

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Investigation of Customer)
Complaints and Compliance with Commission)
Administrative Rules by MCLEOD USA)
TELEPHONE SERVICES)

DOCKET NO. 02-2249-06
NOTICE OF HEARING AND
ORDER TO SHOW CAUSE

ISSUED: March 7, 2003

By the Commission:

On December 31, 2002, the Division of Public Utilities ("Division") filed a Petition, pursuant to *Utah Code Annotated* §54-4a-1, for an Order to Show Cause why McLeod USA Telephone Services ("McLeod") should not be fined \$2,000 per day for each day that it has not been in compliance with Commission rules by failing to timely respond to informal customer complaints filed with the Division. The Division's petition contains allegations that McLeod failed to timely respond to informal complaints on eighteen occasions during 2002. Five of those complaints remained open, and beyond the time required for a response from McLeod, at the time the Petition was filed. The Division alleges that for the complaints listed in the Petition that McLeod had responded, McLeod responded from 4 to 143 days late.

McLeod and the Division have twice notified the Commission that they were attempting to resolve this matter, and requested, and were granted two extensions of time for McLeod to file a response to the Division's Petition. The latest request was to extend the deadline to February 18, 2003. Notwithstanding the extensions, no response has yet been received from McLeod.

The Division's Petition sets forth good cause for an inquiry into whether McLeod should be fined for failure to comply with Commission rules, and whether other action should be taken in response to McLeod's failure to timely respond to customer complaints filed with the Division. A copy of the Division's Petition is attached hereto, and incorporated by this reference. Whereas there appears to be good cause to support said allegations, the Commission enters the following order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. MCLEOD USA TELEPHONE SERVICE and its officers, shall appear before the Administrative Law Judge of the Commission on Thursday, April 3, 2003, at 9:00 a.m., in the Fourth Floor Hearing Room #451, Heber M. Wells State Office building, 160 East 300 South, Salt Lake City, Utah, to show cause, if any, why McLeod USA Telephone Service should not be fined, and other actions taken against McLeod USA Telephone Service, for its failing to comply with Commission rules, and timely respond to customer complaints.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 7th day of March, 2003.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#32989

-ATTACHMENTS-

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation	:	Docket No.
of Customer Complaints and Compliance with	:	
Commission Administrative Rules by McLeod USA	:	Division Petition for Order to
Telephone Services	:	Show Cause

PETITION FOR AN ORDER TO SHOW CAUSE

December 20, 2002

Pursuant to Commission Rule R746-100-3, the Division of Public Utilities ("Division") hereby submits its petition for an Order to Show Cause against McLeod USA Telephone Services ("McLeod"). The Division petitions the Utah Public Service Commission ("Commission") pursuant to UCA § 54-4a-1, to open a docket for the purpose of requiring the officers of McLeod to respond to informal consumer complaints filed with the Division in a timely manner and to show cause why McLeod should not be fined \$2,000 per day for each day that it has not been in compliance with rules adopted by the Commission.

In support of the petition, the Division submits:

1. Pursuant to Commission Rule R746-240-7 ("Rule"), the Division has authority to investigate informal consumer complaints against telephone corporations operating in Utah, and to attempt to resolve such complaints. The referenced Rule requires telecommunications corporations to attempt to resolve informal complaints, absent unusual circumstances, within five business days. The Rule further states that "In no circumstance shall the telecommunications corporation fail to respond to the informal complaint within five business days." Finally, the Rule requires that "The telecommunications corporation shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days."
2. At this time, the Division has seven open informal complaints against McLeod for which the Division has not received any response. The Division e-mailed or faxed copies of the complaints to McLeod in accordance with the established procedures agreed upon by McLeod and the Division. In five of these seven cases, the period of time expired since the informal complaint was filed with the Division equals or exceeds the 30 day response requirement in the Rule (See Attachment # 1).
3. One of the open complaints, Harry Mack have been open in excess of 90 days. The Division received a complaint from Harry Mack against McLeod on September 20, 2002, and forwarded the complaint to McLeod at that time. On October 24, 2002, the Division notified McLeod that failure to respond to the complaint within 10 business days could result in the Division pursuing sanctions against McLeod (See Attachment # 2). To date, the Division has received no response from McLeod regarding the Harry Mack complaint. On November 21, 2002, the Attorney General's office notified McLeod that if the Division did not receive a responses on or before December 6, 2002 to the Harry Mack complaint and four others open at that time the Division would, without further notice, file a petition for an order to

show cause for noncompliance with Commission rules (See Attachment # 3).

