

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

MID-WEST TELEPHONE SERVICE, INC.

and

CASE 8-CA-38901

WILFREDO PLACERES, AN INDIVIDUAL

MID-WEST TELEPHONE SERVICE, INC.

and

CASE 8-CA-39168

DUSTIN PORTER, AN INDIVIDUAL

MID-WEST TELEPHONE SERVICE, INC.

and

**CASES 8-CA-39297
8-CA-39388**

BEN FANNIN, AN INDIVIDUAL

MID-WEST TELEPHONE SERVICE, INC.

and

CASE 8-CA-39334

MIKE WILLIAMS, AN INDIVIDUAL

**RESPONDENT'S VERIFIED APPLICATION FOR ATTORNEY FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT**

MORROW & MEYER, LLC.

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Mid-West Telephone Services

Now comes the Respondent, Midwest Telephone Service, Inc. (“MWTS”), by and through its counsel, Morrow Meyer, LLC, and for its Application For Attorney Fees Under The Equal Access To Justice Act states as follows:

1. MWTS is a small, family-owned telecommunications company located in Girard, Ohio.

2. Under EAJA and the Board’s implementing regulations, the Board shall award to an eligible respondent who prevailed in an adversarial proceeding the fees and other expenses incurred by the respondent unless the General Counsel’s position was “substantially justified” or special circumstances make an award unjust. 5 U.S.C. § 504(a)(1); Section 102.144(a) of the Board’s Rules and Regulations.

3. This application relates only to the charge filed by Wilfredo Placeres on April 20, 2010 concerning his alleged discharge (the “Placeres Charge”). The complaint for this charge was eventually consolidated with the charges of three other MWTS employees. The charges filed by the other three employees are not at issue in this application.

4. In the Spring of 2011, John Ross, counsel for MWTS, and Melanie Bordelois, counsel for the Acting General Counsel, agreed that the NLRB would dismiss the Placeres Charge in exchange for MWTS reinstating Placeres. As part of this agreement, MWTS also agreed to reinstate Placeres without requiring him to sign a noncompete, a requirement for other MWTS employees. MWTS brought Mr. Placeres back to work on or about April 8, 2011. Mr. Placeres continues to work for MWTS today. On July 26, 2011, Placeres submitted a withdrawal request to the Regional Director. Despite this agreement, and the request of Placeres himself, the General Counsel refused to dismiss the Placeres Charge. Instead, the General

Counsel forced MWTS to defend itself at the hearing and related post-hearing proceedings on the Placeres Charge. This cost MWTS unnecessary attorney fees.

5. The case was tried before the ALJ on October 11 – 13, 2011. At the hearing, the Acting General Counsel continually refused to (1) accept Mr. Placeres' withdrawal of charge and (2) honor the prior settlement agreement with MWTS, despite Mr. Placeres' hearing testimony that he liked working for MWTS; he was not coerced to withdraw his charge; and his charge was likely the result of a misunderstanding due to a communication barrier. On December 28, 2012, the ALJ issued his Order finding that the Placeres Charge relating to his alleged discharge should be dismissed.

6. The Acting General Counsel did not file exceptions to the ALJ's decision to dismiss the Placeres Charge. Exceptions, however, were filed on different issues.

7. On September 21, 2012, the Board adopted the ALJ's December 28, 2011 Order.

8. As a result of the Board's September 21, 2012 Decision and Order, the Acting General Counsel lost her case as it relates the Placeres Charge, and can no longer seek the relief requested.

9. Respondent is the prevailing party as it relates to the Placeres Charge because the ALJ dismissed the Placeres Charge after consideration of the circumstances and applicable law. In doing so, the ALJ rejected the Acting General Counsel's arguments against dismissal.

10. The position of the Acting General Counsel in refusing to accept Mr. Placeres' repeated attempts to withdrawal his charge and to honor the settlement agreement between MWTS and the Acting General Counsel regarding the Placeres Charge was not substantially justified.

