METRO AUTHORITY

2011 ANNUAL REPORT

Department of Licensing and Regulatory Affairs
METRO Authority
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EXECUTIVE SUMMARY

The METRO Authority was created in November of 2002 as a result of P.A. 48 of 2002 (METRO Act) with the express purpose of streamlining the right-of-way permitting processes between municipalities (cities, townships, or villages) and telecommunication providers (providers). The Act is the result of collaborative efforts between municipalities and providers. Historically, providers expanding their services into or within the state's 1,777 municipalities approached each municipality individually and completed whatever permitting process these municipalities required as municipalities were not required to have a standard permitting process or fee structure.

The Authority is responsible for recovering the costs of public right-of-way use by the providers. This process starts each February by the Authority sending out notices to all telecom providers requiring them to submit information regarding their linear footages in public rights-of-way. The Authority then assesses maintenance fees owed by providers each April based on the figures they submitted and the formulas provided by the Act. With the money collected from the telecommunication providers, and any interested earned throughout the year, the Authority calculates payments due to eligible municipalities; and in early June, distributes these payments. Currently, 100% of fees assessed on providers are paid out to eligible municipalities. Seventy-five percent of available funds are distributed to eligible cities and villages based on the Michigan Department of Transportation fund distribution formula as found in Section 13 of PA 51 of 1951. Twenty-five percent of available funds are disbursed to eligible townships based on each township's proportionate share of the total linear feet of public rights-of-way in or on which providers' facilities are located within all townships located in metropolitan areas. Townships received almost $5.2 million and cities/villages received $15.5 million of the $20.7 million dollars disbursed in 2011.

The Authority continued to provide technical assistance to Michigan awardees of federal American Recovery and Reinvestment Act (ARRA) funds totaling $247,162,054. Assistance to these ARRA projects will support the deployment of broadband infrastructure in unserved and underserved areas; enhance and expand public computer centers; and encourage sustainable adoption of broadband service on Michigan communities.

The Authority, throughout the year, also coordinates public right-of-way matters between telecom facilities and municipalities; files an annual report to the Governor; issues determinations; grants waivers for underserved areas; collects Annual Reports from municipalities with populations over 10,000; monitors repair and restoration regarding public right-of-way dispute resolutions; and provides information/technical assistance to both municipalities and providers.

The goals of the METRO Authority continue to be:

- Encourage competition in the availability, prices, terms, and other conditions of providing telecommunication services.

- Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increased investment in the telecommunication infrastructure in Michigan.
- Improve the opportunities for economic development and the delivery of telecommunication services.
- Streamline the process for authorizing access to and use of public rights-of-way by telecommunication providers.
- Ensure the reasonable control and management of public rights-of-way by municipalities within Michigan.
- Provide for a common public rights-of-way maintenance fee applicable to telecommunication providers.
- Ensure effective review and disposition of disputes under the Act.
- Allow for a tax credit for providers to recover the costs under the Act (and ensure that providers do not pass costs onto end-users thru rates and charges for telecommunication services).

The METRO Authority has prepared this report in compliance with Section 3 of Michigan Public Act 48 of 2002, which requires the METRO Authority to file an annual report of its activities for the preceding year with the Governor and the members of the legislative committees dealing with energy, technology, and telecommunications issues.

The METRO Authority, per Executive Order 2008-20, is a division within the Michigan Department of Licensing and Regulatory Affairs. The FY10 budget boilerplate (SB 243), Section 366 states: "It is the intent of the legislature that the metropolitan extension telecommunications rights-of-way oversight authority established in section 3 of the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA48, MCL 484.3103, be transferred to, and organized within, the public service commission."

Executive Order 2011-4, effective April 25, 2011, abolished the Department of Labor and Economic Growth and replaced it with the new Department of Licensing & Regulatory Affairs (LARA).

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Year 2011 Summary

The annual report of the year 2011 activities of the METRO Authority is enclosed. The following provides a summary of some of the more informative aspects of the eighth year of operation:

A. Reporting of Footage and Access Lines

All providers that have telecommunication facilities in the State of Michigan are required to report to the METRO Authority the following information:

1. Linear footage for each city, village, or township defined as—occupied by the provider regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider.

2. Total number of owned access lines, including wholesale and retail

3. Total number of linear feet by underground and above ground broken down by city, village and township boundary.

4. Competitive Local Exchange Carriers (CLECs) must report total linear feet in each of the Incumbent Local Exchange Carriers service areas (ILECs).

5. Cable providers may satisfy the fee requirement by certifying that their aggregate investment in Michigan, since January 1, 1996, in facilities capable of providing broadband internet transport access service exceeds the aggregate amount of the maintenance fees assessed.

Providers are required to report new and/or retired footages and access lines to the METRO Authority no later than March 15th of each year. They are invoiced based on the information available to the METRO Authority as of that date. In addition, cable companies report their total aggregate investments reported in Michigan.

