

# 2014/2015 ANNUAL REPORT



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

### NEW MEMBER WELCOME

Bay City,  
Central Lake  
Michiana  
Nashville

**Thank you for your support!!**

### MICHIGAN DEVELOPMENTS

#### MUNICIPAL BROADBAND

Municipal broadband is the concept that local governments should be able to construct their own 21<sup>st</sup> century networks to benefit their residents and businesses and to encourage economic development. This concept took several giant steps forward in the last year. President Obama featured it in his 2015 State of the Union address, the FCC issued an order striking down state law barriers to entry for municipal broadband, and here in Michigan, PROTEC member **Sebewaing** unveiled its new fiber to the premises (FTTP) project making it the **first Gigabit community in Michigan! Congratulations Sebewaing!**

Other Municipal BB projects are in the works across our state. Why? Because incumbent providers who currently own the access “pipes” to the internet refuse to upgrade their ancient copper systems to modern fiber optic cables to allow state of the art speeds and bandwidth, refuse to provide high quality customer service, and refuse to provide high speed internet access at affordable prices.

As a result, both residential and business residents of local communities across the country are demanding vastly better internet access service at affordable prices and local communities are responding. In particular, those communities who successfully fought the electric industry for the right to provide their own customer friendly electric service to residents over 100 years ago are rallying to this demand. Such communities already have much of the requisite infrastructure in place, though interest is not limited to these communities as we see in the downtown Detroit area where developer Dan Gilbert has started up his “Rocket Fiber” venture.

There is a long way to go. Speeds, pricing, and service levels for high-speed internet service in our country pale in comparison to what is offered in most of our global competitor nations. For more information on how your municipality can become a gigabit community, contact PROTEC.

## **CABLE/VIDEO**

### **Local Governments Successfully Resist Further Telecommunications Consolidation: Comcast Abandons Time Warner Acquisition and Spin Off of Midwest Community Subscribers to GreatLand and Charter**

#### **– PROTEC had a role**

When Comcast announced in early 2014 that it planned to acquire Time Warner, Michigan communities were not terribly concerned as Time Warner did very little business here. However, as the transaction matured, it turned out Comcast and the Department of Justice made plans to spinoff many of its Midwest subscribers in order to reduce its present share of the national market enough to allow for it to acquire Time Warner and its subscribers. Comcast was willing to do this because it would be giving up what it regarded as lower value Midwest markets for higher value East and West Coast metropolitan markets.

PROTEC members Southfield and Meridian Township joined a group of Minnesota communities and challenged the transfers pursuant to authority in their franchise agreements. The group commissioned a financial study of the transactions by Garth Ashpaugh, a renowned Florida-based CPA who has assisted local franchising authorities nationally for decades in such matters. His study of the transaction revealed that in order to fully fund the transaction, Comcast transferee, GreatLand would almost certainly have to impose substantial rate increases on its subscribers. In order to approve the transaction as Comcast asked them to do, Southfield and Meridian demanded and received significant concessions from Comcast to protect their residents from shortfalls in service as well as barring any transaction- related rate increases. Similar concerns and criticisms arose across the country regarding the transaction's negative impact on the telecommunications market with respect to not only cable/video, but also high-speed internet access. Gradually, popular opinion began to mount against the transaction nationally. Coincidentally, at the time the FCC was reviewing this transaction, it was also looking at various means of regulating the internet and these two populist issues merged into what ended up becoming a tsunami of resistance from the public. This led to several timeouts on the informal clock for the deal review by the feds, extending the review period from an original date in 2014 to a late 2015 date, if at all. In the end, federal regulators informed Comcast in mid-April of 2015 that they were likely to deny approval. The next day, Comcast announced its withdrawal from the transaction.

The point is that small communities can band together with others and successfully affect significant policy level decisions in Washington D.C. even when up against the largest of industries.

Congratulations to PROTEC members Southfield and Meridian for leading the way on this issue. In their efforts to seek fairness for their residents, they impacted a national issue of great importance to the entire country.

What was PROTEC'S role? By monitoring issues such as this and educating and encouraging members and nonmembers in the local government community to address such issues, PROTEC regularly takes a leading role in organizing and leading such efforts, and it certainly did so here.

## UPDATE ON MICHIGAN LITIGATION

### *Detroit v Comcast*

PROTEC supported the *City of Detroit v Comcast* litigation over local franchising in Detroit which ended up in the U.S. 6<sup>th</sup> Circuit Court of Appeals. The case was on appeal from the District Court in Detroit, and the City of Detroit was challenging issues pertaining to PEG fees as well as renewal and modification of franchise agreements. This litigation relied largely upon the language of the trial court's earlier opinions and orders issued in the *Dearborn/Meridian v Comcast* case. The Federal District Court ruled July 10, 2012 that:

1. Municipalities have authority to challenge the Michigan Uniform Video Services Local Franchise Act, 2006 PA 480;
2. The modification language of the Michigan Act, which cable companies have said immediately altered existing franchises in 2007, is wrong and preempted by federal law;
3. Based upon the well-reasoned position taken by the Michigan Attorney General, municipalities may refuse a renewal via a uniform agreement and negotiate mutually acceptable terms;
4. The District Court also suggested in its opinion that PA 480's reduction of enforceable customer service standards and its severely watered down anti-discrimination provisions may violate the Federal Act as well.

The trial court opinion was appealed to the U.S. Court of Appeals for the Sixth Circuit. Oral Argument went heavily in Detroit's favor. At the conclusion of the hearing, the 6<sup>th</sup> Circuit panel recommended mediation and Comcast eagerly accepted.

A settlement in an amount of **\$26.7 Million Dollars** was reached in Detroit's favor as a result. While a part of the settlement involved vacating the trial court order, the Michigan Attorney General positions taken in various briefs and in oral argument continue to support the points outlined above, most notably that Michigan communities can reject the PA 480 uniform agreement and negotiate an independent agreement. This is of particular importance to any community with a cable franchise expiring in the next few years.

Our support, along with MML, MTA and the Public Corporation Law Section of the State Bar, took the form of Amicus briefing on motions for summary judgment (which were largely decided in favor of Detroit) and most recently on the appeal at the 6<sup>th</sup> Circuit as well as ultimately offering a successful settlement strategy to the City.

On the basis of all the above, certain Michigan communities are challenging existing and pending uniform franchise agreements as current agreements expire and, gaining concessions from Comcast.

## MICHIGAN LEGISLATIVE EFFORTS

PROTEC together with MML is watching and offering input to interested communities on all bills affecting local rights of way issues. At the time of publication of this report, the following Bill was noted as being of particular interest and concern:

1. SB 282: This bill seeks to establish ITC Transmission Co., the company that controls much of Michigan's electric transmission network, as essentially the only viable electric transmission company in Michigan and among other things, establishes a board to review transmission projects and certify them for approval by the MPSC. In turn, under the bill, the MPSC must approve projects within only six months of a request, as opposed to the current 12 month process.

Other legislation that did pass and which PROTEC worked on amending included:

1. SB 0493 passed with MML amendments, but allowing amateur ham radio antennas to largely avoid local regulation.
2. SB 636, AT&T's Landline/Telephony deregulation bill passed into law with MML amendments, but still allowing for dramatic reductions in customer service as traditional phone service was converted to largely unregulated internet (IP) service. The interplay between this new Michigan law and the FCC's recent Open Internet Rules will be interesting to observe. PROTEC will keep an eye on these developments.

## **WIRELESS TOWERS: MICHIGAN'S 2012 PA 143 AND THE FCC OCTOBER 2014 RULES**



### ***Michigan Legislation***

The wireless industry supported a bill in the Michigan Legislature in May of 2012 which sought to sweep local government completely out of the regulation of cell towers. PROTEC joined with MML in seeking changes to the proposed legislation. Although the bill did progress to passage in only a matter of a few weeks, it did not ultimately contain all the language the industry desired. Still, it is a point of concern for local government and must be addressed carefully. It is important to distinguish the impact of this legislation on local government's two cellular tower roles. While subject to this new law as a regulator, to the extent local government is also a landlord, the law has far less, if any impact. Locals must avoid industry lease amendments which attempt to confuse these roles.

### ***FCC Rules***

Meanwhile, the FCC issued new rules in October 2014 on wireless tower siting and collocation and applied many of the same principles as contained in the Michigan legislation to small cellular towers and systems known as Distributed Antenna Systems (DAS). In the wake of the FCC ruling, PROTEC provided much needed guidance by publishing a summary of the new rules and holding a specially focused meeting in October to review the rules. The important points for local communities are that all our proprietary interests (franchising rights) are preserved but, once approved, these small cell structures can be required to allow collocation and related structures of an additional 10 feet in height and six feet in diameter.

These FCC Rules became effective April 8, 2015.

Appeals of the FCC rules are being considered and filed across the country by the industry and municipal groups. If your community is interested in joining in the municipal appeals, please contact Mike Watza who will put you in touch with other interested parties.

Meanwhile, there is also an interesting interplay between the new FCC rule and Michigan's former Metro Authority (now the **"Local Community Stabilization Authority" with our own Dearborn Mayor Jack O'Reilly on the new Board**) and the Metro Act. While the Metro Act, which imposes a 45 day shot clock on approvals and limits fees to five cents per foot, expressly excludes application to antennas and related structures, the Metro Authority issued a ruling in 2004 suggesting that DAS systems are subject to the Metro Act approval and fee process. PROTEC takes the position this Metro Authority rule is either limited to lines only, or invalid as in conflict with the statute and PROTEC is actively monitoring developments and advising communities faced with these issues as well as seeking clarification or amendment of the Metro Authority rule.

## **MICHIGAN ENERGY**

DTE and Consumers are pursuing rate payer re-classification changes and rate increases at the MPSC and, further deregulation of their businesses in the legislature. PROTEC is keeping an eye on these developments.

## **MICHIGAN NEW MISS DIG STATUTE**

PROTEC wishes to remind members that the new Miss Dig statute imposing liability upon local government for underground work it negligently performs or monitors became effective April 1, 2014.

## **FEDERAL DEVELOPMENTS**

### **FCC Multi Video Programming Distribution Notice of Proposed Rule Making**

PROTEC joined with the Michigan Municipal League (MML), Michigan Townships Association (MTA) and the State Bar Public Corporation Law Section (PCLS) in comments and Reply Comments in the FCC MVPD Proceeding along with other national municipal groups in order to oppose disruption of cable franchise fees via the industry use of internet-based video programming. This is a critical development at the FCC. As it seeks to allow competition in the video marketplace, it must preserve local revenues from traditional cable services. Such is the

focus of our briefs. PROTEC will continue to monitor and provide input where feasible in this and related proceedings.

## **US DOT/FAA NPRM REGARDING DRONES**

PROTEC is actively monitoring the new drone rules expected to be issued by the U.S. Department of Transportation and Federal Aviation Administration. The scope of local regulation and use will be involved in these rules and PROTEC will keep you current on those as they are issued.

Thank you for you membership in PROTEC.



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