

Decision No. R04-0126-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-538T

IN THE MATTER OF THE APPLICATION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., FOR RETURN OF FUNDS MISTAKENLY REMITTED TO THE COLORADO LOW INCOME TELEPHONE ASSISTANCE FUND.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
VACATING PROCEDURAL SCHEDULE,
SCHEDULING PREHEARING CONFERENCE,
EXTENDING TIME FOR COMMISSION DECISION,
AND LISTING ISSUES FOR DISCUSSION**

Mailed Date: February 2, 2004

I. STATEMENT

1. On December 16, 2003, McLeodUSA Telecommunications Services, Inc. (McLeodUSA or Applicant), filed its Application for Return of Funds Mistakenly Remitted to the Colorado Low Income Telephone Assistance Fund (Application). Portions of the Application and of the Testimony of Becki Merkel were filed with the Commission under seal. The Application commenced this proceeding.

2. On December 17, 2003, the Commission gave public notice of the Application. See Notice of Application Filed (Notice), dated December 17, 2003. In that Notice, the Commission established a 30-day intervention period and a procedural schedule.

3. On January 26, 2004, Staff of the Commission (Staff) intervened of right and requested a hearing in this matter.

4. On January 28, 2004, by Minute Order, the Commission deemed the Application complete as of February 2, 2004; granted the Staff's request for a hearing; and referred this matter to an Administrative Law Judge (ALJ).

5. The undersigned ALJ is assigned to hear this docket.

6. By this Order, the ALJ will vacate the procedural schedule set out in the Notice.

7. It is necessary to schedule a hearing and to establish a procedural schedule in this matter. To do so, a prehearing conference will be held on February 19, 2004. The provisions of Rules 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and 4 CCR 723-1-79(b)(4) govern this prehearing conference.

8. The parties should be prepared to discuss these matters at the prehearing conference: (a) date by which Staff will file its answer testimony and exhibits; (b) date by which McLeodUSA will file its rebuttal testimony and exhibits; (c) date(s) by which each party will file its corrected testimony and exhibits; (d) date by which each party will file its prehearing motions;¹ (e) whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference; (f) date by which the parties will file any stipulation reached;² (g) hearing dates; and (h) date for post-hearing statements of position and whether the statements should be written or oral and, if written, whether responses should be permitted. In addition, McLeodUSA should be prepared to explain the bases for its claim of confidentiality with respect to the Application and the testimony of Ms. Merkel. Further, the parties should review, and be

¹ This date should be at least 10 days before the final prehearing conference or, if there is no final prehearing conference, 14 days before the hearing.

² This date should be at least seven calendar days before the first day of hearing.

prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Parties may raise any additional issues.

9. In considering proposed dates, parties should keep in mind that the Commission has deemed the Application complete as of February 2, 2004. Absent Applicant's waiver of the statutory time frame or a finding of extraordinary circumstances, a Commission decision in this proceeding should issue within 210 days of that date (*i.e.*, August 30, 2004).³ See §§ 40-6-109.5(1) and 40-6-109.5(4), C.R.S. Any procedural schedule must take into consideration, and allow time for, the preparation of a recommended decision, preparation of exceptions to the recommended decision and response to exceptions, and preparation of a Commission decision on exceptions,⁴ all of which should occur by August 30, 2004.

10. The undersigned expects the parties to come to the prehearing conference with proposed dates for all deadlines. In addition, the parties must consult prior to the prehearing conference with respect to the listed matters. Finally, the parties are encouraged to present, if possible, a procedural schedule and hearing date(s) which are satisfactory to both parties.

II. ORDER

A. It Is Ordered That:

1. The procedural schedule established in the Notice of Application Filed, dated December 17, 2003, is vacated.

³ By this Order, the ALJ extends for an additional 90 days the time for Commission decision in this proceeding. See § 40-6-109.5(1), C.R.S. The issues presented here are novel; the decision in this matter may impact the Colorado Low Income Telephone Assistance Fund; and, thus, the Application requires a degree of consideration which, the ALJ finds, cannot be completed reasonably within 120 days of February 2, 2004.

⁴ As a general rule and not including the time necessary for preparation of a transcript if one is ordered, these activities consume two and one-half to three months from the filing of the statements of position or responses to statements of position, whichever occurs later.

2. A prehearing conference in this docket is scheduled as follows:

DATE: February 19, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

3. The parties shall follow the procedures, and be prepared to discuss the matters, as set forth above.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge