

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter on the Commission's own motion,)	
to implement the provisions of Section 401e of)	
2007 PA 164.)	Case No. U-15489
_____)	

At the September 24, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On February 14, 2013, the Michigan Court of Appeals issued a decision vacating the Commission's December 21, 2010 order regarding 9-1-1 surcharge calculations for appellants Grand Traverse, Alpena, Montcalm, Delta, Hillsdale, Houghton, Dickinson, Cass, Chippewa, Menominee, Tuscola, Cheboygan, Emmet, Charlevoix, Newaygo, Saginaw, Ionia, Gogebic, Ogemaw, Mackinac, Huron, Alcona, and Van Buren counties.¹ The Court ordered that any counties requesting a contested case hearing, as defined in MCL 24.203(3), shall be afforded one and that "the parties may make a disposition of such contested case by stipulation, agreed upon settlement, consent order, waiver, default or other method agreed upon by the parties." The February 14 order allowed each of the counties to select either a new contested hearing case or a

¹ *County of Grand Traverse v Michigan Public Service Comm; County of Van Buren v Michigan Public Service Comm*, unpublished opinion per curiam of the Court of Appeals, issued February 14, 2013 (Docket No. 301877) (February 14 order).

redetermination by the Commission based on reopened existing proofs and existing briefs. The court ordered the Commission proceedings to be completed and new Commission orders to be issued no later than 180 days after February 14, 2013. February 14 order, pp. 4-5. The final deadline was subsequently extended to October 10, 2013. March 27, 2013 order in Case No. U-15489.

On August 30, 2013, the Commission Staff (Staff) filed a fifth partial settlement agreement and release, attached as Exhibit A, resolving all issues in this case with respect to the counties of Cass, Dickinson, Grand Traverse, and Huron (the settling counties).² The settlement agreement sets forth the following:

(1) the parties agree to adopt surcharges that would allow each settling county to recover the 9-1-1 revenues requested for the year 2008;

(2) the parties agree to a standard calculation formula for each county's device count;

(3) the parties agree to a specific 9-1-1 surcharge for each settling county;

(4) the parties waive any claim for additional county 9-1-1 surcharge sums that could have been accrued throughout the course of the dispute and suit; and,

(5) the parties recognize that any proposed increase to the surcharge amount approved by the Commission shall be subject to the provisions of Section 401b(1) of the 9-1-1 Act, MCL 484.1401b(1), or subsequent statutory change.

The settlement agreement is signed by the Staff and each settling county. A joint statement of non-objection to the settlement agreement was filed by Frontier North Inc., Frontier Midstates Inc., and Frontier Communications of Michigan, Inc. No party filed an objection to the fifth

² Orders issued by the Commission on May 15, June 7, and June 28, 2013 in this docket disposed of the claims of the other counties.

partial settlement agreement and release within the 14-day time frame as set forth in Rule 333 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17333.

The Commission finds that the fifth partial settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that the settlement agreement attached as Exhibit A is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, pursuant to MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Greg R. White, Commissioner

Sally A. Talberg, Commissioner

By its action of September 24, 2013.

Mary Jo Kunkle, Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own motion,
to implement the provisions of Section 401e of
2007 PA 164.

Case No. **U-15489**
(e-file/paperless)

FIFTH PARTIAL SETTLEMENT AGREEMENT AND RELEASE

Pursuant to Section 78 of the Administrative Procedures Act of 1969 ("APA"), as amended, MCL 24.278, and Rule 333; 2000 AC, R 460.17333 of Rules of Practice and Procedure before the Michigan Public Service Commission ("MPSC" or "Commission"), and supported by the Commission's own policy towards settlement of contested issues, the undersigned parties have resolved through settlement discussions all issues involving the Michigan Counties of Cass, Dickinson, Grand Traverse, and Huron (collectively, "the Counties"). The parties to this Settlement Agreement, in consideration of the promises, payments, and agreements described below hereby agree as follows:

1. This Settlement Agreement pertains to a controversy between the parties regarding the implementation of 2007 PA 164, which amended Michigan's Emergency 9-1-1 Service Enabling Act ("9-1-1 Act"), MCL 484.1101 *et seq.* The statutory provisions relevant to this Settlement Agreement include amendments to Section 401e(1) and (2) of the 9-1-1 Act, MCL 484.1401e(1) and (2), which required the Counties and the MPSC to establish a monthly county 9-1-1 surcharge on all

communications devices of residents within each county for the year beginning July 1, 2008 (“Dispute”).

