

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Department of Commerce's Formal Complaint and Request for Commission Action Regarding TCG Minnesota, Inc.	<b>ORDER REFERRING PENALTY PHASE TO PUBLIC UTILITIES COMMISSION</b>
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This matter came before the Minnesota Public Utilities Commission (Commission or PUC) on a Recommendation by Administrative Law Judge Steve Mihalchick (ALJ) granting the Department of Commerce's (Department) motion for summary disposition as to TCG's liability; and imposing a penalty of \$552,000. On February 26, 2008, the Commission issued an Order referring the matter back to the Office of Administrative Hearings to supplement the record concerning the penalty factors as it applies to TCG pursuant to Minnesota Statutes § 237.462.<sup>1</sup> On May 8, 2008, TCG Minnesota, Inc. (TCG) filed an Expedited Motion to Stay Procedural Schedule in the penalty phase remand proceedings pending a final appellate decision in *AT & T Communications of the Midwest v. Minnesota Public Utilities Commission*,<sup>2</sup> the companion case to this docket. The Administrative Law Judge issued an Order Granting the Motion to Stay the Procedural Schedule on June 9, 2008. The Minnesota Court of Appeals issued its decision in the *AT & T* case on January 13, 2009, and the Minnesota Supreme Court denied review on April 21, 2009. On May 13, 2009, TCG filed a motion with the Administrative Law Judge to dismiss or terminate the penalty phase. On June 1, 2009, the Department of Commerce filed a letter reply.

Linda S. Jensen, Assistant Attorney General appeared on behalf of the Department. Rebecca DeCook appeared on behalf of TCG.

Based upon the record and the submissions of the parties, the Administrative Law Judge makes the following:

**ORDER**

The proceedings in the penalty phase in this matter before the Office of Administrative Hearings are hereby TERMINATED by the Administrative Law Judge

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<sup>1</sup> See Order Finding Violations and Referring Matter for Further Development (Feb. 26, 2008) at pages 14 and 15

<sup>2</sup> 759 N.W.2d 242 (Jan. 13, 2009), rev. denied April 21, 2009.

and the matter is REFERRED BACK to the Public Utilities Commission for any further proceedings it deems necessary in light of the Court of Appeals decision in the *AT&T of the Midwest* case.

Dated: June 30, 2009

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

### MEMORANDUM

The PUC based its decision finding liability on the part of TCG in this case on principles of collateral estoppel arising from the AT & T case but decided that TCG should have the opportunity to offer further evidence on the question of an appropriate penalty. Because AT & T appealed both the liability and the penalty aspects of that decision, this Administrative Law Judge granted a stay on further proceedings concerning the penalty portion of the case pending the outcome of the appellate proceedings in the AT & T case.

The Minnesota Court of Appeals agreed with AT & T's argument that the penalty provision on which the PUC relied was unenforceable because of a sunset clause within that provision.<sup>3</sup> The Court of Appeals specifically upheld the PUC's liability determination in the AT & T case.<sup>4</sup> The Minnesota Supreme Court declined review of the case. Therefore, it is appropriate to remand this matter to the PUC so that it may determine what action, if any, it will take pursuant to other applicable laws.

S.M.M.

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<sup>3</sup> *In re the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T*, 759 N.W.2d 242, 251 (Minn. App. 2009) (rev. denied April 21, 2009).

<sup>4</sup> *Id.* at 250.