4. Not only did McLeod fail to respond properly to the Harry Mack complaint as detailed above, during 2002, McLeod has routinely ignored the Commission's requirement to respond to informal complaints within 30 calendar days. McLeod failed to respond to 13 of the 48 informal complaints closed to date in 2002 within the required 30 day response requirement in the Commission Rules (See Attachment # 1). The Division has notified McLeod on numerous occasions that its responses to informal complaints were delinquent. On February 11, 2002, the Division faxed a reminder to McLeod that two complaints (Daghnilan and Comp U-Sign) had been open in excess of 30 days (See Attachment # 4). On March 19, 2002, the Division faxed a reminder to McLeod that two (Comp U-Sign and Abdel) complaints had been open in excess of 30 days (See Attachment # 5). Again, on April 12, 2002, the Division faxed a reminder to McLeod that the same two complaints (Comp U-Sign and Abdel) were still open (See Attachment # 6). On April 15, 2002, the Attorney General's Office notified McLeod by certified mail that failure to respond to these delinquent open complaints (Comp U-Sign and Abdel) within 15 calendar days would result in the Division filing a petition for an order to show cause (See Attachment # 7). On June 10, 2002, the Division faxed a reminder to McLeod that one complaint (Blass) had been open in excess of 30 days (See Attachment # 8). On October 24, 2002, the Division faxed a reminder to McLeod that five complaints (Mack, First Reliance Mortgage, I-Net Mortgage, Interwest Mobility, and Winget) had been open in excess of 30 days (See Attachment # 2). Company responses to the informal complaints have contained no justification for the excessive response times.

5. Pursuant to UCA § 54-7-25, any public utility that fails to comply with the statute, any rule or order issued by the Commission is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense. The statute also states that "In the case of a continuing violation, each day's continuance of the violation shall be a separate and distinct offense." Under this statute, based upon the time taken by McLeod to respond to the complaints filed with the Division during 2002, the Commission could justify sanctions against McLeod of between \$348,500 and \$1,394,000 (See Attachment # 9)

6. The Commission has previously put McLeod on notice that future noncompliance with Commission rules and orders would not be tolerated. In an April 9, 2001 order in Docket No. 01-2249-01, the Commission stated:

We wish to emphasize, however, that we are far from satisfied with respondent's handling of this matter. Respondent is in violation of a number of the Commission's service regulations, including §§ R746-240-6A.3, R746-240-6E.3, and R746-240-6F.1, Utah Administrative Code, as detailed in DPU's memorandum. While, as a Competing Local Exchange Carrier (CLEC), Respondent is exempt from some statutes and rules applicable to a public utility, our service regulations are not among them.

Such violations would fully justify our issuing an Order to Show Cause with a view toward the imposition of administrative sanctions. However, Respondent is a new entrant into the Utah Market, and we will assume that it is still familiarizing itself with the requirements for operating in the State. Accordingly, for this once, we will refrain from such action. Respondent should be very clear, however, that it is getting only one 'free bite.' Hereafter we expect punctilious adherence to Utah law and our rules. Respondent would be well-advised to work with its legal counsel to implement policies to achieve such adherence. (Order at pp. 3 and 4)

Wherefore, the Division respectfully requests that the Commission open a docket for the purpose of requiring McLeod and its officers to respond timely to informal consumer complaints filed with the Division and to show cause why penalties of \$348,500 or more (See Attachment # 9) should not be imposed upon the Company for failure to comply with the referenced Commission rules.

Dated this 20th day of December, 2002.

Patricia E. Schmid
Assistant Attorney General
Division of Public Utilities