

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day
of November, 2007.

In the Matter of the Missouri Relay Surcharge)	
Collection by McLeodUSA Telecommunications)	
Services, Inc.)	<u>Case No. TO-2008-0124</u>

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: November 20, 2007

Effective Date: November 29, 2007

On October 24, 2007, the Staff of the Missouri Public Service Commission filed a motion requesting that the Commission open a case and approve a Stipulation and Agreement between Staff and McLeodUSA Telecommunications Services, Inc.

The Commission directed that any responses to the motion or objections to the agreement must be filed no later than November 5, 2007. No responses or objections were received. A copy of the Stipulation and Agreement is attached to this order as Attachment A.

The Stipulation and Agreement between Staff and McLeodUSA is related to Missouri Relay surcharges McLeodUSA failed to remit to the Commission in the amount of \$133,305 through December 2006. Since January of 2007, McLeodUSA has remitted the surcharge moneys as required.

Staff and McLeodUSA agreed that McLeodUSA would remit the \$133,305 plus a late payment charge of \$7,892 for a total payment to the Deaf Relay Service and Equipment Distribution Program Fund of \$141,197. McLeodUSA also agreed to begin billing the relay Missouri Surcharge to its customers who are exempt from sales tax under

Chapter 144, RSMo, and to begin to identify the surcharge on its bills as the “Relay Missouri Surcharge.” In exchange, Staff agreed not to pursue any additional payments or penalties.

Commission rule 4 CSR 240-2.115(1) provides that if no party requests a hearing, the Commission may treat a stipulation and agreement as a unanimous stipulation and agreement. No party has requested a hearing regarding any issue and therefore, the Stipulation and Agreement will be treated as a unanimous stipulation and agreement.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of issues raised in this case.¹ In reviewing the agreement, the Commission notes that²

Every decision and order in a contested case shall be in writing, and, except in default cases, or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. * * *

Consequently, the Commission need not make either findings of fact or conclusions of law in this order.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.³ Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the agreement.

¹Section 536.060, RSMo Supp. 2004.

²Section 536.090, RSMo Supp. 2004. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App., W.D. 1998).

³ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Based on the agreement of the parties, the Commission finds that the parties have reached a reasonable settlement in this case and it shall be approved as set out below.

IT IS ORDERED THAT:

1. The Stipulation and Agreement filed on October 24, 2007, is hereby approved as a resolution of all issues in this case (See Attachment A).

2. McLeodUSA Telecommunications Services, Inc., and the Staff of the Missouri Public Service Commission are ordered to comply with the terms of the Stipulation and Agreement.

3. No later than November 30, 2007, McLeodUSA Telecommunications Services, Inc., shall remit \$141,197 to the Commission for payment to the Deaf Relay Service and Equipment Distribution Program Fund and simultaneously file a notice in this case indicating that it has complied with this requirement.

4. No later than December 31, 2007, McLeodUSA Telecommunications Services, Inc., shall begin to bill the Relay Missouri Surcharge to its customers who are exempt from sales tax.

5. McLeodUSA Telecommunications Services, Inc., shall immediately begin to identify the surcharge as the "Relay Missouri Surcharge" on its customers' bills.

6. The Staff of the Missouri Public Service Commission shall confirm compliance with the provisions of the Stipulation and Agreement and bring any necessary complaint for failure to comply to the Commission's attention.

7. This order shall become effective on November 29, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'CMD', is positioned above the printed name of the Secretary.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Appling, and Jarrett, CC., Concur.

Dippell, Deputy Chief Regulatory Law Judge