2. The Dispute led to a proceeding before the Commission, Case No. U-15489, an MPSC order on March 11, 2008 (“MPSC’s March 2008 Order”), an April 20, 2010 Court of Appeals decision affirming in part and vacating in part the MPSC’s March 2008 Order and remanding the case to the Commission; an MPSC order on December 21, 2010 (“MPSC’s December 2010 Order”), and a February 14, 2013 Court of Appeals decision vacating the MPSC’s December 2010 Order and remanding the proceeding back to the Commission. Based on the Court of Appeals remand, the Commission issued an opinion and order on February 28, 2013 establishing a follow up contested case proceeding within Case No. U-15489 (collectively referred to as the “Suit”).

3. The parties wish to settle the Dispute and the Suit according to the mutual promises, releases, and benefits described and provided herein:

a. Consistent with the Court of Appeals decision, the parties agree that a review was conducted of the necessary and reasonable 9-1-1 costs and revenues for the Counties. For the purposes of this Settlement Agreement, the parties utilized the existing record set forth in Case No. U-15489, took into account the recommendations made by the Emergency Telephone Service Committee (referred to herein as “the State 9-1-1 Committee”) in 2008, and relied upon the annual reports issued by the State 9-1-1 Committee, which

are public information and are located at

http://www.michigan.gov/msp/0,4643,7-123-1593_47748_47752---,00.html.

b. For the purposes of settlement, the parties agree to adopt surcharges that would allow the Counties to recover the 9-1-1 revenues requested for the year 2008. The parties also recognize that in subsequent years, the Counties may decrease the identified rate in their discretion if that discretion is properly exercised and noticed under the 9-1-1 Act.

c. In developing the 9-1-1 surcharge, the parties agree that a device count needs to be determined and that device counts fluctuate yearly. In order to remove any abnormalities in the device counts, the parties averaged the local revenues collected for the Counties, as identified in the annual 9-1-1 reports for the years of 2009 – 2011; divided the average local revenue by the Counties' authorized 9-1-1 surcharge; and divided the result by 12. This calculation established an estimated device count for each of the Counties. Utilizing the estimated-average device count, along with each of the Counties' revenues as adjusted for 2008, a county 9-1-1 surcharge was developed. Under this framework, the parties recognize that there is a range of reasonable surcharges that could be set. The parties agree to the adoption of the following 9-1-1 surcharge rates specified for each named county:

Cass -- \$ 1.39

Dickinson -- \$ 0.68

Grand Traverse -- \$.80

Huron -- \$ 2.20

d. The parties further agree that any claim for additional county 9-1-1 surcharge sums that could have accrued throughout the course of the Dispute and Suit (referred to as the "Retroactivity Surcharge") is waived and released. This waiver and release of the Retroactivity Surcharge is binding and effective for all purposes under the 9-1-1 Act, within Case No. U-15489, as well as any other administrative, legal, judicial or other proceeding in law or equity that the Counties or any of their 9-1-1 funded centers could raise against the MPSC, State of Michigan, residents, or any telecommunications or other service provider as defined in the 9-1-1 Act.

e. As noted above, the parties recognize that a material consideration for entering into this Settlement Agreement is to avoid the additional expense and effort that will be incurred by proceeding with Case No. U-15489.

f. The parties also recognize that any proposed increase to the amount approved in the Commission order shall be subject to the provisions of Section 401b(1) of the 9-1-1 Act, MCL 484.1401b(1). Any County that has voter authorizations currently in effect at the time of this Settlement Agreement pursuant to MCL 484.1401b(1) that are equal to/or greater than those identified above may levy such higher rates in 2013 and/or subsequent years during the effective period of such voter authorization.

