are requesting \$1000.00 compensation to have the matter resolved.

Staff Analyst: Charlene Lund  
Staff Attorney: Karen Cremer  
Date Docketed: 08/01/00  
Intervention Deadline: NA

**CT00-093 In the Matter of the Complaint filed by Terry and Regina Van Dyke, Sioux Falls, South Dakota, against Telco Long Distance Wholesale Regarding a Dispute Over Raising Long Distance Telephone Rates Without Notice.**

The complainants allege that they had agreed to a rate plan for telephone services and the rates were increased without notice, which is a violation of ARSD 20:10:34:10. The complainants are requesting an adjustment of \$203.20 by the company which is equal to the rates provided by the rate plan they had originally signed up for and a letter of apology

Staff Analyst: Charlene Lund  
Staff Attorney: Karen Cremer  
Date Docketed: 08/01/00  
Intervention Deadline: NA

## NATURAL GAS

**NG98-006** In the Matter of the Filing by MidAmerican Energy Company for Approval of Waiver of Refund Plan Relating to Kansas Ad Valorem Tax Refunds Received from Northern Natural Gas Company.

On June 18, 1998, MidAmerican Energy Company (MidAmerican) filed for approval of a waiver of refund plan relating to Kansas ad valorem tax refunds received from Northern Natural Gas Company (Northern) with the Commission. On August 5, 1998, the Commission approved MidAmerican's proposal to defer the Kansas ad valorem tax refunds, until MidAmerican determines that the amount received constitutes a final refund or for a maximum of one year, whichever comes first. On August 26, 1999, the Commission again granted deferral of the Northern Natural Gas Company refund with the same condition. On July 14, 2000 MidAmerican again filed to defer the Northern Refund until MidAmerican determines that the amount received constitutes a final refund or for a maximum of one year, whichever comes first.

Staff Analyst: Dave Jacobson  
Staff Attorney: Karen Cremer  
Date Filed: 07/17/00  
Intervention Deadline: NA

## TELECOMMUNICATIONS

**TC00-116** In the Matter of the Application of Telergy Network Services, Inc. for a Certificate of Authority to Provide Telecommunications Services, Including Local Exchange Services, in South Dakota.

Telergy Network Services, Inc. (Telergy) filed an application with the Commission for a Certificate of Authority to provide facilities-based and resold local exchange and interexchange telecommunications services within South Dakota.

Staff Analyst: Heather Forney  
Date Docketed: 08/02/00  
Intervention Deadline: 08/18/00

**TC00-117** In the Matter of the Joint Petition filed by Sully Buttes Telephone Cooperative, Inc. and Qwest Corporation for Designation as an Eligible Telecommunications Carrier for Sully Buttes Telephone Cooperative, Inc. in the Sisseton Exchange and for Relinquishment of Qwest Corporation's Designation as an Eligible Telecommunications Carrier in the Sisseton Exchange.

Sully Buttes Telephone Cooperative, Inc. (Sully Buttes) and Qwest Corporation, formerly U S WEST Communications, Inc. (Qwest), filed a Joint Petition for ETC Designation and Relinquishment with the Commission. The petitioners are asking the Commission to designate Sully Buttes as an eligible telecommunications carrier (ETC) within the local exchange of Sisseton, South Dakota, the exchange Sully Buttes recently purchased from Qwest. The petitioners are simultaneously asking the Commission to relinquish and transfer Qwest's ETC designation and accompanying universal service obligations to Sully Buttes in the same exchange.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Date Docketed: 08/02/00  
Intervention Deadline: 08/18/00

You may receive this listing and other PUC publications via our website or via internet e-mail.  
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>



November 2, 2000

SENT VIA OVERNIGHT MAIL

**RECEIVED**

NOV 03 2000

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Ms. Heather K. Forney, Utility Analyst  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Re: TC00-116—In the Matter of the Application of Telergy Network Services, Inc.  
to Provide Local Exchange and Interexchange Services

Dear Ms. Forney:

Thank you for your letter dated October 12 regarding the indemnity bond and clarification of Telergy's intent to provide customers with access to emergency and other services. Please find enclosed, the original indemnity bond in the amount of \$25,000.00 which was signed by William M. Kelly, Jr., our Executive Vice President and acknowledged by notary public.

