

2017/2018 ANNUAL REPORT



The Michigan Coalition to Protect Public Rights-Of-Way

OUR 22nd YEAR

NEW MEMBER WELCOME

Battle Creek, Berkley, Charlevoix, Clinton, Delta Township, Dundee, East Jordon, Essexville, Galesburg, Gaylord, Grand Ledge, Grosse Pointe Shores, Harper Woods, Hart, Laingsburg, Mackinaw City, Marysville, Merrill, Michiana, Morley, North Muskegon, Novi, Onaway, Petersburg & West Branch

Thank you for your support!!

Why join PROTEC? See link to our Answer on our website:

<https://www.protec-mi.org/>

2018

PROTEC WINS AGAIN

PROTEC Defended our Constitution, Home Rule and Our ROW from DAS/Small Cell Bill SB 637

In the Face of the

- **Wireless Industry**
- &
- **Michigan Legislature**

As 2017 and 2018 have unfolded and DAS and "Small" Cell issues continue to dominate the landscape and our Rights of Way, PROTEC had the opportunity to do what it was designed to do 22 years ago:

Just Say "Yes" to Local Governance of OUR Rights of Way!

In October 2017, the telecommunications industry dropped five bills in the Michigan Legislature, each of which sought to dramatically reduce local community authority over our governance of our own Rights of Way.

The key bill, SB 637, comprised 36 pages of extremely poorly written and a near incomprehensible industry wish list for essentially free and unfettered use of our ROW.

SB 637 Problems continue to include:

- 36 pages of overly complex and poorly written race to the bottom rhetoric, subject to broad judicial scrutiny which will take a decade to sort out, if then. The result is that no one is served and there will be no finality or certainty for any party.

- **35 States have NOT passed this legislation: Because there is -0- Nothing in it for Local Communities in exchange for a give-away of significant Community taxpayer supported property interests to the very profitable wireless industry.** This is in stark contrast to similar past legislation such as the Metro Act and Video Service Act.
- No Industry standards in Exchange for ROW Giveaway
 - Rates
 - Service
 - Build-out scope and timelines
- Preamble Platitudes = Empty and Unenforceable Promises
- 5G does not yet exist
- Locals and Providers have been working these issues out: This legislation stalls or ends that process
- Equipment Size Discrepancies: 5cu ft applications but the Bill seeks 31cu ft+? (x 4 providers?)
- Height: Even if limited to 40-50'; FCC Collocation = another 10% or 10 feet
- **The industry is in it for the \$\$.** We need to address that issue head on. **No Market Rate rents (\$20-250 annually = as little as 1-10% of fees in States not passing such legislation)**
 - **COLA is irrelevant at these rates**
- Non-market rates = Unconstitutional Lending of Credit
- No certainty of actual cost recovery – engineering, lawyering etc
- Time line for Review too short - days vs months per federal law
- Bill risks increased bureaucracy since Feds are acting
 - FCC
 - Congress
- Substantial risk of pvt property owner claims
- Discrimination Claims = Cable industry is making noise about paying 5% of Gross Revenue for ROW access compared to these low rates (Minnesota)
- Grandfathering of existing agreements is not clear
 - A “Maybe” at best
- “40’ cap on height of utility poles”
 - But the FCC says Approval = Collocation and an additional 10% or 10’ plus 6’ horizontally

As our partners dutifully negotiated certain improvements in SB 637 as the industry and pro-industry legislators allowed, PROTEC steadfastly opposed the bill in total, offering support to our partners by calling out a litany of issues with the bill and, clinging to our Michigan Constitution and Home Rule as long established precedent for ROW access. We even offered the suggestion that perhaps the answer to industry desires was an amendment to the Metro Act, a law that has been on Michigan’s books since 2002 and which, generally, has worked without great controversy ever since.

This five month effort culminated in PROTEC’s sole municipal testimony in opposition to SB 637 on March 15, 2018, when our partners were forced to withdraw their opposition to the bill, in order to preserve the changes they had succeeded in making over five months of negotiation.

See PROTEC Testimony here:

<https://kitch.sharefile.com/share/view/s500ad44accd4eba8>

See a portion of PROTEC's written Opposition here:

<https://kitch.sharefile.com/d-s30202a1a7084387a/>

A WIN! AGAIN!!