11. There are no special circumstances that would make the award of fees unjust.

12. MWTS is a “party” as defined in the EAJA. For purpose of entitlement to a fee award”

(B) “party” means.....

(ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated....

13. The attached Declaration of MWTS’ accountant, Daniel G. Perry, C.P.A., and Vice President George Vaughn, Jr. confirms that the net worth of MWTS is less than \$7,000,000, and that MWTS employs fewer than 500 employees. **(Exhibit 1)**.

14. MWTS thus meets all the requirements of the EAJA, and respectfully requests that the Board award to MWTS its fees relating to the defense of the Placeres Charge from July 26, 2011, the date on which Acting General Counsel refused to honor her agreement with MWTS and to accept Mr. Placeres’ requests to withdrawal his charge.

15. A statement of MWTS’ attorney fees related to MWTS’ defense of the Placeres Charge from July 26, 2011 to the ALJ’s December 28, 2011 Order are attached hereto as **Exhibit 2**. MWTS attorneys spent 1.10 hours on attempting to resolve the Placeres Charge after July 26, 2011. Further, MWTS’ attorneys expended a total of approximately 302 hours preparing for the hearing for and attending the hearing and preparing and submitting its post-hearing briefs. As demonstrated in the statement of fees **(Exhibit 2)**, MWTS’ attorneys did not itemize its time by charge because the charges were consolidated into one action. Since the Placeres charge was among one of four in this consolidated action, the total amount of hours for hearing preparation and attendance and post-hearing brief preparation and submission have been divided by four and multiplied by the \$125.00 per hour statutory rate. Based on this calculation,

MWTS is entitled to an award of attorney fees in the amount of \$9,422.00 in defending the Placeres Charge from July 26, 2011 to the ALJ's December 28, 2011 Order.

16. EAJA provides for an award of attorney fees and expenses incurred in litigating the fee request itself. *Commissioner, INS v. Jean*, 496 U.S. 154, 163-165 (1990). A separate statement of those fees is attached as **Exhibit 3**, but is subject to amendment as additional time is expended in the course of litigating this fee request. MWTS' attorneys spent 7.9 hours preparing this Petition.

17. Thus, pursuant to 29 C.F.R. 102.145, MWTS is entitled to an award of \$987.50 in attorney fees.

WHEREFORE Mid-West Telephone Service, Inc. respectfully requests that the Board:

- A. Enter an award of fees in favor of MWTS in the amount of \$9,422.00 for attorney fees incurred by MWTS at the statutory rate in the defense of the Placeres Charge from the date of July 26, 2011 to December 28, 2011.
- B. Further award the amount of \$987.50 in attorney fees incurred by MWTS at the statutory rate in preparing this Application, representing 7.9 hours of work (through the date of filing this Application);
- C. Further award MWTS such additional fees as it may incur in responding to any objections to this Application; and,
- D. Award such other amounts, and provide for such other relief, as the Board may determine to be appropriate.

Respectfully Submitted,

MORROW & MEYER, LLC.

/s/Hans A. Nilges

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Counsel for Respondent
Mid-West Telephone Services

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Respondent's Application for Attorneys Fees Under the Equal Access to Justice Law as sent this 19th day of October, 2012 to the following via e-mail and regular mail to:

Frederick Calatrello
Melanie Bordelois, Esq.
National Labor Relations Board, Region 8
1240 E. 9th St, Room 1695
Cleveland, OH 44199-2086

/s/Hans A. Nilges

Hans A. Nilges

Mid West NLRB Charge EAJA application 10-15-12

VERIFICATION UNDER PENALTY OF PERJURY

The undersigned hereby verifies under penalty of perjury that he has read the above Application for Fees and that all of the information in said application is true and correct to the best of his knowledge and belief.

I DECLARE THAT UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this 19th day of October, 2012.

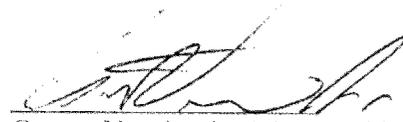
George Vaughn, Jr., Vice-President

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George Vaughn, Jr., Vice-President