You are correct in your understanding that Telergy intends to provide emergency services-- 911, operator services, interexchange services, directory assistance and telecommunications relay services via its ILEC(s) and that any interconnection agreements will contain such provisions. In accordance with your position, we understand that the waiver we originally requested in our application, based on ARSD 20:10:32:03(10) will not be recommended to the Commission. If this letter is not sufficient to serve as a statement that these services will be provided by the ILEC(s), please advise me accordingly.

Also enclosed is a duplicate of this letter. Kindly date-stamp the duplicate and return it in the postage paid envelope provided. If you have any questions concerning the above responses, please don't hesitate to call or E-Mail me. My telephone number is (315) 362-2259 and E-Mail address is [dlawson@telergy.net](mailto:dlawson@telergy.net).

Sincerely,

A handwritten signature in cursive script that reads "Diann Lawson".

Diann Lawson  
Paralegal, Regulatory Compliance

Encs.





# Fidelity and Deposit Company of Maryland

Home Office: P.O. Box 1227, Baltimore, MD 21203-1227

## INDEMNITY BOND

To the

PEOPLE OF THE STATE OF SOUTH DAKOTA

Bond No. LPM 8128273

We, TELERGY NETWORK SERVICES, INC. the principal and applicant for a CERTIFICATE OF AUTHORITY to resell long distance telecommunications services within the State of South Dakota, and FIDELITY AND DEPOSIT CO. OF MARYLAND as an admitted surety insurer, bind ourselves unto the Public Utilities Commission of the State of South Dakota and the consumers of South Dakota as Obligees, in the sum of \$25,000.00.

The conditions of the obligation are such that the principal, having been granted such CERTIFICATE OF AUTHORITY subject to the provision that said principal purchases this Indemnity Bond, and if said principal shall in all respects fully and faithfully comply with all applicable provisions of South Dakota State Law, and reimburse customers of TELERGY NETWORK SERVICES, INC. for any prepayment or deposits they have made which may be unable or unwilling to return to said customers as a result of insolvency or other business failure, then this obligation shall be void, discharged and forever exonerated, otherwise to remain in full force and effect.

This bond shall take effect as of the date hereon and shall remain in force and effect until the surety is released from liability by the written order of the Public Utilities Commission, provided that the surety may cancel this Bond and be relieved of further liability hereunder by delivering thirty (30) days written notice to the Public Utilities Commission. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty (30) day period.

Dated this 26<sup>TH</sup> day of September, 2000.

To be effective this 26th day of September, 2000.

*The original  
bond is in  
Belaine's bottom  
desk drawer.*

TELERGY NETWORK SERVICES, INC.

By: 

SURETY

Countersigned this 26th day of  
September, 2000

By Nick Gusso

Resident Agent  
Nick Gusso  
600 S. Cliff Avenue  
Sioux Falls, SD 57101

FIDELITY AND DEPOSIT CO. OF MARYLAND

By Sharon L. Bate  
Sharon L. Bate, Attorney in Fact

RECEIVED

NOV 03 2000

**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**  
**HOME OFFICE: P.O. BOX 1227, BALTIMORE, MD 21203-1227**

Know ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by W. B. WALBRECHER, Vice-President, and T. E. SMITH, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Paul R. Wrona, Barbara A. Garr, Sharon L. Bater and Francis A. Lowther**, all of Syracuse, New York, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Paul C. Rogers, Barbara A. Garr, Sharon L. Bater, Paul R. Wrona and Francis A. Lowther, dated August 7, 1997.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 2nd day of September, A.D. 1998.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*T. E. Smith*

*Assistant Secretary*

By:

*W. B. Walbrecher*

*Vice-President*

State of Maryland } ss:  
County of Baltimore }

On this 2nd day of September, A.D. 1998, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came W. B. Walbrecher, Vice-President and T. E. Smith, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Carol J. Fader*

*Notary Public*

My Commission Expires: August 1, 2000

ACKNOWLEDGEMENT PAGE

CORPORATION

STATE OF NEW YORK

COUNTY OF ONONDAGA SS

ON THIS 30th DAY OF October, 2000 BEFORE ME PERSONALLY CAME  
WILLIAM M. KELLY, JR TO ME PERSONALLY KNOWN AND KNOWN TO ME TO  
 BE EXECUTIVE VICE PRESIDENT OF TELERGY NETWORK SERVICES, INC. ("TELERGY")  
 THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE FOREGOING INSTRUMENT AS PRINCIPAL, WHO BEING BY ME DULY  
 SWORN, DID DEPOSE AND SAY: THAT HE RESIDES AT FAYETTEVILLE, NY THAT HE IS  
EXECUTIVE VICE PRESIDENT OF THE SAID TELERGY AND KNOWS THE  
 CORPORATE SEAL THEREOF; THAT THE SEAL AFFIXED TO THE FOREGOING INSTRUMENT IS THE CORPORATE SEAL OF SAID COMPANY  
 AND WAS AFFIXED THERETO BY AUTHORITY OF THE BOARD OF DIRECTORS OF SAID COMPANY, AND THAT HE SIGNED HIS NAME  
 THERETO BY THE LIKE AUTHORITY AS EXECUTIVE VICE PRESIDENT OF SAID COMPANY.

Isabella D. Lawson

ISABELLA D. LAWSON  
 Notary Public in the State of New York  
 Qualified in Onondaga Co. No. 01LA5070347  
 My Commission Expires December 9, 2000

FOR INDIVIDUAL OR PARTNERSHIP

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_ SS

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, BEFORE ME PERSONALLY CAME

\_\_\_\_\_ TO ME KNOWN TO BE THE PERSON \_\_\_\_\_ DESCRIBED IN  
 AND WHO EXECUTED THE FOREGOING INSTRUMENT AS PRINCIPAL \_\_\_\_\_, AND ACKNOWLEDGED THAT \_\_\_\_\_ HE \_\_\_\_\_ EXECUTED THE SAME.

NOTARY PUBLIC

NOTARY JURATS

STATE OF NEW YORK

COUNTY OF ONONDAGA SS

ON THIS 26th DAY OF September IN THE YEAR 2000 BEFORE ME PERSONALLY CAME  
Sharon L. Bater TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY,  
 THAT HE RESIDES IN THE CITY OF Syracuse, NY; THAT HE WAS THE ATTORNEY-IN-FACT OF THE FIDELITY  
 AND DEPOSIT COMPANY OF MARYLAND, THE CORPORATION NAMED IN AND WHICH EXECUTED THE WITHIN INSTRUMENT; THAT HE  
 KNOWS THE SEAL OF SAID CORPORATION; THAT THE SEAL AFFIXED TO SAID INSTRUMENT IS SUCH CORPORATE SEAL; THAT IT WAS  
 SO AFFIXED BY ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION, AND THAT HE SIGNED HIS NAME THERETO BY LIKE  
 ORDER, AND THAT THE LIABILITIES OF SAID COMPANY DO NOT EXCEED ITS ASSETS AS ASCERTAINED IN THE MANNER PROVIDED IN  
 SECTION 183 OF THE INSURANCE LAW, CONSTITUTING CHAPTER 33 OF THE CONSOLIDATED LAWS OF THE STATE OF NEW  
 YORK..

Barbara A. Carr  
 NOTARY PUBLIC

BARBARA A. CARR  
 Notary Public in the State of New York  
 Qualified in Onondaga County No. 4625457  
 My Commission Expires 12/31/2000



# FIDELITY AND DEPOSIT COMPANY

OF MARYLAND  
P O. BOX 1227 BALTIMORE, MD 21203

## Statement of Financial Condition As Of December 31, 1999

### ASSETS

Bonds .....	\$ 98,337,232
Stocks .....	106,196,245
Real Estate .....	0
Cash in Banks and Offices and Short Term Investments .....	45,657,743
Premiums in Course of Collection (less than 90 days old) .....	0
Reinsurance and Other Accounts Receivable .....	43,401,430
TOTAL ADMITTED ASSETS .....	<u>\$ 293,592,650</u>

### LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Unearned Premiums .....	\$ 0
Reserve for Claims and Claim Expenses .....	0
Reserve for Taxes and Expenses .....	3,444,494
Miscellaneous .....	2,562,669
TOTAL LIABILITIES .....	<u>\$ 6,007,163</u>
Capital Stock, Paid Up .....	\$ 5,000,000
Surplus .....	282,585,487
Surplus as regards Policyholders .....	287,585,487
TOTAL .....	<u>\$ 293,592,650</u>

Securities carried at \$20,088,000 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 1999 market quotations for all bonds and stocks owned, the Company's total admitted assets would be \$279,249,930 and surplus as regards policyholders \$284,819,730.

I, JOSEPH J. GALLAGHER, Treasurer of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31 st day of December, 1999.

*Joseph J. Gallagher*

Treasurer

State of Maryland }  
City of Baltimore } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Maryland, in the City of Baltimore, this 31 st day of December, 1999



*Frances L. Coffman*

Notary Public

My commission expires March 4, 2002.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF</b>	<b>)</b>	<b>ORDER GRANTING</b>
<b>TELERGY NETWORK SERVICES, INC. FOR A</b>	<b>)</b>	<b>CERTIFICATE OF</b>
<b>CERTIFICATE OF AUTHORITY TO PROVIDE</b>	<b>)</b>	<b>AUTHORITY</b>
<b>INTEREXCHANGE TELECOMMUNICATIONS</b>	<b>)</b>	
<b>SERVICES AND LOCAL EXCHANGE</b>	<b>)</b>	<b>TC00-116</b>
<b>SERVICES IN SOUTH DAKOTA</b>	<b>)</b>	
	<b>)</b>	

On August 2, 2000, the Public Utilities Commission (Commission) received an application for a certificate of authority from Telergy Network Services, Inc. (Telergy).

Telergy proposes to offer facilities-based and resold local exchange and interexchange telecommunications services within South Dakota. A proposed tariff was filed by Telergy.

On August 3, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of August 18, 2000, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled November 30, 2000, meeting, the Commission considered Telergy's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to rural safeguards, and subject to a continuous \$25,000 surety bond. Commission Staff further recommended a waiver of ARSD 20:10:24:02(8) and ARSD 20:10:32:03(11), (12)(c) and (13).

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and 49-31-69 and ARSD 20:10:24:02, 20:10:24:03 and 20:10:32:03. The Commission finds that Telergy has met the legal requirements established for the granting of a certificate of authority. Telergy has, in accordance with SDCL 49-31-3 and 49-31-71, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to waive subparagraph (8) of ARSD 20:10:24:02 and subparagraphs (11), (12)(c) and (13) of ARSD 20:10:32:03.

The Commission approves Telergy's application for a certificate of authority, subject to rural safeguards, and subject to a continuous \$25,000 surety bond. The certificate of authority for Telergy shall authorize it to offer local exchange services in South Dakota, except in those areas served by a rural telephone company. In the future, should Telergy choose to provide local exchange services statewide, with respect to rural telephone companies, Telergy will have to come before the Commission in another proceeding before being able to provide local service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation

as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f). It is therefore

ORDERED, that Telergy's application for a certificate of authority to provide interexchange telecommunications services and local exchange services is granted, subject to a continuous \$25,000 surety bond; and it is

FURTHER ORDERED, that Telergy shall file informational copies of tariff changes with the Commission as the changes occur; and it is

FURTHER ORDERED, that the Commission shall authorize Telergy to offer its local exchange services in South Dakota, except in those areas served by a rural telephone company; and it is

FURTHER ORDERED, that the Commission finds good cause to waive subparagraph (8) of ARSD 20:10:24:02 and subparagraphs (11), (12)(c) and (13) of ARSD 20:10:32:03.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of December, 2000.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Alaine Kalbo

Date: 12/8/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

# SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

---

## ***CERTIFICATE OF AUTHORITY***

To Conduct Business As A Telecommunications Company  
Within The State of South Dakota

Authority was Granted November 30, 2000  
Docket No. TC00-116

*This is to certify that*

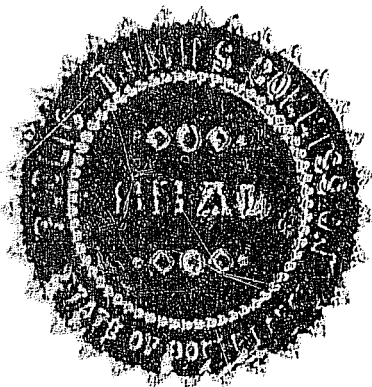
**TELERGY NETWORK SERVICES, INC.**

is authorized to provide interexchange telecommunications services,  
including local exchange services in nonrural areas in South Dakota.

This certificate is issued in accordance with SDCL 49-31-3 and 49-31-69  
and ARSD 20:10:24:02 and 20:10:32:03, and is subject to all of the conditions  
and limitations contained in the rules and statutes governing its conduct of  
offering telecommunications services.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of December, 2000.

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION:**



  
JAMES A. BURG, Chairman

  
PAM NELSON, Commissioner

  
LASKA SCHOENFELDER, Commissioner