As a result of our opposition, testimony and previously submitted written responses to the bill, together with individual communities and private property owner groups and, the onset of election year politics, the House leadership has indicated the bill will not be moving forward at this time.

Given that the votes were there to pass the Bill in October 2017, PROTEC's efforts, in concert with that of our partner's, particularly MML, MTA and CRA, has yielded a significant win for local community ROW governance!

Lame Duck Session: A few weeks following the Elections November 6

Of course the battle is not won outright until we negotiate the lame duck session of the legislature and the bill dies in December, at the end of this term. So vigilance continues to be necessary. Feel free to share the referenced testimony and document.

MORE MICHIGAN AND CONGRESSIONAL LEGISLATIVE NEWS

DAS AND BROADBAND DOMINATE MICHIGAN LEGISLATIVE EFFORTS IN 2017/18

In October of 2017, five bills were introduced in the Michigan Legislature which were designed to push local communities out of regulating their own Rights of Way. PROTEC together with MML, MTA, CRA, CWW and MAC, worked aggressively to address these bills which, at the outset appeared poised to be run through the Legislature in matter of couple weeks. Thanks to much hard work by MML, MTA, CRA, PROTEC and Bloomfield Township in particular, the year ended on a largely happy note, with only one of these bills advancing in any meaningful way. All the rest however are still very much alive and ready for further action by industry and their friends among the legislators in the balance of this year and the coming lame duck session following the November 6, 2018 election.

2017/2018 TELECOM BILLS WRAP UP AS OF MAY 1, 2018

a. SB 637 See Detailed Discussion Above

<http://www.legislature.mi.gov/documents/2017-2018/billintroduced/Senate/pdf/2017-SIB-0637.pdf>

b. SB 894 added March 13, 2018 which applies 637 to the ZEA: See
[https://www.legislature.mi.gov/\(S\(w5cd4mjlzfhfzra1bn4cxsdgg\)\)/mileg.a.spx?page=getObject&objectname=2018-SB-0894](https://www.legislature.mi.gov/(S(w5cd4mjlzfhfzra1bn4cxsdgg))/mileg.a.spx?page=getObject&objectname=2018-SB-0894)

c. HB 5098 – Utility Relocation – Revisit of 2015 HB 5016

Adjourned without date

d. HB 5096 – Drain Comm Limits on DAS/BB access

Adjourned without date

e. **HB 5099 – Muni BB Kill Bill**

Adjourned without date

g. **HB_5097 Limits County Road Commission regulation and access of DAS/Small Cells** Passed both Houses and signed into law on 4/10/2018 but, substantially improved from original draft. See: <http://www.legislature.mi.gov/documents/2017-2018/publicact/htm/2018-PA-0097.htm>

h. **HB 4047 Reintroduction of HB 5946 Telecom Property Tax Exemption**

Adjourned without date

OTHER MICHIGAN LEGISLATION WE ARE WATCHING

a. **Potential Video/Telecom/Wireless State Bill?** ☹

b. **HB 4220 of 2017 – Smart Meters – Electric, Gas, Water and Muni Owned utilities** - gives consumers broad authority to reject smart meters with little consequence

c. **HB 4002 of 2017 - Complex protection of print media revenues from Municipals**

d. **HB 4100 of 2017 Oakland County Drains Utility Initiative**

e. **HB 4392 etc. – MPSC to Control Local Water Rates?**

f. **HB 4290 – PA 222 Rewrite is back –**

g. **HB 4482 (H-6) & 4483(H-6) - Electric Transmission Co Expansion of Condemnation Powers** (2d reading reported 10/20)

h. **HB 5406 (H-2): Governor’s Infrastructure Council – Water Infrastructure** Ref’d to Transportation comm 4/10/18

i. **HB 5717 Zoning required for any local regulation of land**

j. **HB 4290 PA 222 Rewrite - Sewer Back Up Enhanced Immunity Amendment** Reported out of Local Govt Comm 3/1/17

CONGRESS

As many as 25 broadband bills/Resolutions anticipated – All focused on expediting access to federal state and local lands for cell siting.

PROTEC is monitoring these developments via our association with Telecommunity, NATOA and IMLA.

