

The Metro Act and DAS/Small Cells in our Rights of Way

The Metro Act

PA 48 of 2002 was enacted in response to a push by the wireline telecommunications industry for simpler and more uniform rights of way regulations. The industry sought new and upgraded internet access lines (both traditional copper and newer fiber) and wanted to deregulate access to municipal rights of way pursuant to the Michigan Constitution of 1963 Art 7 Sec 29. The industry claimed its efforts to upgrade telecommunications data services were being hampered by inconsistent and confusing local rights of way access requirements. The industry desired one-stop shopping, wanted it at the State level only and, with little or no fees. The Michigan Municipal League (MML), the Michigan Coalition to Protect Public Rights of Way (PROTEC), and other municipal interests resisted this effort, arguing that while all stakeholders desired these telecommunications upgrades, the issues from community to community across the State did not translate well to a one size fits all regulatory scheme. Some communities, particularly in more densely populated areas with more complex existing rights of way infrastructure, required significant cost sharing from these providers/installers.

Following contentious negotiation, and several lawsuits and claims litigated in the courts and at the Michigan Public Service Commission between the industry and several cities, the Legislature passed 2002 PA 48. The Act generally provides:

- The Act applies to wireline telecom industry wires or lines above or below ground;
- A 5 cents/foot annual fee plus a one-time \$500 application fee;
- A 45-day municipal shot-clock to grant or deny applications;
- Substantial penalty provisions for violations; and
- Specifically excludes wireless facilities.

As a result of PA 48, wireline access to municipal rights of way has largely quieted over the last decade. So, too, have statewide revenues which have hovered around \$20 million for the last 14 years, a number which represented 1/4 of what municipalities considered to be appropriate in the year 2002. It is generally conceded that larger communities suffer the greatest loss due to the complexities and higher costs of their rights of way issues.

Recent Metro Act Issue: DAS/Small Cells

Since 2014, in particular, the telecommunications wireless industry (entities closely related to the wireline industry discussed above) has been seeking the same treatment for wireless infrastructure. DAS/Small Cell systems typically involve a network of antennas, linked by fiber strung underground or between utility poles, and ultimately connected to a central point which might be a traditional macro cellular tower or other hub-center.

While the industry claims rights of way access under the Metro Act for these antennas and poles, the Act specifically excludes application to wireless infrastructure as wireless is governed exclusively by the Federal Communications Commission (FCC). An early attempt by the industry to utilize an unsupported ruling by the former Metro Authority (Determination #1) was soundly defeated by the new Local Community Stabilization Authority in the Fall of 2016, relegating the Determination to historical status only. This change was a result of efforts by PROTEC and MML in bringing attention to the inconsistency between the authorizing statute and errant regulation.

DAS/Small Cell treatment today relies largely on federal law emanating from Congress and the FCC. To date, both have held local communities harmless regarding their proprietary interests, including rights of way. However, that very issue has been brought back to the FCC by a November 2016 Mobilite Petition seeking quick, easy, and cheap access for its 120' towers in municipal rights of way. The MML and PROTEC are actively involved with many other organizations locally, regionally, and nationally in responding to this threat to our rights of way at the FCC.

Fact Sheet provided by Mike Watza of the Kitch Drutchas Wagner Valitutti & Sherbrook law firm and General Counsel to PROTEC.

PROTEC Member Alert: Distributed Antenna Systems (DAS) and The Metro Act

If you receive a Metro Act Application and it references antennas, Distributed Antenna Systems (DAS), or Small Cells, or poles, or other wireless support structures ANYWHERE in the application, STOP.

I strongly suggest that you not proceed to grant the application until you investigate the issues further. Instead, recognize the application seeks to expand the Metro Act beyond its bounds, and shove 10 pounds of telecom into the Act's 5-pound bag.

While the Metro Act may cover the lines connecting these cellular antennas, it expressly does NOT cover the rest—including antennas, poles, and other support structures. Those items are to be franchised, providing your community both Control and Revenue to reduce the cost burdens of maintaining your rights of way and other public places otherwise incurred by community taxpayers. In addition, if you simply grant the Metro Application, you risk significant unregulated expansion of these antennas and poles beyond the scope of the original plans when co-location requests occur—and they will.

DO NOT GIVE AWAY CONTROL OF YOUR PROPERTY AND REVENUE.

Mike Watza on behalf of PROTEC



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