

2018/2019 ANNUAL REPORT



The Michigan Coalition to Protect Public Rights-Of-Way
OUR 23rd YEAR

NEW AND RETURNING MEMBER WELCOME

**Newaygo, North Branch, Parchment, Portage, River Rouge, Sand Lake,
Traverse City, Uby, Warren & Waterford Twp.**

Thank you for your support!!

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

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

Facebook - <http://www.facebook.com/pages/Protec-Michigan/202171746532661>

LinkedIn - <http://www.linkedin.com/groups/PROTEC-Michigan-4207436>

**Twitter - <https://twitter.com/PROTECMichigan>
www.protec-mi.org**

PROTEC FIGHTS ON

PROTEC fought hard to defend our Constitution, Home Rule and our ROW from DAS/Small Cell Bill SB 637 and 894 In the Face of the Wireless Industry and the State Legislature and Governor's Office in 2017 and 2018 and continues to address issues arising under now enacted 2018 PA 365 and 366

RECENT HISTORY

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, nearly incomprehensible language constituting an industry wish list for essentially free and unfettered industry use of our ROW.

PROTEC led on this matter because, defending our ROW from improper intrusions by Telecom, Electric and Pipelines is who we are.

We fought despite enormous odds against us.

SB 637 & 894 PASSED AND BECAME 2018 PA 365 & 366 IN DECEMBER 2018

In December's lame duck legislative session, SB 637 and its companion SB 894 were passed by the Legislature and then signed by Governor Snyder. In the end, we pulled 35 votes in the final House vote. This is 35 more votes than some predicted. (See our 2017/2018 Annual Report for a detailed chronology of event on Small Cells since 2014)

Problems Include:

- 20 pages of overly complex and poorly written “race to the bottom” rhetoric, subject to broad judicial scrutiny which could 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.
- 25 States have NOT passed this legislation. There is no benefit to Local Communities in exchange for a giveaway of significant taxpayer-supported property interests to the very profitable wireless industry. This is in stark contrast to similar recent 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
- Promised 5G does not yet exist
- Locals and Providers have been working out siting issues: These laws end that process
- Size Matters: Industry talks about equipment the size of pizza boxes but the laws allow industrial refrigerator size equipment at 31 cubic feet (x 4 providers?)
- Height: Even if limited to 40' plus a 5' antenna; FCC rules may allow another 10% or 10 feet
- \$20/pole/year for ROW access does not cover cost, let alone market rates
- 60 days to review and approve these installations is far too short
- Increased bureaucracy created by the State Laws since the FCC already acted in Fall 2018 on the very same issues
- Substantial risk of private property owner claims for inverse condemnation and potential RF exposure

A good summary of our continuing concerns is contained in the Senate testimony of PROTEC Counsel here:

<https://youtu.be/1ZPhceGolMg>

and PROTEC written opposition here:

https://www.protec-mi.org/media/DET02-2596123-v3-Muni_Addendum_re_SB_637_for_RFR_Group.pdf

**AND IN CASE YOU FORGOT WHAT THE INDUSTRY CONSIDERS A SMALL CELL
IN OUR ROW?**



“SMALL” CELL DIMENSIONS: 31CU FT ... X 4



FLINT MOBILITIE 120' POLE



FCC - SMALL CELLS CONTINUED

As mentioned, the FCC addressed Small Cells in the Fall of 2018 in two orders.

1. The “Moratoria ROW Order” Is that August 3 Order in which the FCC took aim at any local, state or federal activities that constituted a moratorium on Broadband build out. It included an adverse reference to Michigan’s seasonal road weight restriction statute, which was a featured subject of a reconsideration petition filed by Smart Communities.

See Order here:

<https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf>

See petition here:

https://ecfsapi.fcc.gov/file/10904323720005/Smart%20Communities_Special%20Dists_ReconPetition.pdf

Current Disposition: An appeal has been filed at the US 9th Cir Ct of Appeals and, consolidation with the Telecom ROW Access Order discussed below is in process at the 9th Cir (our preference and request). PROTEC, MML, MTA and several Michigan communities joined in that appeal.

2. The Telecom ROW Access/Small Cell Order: This is the key FCC ROW order dated September 27 which preempts local control of our ROW in large measure, using the term “preempt” over 100 times throughout the order and, in many respects mirrors Michigan’s SB 637 and 894.

See Order here: <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

Smart Communities and many other individual communities and organizations across the country filed appeals. The appeals are now in the 9th Circuit US Ct of Appeals as a result of a lottery process.

Substantive briefing on the appeals will occur over the summer.