FCC

BDAC: AN EMBARRASSMENT FOR THE FCC

The FCC formed the Broadband Deployment Advisory Committee (BDAC) on January 31, 2017 for the announced purpose of assisting in the formulation of recommendations for the acceleration of Broadband. The Focus from the beginning was on State and Local government interference with the desires of the wireless industry in rolling out their DAS/Small Cell facilities into local ROW. Predictably perhaps, the BDAC has nearly finished much as it began: industry bloated, missed deadlines and even a little scandal.

First, of the Board's 29 members, only 2 were from local government; the rest were from or behold to industry. Following months of Australian marsupial like proceedings, both communities resigned.

Second, the BDAC which has now in just the last month, finally recommended municipal approvals within **90 days**, took some **400 days** to finalize that recommendation.

Finally, former **BDAC Chair, Elizabeth Pierce was indicted** in April 2018 for **defrauding investors** to the tune of **\$250 million**. *"In her role as CEO of Alaska-based telecom company Quintillion, Pierce is accused of forging contracts that promised roughly \$1 billion in revenue in order to secure further funding from investors to build a new high-speed fiber network."* WSJ Article 4/17/18

<https://www.lightreading.com/regulation/bdac-blowback-andndash-ex-chair-arrested/d/d-id/742311>

PROTEC continues to monitor these developments and prepare response to likely industry efforts to foist the biased recommendations of the BDAC on local governments and our State leadership.

MOBILITIE FCC PENALTY AND A PROTEC COMMUNITY CATCHES THEM, RESULTING IN A BETTER FRANCHISE FOR ALL

New Updated and Improved Franchise Agreement available to PROTEC members

The FCC entered into a \$11.6 Million Settlement with Mobilitie and Sprint regarding wireless structures built without required review

https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0410/DOC-350129A1.pdf

Internal Emails here: <https://event-driven.com/sprint-approved-trial-for-contractor-mobilitie/>

Interestingly, a Michigan community "caught" Mobilitie doing sneaky (not to be confused with stealthy) installations last year. That community had them pay treble trespass damages under threat of removal and, a much improved franchise fee and terms also resulted, which we have rolled out across the state of Michigan for all our communities to use with all providers.

PROTEC ASSISTS WITH COMMENTS FILED AT THE FCC IN THE MOBILITIE PROCEEDING

In November 2016, Mobilitie, the installer for Sprint, filed a complaint for Declaratory Judgment seeking essentially unregulated free access to local rights of way for its 120' cell towers. (See photos below) PROTEC joined a large group of communities from

around the nation as well as MML, MTA, the State Bar Public Corporation Section, County Road Association, City of Monroe, Grand Valley Metro Council, Conference of Eastern Wayne and County of DeSoto Miss., and filed comments opposing Mobilitie's request. Key to this filing, unlike any others in the proceeding, were four expert reports which lent significant substance to the legal arguments opposing these 120' monstrosities. These experts included a highway design safety expert who identified many of the concerns and costs associated with allowing such structures in the rights of way , an appraiser who discussed the impact on private and public property adjacent to such installations, an economist who discussed the need for market prices to be charged for rights of way access and, a wireless network engineering firm which discussed the various aspects of need (or not) for these rights of way installations and where technology is likely to take such need.

See our 250 page comments here:

https://ecfsapi.fcc.gov/file/1030998488645/COMMENTS_SMART%20COMMUNITIES%20SITING%20COALITION.pdf

Regrettably, since those filings, the Trump Administration issued entirely new proceedings, raising largely identical issues and including similar questions regarding wireline access to our rights of way. Because the issues were near identical to the previous Mobilitie and FCC filings, the Smart Communities essentially refiled their prior pleadings in the new matters.

THE TRUMP FCC 2017 "OPEN" INTERNET ORDER

When Ashton coined the expression, "The Internet of Things"¹ in 1999, it is hard to imagine he truly understood the scope of what was coming. Today, we know that the internet touches, or should touch and will touch every one of us and, even the ROW. After all, the industry efforts to install DAS/Small Cells there, is almost entirely for the purpose of reaching the internet, which has become the information superhighway for voice, video, data, etc. As such, while the internet as a concept is not technically ROW dependent, the fact is it has entered our ROW through both lines of copper, coax and fiber, as well as via antennas for access wirelessly. And it is the profit driven business of providing that access to the internet that in turn drives the industry fostered federal and state legislation and rulemakings discussed already in this report. As such it is at least a topic of concern for PROTEC. Accordingly, PROTEC Counsel filed comments in that proceeding.