4. This Settlement Agreement is based on the facts and circumstances of this case and is intended as the final disposition of all issues before the Commission in Case No. U-15489 as it relates to the Michigan Counties of Cass, Dickinson, Grand Traverse, and Huron. The provisions of this Settlement Agreement constitute the entire agreement between and among the parties as to the actions to be taken to resolve the Dispute and Suit. Any amendments, deletions, or other changes of this Settlement Agreement are to be made in writing. The parties stipulate that they will not assert that this Settlement Agreement or any provision herein, including this one, was modified, amended, or voided by any subsequent oral understanding. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement.

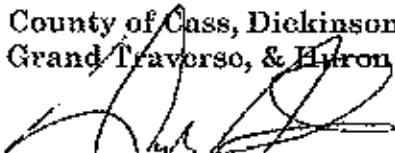
5. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

6. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

7. By signing below, each signatory attests that the entity he or she is representing has duly approved this Settlement Agreement and authorized him or her to execute it on its behalf. This Settlement Agreement may be signed in counterparts.

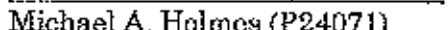
Therefore, the undersigned parties respectfully request the Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

County of Cass, Dickinson,
Grand Traverse, & Huron


Douglas W. Van Essen (P33169)
Silver & Van Essen, P.C.
300 Ottawa Avenue, NW, Ste. 620
Grand Rapids, MI 49503

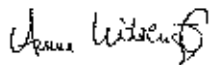
Date: August 30, 2013

Telecommunications Assoc.
of Michigan


Michael A. Holmes (P24071)
Telecommunications Association
of Michigan
600 W. Shiawassee, St. 181
Lansing, MI 48933

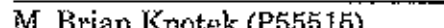
Date: _____

MPSC Staff


Anne M. Uitviugt (P71641)
Assistant Attorney General
Public Service Division
6520 Mercantile Way, Ste. 1
Lansing, MI 48911

Date: August 30, 2013

Van Buren County


M. Brian Knotek (P55515)
Schuitmaker, Cooper, Schuitmaker,
Cypher & Knotek
181 W. Michigan Avenue, Ste. 1
P.O. Box 520
Paw Paw, MI 49079

Date: _____

**Michigan Bell Telephone Co.,
d/b/a AT&T Michigan**

St. Clair County

Mark R. Ortlieb (P34962)
AT&T Michigan
221 N. Washington Square
1st Floor
Lansing, MI 48933

Date: _____

T. Allen Francis (P66160)
Fletcher, Fealko,
Shoudy & Francis, P.C.
511 Fort Street, Suite 101
Port Huron, MI 48060

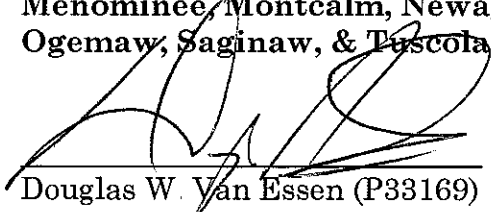
Date: _____

Frontier North Inc., et al

Michael G. Oliva (P29038)
Loomis Ewert Parsley Davis & Gotting
124 W. Allegan St., Ste. 700
Lansing, MI 48933

Date: _____

**Counties of Alcona, Alpena,
Charlevoix, Cheboygan, Chippewa,
Delta, Emmet, Gogebic, Hillsdale,
Houghton, Ionia, Mackinac,
Menominee, Montcalm, Newaygo,
Ogemaw, Saginaw, & Tuscola**



Douglas W. Van Essen (P33169)
Silver & Van Essen, P.C.
300 Ottawa Avenue, NW, Ste. 620
Grand Rapids, MI 49503

Date: August 30, 2013

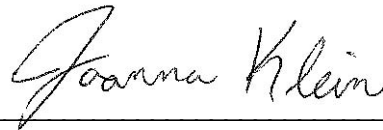
P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-15489

County of Ingham)

Joanna Klein being duly sworn, deposes and says that on September 24, 2013 A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.



