

Decision No. R04-0539-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
GRANTING MOTION, VACATING
HEARING DATE, ESTABLISHING
PROCEDURAL SCHEDULE, SCHEDULING
NEW HEARING DATES, PROVIDING NOTICE
OF WAIVER, AND WAIVING RESPONSE TIME**

Mailed Date: May 24, 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. The Commission gave public notice of the Application. *See* Notice of Application Filed, dated December 17, 2003. Staff of the Commission (Staff or Intervenor) intervened of right and requested a hearing in this matter.

3. On January 28, 2004, by Minute Order, the Commission deemed the Application complete as of February 2, 2004.

4. By Decision No. R04-0180-I, the undersigned Administrative Law Judge (ALJ) established a procedural schedule and set a hearing date of May 27, 2004, in this matter. On motion of the parties, the ALJ later modified that procedural schedule (*see* Decisions No. R04-0390-I and No. R04-0481-I).

5. On May 21, 2004, Applicant filed a Motion for Adoption of Revised Procedural Schedule (Motion). In that Motion Applicant proposes a procedural schedule and hearing dates which are acceptable to Intervenor. *Id.* at ¶ 2. Applicant also agrees to “a limited, fifty-six (56) day waiver of” the time limits contained in § 40-6-109.5, C.R.S. According to Applicant, the “limited” waiver should result in an October 20, 2004, deadline for Commission decision in this proceeding. *Id.* at ¶ 3.¹

6. In view of Applicant’s waiver (to whatever degree) of § 40-6-109.5, C.R.S., and Intervenor’s agreement with the proposal, the ALJ will grant the Motion; will vacate the May 24, 2004 hearing date; and will adopt the proposed procedural schedule.

7. The following procedural schedule will be adopted: (a) on or before June 2, 2004, Intervenor will file its answer testimony and exhibits; (b) on or before June 16, 2004, Applicant will file its rebuttal testimony and exhibits; (c) on or before June 23, 2004, each party will file its corrected testimony and exhibits;² (d) on or before June 23, 2004, each party will file its prehearing motions; (e) on or before July 7, 2004, each party will file its response to prehearing

¹ Section 40-6-109.5(3), C.R.S., provides for waiver of the §§ 40-6-109.5(1) and 40-6-109.5 (2), C.R.S., time limits, in which event they “shall not be binding on the commission.” There is no language indicating that an applicant may make a “limited” waiver and thereby impose (either unilaterally or with the agreement of another party in a proceeding) a new deadline on the Commission. While she does not reach this issue because it is not before her and because resolution is not necessary to decide the Motion, the ALJ must confess to a certain skepticism about the efficacy of a “limited” waiver of § 40-6-109.5, C.R.S. This is left, however, for another day.

² This is a new requirement that was not addressed in the Motion. It is a parallel provision to one contained in Decision No. R04-0180-I.

motions; (f) on or before July 15, 2004, the parties will file any stipulation reached;³ (g) the hearing will be held on July 22 and 23, 2004; and (h) on or before August 6, 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,⁴ from February 19, 2004, forward, Staff will request information in this proceeding using discovery and not audit.

10. Applicant filed a Motion for Waiver of Response Time to the Motion. Staff agrees with the Motion. As a result, the ALJ will grant the Motion for Waiver of Response Time and will waive response time to the Motion for Adoption of Revised Procedural Schedule.

II. ORDER

A. It Is Ordered That:

1. The Motion for Adoption of Revised Procedural Schedule is granted.
2. The hearing scheduled for May 27, 2004, is vacated.
3. The procedural schedule detailed above is adopted.

³ See note 2, above.

⁴ 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.

4. Hearing shall be conducted in this matter at the following dates, time, and place:

DATES: July 22 and 23, 2004

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1580 Logan Street, OL-2
Denver, Colorado

5. The parties shall follow the procedures and shall make the filings set out above.

6. The Motion for Waiver of Response Time is granted.

7. Response time to the Motion for Adoption of Revised Procedural Schedule is waived.

8. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge