

# 2015/2016 ANNUAL REPORT



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

### NEW MEMBER WELCOME

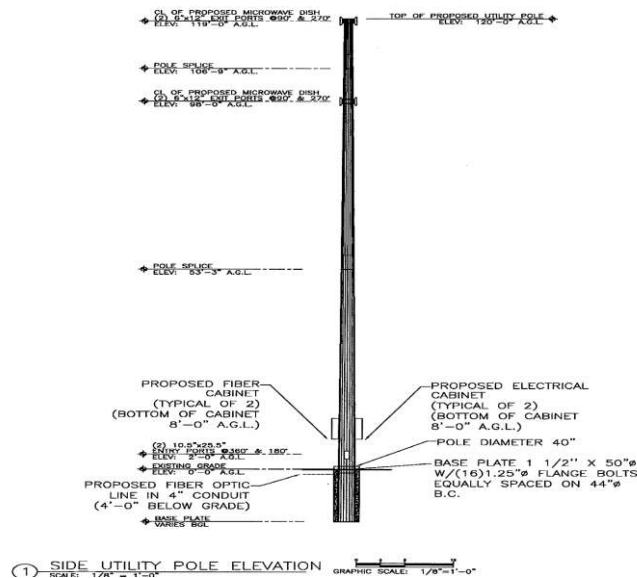
Breedsville  
Buchanan  
Clare  
Edwardsburg  
Pentwater  
Sebewaing Light and Water

Thank you for your support!!

### MICHIGAN DEVELOPMENTS

#### **PROTEC HELPS RESTORE \$2.3 MILLION TO METRO ACT FUND**

In 2014-2015, AT&T reduced its payments to the Metro Authority (Newly renamed - Local Community Stabilization Authority pursuant to Public Act 88 and Public Act 86 of 2014) resulting in a **\$2.3 million** (15.8%) reduction in 2015 funding available for local communities pursuant to the Metro Act. PROTEC inquired about this reduction and upon confirming the source of this shortfall in local revenues in the Fall of 2015, PROTEC served FOIA inquiries upon the State of Michigan seeking the detail on the basis of such reductions. Within three days of the FOIA requests, AT&T reversed its position and agreed with the Local Community Stabilization Authority to make up the earlier shortage and correct its payments going forward. We appreciate both the staff of the Local Community Stabilization Authority as well as AT&T for their efforts to correct this significant circumstance once brought to their attention.



## 120' WIRELESS ANTENNAS IN OUR RIGHTS OF WAY: DAS AND SMALL CELLS GROWING

The 2014 FCC wireless order has generated a multitude of applications for proposed antennas and support facilities including poles, towers and generators. Associated issues have dominated PROTEC's time and attention this past year or two and likely to continue to be the HOT issue for the balance of this year, 2017 and beyond.

The subject concerns a profound effort by the wireless industry to keep up with the demand (it created) for wireless connectivity for person to person hand held communication devices (phones), as well as an even larger machine to machine proliferation of similar devices. The FCC has suggested the industry needs to install millions of new antennas to meet this demand within the next few years.

The current controversy relates to efforts to deploy new antennas not only on traditional cell towers, but to bring these antennas to street level, in order to enhance this connectivity. These systems involve smaller antennas mounted on new or existing poles, buildings or towers at or near street level in our rights of way. They are referred to as Distributed Antenna Systems (DAS) or Small Cells. Both are typically connected to one another or other infrastructure by fiber lines.

Most recently, the industry has upped the ante by proposing towers as much as **120' tall with 5-6' wide bases (plus the antennas and related equipment) within inches of roadway surfaces.** The issues raised by these proposals invoke complex State and Federal statutes, regulations and local zoning and police powers. PROTEC has developed and shared with its members **copies of a modified Metro Act permit as well as a proposed franchise agreement.** The reason for these new forms is that many of the applications for these new poles and towers come in the guise of a Metro Act application. While the Metro Act probably applies to the “lines” connecting the proposed antennas and other facilities, it does not cover antennas or the accompanying poles and other support facilities. So, the revised Metro Act permit is designed to address the lines aspect of the application and system, while the franchise agreement is designed to address the local community Constitutional rights to franchise the antenna portions of the system. On related issues, the FCC is currently looking at DAS/Small Cells concerning RF emissions and the effects on humans.

Standby for more news and information on this subject as PROTEC continues to work for your rights to regulate, exercise police powers for the health and welfare of our residents and assess reasonable fees related to these new wireless systems.

## **MUNICIPAL REGIONS, POLITICAL LEADERSHIP AND BROADBAND**

As an organization of municipalities across Michigan, PROTEC has taken notice of recent discussions among national policy folks who have suggested that large urban centers, where the vast majority of Americans live today, will increasingly become centers of political power, innovation and economic drive. Much of this will depend upon the information super highway being true high speed, low cost and ubiquitous.

See:

<http://www.nytimes.com/2016/04/17/opinion/sunday/a-new-map-for-america.html>

and:

<https://www.benton.org/blog/cities-technology-next-generation-urban-development-and-next-administration>

Municipal broadband is at the heart of such discussions. 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!**

Because of these developments, 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 DEVELOPMENTS**

In our last Annual Report, we discussed the actions of PROTEC members Southfield and Meridian Township who joined a group of Minnesota communities and challenged the proposed Comcast/Charter transfers pursuant to authority in their franchise agreements. That effort proved not only a success on terminating the transfer and avoiding further consolidation of the communications industry, but also positively impacted both communities’ subsequent franchise renewals. The point again, is that small can band together with others and successfully affect significant policy level decisions in Washington D.C. as well as their own relationships with industry.

Meanwhile, we note there is current litigation pending in the US District Court located in Detroit as between West Bloomfield and Comcast over ownership rights of I-Net facilities which were often an important but often misunderstood part of cable franchises prior to PA 280. Once West Bloomfield executed its uniform franchise, Comcast took the position, as it has elsewhere, that the I-Net belongs to Comcast and sought to charge West Bloomfield commercial rates in the tens of thousands of dollars per month for its continued use. The litigation is scheduled for trial in the Summer of 2017. PROTEC is monitoring same and will advise of further developments as they become known.

In order to avoid litigation of this sort, PROTEC strongly advises that the impacts of PA 480 and uniform franchises on important I-Nets and other infrastructure be carefully reviewed prior to execution.

## **MICHIGAN LEGISLATIVE EFFORTS**

PROTEC together with MML is watching and offering input to interested communities on all bills affecting local right of way issues. At the time of publication of this report, the following bills were noted:

### **HB 5016 H-5**

This bill started out as an effort by the telecommunications industry to capture several hundred million dollars of the highway money recently allotted for road repairs by the Michigan Legislature. It called for local communities to pay for all telecommunication relocation costs for any public projects requiring such relocation. This could – by MDOT’s own estimate –cost \$100,000,000 per year for MDOT alone, while reversing 100 or more years of court precedent and plenty of existing franchise agreements. This is particularly ironic because many of those

agreements were written by the State and required for municipal use. With PROTEC providing technical legal assistance, MML, MTA, MAC and others successfully fought this effort and have managed to reduce the bills impact dramatically, from 100% reimbursement in all events, to 50%, and only if a local community fails to provide the telecommunications provider one year notice of such relocation requirement. Though still objecting to the entire concept, the bill is far better than upon its introduction in 2015.

### **SB 399 S-3**

This bill is another effort by the wireless industry to gain unregulated access, this time to county rights of way. To the extent county rights of way extend through cities, villages and particularly townships, this bill is fraught with issues of concern for all. Most regrettably, this bill was amended at a Senate Committee hearing on May 3, 2016, which may broaden its scope to include wireless facilities, and potentially those 120' wireless towers discussed earlier in this report.

### **HB 5282 H-2 Sewer Back Up Immunity Amendment of PA 222**

This bill seeks to amend PA 222 and is the product of several years of effort by many communities and community associations to address the capacity arguments made by Plaintiff's attorneys in sewer backup claims and litigation. As a critical right of way issue, PROTEC has been involved from the start. This bill's critical feature is the addition of a brightline test which when met, will clarify that local communities are immune from claim or suit as a result of catastrophic rain events which are, in every respect, Acts of God, for which no one is or should be responsible.

PROTEC will continue to be closely involved in this effort which if successful, will avoid tens of millions of dollars in liability exposure for local communities.

### **HB 5675&5676 Restoring MPSC Funding to Regulate PA 480?**

On May 19, 2016, bills were introduced seeking to re-establish the provider fees used to fund the MPSC's regulation of PA 480 as occurred from the outset of PA 480 in 2007 through 2015 when the fee provision ended via sunset. These bills may have been encouraged by other unpublished bills (bluebacks) which have also been circulating informally and actually seek to repeal PA 480 in light of the recent lack of funding.

PROTEC is working with some of the sponsors of some of these documents and will keep membership closely informed of further developments.

### **MICHIGAN ENERGY**

DTE and Consumers are pursuing further 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. The MPSC has recently published new rules and forms regarding its enforcement of the Act available here:

[http://www.michigan.gov/documents/mpsc/damagedatamemo\\_485707\\_7.pdf?20160524125438](http://www.michigan.gov/documents/mpsc/damagedatamemo_485707_7.pdf?20160524125438)

PROTEC has been monitoring this Act and its impact on local communities and will continue to do so and advise of significant developments as they occur.

## **FEDERAL DEVELOPMENTS**

### **FCC Multi Video Programming Distribution Notice of Proposed Rule Making Converts to Set Top Box Rentals Proceeding**

**VICTORY!** As reported in our 2014/15 Annual Report, PROTEC joined with the MML, 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 was a critical development at the FCC and one that the FCC Chair hoped might be one of his final legacy items. As the FCC sought to allow competition in the video marketplace, it needed also to preserve local revenues from traditional cable services. Such was the focus of our briefs. Early this year, the FCC Chair decided to table this proceeding in favor of a new proceeding seeking instead to open the door to competitive cable box availability. We applaud the Chair's change of direction and look forward to a much safer and consumer friendly set top box proceeding as his final legacy item.

### **US DOT/PHMSA – PROTEC FILES COMMENTS ON PIPELINE SAFETY RULES**



**San Bruno California 2010 Fire Storm from Sudden and Catastrophic Failure of PG&E Gas Line: Loss of Life, Several Square Blocks Destroyed and Billions in Damages and Fines Levelled**



Hazardous and gas pipelines are now on average 80 years old across America. And not surprisingly, they are failing, sometimes catastrophically, at an increasing rate. Add to this the pipeline industry's strong push to make local communities liable for much of this, (See Michigan's revised Miss Dig Statute deleting Governmental Immunity for underground work) and that explains PROTEC's attention to and concerns about the subject.

To that end, PROTEC filed comments at the US Department of Transportation Pipeline and Hazardous Safety Administration (PHMSA) earlier this year, outlining the unique predicament that local communities are in with respect to these dangerous facilities running through so many communities. As first responders, when these pipelines fail, local communities are expected to respond quickly and safeguard local residents and their property. However, under current laws and regulations, locals have very little input or even basic knowledge of such infrastructure location and operation. PROTEC recommended increased local authority and funding to allow our first responders to be involved in pipeline planning and siting as well as regulation of operation and safety issues so that our disaster response can be far more successful than sometimes occurs.

See the new federal rules here:

<https://www.gpo.gov/fdsys/pkg/FR-2010-10-18/pdf/2010-26006.pdf>

A copy of the PROTEC comments are available from Mike Watza at [mike.watza@kitch.com](mailto:mike.watza@kitch.com) PROTEC is also actively monitoring the new natural gas pipeline NPRM proceeding expected to be issued by the U.S. Department of Transportation and PHMSA and intends to file comments in that proceeding as well on or about July 7, 2016. **Let us know if your community would like to join in these comments.**

PROTEC is also monitoring the State of Michigan's review of the two 20-inch Enbridge petroleum pipelines crossing the Straits of Mackinac just west of the Mackinac Bridge. The pipelines were built in 1953 and nearly 23 million gallons of oil flow through these pipelines every day. The State of Michigan is considering options for the future of this aging infrastructure and we will keep you current on those developments as they occur.

## THANK YOU

Thank you for you membership in PROTEC. You are the reason we can and the reason we do the work we do.



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