

FY 2009 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Boards, Authorities, and Commissions **PROGRAM:** METRO Authority and FOIA

TIMELINE: October 1, 2008 through September 30, 2009

PROGRAM MISSION STATEMENT (Customer-Focus Direction)

The Mission of the Metro Authority is to implement the provisions of the METRO Act by streamlining the right-of-way permitting process between municipalities and telecommunication providers; recover the costs of public right-of-way use by the providers; and coordinate public right-of-way matters with municipalities and telecom providers.

VISION STATEMENT

A. METRO Authority

The vision of the METRO Authority unit is to grow Michigan telecommunication providers to each municipality by:

- Establishing a common right-of-way procedure and fee paid by telecommunication providers to each municipality.
- Allowing Michigan's municipalities to reasonably control and manage their public right-of-ways.
- Recovering the costs of using rights-of-way by telecommunication providers.
- Ensuring effective review and disposition of disputes between municipalities and telecommunication providers as they relate to right-of-way matters.
- Assuring that all available funds from providers are timely collected and distributed to municipalities.

B. Freedom of Information Act (FOIA)

The vision of the FOIA operation is to timely and accurately process the approximately 44,000 to 46,000 annual requests, including subpoenas, from citizens/organizations received by the Department.

- Assuring that FOIA requests and subpoenas are processed accurately and timely.

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PROGRAM STATEMENT

A. METRO Authority (Public Act 48 of 2002). MCL 484.3101 et seq.

The Metropolitan Extension Telecommunications Right-of-Way Authority (METRO Authority) was created on November 1, 2002, as a result of Public Act 48 of 2002. The METRO Act gives the Authority the responsibility to coordinate public right-of-way matters with municipalities (cities, villages and townships); the exclusive power to assess maintenance fees from telecommunication providers owning telecommunication facilities in public rights-of-ways within a municipality; and to allocate and disburse collected annual maintenance fees to 1,758 eligible municipalities. The Authority may also promulgate rules to implement and administer the Act. The METRO Act also:

- Encourages competition in the availability, prices, terms, and other conditions of providing telecommunication services
- Encourages the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in Michigan
- Improves the opportunities for economic development and the delivery of telecommunication services
- Ensures the reasonable control and management of public rights-of-way by municipalities within Michigan
- Provides for a common public rights-of-way maintenance fee applicable to telecommunication providers
- Ensures effective review and disposition of disputes under the act
- Allows for a tax credit for providers to recover the costs under the act (and ensure that providers do not pass costs on to end-users through rates and charges for telecommunication services)

B. Freedom of Information Act (Public Act 442 of 1976, as amended) MCL 15.231 et seq.

The Freedom of Information Act (FOIA) provides Michigan residents (and others) access to public records and information regarding the department's activities. The FOIA regulates and sets requirements for the disclosure of public records by all public bodies.

FUND SOURCE:

A. METRO Authority (Public Act 48 of 2002)

Public Act 48 of 2002 created a funding stream but did not allow the funds to be used for program administration. DELEG has been using appropriation authority from Executive Director Programs (Liquor Purchase Revolving Fund) to operate the program at a bare minimum.

B. Freedom of Information Act (Public Act 442 of 1976, as amended)

FOIA support is absorbed as part of the METRO Authority operations.

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LEGAL BASIS:

A. METRO Act (Public Act 48 of 2002), MCL 484.3101 et seq.
METRO Authority (Public Act 48 of 2002)

B. Freedom of Information Act (Public Act 442 of 1976, as amended), MCL 15.231 et seq.
Freedom of Information Act (Public Act 442 of 1976, as amended)

CUSTOMER IDENTIFICATION:

METRO Authority/FOIA customers consists of Michigan consumers of METRO Act/FOIA services (1,778 municipalities, 95+ telecommunication providers); other DELEG units (33 FOIA coordinators); trade/governmental associations (CLECA, TAM, MML, MTA, etc.); federal/other state agencies/citizens; state legislators; peers/subordinates.

As a semi-regulatory unit implementing both METRO Act and FOIA statutes mandates, the unit provides support to customers by:

- Continuously educating the municipalities, providers, and the public regarding the implementation of the METRO Act.
- Coordinating the FOIA activities of DELEG bureaus/offices in a consistent and timely manner.
- Timely decisions regarding PA48 and FOIA issues.
- Providing proper funding/staffing to enable efficient operation of PA48 and FOIA activities.
- The way we conduct business and respond to our customers.
- Regular communications with peers, customers, and DELEG policy makers via letter, email, website inclusions.
- Regular staff meetings and planning sessions.
- Website publications of “Determinations” regarding relevant policy decisions.
- Periodic meetings with customer groups, including Michigan Municipal League, Michigan Township Association, Telecommunication Association of Michigan, Telecommunication Association of Michigan, CLECA, etc.
- Annual reports; telephone discussions with customers; work groups; surveys, etc.