¹ Ashton, K. (22 June 2009). "That 'Internet of Things' Thing". Retrieved 9 May 2017.
Jump up ^



A Mobilitie/Sprint 120' Tower Installed when Flint allegedly failed to Deny a Metro Act Application within 45 days of Receipt

PROTEC HELPS END MISAPPLIED DETERMINATION #1 BY THE METRO AUTHORITY

In summer 2016, the Local Community Stabilization Authority (LCSA), as it took over for the former Metro Authority pursuant to Public Act 88 and Public Act 86 of 2014, aptly fulfilled its new role in administering the Metro Act by vacating the problematic Determination #1 (as well as all the ten other Metro Authority Determinations). Determination #1 -- authored by the Metro Authority in 2004 -- was causing consternation among local governments because industry argued that it essentially

immunized Wireless DAS/Small Cell Network Applications from municipal controls on rights of way use.

This should never have been the issue it became because the Metro Act very specifically exempts wireless infrastructure from its application, leaving the approval or denial to local franchise rights under Art 7 Section 29 of the 1963 Michigan Constitution. The industry arguments ignored the statutory language and attempted to claim it was an override of the Constitution. PROTEC served FOIA inquiries upon the State of Michigan seeking the detail on the formation and basis of Determination #1. Within days of the FOIA requests, the LCSA placed a statement on its website indicating that all Metro Authority Determinations -- including troublesome #1 -- were posted solely for historical purposes and that they were no longer of any binding effect:

“These documents are provided for reference and historical purposes only and were issued by personnel of predecessors to the Department of Licensing and Regulatory Affairs before the creation of the Local Community Stabilization Authority. These documents are not determinations of and do not reflect other action taken by the Local Community Stabilization Authority or its authority council.”

URL:<http://www.localcommunitystabilizationauthoritymi.gov/policy-and-issue-determinations/>

We appreciate the efforts of the Local Community Stabilization Authority in correcting this significant issue once PROTEC brought it to their attention.

PROTEC GENERAL COUNSEL ASSISTS GENESEE COUNTY ROAD COMMISSION IN MULTIPLE SUITS FILED BY VERIZON DAS INSTALLER ACD.NET

PROTEC's General Counsel Served as an expert on the subject of Small Cell and DAS Rights of Way issues, supported the work of Insurance Defense Counsel Bill Henn, in two lawsuits filed against the Road Commission by ACD.Net over DAS access and fee issues. Two of the many developments from this effort, is a letter now widely disseminated by County Road Commissions across Michigan to other local governments seeking cooperation on DAS applications, as well as a County Road Commission Centric Policy and Guidelines document to address these applications, which was also shared among all Michigan County Road Commissions.

A

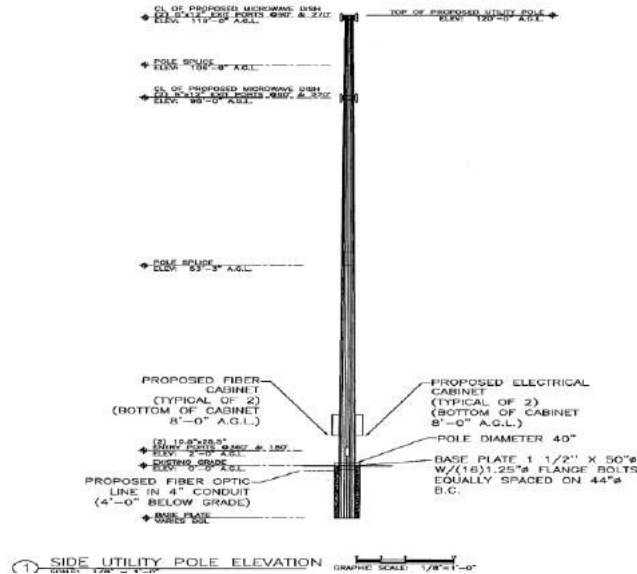


As the defense of the lawsuit progressed, a late night driver happened to fall asleep at the wheel, left the road way and as luck would have it, struck a DAS pole improperly located by ACD.Net. Fortunately, no serious injuries were reported, but the accident was a timely reminder of the danger posed to the travelling public by any and all objects located in the rights of way.

As of this writing, the lawsuit has been dismissed with prejudice. The parties have agreed to the above referred to policies and documents.