B. 2011 Maintenance Fee Payments (Attachment B)

	Invoiced	Collected
- ILECs	$19,433,061	$19,433,061
- CLECs	$1,349,554	$1,287,398
- Broadband	$9,282	$9,282
Total	$20,791,897	$20,729,741

C. 2011 Payments to Municipalities

	Payments	Payments Held*	Total
Cities and Villages (Attachment C)	$15,572,792	$0	$15,572,792
Townships (Attachment D)	$5,190,940	$0	$5,190,940
Total Payments**	$20,763,732	$0	$20,763,732

* Payments in escrow for those municipalities that are in noncompliance with PA 48.

** 2011 payments to municipalities are funded from 2011 provider invoices paid prior to May 15, 2011; 2010 provider invoices paid after May 15, 2010; accrued interest; and carry forward from 2010.

D. Municipalities Eligible to Receive 2011 METRO Act Funds

	Total	Eligible for 2011 Funds	Ineligible for 2011 Funds
Cities	271	270	1
Villages	264	248	16
Townships	1,242	1,239	3
Total	1,777	1,757	20

Attachment F illustrates the municipalities that are not currently eligible to receive METRO Act Funds.

E. Michigan Public Service Commission

(METRO Act, Section 8(14))

1. Tax Credits Granted to ILECs		$19,433,061
2. Tax Credits Granted to CLECs		$1,114,773
3. Tax Credits Granted to Broadband Companies		$5,347
4. Right-of-Way Permits Received	250	
– Unilateral	72	
– Bilateral	173	
– Unspecified Type	3	
– Approved Permits	248	
– Denied Permits	2	
– Pending Permits	0	
– New Permits	213	
– Extensions to Existing Permits	35	

See Attachments E and I.

F. ***State Legislation Impacting the METRO Act***

The following proposed/enacted legislation impacting the METRO Act are continued to be reviewed:

A. Enacted Legislation

– House Bill 5048, adopted MPSC resolution procedures for disputes arising under the Uniform Video Service Local Franchise Act (PA 480 of 2007).

--*Section 8(3) of PA 480 reads:*

"A franchising entity may impose on a video service provider a permit fee only to the extent it imposes such a fee on incumbent video providers, and any fee shall not exceed the actual, direct costs incurred by the franchising entity for issuing the relevant permit. A fee under this section shall not be levied if the video service provider already has paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the permit fee under this section or is otherwise authorized by law or contract to place the facilities used by the video service provider in the public rights-of-way or for general revenue purposes."

This section of PA 48 relates to the fact that providers that pay the METRO Act maintenance fee (Section 4(3)) do not pay local fees for access or use of municipality rights-of-way. However, this is not applicable to providers that do not pay the METRO Act maintenance fee.

B. Proposed Legislation

None introduced in 2011.

2011

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AUTHORITY

ACTIVITIES

2011 METRO Authority Activities

This report has been prepared pursuant to Section 3 of the METRO Act (PA 48 of 2002).

I. Invoice Calculations

The 2011 telecommunication provider assessments were for the period April 1, 2010 to March 31, 2011 with payment due by April 30, 2011 (Sec 8(2)).

Providers are invoiced each April based on the information available as of mid-March of each year. According to Section 8 of PA 48, providers shall pay a fee due to the METRO Authority as follows:

ILECs: the lesser of

a. $0.05/linear foot; or
b. Number of access lines times the statewide per access line per year of the provider with the highest number of access lines in Michigan (AT&T).

In 2011, AT&T reported 1,959,215 access lines and 307,280,528 linear feet. As compared to 2010, this reflects a decrease of 279,417 access lines and an increase of 613,334 linear feet.

307,280,528 linear feet *times* $0.05 = $15,364,026.40
$15,364,026.40 *divided* by 1,959,215 access lines = $7.84193

Therefore, the 2011 access line rate for ILECs was $7.84193

CLECs/Broadband Companies: rate is based on linear foot charge only for each ILEC it resides in:

Each ILEC per linear foot fee times CLECs/Broadband Companies linear feet in that ILECs territory

Cable Providers:

Cable providers are assessed, per Section 8(11) of the METRO Act, $0.01 per linear foot. Cable providers report the amount of aggregate investments in Michigan since January 1, 1996, in facilities capable of providing broadband internet transport service. This assessment may be satisfied if the amount of investments certified by the cable provider exceeds the amount assessed.

Because reported investments exceeded assessments in all cases, no cable providers were invoiced in 2011. However, the METRO Authority is still required to collect linear footage in public rights-of-way information (See Attachment J).

II. Telecommunication Provider Assessments

Invoices are typically mailed out by April 1st of each year based on the information provided by each provider and based on AT&T's number of access lines.

The total amount received from providers is deposited into a State of Michigan account, which is used for compensatory payments to those eligible municipalities that have opted in.