Joanna Klein

Subscribed and sworn to before me
This 24th day of September 2013

Gloria Pearl Jones
Notary Public, Ingham County, MI
My Commission Expires June 5, 2016
Acting in Eaton County

Service List U-15489

Allegan County Central Dispatch
Jan Goswick, Director
3271 122nd Avenue
Allegan MI 49010

Antrim County Sheriff's Office
Terry L. Johnson, Sheriff
207 E. Cayuga, PO Box 568
Bellaire MI 49615

Arenac County Central Dispatch
Steve Wuelfing, Director
126 N. Grove Street
PO Box 747
Standish MI 48658

AT&T Michigan
Robin Gleason
221 N. Washington Square
Ground Floor
Lansing MI 48933

Benzie County
Charles J Clarke, Admin/Controller
448 Court Place, PO Box 377
Beulah MI 49617

Berrien County Administration Center
David Agens, Director
701 Main Street
St. Joseph MI 49085

Branch County 9-1-1 Emergency Manage
Kurt R. Spalding, Director
141 E. Chicago Road
Coldwater MI 49036

Clare County Central Dispatch
Thomas M. Valdez, 9-1-1 Director
255 W. Main Street
Harrison MI 48625

Clinton County E 9-1-1 Central Dispatch
James K. Fyvie, Director
100 E. State Street, Suite 1400
St. Johns MI 48879

County of Alger
David M. Cromwell, Sheriff
101 E. Varnum Street, Suite B
Munising MI 49862

Service List U-15489

County of Kalkaska
Governmental Center
George Shetler, Chairperson
605 N. Birch Street
Kalkaska MI 49646

County of Oscoda
County Courthouse
Jeri Winton, County Clerk
311 Morenci Street, PO Box 399
Mio MI 48647

County of Wayne
Marsha Bianconi, Exec. Director 9-1-1
39293 Plymouth Road, Suite 101
Livonia MI 48150

County of Wexford
Pamela S. Dahlstrom, Acct. Supervisor
437 E. Division Street
Cadillac MI 49601

Crawford County
Paul C. Compo, Administrator/Controller
200 W. Michigan Avenue
Grayling MI 49738

Sharon L. Feldman
DLARA/MAHS - MPSC Hearings
Constitution Hall - North Tower
525 W. Allegan, 3rd Floor
Lansing MI 48913

T. Allen Francis
Fletcher Fealko Shoudy & Francis, P.C.
511 Fort Street, Suite 101
Port Huron MI 48060

Frontier Communications of Michigan, Inc.
180 S. Clinton Avenue, 5th Floor
Rochester NY 14646

Frontier North Inc., f/k/a Verizon North Inc.
Robert E. Stewart
224 W. Exchange
Owosso MI 48867

Genesee County Communications Center
Lloyd R. Fayling, Director
G-4481 Corunna Road
Flint MI 48532

Service List U-15489

Gladwin County Sheriff Department
Michael Shea, Sheriff
501 W. Cedar Avenue
Gladwin MI 48624

Gratiot County 9-1-1 Communications Center
Mark Duflo, Director
1375 County Farm Drive
Ithaca MI 48847

Michael A. Holmes
Telecommunications Association of Michigan
600 W. Shiawassee Street
Lansing MI 48933

Washtenaw County Emergency Management
Division
Sheriff Headquarters
2201 Hogback Road, PO Box 8645
Ann Arbor MI 48107-8645

Iosco County Central Dispatch
Robert Rae, Director
1795 Pine Trail
East Tawas MI 48730

Iron County
Joan Luhtanen, County Clerk
2 South 6th Street, Suite 7
Crystal Falls MI 49920

Isabella County Central Dispatch
Office of the Administrator/Controller
200 N. Main Street
Mount Pleasant MI 48858

Jackson County
Amanda Riska, County Clerk
312 S. Jackson Street
Jackson MI 49201

Kent County
Mary Hollinrake, County Clerk
300 Monroe Avenue NW
Grand Rapids MI 49503

M. Brian Knotek
Schuitmaker Cooper Schuitmaker Cypher &
Knotek P.C.
181 W. Michigan Avenue, Suite 1
P.O. Box 520
Paw Paw MI 49079

Service List U-15489

Lake County
Shelly Myers, Clerk/Register/CFO
800 Tenth Street, Suite 200
Baldwin MI 49304-7971

Lapeer County E9-1-1 Central Dispatch
Victor A. Martin, Director
2332 W. Genesee Street
Lapeer MI 48446

Leelanau County Office of Emergency
Management/9-1-1
Tom Skowronslu, Director
8525 E. Government Center Drive
Suttons Bay MI 49682

