

2020/2021 ANNUAL REPORT



THE MICHIGAN COALITION TO PROTECT PUBLIC RIGHTS-OF-WAY

*OUR 25<sup>th</sup> YEAR*



*HAPPY ANNIVERSARY!!  
&  
THANK YOU TO OUR  
MEMBERS FOR MAKING IT  
ALL POSSIBLE*

## **IN THE BEGINNING**

PROTEC sprang to life on May 16, 1996, when on behalf of all our residents, the Cities of Dearborn, Livonia and Southfield, with the Michigan Municipal League serving as fiscal agent, combined our local governmental authority in order to address and protect continuing State and Industry incursions into local self-governance of our Rights of Way. Since then, we have devoted well over One Million dollars in resources to that cause, advancing our local control interests in the face of opposition by the telecommunications, cable, electric and pipeline industries, as well as our own State and Federal Governments from time to time. We have in short, fought the fights many have declined to enter alone, often due to inadequate resources. We have proven that together, local communities are strong and, can win against enormous opposition, when we put our hearts and souls into it. We have won some battles outright, and lost others...but these, only temporarily.

**Today**, we see our rights so very carefully preserved in the 1963 Michigan Constitution starting to return to prominence from darker times, with new leadership in our state and Federal Government, including in particular, our State Appellate Courts. We think Mayor Guido, the driver behind the creation of PROTEC, would be proud of what we have stood for, what we have accomplished and, where we are headed.

## **25 YEAR REVIEW: ISSUES WE HAVE ADDRESSED SINCE 1996**

- **TELECOMMUNICATIONS INDUSTRY AND THE METRO ACT OF 2002**
  - The industry and state sought to allow free access for wireline in our ROW. PROTEC fought for at least a toehold on fair compensation and reasonable controls, resulting in **\$27 Million Dollars per year** for local communities State wide.
  
- **TELECOM ATTEMPT TO TERMINATE MUNI BROADBAND**
  - In 2005, PROTEC fought off an effort at a telecom Act rewrite that included ending any municipal Broadband efforts. Since then, a half dozen and more municipal BB systems have been built in Michigan or are in stages of development.
  
- **TELECOM & CABLE INDUSTRY AND VIDEO SERVICE ACT OF 2006**
  - Starting in 2005, PROTEC led the opposition to the telecom and cable industry effort to deregulate cable service and PEG operations and reduce fees for ROW access. We were successful in securing 5%

Franchise Fees and 2% of Gross Revenue PEG support fees and other smaller victories.

- **CABLE ATTEMPTS TO MARGINALIZE LOCAL PEG PROGRAMMING**
  - In a battle Royale that ended with an apology by Comcast before Congress and the Nation, PROTEC opposed the cable industry effort to push PEG programming to the digital 900 channel range, which 2 million Michigan viewers did not have at the time, effectively threatening the end of PEG local programming.
  
- **ELECTRIC INDUSTRY RATES AND SERVICE**
  - In 2010 we pursued remedies at the MPSC regarding electric street lighting rates and service issues
  - In 2011, we returned to the MPSC to lend support for customers in a DTE rate case filing.
  
- **STEAM HEAT INDUSTRY RATE AND SERVICE MATTERS**
  - In 2010 we also supported an MPSC rate case to address rate and service abuses by Detroit Thermal in the City of Detroit.
  
- **ELECTRIC TRANSMISSION INDUSTRY SITING AND ANTI-ZONING**
  - From 2010 to 2015 or so, ITC waged a battle against local communities in the course of its unilateral desire to plant 150 foot electric transmission towers down and across main streets and neighborhoods across Michigan. PROTEC joined ITC in several litigated matters in an effort to curb these abuses. Although we did not ultimately prevail in efforts to curtail this entity's power over locals, we certainly let them know we were watching closely and no doubt reduced at least some of their plans to a more palatable nature. Indeed, as we consider opportunities under a progressively friendlier State Government, this is a subject we may revisit.
  
- **WIRELESS INDUSTRY 2012 DEREGULATION OF MACRO TOWER SITING AND EXPANSION**
  - In the course of 3 weeks during the Summer of 2012 recess, AT&T led a surprise charge on State legislation sweeping away local zoning control

Over Macro Cell Tower expansion. PROTEC worked to advise MML on issues in the legislation, but AT&T received most of what they asked for. See [2012, Act 143](#), Imd. Eff. May 24, 2012 as amended by [2018, Act 366](#), Eff. Mar. 12, 2019

This too may be an issue to reconsider as our State government hopefully becomes Muni friendlier.

- **TELECOM DEREGULATION OF LANDLINE PHONE SERVICE**

- In 2016 PROTEC opposed the telecom industry effort to deregulate landline phone service and convert it to unregulated Internet Protocol. PROTEC supported the work of one of several of our partners and managed to save essential elements of the 911 sections of the Act.

