

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
ESTABLISHING PROCEDURAL SCHEDULE
AND SCHEDULING HEARING**

Mailed Date: February 20, 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). McLeodUSA filed its direct testimony with the Application. 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.

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. On February 2, 2004, by Decision No. R03-0126-I, the undersigned ALJ, *inter alia*, vacated the procedural schedule set out in the Notice and scheduled a prehearing conference.

6. On February 19, 2004, the ALJ held the scheduled prehearing conference. At that prehearing conference the Applicant presented a proposed procedural schedule and hearing dates with which Staff agreed. The proposed schedule allows sufficient time for the Commission to meet the timeframe set out in § 40-6-109.5(1), C.R.S. The ALJ stated that the proposed schedule would be adopted, and this Order memorializes that decision.

7. The following procedural schedule will be adopted: (a) on or before April 12, 2004, Staff will file its answer testimony and exhibits; (b) on or before April 26, 2004, McLeodUSA will file its rebuttal testimony and exhibits; (c) on or before May 3, 2004, each party will file its corrected testimony and exhibits; (d) on or before May 3, 2004, each party will file its prehearing motions; (e) on or before May 17, 2004, each party will file its response to prehearing motions;¹ (f) on or before May 20, 2004, the parties will file any stipulation reached; (g) the hearing will be held on May 27, 2004; and (h) on or before June 11, 2004, the parties will file post-hearing statements of position and, absent further order, no response will be permitted.

8. No final prehearing conference is scheduled at this time. Should one or both parties believe that a prehearing conference is necessary or desirable, a motion may be filed.

9. Rule 4 *Code of Colorado Regulations* 723-1-77 will govern discovery in this proceeding. At the request for Applicant and with the agreement of Staff,² from February 19,

¹ Argument on prefiled motions will be heard as a preliminary matter at the hearing.

² Staff did not waive, and specifically reserved, its right to audit. *See, e.g.*, § 40-6-106, C.R.S. For this case only, it agreed to Applicant's request.

2004, Staff will request information in this proceeding using discovery and not audit. There are now-pending Staff audit requests addressed to Applicant concerning this proceeding. These pending audit requests are not subject to this Order.

10. In Decision No. R04-0126-I at ¶ 8, the ALJ requested that McLeodUSA explain the basis or bases for the claim of confidentiality made with respect to portions of both the Application and the testimony of Ms. Merkel. At the prehearing conference, McLeodUSA stated that, with little effort, a person could calculate Applicant's line count from the data filed under seal and that Applicant considers its line count to be highly confidential information. Staff supported maintaining the materials under seal. Based on the explanation and the absence of objection, the ALJ is satisfied that, at this time, the materials should remain confidential.³

II. ORDER

A. It Is Ordered That:

1. The procedural schedule detailed above is adopted.
2. Hearing shall be conducted in this matter at the following time and date:

DATE: May 27, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL-2
Denver, Colorado
3. The parties shall follow the procedures and shall make the filings set out above.
4. This Order is effective immediately.

³ This determination is based on the circumstances at present, is not conclusive, and may be revisited in the future.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge