

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Duke Manufacturing Co.,)	
)	
Complainant,)	
)	
v.)	<u>Case No. TC-2008-0191</u>
)	
McLeodUSA Telecommunications)	
Services, Inc.,)	
)	
Respondent.)	

ORDER SETTING PREHEARING CONFERENCE AND DIRECTING
FILING OF A PROPOSED PROCEDURAL SCHEDULE

Issue Date: March 19, 2008

Effective Date: March 19, 2008

Duke Manufacturing Co. ("Duke") filed a formal complaint against Respondent McLeodUSA Telecommunications Services, Inc. ("McLeod") on December 11, 2007. Exhibit 1 attached to the complaint lists nearly 100 contacts concerning approximately 15 service issues between Duke and McLeod going back over a two-year period. On December 14, 2007, the Commission notified McLeod of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). On the same day, the Commission also directed the Staff to investigate this matter and to file a report concerning the results of that investigation no later than one week after McLeod filed its answer.

McLeod filed its answer on January 14, 2008. McLeod generally denied that it has failed to provide adequate, just, and reasonable services, but also averred that the majority of the chronic service issues identified by Duke in its complaint relate to the condition of

several access loops provided by Southwestern Bell Telephone Company d/b/a AT&T Missouri ("AT&T Missouri") that are leased as unbundled network elements.

On January 18, 2008, Staff filed a pleading captioned "Motion to Postpone Filing Report and Motion to Schedule Prehearing Conference." In this pleading, Staff requested that the Commission extend the due date for Staff's report from January 21, 2008 to an unspecified later date, explaining that "Staff's investigation will of necessity include extensive inquiries of Duke, McLeod, and AT&T Missouri and an examination of the facilities of Duke, McLeod, and AT&T Missouri, as well as that of any other as yet unidentified connecting carriers." Staff also requested that the Commission schedule a prehearing conference in this matter, at which time the parties would develop a proposed procedural schedule, including the time for Staff to file testimony on its investigation. The Commission granted those requests by order dated January 29, 2008. In a separate order issued the same day, the Commission also set this matter for a prehearing conference on February 7, 2008.¹

On February 1, 2008, Staff filed its Motion to Join AT&T Missouri as a Party, which the Commission granted by order dated March 11, 2008, further directing the parties to "meet and confer and jointly file an appropriate pleading containing a proposed date and time for a prehearing conference." A week later, Staff filed such a pleading on behalf of all the parties to this case, suggesting that the conference be held at 10:00 a.m. on April 9, 2008.

¹ On February 4, 2008, McLeod filed a motion requesting that the prehearing conference be postponed "until sometime after the Commission rules on Staff's Motion to Join AT&T Missouri as a Party," contending that it would be "inefficient to proceed with the Prehearing conference while Staff's motion is pending, in light of the uncertainty as to whether all necessary parties have been identified, joined, and been given adequate notice of the prehearing conference." The Commission granted that motion by order dated February 6, 2008, directing the parties to meet and confer and jointly file an appropriate pleading containing a proposed date and time for the prehearing conference within a week of the Commission's decision on Staff's pending motion.

This matter is now at issue and a prehearing conference is appropriate to ensure its prompt resolution. In part, a prehearing conference is designed to permit the parties to pursue settlement discussions and to identify all remaining procedural or substantive matters of concern prior to the formal disposition of the issues in the case.² In addition, a prehearing conference offers the parties a valuable opportunity to attempt to resolve their differences by agreeing to voluntary mediation of their dispute. The parties shall jointly file a proposed procedural schedule within twenty days after the prehearing conference.

The Commission reminds the parties that this prehearing conference is *not an evidentiary hearing*. Sworn testimony will not be taken and no final decision will result from this prehearing conference.³ However, all parties are required to be present for the prehearing conference, and a court reporter will be present to make a record of the parties that appear. **Parties must arrive in person or appear by telephone at or before the scheduled starting time of 10:00 a.m. in order to participate.** Pursuant to Commission Rule 4 CSR 240-2.090(5), “Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party’s complaint, application or other action unless good cause for the failure to appear is shown.”

The Commission further advises the parties that arriving late to a prehearing conference is the equivalent of failing to appear. Parties are expected to appear at scheduled hearings on time, or to advise the Commission of their need to appear late or to timely request a continuance. If a party fails to meet those obligations, that party may be dismissed and the Commission may rule in favor of an opposing party. This is why the

² See Commission Rule 4 CSR 240-2.090(6).

Commission issues advance notice of all hearings and conferences and extends various opportunities prior to any scheduled event for the parties to appear by phone or request a continuance.

IT IS ORDERED THAT:

1. Staff's Motion to Schedule a Prehearing Conference is granted. The parties shall appear at a prehearing conference to be held on April 9, 2008, beginning at 10:00 a.m. The prehearing conference will be held in Room 305 at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets the accessibility standards required by the Americans with Disabilities Act. Any person needing additional accommodations to participate in this prehearing conference should call the Public Service Commission's Hotline at 1-800-392-4211 or dial Relay Missouri at 711 prior to the conference.

2. Any party wishing to appear by telephone shall notify the Regulatory Law Judge by calling 573-751-7485 no later than April 2, 2008.

3. Any party wishing to request a continuance shall file a pleading with the Commission stating why they are unable to attend the scheduled prehearing conference on April 9, 2008, either in person or by phone, and shall provide the Commission with a list of dates when that party is available to appear. Any such pleading shall be filed no later than April 4, 2008, and shall also be served on every other party to this complaint by the party requesting the continuance.

4. The parties shall jointly prepare and file a proposed procedural schedule no later than April 29, 2008. The proposed schedule shall include a due date for Staff's report

³ Also, under Commission Rule 4 CSR 240-2.090(7), any facts the parties may discuss during the conference, including any settlement offers or discussions, are privileged and cannot be used against any participating party unless the parties agree to disclose them or they are fully supported by other, independent evidence.

concerning the results of its investigation of Duke Manufacturing Co.'s formal complaint against McLeodUSA Telecommunications Services, Inc.

5. This order shall become effective on March 19, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory
Law Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 19th day of March, 2008.