- **TELECOM & CABLE AND THE “not so”– SMALL CELL ACT OF 2018**

- **State Law:** While most of our efforts on state legislation are in partnership with other local associations, PROTEC ended up fighting singlehandedly to keep “not so” small cell towers out of our ROW for free and unregulated. Despite pulling off a near win and 30+ votes, (30 more than some predicted), the wireless industry prevailed with one of the worst small cell laws in the country. PROTEC has fought on behalf of many communities to minimize the damage and has supplied numerous forms and advisories to assist our members and beyond. See our website under “RESOURCES”. <https://www.protec-mi.org/resources.php>
- **FCC SMALL CELL RULES:** A few months before passage of the State law, the FCC Ordered very similar small cell rules allowing these cell towers in our ROW essentially for free and unregulated. PROTEC had been fighting that effort going back to 2014. **In 2016/17 we fought and defeated Sprint and Mobilitie’s efforts to install 120-foot Cell towers in our ROW.** See one of these errant monstrosities in the City of Flint among the picture below. But the FCC regrouped and issued its orders nonetheless, though limiting height to 50 feet.
  - **APPEAL WIN!!** Once issued, PROTEC and a consortium of Cities from across the country filed an appeal. By Order dated August, 2020, the US 9<sup>th</sup> Cir Ct of Appeals delivered us a **WIN** on the aesthetics portion of the Appeal. The balance has gone to the US Supreme Court. PROTEC has reserved its right to rejoin support of that appeal if appropriate.

**AND IN CASE YOU FORGOT HOW BIG, “SMALL CELLS ARE  
FLINT 120’ “SMALL CELL”**



**ARIZONA ROW SMALL CELL**



- **“SMALL” CELL DIMENSIONS:**  
 2018 PA 365 Sec 7 (j) “Small cell wireless facility’ means ... the following requirements:
  - i) Each antenna is ... not more than **6 cubic feet** in volume ...
  - (ii) All other wireless equipment ... not more than **25 cubic feet** in volume ... not included in the calculation ... **[plus]** electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.”**Total equals 6 cu ft + 25 cu ft + ? = 31+ Cubic Feet per pole and per provider**
- **PROTEC OPPOSES FCC 2018 SEC 621 CABLE FRANCHISE FEES ORDER**
  - **The FCC 2018 Sec 621 Order** seeks to reduce Franchise FeeS by the value of all “in kind” benefits authorized, but not mandated by

Congress. It also sought to allow multiple services beyond video to be provided even under cable “only” franchise agreements.

- **Appeal:** PROTEC and a consortium of Cities from across the country filed an appeal which landed in the US 6<sup>th</sup> Cir Ct of Appeals. A decision is expected very soon.

- **PROTEC and NETFLIX**

- PROTEC is researching the potential for our communities to join in a contingent fee lawsuit to recover cable/video franchise fees from the likes of Netflix, who provide video service under the Act and therefore owe franchise fees. Let us know if your community might be interested.

- **PROTEC SUPPORTS APPELATE CHALLENGE TO LOCAL GOVERNMENT FRANCHISING RIGHTS UNDER ART VII SEC 29 ETAL**

- PROTEC is looking for communities interested in challenging various laws enacted over the last 20 years which abridge local community rights to govern our own ROW. 1<sup>st</sup> and foremost, this starts with the Small Cell Legislation, one of the worst in the country.

- **COVID AND BB**

- PROTEC Provided a wealth of assistance nationally on backing the wireless industry off of its push for small cell approvals and other issues that arose in the middle of the COVID-19 Outbreak.

- **PROTEC CONTUES TO MONITOR AND INFLUENCE MULTIPLE PIECES OF LEGISLATION AT THE STATE AND FEDERAL LEVELS AS WELL AS RULE MAKING AT THE FCC, NTIA AND MPSC AS WELL AS MAJOR DEVELOPMENTS IN STATES ACROSS THE COUNTRY. Of particular note is our assistance on identifying and securing Federal Covid Relief Funding. See our SUMMARY OF COVID ERA FEDERAL RESCUE LEGISLATION at our resource page on our website. See <https://www.protec-mi.org/resources.php>**

- **2021 & BEYOND?**

- To aggressively improve and undo many of the statutes and rules discussed above where needed and as supported by our State

Constitution, Art VII Sec 29 in particular, and a growing body of case law re-establishing our constitutional rights.

- It is imperative that we challenge and reverse the State Small Cell Act because of the damage it is doing to our community aesthetics and, to our right to local self- governance of our ROW. We have the tools and precedent.
- We require the Will of at least one community to take on this challenge.

- **PROTEC MEMBERSHIP HAS GROWN**

From the original three, to over 100 dues paying Michigan communities and, over 350 communities and others nationally, who follow and support us.

- **WHY JOIN PROTEC?**

See link to our Answer on our website: <https://www.protec-mi.org/why-join.php>

- **JOIN US ON SOCIAL MEDIA:**

**Facebook –**

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

**LinkedIn**

<https://www.linkedin.com/company/64739871/admin/>

**Twitter –**

<https://twitter.com/PROTECMichigan>

[www.protec-mi.org](http://www.protec-mi.org)

**THE END OF OUR 1<sup>ST</sup> 25 YEARS.  
THE BEGINNING OF OUR NEXT 50!!**

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

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