

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Department of Commerce's  
Formal Complaint and Request for  
Commission Action Regarding TCG  
Minnesota, Inc.

ISSUE DATE: October 23, 2006

DOCKET NO. P-5496/C-06-498

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On June 7, 2006, the Minnesota Department of Commerce (the Department) filed a complaint alleging that TCG Minnesota, Inc. (TCG), had violated statutes and rules by conspiring to conduct business on terms inconsistent with its tariffs. TCG filed no response.

The Department, in its complaint, alleged that TCG conspired with MCI World Communications (now MCI Communications Services) to provide its affiliates – Brooks Fiber Communications of Minnesota, Inc.; Intermedia Communications, LLC; MCI Worldcom Communications, Inc.; and TTI National, Inc. (collectively MCI) – with switched access to TCG's local telecommunications network on terms that were inconsistent with the terms in TCG's tariffs, and that were concealed from regulators and other telecommunications service providers.

The Department further alleged that in so doing, TCG discriminated by knowingly and willfully charging, demanding, collecting, and receiving payments according to untariffed rates from MCI while offering, charging, demanding, collecting or receiving tariffed rates from MCI's competitors, in violation of:

- Minn. Stat. § 237.07
- Minn. Stat. § 237.09
- Minn. Stat. § 237.121, subd. 4
- Minn. Stat. § 237.74
- Minnesota Rules part 7812.2210, subp. 2, 3, 5, and 9
- Minnesota Rules part 7810.0500, subp. 1

On July 28, 2006, the Commission issued an order finding jurisdiction, grounds to investigate and requiring TCG to answer the complaint.

On August 17, 2006, TCG filed its answer, denying it had violated any Minnesota statutes, rules or Commission orders.

On September 7, 2006, the Department filed reply comments.

On October 12, 2006, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has jurisdiction over TCG's provision of intrastate telecommunications services under the Minnesota Telecommunications Act, Minnesota Statutes Chapter 237, including the following specific grants of jurisdiction: Minn. Stat. §§ 237.16, 237.081, 237.461, 237.462, and 237.74.

The Commission finds that it cannot resolve the issues raised in the Complaint on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **II. Issues to be Addressed**

The issues in this case are whether TCG has violated Minnesota statutes and rules in its provision of intrastate switched access services to MCI subsidiaries and, if it has, what remedial action the Commission should take.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the Complaint.

### **III. Procedural Outline**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

## **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Roger Moy, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2217; or Lisa Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are TCG and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will inform the parties of its time and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

#### **IV. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

#### **V. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

#### **ORDER**

1. The Commission hereby refers the issues raised in the Department of Commerce's Complaint against TCG to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Department of Commerce's MPUC Docket No. P-5496/C-06-498  
Formal Complaint and Request for Commission  
Action Regarding TCG Minnesota, Inc. OAH Docket No.

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 5401-2138; (612) 349-2544

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_