

Frequently Asked Questions

METRO ACT

Last updated on November 30, 2021

Who should the municipalities notify of permit approvals/denials?

The municipalities should notify the Michigan Public Service Commission (MPSC) of permit approvals/denials. A letter indicating the following details of the permit should be included:

1. Who the permit is with
2. Date of application
3. Date of approval/denial
4. Whether the permit is unilateral or bilateral
5. Contact person for the municipality with phone number and email address

The letter should be sent to the attention of:

Mr. Ryan McAnany, Director
Telecommunications Division
Michigan Public Service Commission
7109 W. Saginaw Hwy.
P.O. Box 30221
Lansing, MI 48909

What list does the MPSC suggest the municipalities use to notify providers of a new telecommunication ordinance?

The Michigan Public Service Commission recommends that the municipalities use two lists that are posted on our website.

The list of regulated local telephone companies licensed in Michigan:
http://www.michigan.gov/documents/mpsc/newlocal_558171_7.pdf

and, the list of regulated telephone interexchange carriers and competitive access providers:
http://www.michigan.gov/documents/mpsc/ixclist_558170_7.pdf

Are cable providers covered under this act?

Sec. 8 (11) states that "Notwithstanding any other provision of this act, a provider possessing a franchise or operating with the consent of a municipality to provide and that is providing cable services within a metropolitan area is subject to an annual maintenance fee of 1 cent per linear foot of public right-of-way occupied by the provider's facilities within the metropolitan area." Cable providers that also provide telecommunication services fall within this provision of the act, however cable providers that only provide cable television service are exempt from this provision.

Is the rate cap designed to apply to the CLECs?

Act 48 defines an ILEC by incorporating the definition contained in the Federal Telecommunications Act. 47 U.S.C. 251 (h) defines an ILEC as an entity that was providing telephone exchange service on 2/8/96. Consequently, the portion of Sec. 8 (6) of Act 48 that refers to ILECs would be applicable to those entities providing telephone exchange service on 2/8/96. All others would be providers as referenced in

Sec. 8 (6) (b), which states that “for all other providers in an exchange, the fee per linear foot for the provider’s facilities located in the public right-of-way in that exchange shall be the same as that of the incumbent local exchange carrier.” For purposes of this section, Allband Communications Cooperative is also considered an ILEC.

How many days does a Municipality have to approve or deny a permit for access to a public right-of-way?

45 days. (Sec. (15(3))

Is a permit required for new construction?

Yes. In addition, a one-time \$500 application fee (Sec. 6(4) must be paid to the Municipality along with a route map to both the Commission and the Municipality within 90 days of the full completion of the construction (Sec. 6(7)).

How does the permit process work?

A provider using or seeking to use public rights-of-way in a metropolitan area for its telecommunication facilities shall obtain a permit from the Municipality and pay all fees required under the act. Authorizations or permits previously obtained from a Municipality satisfy the permit requirement of this section (Sec. 5(1))

What if a township also requires a provider to get approval of the county, how does Act 48 apply?

P.A. 48 is silent as to the role of the counties; however, providers must also comply with any county requirements for a permit to work within the county road right of way.

Where and in what format do the municipalities send the route maps as required by the Act under section 6(8)?

Within 90 days after the substantial completion of construction of new facilities in a municipality, a provider shall submit route maps showing the location of the telecommunication facilities to both the commission and the affected municipalities (Section 6(7) of Act 48).

Route maps shall be submitted in electronic form. If the provider is not able to provide electronic maps, the provider must seek a waiver from the Commission. A request for a waiver shall include all necessary supporting documentation. If a municipality does not have electronic capabilities, the municipality and the provider should work out an acceptable agreement

(<https://mi-psc.force.com/s/case/500t0000008eersAAA/>).

Also see the METRO authority Route Map Minimum Requirement Instructions/Guidelines issued in 2008:

https://www.michigan.gov/documents/mpsc/Route_Map_Minimum_Requirements_480716_7.pdf

Who must acquire a permit? And where?

All providers “owning telecommunications facilities located within a public right of way”, excluding a federally licensed provider of commercial mobile radio service as defined in the FTA, 47 U.S.C. 332, and service provided by any wireless two way communication device as described on section 2(k) of PA 48 of 2002, must acquire a permit from municipalities where facilities are located.

Providers who *lease* telecommunication facilities, must they obtain a permit also?

No, the MPSC has determined that only telecommunications providers that *own* telecommunication facilities must obtain a permit. See Docket U-14878

(<https://mi-psc.force.com/s/case/500t0000008ef89AAA/>)

If a provider has a permit issued under the Michigan Telecommunications Act (MTA) prior to Act 48 of 2002, must the provider still file for a METRO permit?

No, a provider with an active permit under the MTA satisfies the METRO Act's permit requirements.

What was the deadline for filing a permit for providers with facilities in place at the time of enactment of the METRO Act?

Providers without permits had until May 1, 2003 to apply for a permit for facilities in place at the time of the enactment of the METRO Act. The METRO Authority extended the deadline to October 27, 2003 for a few providers at their request.

If a provider fails to file a permit, what are the consequences?

