

**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 PETITION FOR AMENDMENT OF RULE 102.145
TO INCREASE MAXIMUM ATTORNEY FEES**

MORROW & MEYER, LLC.

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Now comes the Respondent, Midwest Telephone Service, Inc. (“MWTS”), by and through its counsel, Morrow Meyer, LLC, and for its Petition for Amendment of Rule 102.145 To Increase Maximum Attorney Fees states as follows:

1. On October 19, 2012, MWTS filed a Verified Application For Attorney Fees Under The Equal Access to Justice Act (“EAJA Application”). In its EAJA Application, MWTS requested that it be awarded \$10,409.50 in attorneys’ fees in defending the Wilfredo Placeres charge. MWTS used EAJA’s statutory rate of \$125.00 in calculating these fees.
2. The Equal Access to Justice Act (“EAJA”) was enacted in 1980 and became effective in 1981. 28 U.S.C. §2412 and 5 U.S.C. §504.¹ Under EAJA, a prevailing party is entitled to recover reasonable attorney fees and other expenses from the government, unless the government’s position was “substantially justified” or special circumstances make an award unjust. 5 U.S.C. §504.
3. Under EAJA, prevailing parties are entitled to recover attorney fees at a rate of \$125.00 per hour. *Id.* This has not, however, always been the case. The original version of EAJA capped the hourly rate at \$75.00. But, in 1996 Congress recognized that the \$75.00 hourly rate was insufficient and adjusted the rate to \$125.00 per hour. In doing so, Congress intended to bring EAJA awards “more closely in line with the current hourly rates charged by attorneys”. Small Business Regulatory Enforcement Act of 1996, Pub L. No. 104-121, §§232(b)(1), 110 Stat. 847, at 862.

¹ 28 U.S.C. §2412 deals with civil actions and 5 U.S.C. §504 deals with administrative proceedings. MWTS will therefore refer to 5 U.S.C. § 504 in support of this Petition.

4. Rule 102.145 also became effective in 1981. Rule 102.145 caps hourly rates at \$75.00 per hour. Unlike EAJA, it has not been revised to bring the hourly rates “more closely in line with the current hourly rates charged by attorneys”. *See supra*. Notwithstanding the Board’s \$75.00 rate, the Sixth Circuit Court of Appeals has applied EAJA’s statutory rate of \$125.00 in Board cases. *See Caremore, Inc. v. NLRB*, 150 F.3d 628, 630-631 (6th Cir. 1998).
5. Accordingly, MWTS respectfully requests that the foregoing Petition be granted and that Rule 102.145 be amended for purposes of MWTS’ EAJA Application to increase the maximum allowable attorney fees from \$75.00 per hour to \$125.00 per hour.

Respectfully Submitted,

MORROW & MEYER, LLC.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Respondent's Petition For Amendment Of Rule 102.145 To Increase Maximum Attorney Fees as sent this 14th day of December 2012 to the following via e-mail to:

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Melanie Bordelois, Esq.
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And Via U.S. Mail to:

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/s/Hans A. Nilges

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