However, a second lawsuit was filed by ACD.Net in Federal Court in the Fall of 2017, seeking similar relief. PROTEC assisted here by pointing out several procedural and substantive defects in the filing including the fact that the industry failed to file their complaint within 30 days of the final action on the aggrieved issue, by the County Road Commission. Federal law provides a strictly enforced 30 day window for industry to file suit following an adverse action by a governmental entity on a cellular siting application. ACD missed that window by at least a couple months, leading to a quick dismissal of the matter.





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

The 2014 FCC wireless order has continued to generate 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, 2019 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.

In early 2016, at least one industry member 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**. Thankfully, we believe we have been largely successful in dissuading the industry from this "new pole" approach. In part due to the safety reports we included on our FCC filing on the subject and, partly due to our efforts to incentivize the industry in using existing ROW poles by reducing rents for use of those existing poles.

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 NEW AND IMPROVED proposed franchise agreement as of just this last month.**² 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’s 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.

Cable WiFi: We are aware of this development and some litigation was started and quickly stopped on the issue in 2016 without broad resolution.

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.

CABLE/VIDEO DEVELOPMENTS: MORE WIRELESS??

Cable WiFi Antennas and Equipment



The next time you are out walking, biking or driving, look at the above ground “cable television” lines that have probably been hanging on utility poles for the last 30 years. They should be suspended about 6 feet below the electric lines that may have been there for 100 years or so. If you look carefully, you may see some small boxes (photos of exemplars above) hanging on those cable lines. Chances are good, these are

² Copies of the new franchise forms and policy forms have been made available to PROTEC members and many other communities who have contributed to the broad based effort to develop it. As the first franchise was largely underwritten by PROTEC and Boyne City, this latest amendment is thanks largely to PROTEC and the City of St. Clair Shores.

recently hung WiFi radios placed there by one or more of your current cable/video service providers. Why? To provide the traditional cable company's effort at a wireless system to compete with their telecom competitors who have of course recently entered the cable/video market. The next thought that might enter your head may be: ***"And by what authority does the cable company get to conduct wireless business in our rights of way on the strength of a cable/video franchise?"***

PROTEC has been asking the same question. In a recent but only briefly filed federal lawsuit, we asked Comcast the same question, alleging a trespass for this unauthorized use of the City Right of Way. The lawsuit was resolved quickly and with no clear resolution of the answer.

So, the question remains. Stay tuned as this issue is likely to be addressed again....

OTHER PROTEC HEADLINES:

PROTEC COUNSEL DEFENDS SEVERAL CITY MEMBERS IN EXTENET FILINGS AT MPSC RE DAS APPLICATIONS

In addition to the suits by ACD.Net against the Genesee County Road Commission referenced above, PROTEC Counsel defended at least two cities against similar claims by ExteNet which were filed at the MPSC. Both resolved with substantially improved agreement terms from that originally proposed by ExteNet.

PROTEC FILES INFORMAL COMMENTS AT US FEDERAL ENERGY REGULATORY COMMISSION OPPOSING CUSTOMER SUBSIDIZATION OF COAL AND NUCLEAR PLANT PROJECTS

PROTEC along with many others concerned with the industry's effort to allocate losses based upon certain coal and nuclear generation choices made by investor owned electric generation entities, filed objections thereto. The industry effort though still under review, appears to be in jeopardy.

PROTEC CONTINUES TO MONITOR THE STATE OF MICHIGAN'S REVIEW OF THE TWO 20-INCH ENBRIDGE PETROLEUM PIPELINES AT THE STRAITS OF MACKINAC. 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.

MUNICIPAL BROADBAND

Many Communities around the State of Michigan, and the Country, are looking at providing their residents with much needed, and often lacking, Internet access via fiber.

PROTEC and its Counsel continue to play a leading role in the navigation of the legal and policy hurdles to make such plans work.

A couple of caveats:

1. Be careful accepting everything the promoters tell you
2. Hire:
 - a. Experienced network engineers as owner's representative to study feasibility and to monitor the design and construction of the facilities;
 - b. Experienced Telecom Policy and Legal expertise;
 - c. Experienced Bond/Financial Counsel and
 - d. Create solid contracts with able ISP's for long term service

THANK YOU

Thank you on Behalf of the PROTEC Board; Dearborn, Livonia & Southfield, for your membership in PROTEC. You are the reason we can and the reason we do the work we do.

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