No access to public right-of-way and subject to fines under section 18(2) of the Act. In addition, the provider may be trespassing and may be subject to civil infraction penalties.

How will a provider know whether a municipality is in compliance with the act or not?

"The municipalities shall provide each provider affected by the fee a copy of the resolution or ordinance" as adopted by the municipality in compliance with section 14(1) of PA 48 of 2002. In addition, the Local Community Stabilization Authority (formerly METRO Authority) has a list of all ineligible municipalities under determination number 8 on its website at

http://www.localcommunitystabilizationauthoritymi.gov/wp-content/uploads/2015/05/mun_not_opted_in_web_page_144446_7.pdf

If a municipality "opts out," must the provider still file a permit with that municipality?

Yes, and the provider is still obligated to comply with any other existing rules and regulations.

Must cable companies providing telecommunications services file a permit?

A separate provision for cable franchise holders under section 8(11) of PA 48 of 2002 allows for an alternative agreement to satisfy the permit requirements.

Who is exempt from filing a permit?

A governmental entity, educational institution or utility, who does not provide telecommunication service to outside third parties for compensation, as specified in section 8(18,19,20) of PA 48 of 2002 is exempt from filing a permit.

What do providers get in return?

They will receive relatively uniform treatment among Michigan municipalities including a safe harbor permit to streamline the permit process. If there is no agreement between both parties, the matter is submitted to mediation and, if not resolved in that manner, the Michigan Public Service Commission will decide.

What's the difference between the unilateral permit and the bilateral permit?

The bilateral permit is a signed contractual agreement for up to 30 years (initial 15 years with a possibility of another 15 year extension). The unilateral permit is issued by a municipality and is for 5 years or less.

What are the fees associated with this permit?

There will be a \$500 one time application fee paid to the municipality by all providers for permits submitted to municipalities after October 27, 2003. (Providers such as AT&T Michigan and Frontier, fka Verizon were grandfathered and exempt from paying the \$500 application fee for the initial phase of this process until October 27, 2003 under Sec. 5(3) of PA 48 of 2002). Also, an annual maintenance fee is paid by providers to the Local Community Stabilization Authority (formerly METRO Authority) who distributes the monies to the various municipalities pursuant to Section 8 of the METRO Act. For further details, please refer to the LCSA's determination number 3 at http://www.localcommunitystabilizationauthoritymi.gov/wp-content/uploads/2015/05/Determination_No_126181_7_3.pdf

What telecommunication facilities are included in the assessment of linear feet?

PA 48 OF 2002 defines "telecommunication facilities" as "the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 C.F.R. 20.3, and service provided by any wireless, 2-way communication device."

For Telecommunication providers who share facilities, how does the Local Community Stabilization Authority (formerly METRO Authority) assess their fees?

Providers sharing poles, trenches, etc...may be entitled to a 40% discount of their fees. The discount applies only to new facilities installed on or after November 1, 2002 pursuant to shared use agreements executed after November 1, 2002.

How and when will the collected fees be distributed to the municipalities?

100% of the collected funds will be distributed back to the municipalities by May 31 of each year. Cities and villages will receive 75% using section 13 of PA 51 of 1951 formula. Townships will receive 25% based on the total linear feet of right-of-way in the township as specified in section 11 of PA 48 OF 2002.

When and how must the municipalities "opt in"?

The municipalities initially had to "opt in" by December 31, 2003. However, if the municipalities wished to receive a payment by May 2003, the METRO Authority strongly encouraged the municipalities to be in compliance by April 29, 2003. The municipalities had to send the METRO Authority as well as the providers (section 13(4) of PA 48 of 2002) a resolution or ordinance stating their decision to comply with the METRO Act. In addition, the municipality had to modify "any fees charged to providers after November 1, 2002 relating to access to and usage of the public rights of way to an amount not exceeding the amount of fees and charges required under this Act." Subsequently, PA 130 of 2008 allowed municipalities which had not previously "opted in" to do so. For further details, please refer to the Local Community Stabilization Authority's (formerly METRO Authority) Determination number 8 at http://www.localcommunitystabilizationauthoritymi.gov/wp-content/uploads/2015/05/mun_not_opted_in_web_page_144446_7.pdf

If a municipality decides to “opt out”, what will happen?

The municipalities that “opt out” will not be eligible to receive any funds from the Local Community Stabilization Authority (formerly METRO Authority). The municipality will then be required to use its existing permit agreements with telecom providers. At such time as the permit expires, it will be unable to charge fees.

How can a municipality verify they are in compliance with the Local Community Stabilization Authority (formerly METRO Authority)?

Contact the LCSA (via the Michigan Municipal Services Authority):

Phone: 269-888-3732

Email: director@lcsami.gov

Or Kristen Delaney at 734-726-4113

admin@lcsami.gov

Would MDOT improvements, sidewalks, and management tool software be considered “rights-of-way related purposes”?

These items can be considered “rights-of-way related purposes” if they comply with section 10(4) of PA 48 of 2002.

Could insurance be purchased instead of a bond?

The METRO Act clearly specifies “a municipality may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the provider’s access and use.” (Sec. 19(2)(c) of PA 48.