Lenawee County Sheriff's Office
Lawrence Richardson, Jr., Sheriff
405 N. Winter Street
Adrian MI 49221

Douglas W. Van Essen
Silver & Van Essen PC
300 Ottawa Avenue NW, Suite 620
Grand Rapids MI 49503

Livingston County 911 Central Dispatch
Emergency Management
Richard L. Winsett, Director
300 S. Highlander Way
Howell MI 48843

Luce County 911 Central Dispatch
Terry H. Stark, Chairman
411 W. Harrie Street
Newberry MI 49868

Mason-Oceana County 9-1-1
9160 N. Oceana Drive
Pentwater MI 49449-8592

Meceola Consolidated Central Dispatch Authority
Laurie Smalla, Director
20701 Northland Drive
Paris MI 49338

Monroe County
Charles A. Londo, Admin/CFO
125 E. Second Street
Monroe MI 48161-2197

Montmorency County Sheriff Department
Douglas Baum, Sheriff
11045 M-32
Atlanta MI 49709

Nancy L Mullett
Calhoun County
315 West Green Street
Marshall MI 49068

Muskegon Central Dispatch 9-1-1
David W. McCastle, Exec. Director
770 Terrace Street, PO Box 626
Muskegon MI 49443

Oakland County Board of Commissioners
1200 North Telegraph Road
County Service Center, Building 12 East
Pontiac MI 48341-0421

Office of the Ingham County Controller
County Courthouse
John L Neilen, County Deputy Controller
PO Box 319
Mason MI 48854

Michael G. Oliva
Loomis Ewert Parsley Davis & Gotting PC
124 W. Allegan Street, Suite 700
Lansing MI 48933

Ontonagon County 9-1-1
William Johnson, Coordinator
725 Greenland Road
Ontonagon MI 49953

Mark R. Ortlieb
AT&T Michigan
221 N. Washington Square, Room G1
Lansing MI 48933

Otsego County Central Dispatch
Michael F. Thompson, 9-1-1 Director
580 S. Otsego Avenue
Gaylord MI 49735

Presque Isle County Sheriff's Office
Robert W. Paschke, Sheriff
267 N. Second Street
Rogers City MI 49779

Service List U-15489

Sanilac County Sheriff's Office
Virg Strickler, Sheriff
65 N. Elk Street
Sandusky MI 48471

Schoolcraft County Sheriff Office
Gary L. Maddox, Sheriff
300 Main Street
Manistique MI 49854

Shiawassee County Central Dispatch Board
Michael Ash, 9-1-1 Director
201 E. McArthur Street
Corunna MI 48817

Anne M. Uitvlugt
Michigan Dept. of Attorney General
Public Service Division
6520 Mercantile Way, Suite 1
Lansing MI 48911

Van Buren County Sheriff's Office
Dale R. Gribler, Sheriff
205 S. Kalamazoo Street
Paw Paw MI 49079-1594

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-15489

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on September 24, 2013 A.D. she served a copy of the attached **Commission Order (Commission's Own Motion) via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

Subscribed and sworn to before me
This 24th day of September 2013

Gloria Pearl Jones
Notary Public, Ingham County, MI
As acting in Eaton County
My Commission Expires June 5, 2016

Brackett@alcona-county.net; guriskom@alpenacounty.org; dougw@cassco.org; bradley@cce911.com; bradley@cce911.com; tmckee@chippewacountymi.gov; jsegorski@escanaba.org; sheriff@dickinsoncountymi.gov; bradley@cce911.com; jloeper@gogebic.org; janders2@grandtraverse.org; d.sanford@co.hillsdale.mi.us; rbritz@houghtonsheriff.com; millerr@co.huron.mi.us; jvalentine@ioniacounty.org; e911@mackinacounty.net; dwormwood@menomineeco.com; tscott@co.montcalm.mi.us; toddm@co.newaygo.mi.us; cadair@ogemawcountymi.gov; 911@saginawcounty.com; trconger@stclaircounty.org; tccd911@tuscolacounty.org; tapperje@vbco.org; dww@silvervanessen.com; brianknotek@scsck.com; tfrancis@fletcherfealko.com; gclark@cce911.com