

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
MCLEODUSA TELECOMMUNICATIONS)
SERVICES, INC., against the TOWNSHIP OF)
MONITOR regarding the terms and conditions)
of a right-of-way use permit, the revocation,)
and the threatened removal of certain facilities.)
_____)

Case No. U-13273

At the May 16, 2002 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On January 25, 2002, McLeodUSA Telecommunications Services, Inc., (McLeodUSA) filed a complaint against the Charter Township of Monitor alleging violations of the provisions of the Michigan Telecommunications Act (MTA), MCL 484.2101 et seq., governing access to public rights-of-way by telecommunication service providers. On March 27, 2002, McLeodUSA and the township submitted a settlement agreement, attached as Exhibit A, resolving all issues in this case. On April 3, 2002, the parties submitted an addendum to the agreement. The parties agree that McLeodUSA has the right to ongoing use of the public rights-of-way in the township under the terms of the February 6, 2002 permit issued by the township on terms consistent with the MTA.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.
- b. The settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that the settlement agreement between McLeodUSA Telecommunications Services, Inc., and the Charter Township of Monitor, 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 in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of May 16, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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and conditions of a right-of-way use)	Case No. U-13273
Permit, the revocation thereof, and the)	
threatened removal of certain facilities)	

JOINT SETTLEMENT AGREEMENT

NOW COME Complainant McLeodUSA Telecommunication Services, Inc. ("McLeodUSA") and Respondent the Charter Township of Monitor (the "Township") (collectively, the "Parties"), and, for their Joint Settlement Agreement under Rule 333 of the Commission's Rules of Practice and Procedure, 1992 AACSR 460.17333, state as follows:

1. On January 16, 2002, the Township send McLeodUSA a letter stating that McLeodUSA's telecommunications right-of-way permit for the Township was revoked effective March 30, 2002, and that the Township was going to "take all necessary action to ensure that all wires, poles, and other telecommunications facilities are properly removed."

2. McLeodUSA filed its Complaint in the captioned matter on January 25, 2002, alleging, *inter alia*, certain violations by the Township of the Michigan Telecommunications Act ("MTA") in connection with a "Permit Agreement" under which McLeodUSA was then occupying public rights-of-way in the Township.

3. Concurrently with the filing of the said Complaint, McLeodUSA submitted to the Township, on a form approved by the Commission, a new "Application

for Access to and Ongoing Use of Public Ways" ("Application"), and in connection therewith submitted for the Township's issuance a draft "Right-of-Way Telecommunications Permit" ("Permit"), also on a form approved by the Commission.

4. The Township approved the Application and granted the new Permit, without modification, by action of its Board of Trustees on February 6, 2002.

5. The said Permit did not provide for the payment by McLeodUSA to the Township of fees, instead containing at ¶9.1 a provision noting that "The MTA shall control the establishment of right-of-way fees," and reserving the rights of the Parties with respect to any such fees.

6. The said February 6, 2002 action of the Township Board appears to the parties to have resolved the pending controversy between the Parties in that it grants McLeodUSA ongoing access to and use of public rights-of-way in the Township on terms consistent with the MTA.

NOW, THEREFORE, the Parties agree to the settlement of the captioned matter on the following terms:

- a. The Parties agree that the Permit issued by the Township on February 6, 2002 immediately superceded, nullified, and terminated the "Permit Agreement" of August 25, 1997 entered by the Township and BRE Communications, Inc. ("BRE"), as a party to which McLeodUSA later succeeded BRE;
- b. All matters of controversy arising under the August 25, 1997 "Permit Agreement," including but not limited to the alleged illegality of the fees and other terms of such "Permit Agreement" and the alleged failure of

McLeodUSA to comply with any terms thereof, are resolved by this Settlement Agreement and by the Township's February 6, 2002 granting of the new Permit, and the Parties hereby waive any and all remaining claims arising under or in connection with the August 25, 1997 "Permit Agreement": and

- c. McLeodUSA has the right to ongoing use of public rights-of-way in the Township, consistent with the MTA and other applicable law, under the terms of the February 6, 2002 Permit, unless and until it is lawfully rescinded, revoked, terminated, superceded or modified.

Respectfully Submitted,

Clark Hill PLC

By: 

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Date: March 26, 2002



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Date: March 26, 2002

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**ADDENDUM TO
JOINT SETTLEMENT AGREEMENT**

NOW COME Complainant McLeodUSA Telecommunication Services, Inc. ("McLeodUSA") and Respondent the Charter Township of Monitor (the "Township") (collectively, the "Parties"), and, for their Addendum to the Joint Settlement Agreement submitted on March 26, 2002 in the captioned matter, state as follows:

The Parties, by their undersigned counsel, hereby waive any rights that they may have to the submission of a proposal for decision to the Commission, to submit exceptions or replies to exceptions on any such proposal for decision, and any other rights that they may have under §81 of the Administrative Procedures Act, MCL 24.281.

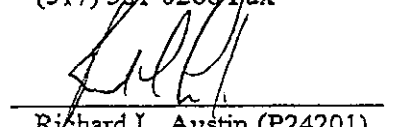
Respectfully Submitted,

Clark Hill PLC

By: 

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Date: April 3, 2002



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Date: April 1, 2002