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CRITICAL GOALS/MAJOR OBJECTIVES and RESULTS

Program Goals:

A. METRO Authority (Public Act 48 of 2002)

1. Annual Report (Section 3(4))

Pursuant to Section 3(4) of PA 48 of 2002, prepare and file the year 2008 annual report of activities with the Governor and members of the legislative committees dealing with energy, technology, and telecommunications by or before March 1, 2009.

Result: Report prepared and submitted to Governor and Legislature February 2009.

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2. Collection and Disbursement of Provider Fees (Section 8)

- a. Send providers request to confirm and/or correct the linear footage of right-of-way facilities regarding fees to be billed by February 13, 2009, or sooner.
Result: MA met this goal.
- b. Determine fee amount owed by each provider and bill providers by or before March 13, 2009.
Result: MA met this goal.
- c. Collect all due provider fees by April 30, 2009.
Result: MA collected \$21,891,304 from 76 providers, an increase of \$260,993 than previous year; billing includes 3 providers that received loans from the Broadband Authority (now defunct).
- d. Re-bill delinquent payer providers by May 15, 2009.
Result: MA met this goal--\$86,225 late payments carried over.
- e. Prescribe the schedule for the allocation and disbursement of fees to municipalities by May 15, 2009.
Result: MA met this goal.
- f. Disburse maintenance fees to eligible (opted-in) municipalities by May 30, 2009.
Result: MA disbursed \$22,009,786 million by May 30, 2009.
- g. Determine status of any delinquent payer provider and consider authorizing the department of Treasury to collect delinquent fees by or before June 12, 2009.
Result: MA met this goal; no fines requested to be assessed.

3. Provider Credits (Section 8(14, 16, 16))

Request information from the MPSC regarding the determination of provider applications for property tax credits via PA 282, MCL 207 of 1905 for METRO Authority analysis on a quarterly basis:

- October 1 thru December 31, 2008
- January 1 thru March 31, 2009
- April 1 thru June 30, 2009
- July 1 thru September 30, 2009

Result: MA met this goal.

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4. Municipality Use of Funds (Section 10(4)&(5))

- a. Post on METRO Authority website 2008 Annual Report Form; to simplify municipal reporting by or before April 1, 2009.
- b. Issue to eligible municipalities revised/updated Annual Report Guidelines by or before April 17, 2009.
- c. Collect and analyze information reported by eligible municipalities by or before June 12, 2009.

Result: MA met this goal. Only 20 of 1,778 municipalities ineligible to receive METRO Act funds.

5. Undisputed Fee Payments (Section 18(2))

Determine whether there are undisputed fees owed the METRO Authority for referral to MPSC for action by or before June 30, 2009.

Result: MA still working to determine undisputed fees.

6. Other:

- Revise/update METRO Authority website information quarterly or as needed.
Result: MA met this goal.
- Confirm correct address to send payments; correct name of chief elected official/appointed official by June 12, 2009.
Result: MA met this goal.
- If a FY09 budget is appropriated for the METRO Authority, the following will need to be addressed:
 - a) Determining staffing/consultant needs and costs by October 1, 2009.
 - b) Municipality Payment Calculations—Develop (aside from MDOT), capability to calculate municipality allocations based on the Act 51 funds distribution system by or before April 30, 2009.
 - c) Databases—acquire assistance (MDIT or other services) to convert large spreadsheet information to databases necessary to build reports, mail merges, etc., by or before July 18, 2009.
 - d) Web Page—acquire assistance to make web page more useful for municipalities and other affected parties by July 18, 2009.

If no FY09 budget approved for the METRO Authority, continue strategy to amend P.A. 48 to provide for administrative/operational funds for FY09; and/or FY10. Note: FY10 budget bill transferred METRO Authority and funding to the Michigan Public Service Commission.

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In 2008, MA staff made a presentation to House and Senate committees/representatives regarding the need for administrative/operating funds for the MA. House Committee, in May 2008, referred matter to “Work Group.” No further action taken. Also, in 2008 MA met with Representative Frank Accavitti regarding possibility of introduction of amendment to METRO Act to provide administrative/operating funds—no further action at this time.

