

# 2011 ANNUAL REPORT



## *The Michigan Coalition to Protect Public Rights-Of-Way*

### I.

#### MICHIGAN DEVELOPMENTS

##### UPDATE ON LITIGATION:

###### **A. Detroit v Comcast**

PROTEC is supporting the **Detroit v Comcast** litigation presently pending before the US District Court in Detroit challenging issues pertaining to PEG fees as well as renewal and modification of franchise agreements. This litigation relies largely upon the language of the Court's opinions and orders issued in the Dearborn/Meridian v Comcast case. Our support along with MML, MTA and the Public Corporation Law Section of the State Bar comes in the form of Amicus briefing on pending motions for summary judgment in favor of Detroit. A ruling on cross motions for summary judgment is expected this year.

###### **B. ACM v AT&T**

Following the lead of the Dearborn/Meridian v Comcast suit, the Alliance for Community Media ("ACM"), an organization of PEG programmers and producers, filed a petition with the FCC regarding AT&T's treatment of PEG on its U-Verse video platform. Essentially, AT&T has relegated PEG to a web stream, doing a great disservice to the concept of local PEG programming and industry public service responsibilities. PEG programming has historically been cablecast at the same quality as local broadcast channels. On U-verse, PEG programming is singled out for second class treatment by relegating all PEG channels throughout a metropolitan area to channel 99, something that is not done to any other channel. The ACM case and a companion claim filed by the City of Lansing remain pending on the FCC's docket.

## **C. Michigan Legislative Efforts**

### **PEG**

The Michigan Senate Committee on Energy and Technology held hearings on the impact of PA 480 this summer. PROTEC, MiNATOA and the Alliance for Community Media rallied and presented testimony from a host of witnesses including multiple elected officials who collectively presented a host of problems communities have encountered with PA 480. Counsel for PROTEC wrapped up the 1st hearing with a short list of proposed changes to the Act, including addressing the 2% PEG promise made during the negotiations over the Act in 2006 that were never delivered, as well as extending franchise review periods. Proposed amendments were asked for by the Chair and provided by MML with input from PROTEC, MiNATOA and the Alliance. No bills have been submitted to date.

PROTEC supported-Legislative Bills seeking to allow PEG channels and municipal web pages to substitute for other publications for various statutorily required public notices. This legislation was advanced by PROTEC counsel and pressed by MML Lobbying staff. The bills were the subject of substantial attention but were never enacted. PROTEC hopes that these Bills will be revived and PEG will have an opportunity to fill this important role. Electronic publication should also serve to lower communities' costs by eliminating the need for published notices in the newspaper.

## **D. Michigan Regulatory Issues**

### **New Michigan Public Service Commission Chairman Appointed**

Gov. Rick Snyder has tapped UBS Global Asset Management executive John Quackenbush to be Michigan's chief utility regulator, as chair of the Michigan Public Service Commission.

Michigan native Quackenbush, 52, has been managing director and senior investment analyst in UBS' Chicago office, responsible for equity research of the transportation, utilities and coal industries in the U.S. and Canada.

He previously was manager of Sprint Nextel Corp.'s treasury department and local telecom division, and prior to that held senior financial analyst roles with the Illinois Commerce Commission.

Quackenbush will replace current PSC chairman Orjiakor Isiogu, who will continue to serve on the three-member commission as a member. He fills a

commission slot vacated by Monica Martinez, who left the commission earlier this month after her term expired in July.

A chartered financial analyst, Quackenbush holds a bachelor's degree in business economics from Calvin College and a master's degree in finance from Michigan State University.

His appointment is subject to Senate consent. He is slated to start at the commission Oct. 17 and serve a six-year term expiring July 2, 2017.

**Article by Crain's Amy Lane**

### **F. Pipelines: Leaks and New Lines/PROTEC links up with the Pipeline Safety Trust in Washington**

PROTEC continues to monitor developments concerning the July 27, 2010 Kalamazoo river disaster related to the 1 million gallon crude oil leak from an Enbridge owned pipeline as well as several recent requests for new pipelines in southeast Michigan. Federal legislation to upgrade safety and pipeline aging issues is pending in Congress with strong support from the



Michigan delegation. See the Pipeline Infrastructure and Community Protection Act of 2011. As part of this effort, PROTEC is partnering with the Pipeline Safety Trust, a national pipeline watchdog group which assisted PROTEC with the Wolverine Pipeline Issue in Lansing several years ago.

### **G. PROTEC monitors SB 499 and HB 5342**

SB 499 seeks to allow telecommunications companies expedited and essentially free and unlimited access to railway trails. HB 5342 also seeks to allow wireless providers expedited and unregulated access to State Public Safety Towers. This expedited and discounted access is unwarranted and unnecessary for an industry breaking record profit levels and further degrades the concept of fair compensation for rights of way access. The bills remain in committees though SB 499 is now in the House having passed the Senate.

## **II. FEDERAL DEVELOPMENTS**

### **A. FCC NOI Re: Local Rights of Way Management and Broadband Deployment**

In the American Recovery and Reinvestment Act of 2009, Congress directed the FCC to develop a national broadband plan to ensure that “all people of the United States have access to broadband capability.” On March 16, 2010, the FCC submitted its plan to Congress ([www.broadband.gov/plan](http://www.broadband.gov/plan)). The plan is a comprehensive document that contains a number of recommendations and an “action agenda” promoting broadband throughout the U.S. Chapter 6 of the plan concerns rights-of-way issues. Regrettably, the path the FCC appears to be taking with respect to local community control is one of “uniformity” and “reducing fees,” instead of allowing local governments to manage their unique needs and interests. Coming out of all this was an FCC Notice Of Inquiry issued in April of 2011 asking for comment on the role of local rights of way management in delaying broadband deployment. PROTEC joined the MML, MTA and City of Detroit on a set of comments discussing these issues as well as Michigan’s Metro Act. PROTEC is monitoring these developments including the FCC’s establishment of a committee formed specifically to address these local issues.

### **B. The CAP Act Bill**

On October 7, 2009, U.S. Representative Tammy Baldwin (D-WI), introduced HR 3745; the Community Access Preservation Act or “CAP” Act. In its simplest terms, the Act would require that PEG be treated like other broadcast channels. This embodies much of what was at stake in the Meridian, Dearborn, Bloomfield, Warren v Comcast case as well as the ACM and Lansing cases against AT&T that are pending at the FCC.

The bill died at the end of the last session of Congress but has been renewed in the current Congress and is known as the CAP Act Bill. The new Bill includes much of the same language as before. It presently has a dozen sponsors including an Ohio Republican.

The goal of the bill is to have Congress reassert itself in the communications field re-establishing uniform regulation that preserves a significant role for PEG and local government. Please assist in gaining your Congressional representative’s support by appealing directly to him or her for support of the bill or ask your local elected officials to do so.

## C. Wireless Towers

The wireless industry has indicated that the explosion of wireless use with smart phones and devices has dramatically increased the need for additional spectrum and wireless towers. Industry estimates suggest 1 million new towers to be installed over the next few years to meet this demand. PROTEC is actively involved at the national level responding to the growing pressure at the FCC and in Congress to “streamline” the cell tower siting process.



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