The FCC denied the Stay we requested on December 10.

See <https://www.fcc.gov/document/order-denying-motion-stay-wt-dkt-no-17-79-and-wc-dkt-no-17-84>

A follow up motion to stay the FCC order in the judicial appeal was filed 12/18/18 by Smart Communities and subsequently denied by the 10th Cir while the cases were briefly pending there.

The intervenor as of right period ended January 11. Permissive joinder is still available.

The likely effective date of this FCC order, absent a Stay order is January 14, 2019 for most of the Order;

April 14, 2019 is the effective date for the aesthetics parts of the order.

A summary comparison of these FCC orders and the new Michigan laws has been provided by PROTEC, which attempts to address the interplay between them.

AND...CABLE FRANCHISE FEES REDUCTIONS

Cable Franchise Proposed Order: This involves the proceeding in which the FCC attempts to respond to the cable industry request that it level the ROW access playing field as between the traditional telecoms and the cable industry. The cable industry argument is that as both industries now largely provide similar communication services, cable is entitled to the same vastly reduced access fees which Bills like SB 637 and the FCC Row orders addressed above, have provided cable’s competitors. Our Final reply

comments have been filed. See Smart Communities' comments here <https://ecfsapi.fcc.gov/file/1115723504888/LFA%20COMMENTS%20IN%20OPPOSITION.pdf>

The Michigan Public Service Commission's reply opposed the FCC proposed order. The FCC will now consider the comments filed by locals and industry and presumably issue its final order sometime in the coming months. We think sooner rather than later. We therefore believe the likely effective date, absent a stay order, is probably going to be in time to impact Fall 2019 quarterly cable franchise fee payments.

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 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.

Fall 2018: This very issue is addressed by both the new State Small cell law and the FCC Cable Franchise Orders discussed above. The State law allows “micro cells” unfettered, unregulated, unapproved access to existing cable lines, while the FCC Order does much the same by stating that cable access to the ROW includes such wireless equipment and service.

WRAP UP ON SMALL CELLS

PROTEC has authored and shared numerous documents including not only material commenting and educating on the Small Cell Bills discussed above, but also sample franchises, ordinances, policies and other such helpful items. In particular is the PROTEC Summary Comparison of the State Small Cell Law and FCC Rules. It is available here: <https://www.protec-mi.org/media/Summary-Comparison-SB637894-FCC-Small-Cell-Orders-2740853.pdf>

We also created a sample small cell ordinance. It is available here: <https://www.protec-mi.org/media/DET02-2797171-v1-2776876-Simple-Small-Cell-Ordinance.pdf>

We have also had many discussions about challenging the Act on a variety of grounds including state Constitutional provisions addressing ROW franchising and anti-gifting of public assets, like our ROW. To date, no challenges have been filed. (Apart from those appeals in the US 9th Circuit, addressing similar issues in the FCC orders.) However, Ohio, Texas and Florida communities have challenged their own versions of our State Act with varying outcomes.

Michigan has very strong home rule laws but, they must be defended. These Small Cell laws perhaps raise the right issue at the right time.

2018 TELECOM BILLS WRAP UP AS OF December 31, 2018

a. SB 637

<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 Zoning Enabling Act: See

[https://www.legislature.mi.gov/\(S\(w5cd4mjlzfhzra1bn4cxsdgg\)\)/mileg.a.spx?page=getObject&objectname=2018-SB-0894](https://www.legislature.mi.gov/(S(w5cd4mjlzfhzra1bn4cxsdgg))/mileg.a.spx?page=getObject&objectname=2018-SB-0894)

See Detailed Discussion re 637 and 894 above and further below

c. HB 5098 – Utility Relocation – PROTEC assisted MML and MTA to resist the effort of the telecom industry to place the cost of relocating their facilities on local government. By the time this Bill became law, it merely seeks notice by local government to the industry prior to requiring relocation.

CONGRESS

Multiple Bills/Resolutions are now circulating in the House and to a lesser extent in the Senate, addressing Small Cell Issues as well as Internet regulation and anticipated FCC reductions in Cable Franchise Fees. PROTEC is monitoring these developments via our association with TeleCommUnity, NATOA and IMLA.

OTHER PROTEC HEADLINES:

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.

To assist in our work on pipeline issues in and near the ROW, PROTEC General Counsel participated in a 3-day May 2019 Pipeline Safety Training Program in Houston, Texas on the basis of a scholarship granted by the Pipeline Safety Trust. The program and funding was underwritten by the Pipeline and Hazardous Materials Safety Administration <https://www.phmsa.dot.gov/>

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 representatives 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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