Result: MA and MPSC will need to review whether to amend METRO Act to provide for administrative/operating funds.

B. Freedom of Information Act (Public Act 442 of 1976, as amended), MCL 15.231 et seq.

1. FOIA Rules/Procedures

- Publish DELEG FY10 FOIA Fees procedures/guidelines by or before October 1, 2009.

Result: FOIA Unit met this goal.

- Develop and distribute to designated FOIA liaisons DELEG rules and procedures governing DELEG responses to FOIA requests by February 13, 2009, or sooner.

Result: Issued Revised Attachment 12 to DELEG Freedom of Information Act Policy/Procedures/Guidelines October 1, 2009,

2. FOIA Liaisons

- Update DELEG unit’s designated FOIA liaisons listing by October 1, 2009.

Result: FOIA Unit met this goal—done as staff/assignments change.

- Arrange for FOIA liaisons training via the Attorney General’s office and/or Civil Service as offered.

Result: FOIA Unit met this goal – 3 training opportunities made available.

Processes/Services

PROGRAM EFFECTIVENESS and Efficiency (Current Year)

Program Goals/Metrics

See attached charts

Performance Measures

- Waived \$4,634 in fees for AT&T and \$483 in fees for Allband Communications Cooperative.
- Disbursed about \$22 million to municipalities by May 31, 2009, including \$1,058 in interest and \$124,718 in prior year carry-forward.
- No. non-eligible municipalities not receiving METRO Act funds in 2009 remained at 20.

11/25/2009

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- No. new fee waivers received/granted aside from existing to Allband—none.
- Zero Determinations/Rulings issued.
- 183 municipalities' annual reports received and reviewed for compliance.
- 183 municipalities were contacted regarding new METRO Authority Database and ability to file annual reports on-line.
- +4 inquiries sent to potential providers.
- 4 annual/special reports prepared, including:
 - 2008 Annual METRO Act Report to Governor/Legislature (2-29-09)
 - PowerPoint presentation to Michigan Township Association Annual Conference
 - Database conversion project completed.
 - METRO Act Property Tax Credit.

Program Improvements Made

METRO Authority

Improvements to on-line data base

- Developed and implemented telecom provider module which enables providers to update contact information, linear footages and access lines
- Developed and implemented municipality module which enables municipalities to update their contract information, view the linear footages reported by telecom provider, and report on usage of METRO Authority funds

Freedom of Information Act

- Developed, revised, published Attachment 12, FOIA Processing Cost Guidelines distributed to DELEG's 28 bureau/office FOIA liaisons. New guidelines address FOIA and subpoena labor charges to process FOIA requests ad subpoenas as well as provide instructions/examples of processing these type requests.
- Updated as necessary DELEG FOIA Policy/Procedure/Guidelines manual.

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PROGRAM IMPROVEMENT PLANS FOR FY10

- Improve collection of \$23-\$25 million from over 91 telecommunication providers to distribute to 1,758 eligible providers.
- Issue Determinations to establish/clarify policy/procedures regarding the implementation of the METRO Act; and FOIA.
- Improve guidelines for METRO Authority/FOIA activities.
- Improve the FOIA related activities of 32 DELEG unit FOIA Coordinators (and appeals) regarding 44,000-46,000 requests for information and subpoenas received annually by the department.
- Publish Annual report of METRO Authority activities to Governor and Legislature.
- Improve consultation services to 1,778 municipalities and 91 telecom providers as needed.
- Improve coordination activities with other state agencies involved with FOIA and METRO Act activities (Attorney General, MPSC, Governor's office, legislators).
- Improve research/interpret relevant statutes/regulations related to METRO Act and FOIA.
- Improve data base modules for telecom providers and municipalities.

CHALLENGES FOR FY10 and BEYOND

The METRO Authority/FOIA staff yet consists of two FTEs (Director and a Secretary) and a permanent intermittent staff person who works 8-24 hours/week. Due to the numerous and complex duties and responsibilities to implement PA 48, there is critical need for additional staff; and a specific, detailed budget. For instance, aside from resources needed to engage the Attorney General's assistance, or perform provider linear footage audits, there continues to be internal information technology needs from MDIT, including:

1. On-Line Database – The METRO Authority recently converted data from spreadsheets into an on-line database that makes it possible to produce various reports, invoices, mail merges, etc. In addition, a module for telecom providers to annually report their linear footages and a module for municipalities to report their expenditures are also operational. Ongoing assistance is required from MDIT for maintenance and upgrades.
Result: Challenge is ongoing in FY10.
2. Web Page – The METRO Authority continues to need assistance to increase functionality and usefulness of its web page .
Result: Challenge remains for FY10.
3. Payment Calculation – The METRO Authority continues to need MDOT to make payment calculation to municipalities based on their Act 51 fund distribution system. At some point, the Authority will need the capability to do these calculations in-house.
Result: Challenge remains for FY10.

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4. Budget – METRO Authority continues to be in dire need of budget/funds to perform the above and other prescribed functions of the METRO Act. Note: The FY10 Appropriation Bill transferred the METRO Authority and funding to the Michigan Public Service Commission. **Result: Challenge remains for FY10 as to whether action to amend PA48 to require independent funding will be undertaken.**

Other Challenges:

- Bundled Services Assessments—need to determine how to assess maintenance fees on providers bundling telephone, cable TV, and broadband services. Do we assess at cable rate, telephone rate, or both?
- HB6456 (Video Services Act)—still need to address certain issues related to METRO Authority references in this new legislation for statewide franchising of video services, particularly:
 - Section 6(11) calculations of METRO Act credits.
 - Coordination with MPSC of possible related METRO Act/Video Services provisions.
 - Does Act preclude non-opted-in municipalities to enter into agreements with new video service providers; is Section 6(11) applicable to these municipalities?
- VOIP Companies—MPSC indicates that it has no regulatory authority over VOIP companies. However, Sections 8(11) and 8(12) of the METRO Act could be interpreted to imply that VOIP companies may be covered, but would not necessarily result in the Authority collecting any more fees from the cable companies that provide VOIP services. In light of the new Video Services legislation, does the METRO Authority need to continue to monitor this matter?
- Provider Linear Foot Reductions—Municipalities continue to express concerns about a verification process of the reductions of linear footage reported by providers. Due to the Authority's limited staff, the Authority, currently has the authority, but not the ability to audit the provider reports/information. Is this a matter that can be addressed by other means?
- Telecom Permits – Municipalities have expressed concerns that some telecom providers have and/or attempted to unilaterally change provisions of telecom permits that will adversely impact municipalities.
- Sections of the METRO Act are no longer accurate or relevant and need to be updated/eliminated, but obtaining need amendments will be problematic due to resistance from telecom providers/others.

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FOIA

1. Semi-Autonomous Agencies – There are currently 4 (MSHDA; MLCC; MPSC; and MCSC) and about 30 additional offices/bureaus in DELEG which FOIA actions need coordination as regards specific responsibilities to respond to requests and/or appeals.
Result: Challenge remains for FY10.
2. Policies/Procedures – There is need to continually monitor and update policies/procedures to address unique bureau/office needs by issuing various revisions/updates as needed/requested.
Result: FOIA Unit met this goal.

CHARTS ATTACHED

- Maintenance Fees Collected/Disbursed
- Assessed Telecom Providers
- Eligible Funded Municipalities
- FY09 Organizational Chart



METRO AUTHORITY
MUNICIPALITY PROVIDER CHARTS

| MAINTENANCE FEES COLLECTED/DISBURSED | | | |
|--------------------------------------|-------------------|-------------|--------------|
| Year | Cities & Villages | Townships | Total |
| 2003* | \$ 3,375,140 | \$ 701,732 | \$ 4,076,872 |
| 2004 | \$15,989,444 | \$5,879,126 | \$21,868,570 |
| 2005 | \$17,472,387 | \$5,836,199 | \$23,305,586 |
| 2006 | \$16,146,157 | \$5,447,808 | \$21,593,965 |
| 2007 | \$16,086,842 | \$5,386,092 | \$21,472,934 |
| 2008 | \$16,375,516 | \$5,458,506 | \$21,834,022 |
| 2009 | \$16,507,340 | \$5,502.447 | \$22,009,787 |
| *Partial year | | | |

| ASSESSED TELECOM PROVIDERS |
|---|
| Current Number of Reported Eligible Providers <ul style="list-style-type: none"> •40 ILECs •43 CLECs •17 Cable • 3 Broadband |

| ELIGIBLE FUNDED MUNICIPALITIES | | | |
|--------------------------------|-------|--------------------|----------------------|
| Type | Total | Eligible for Funds | Ineligible for Funds |
| Cities | 271 | 270 | 1 |
| Villages | 264 | 248 | 16 |
| Townships | 1,243 | 1,240 | 3 |
| Total | 1,778 | 1,758 | 20 |