Three-Year Comparison of Assessments

	2009	2010	2011
Incumbent Local Exchange Carriers (ILECs)			
Total number reporting	40	41	40
Total linear feet reported	518,713,726	519,208,223	520,339,591
AT&T linear feet reported	306,360,833	306,667,194	307,280,528
Total access lines reported	3,502,262	3,080,049	2,489,244
AT&T access lines reported	2,602,365	2,238,632	1,959,215
Amount invoiced	$20,608,323	$21,092,194	$19,433,061
Competitive Local Exchange Carriers (CLECs)			
Total number reporting	43	53	47
Total linear feet reported	29,818,380	29,994,616	31,307,897
Amount invoiced	$1,366,803	$1,365,321	$1,349,554
Broadband Companies			
Total number reporting	3	3	3
Total linear feet reported	241,053	252,492	282,646
Amount invoiced	$9,403	$10,260	$9,282
Cable Companies			
Total number reporting	16	17	17
Linear feet reported	207,321,597	209,902,582	213,325,541
Amount invoiced	$0	$0	$0
Total Amount Invoiced	$21,984,529	$22,467,775	$20,791,897

Summary of 2011 Assessments

	Total Invoiced	Total Payments Received by 05/15/11
ILECs	$19,433,061	$19,433,061
CLECs	$1,349,554	$1,260,235
Broadband Co.'s	$9,282	$9,282
Total	$20,791,897	$20,702,578

III. Municipality Payments

Section 11 of the METRO Act stipulates allocation of funds collected from telecommunication providers. Seventy-five percent of the funds collected are disbursed to cities and villages based on the formula found in section 13 of 1950 PA 51 administered by the Michigan Department of Transportation. The remaining 25% is disbursed to townships based on their linear feet as a percentage of total linear feet reported for all townships. Normally, calculations are made for payments to each municipality in Michigan, then the amounts allocated to municipalities that are not opted in – 20 in all – are removed from the calculations and their money is re-distributed to the remaining municipalities.

Section 10(5) of PA 48 requires municipalities with populations of over 10,000 to file an annual report on the use and disposition of METRO funds. In 2011, payments were temporarily withheld from municipalities that failed to file annual reports. However, as of February 28, 2011 all municipalities had filed their 2010 annual report and had received their 2011 payment.

Summary of Available Funds

	Total
2011 invoices paid by 5/15/11	$20,702,578
2011 interest earned	$175
2011 invoices paid in 2011	$20
Prior year carry forward	$197,908
Refunds	($31,304)
Subtotal	$20,869,377
Less:	
2010 municipal payments made in 2011 (prior to 5/15/11)*	($69,110)
2010 payments pending (as of 5/15/11)*	(36,365)
2011 Other (Treasury Fees)	(167)
Total funds available for disbursements	$20,763,735

Summary of Payments

	Cities & Villages	Townships	Total
2009 municipal payments made in 2011*	$0	$9,720	$9,720
2010 municipal payments made in 2011*	$36,365	$13,026	$49,391
2011 payments made to municipalities	$15,572,792	$5,190,940	$20,763,732
Total	$15,609,157	$5,213,686	$20,822,843

*Payments to several municipalities were held due to noncompliance issues. Payments were released when they became compliant with PA 48 requirements.

IV. Approved Property Tax Credits

The METRO Act, Section 8(14) and PA 50 of 2002 allows for a property tax credit as the sole means by which providers can recover costs under this Act; and insures that the providers do not pass costs on to the end-users of this state through rates and charges for telecommunication services. These tax credits must be approved by the Michigan Public Service Commission (MPSC). Attachment E illustrates the property tax credits approved by the MPSC for 2011 totals $19,433,061 for ILECs, $1,114,774 for CLECs, and $5,347 for broadband companies through June 16, 2011.

V. Activities Resolved/Under Review

A. Use of Maintenance Fee Payments Guidelines

Municipalities with populations over 10,000 are required to report on the usage of the funds they receive under PA 48 of 2002 by April 30 annually. The Act states that municipalities may use funds received under the Act solely for rights-of-way related purposes. Attachment A includes the current guidelines regarding the use of the METRO Act funds.

B. Reduced Footages/Fee Collections

Each year the METRO Authority requests telecommunication providers in Michigan to "true up" (update) their linear footages. They report this information by city, village and township. At the end of April, the METRO Authority invoice the older providers (ILECs) based on their linear footages or number of access lines, whichever is less. Newer providers (CLECs) are invoiced on their linear footages. One hundred percent of the revenue received from the telecommunication providers is distributed to cities, villages, and townships. Seventy-five percent of the money is distributed to cities and villages based on a formula found in PA 51. Twenty-five percent of the revenue collected is distributed to townships and is based on each township's linear footage as compared to the total linear footages for all townships.

While the METRO Authority has the statutory ability to audit provider reports/information, due to limited staff (2 ½) and limited funding, the METRO Authority cannot perform this task at this time; and, thusly, may not be receiving sufficient footage information to collect as much maintenance fees as may be owed.

C. Possible New Providers

Section 8(2) of the METRO Act authorizes the METRO Authority to determine the amount of fees to be collected from telecommunication providers; and the information required to calculate those fees. Upon review of the municipality permits listed by the MPSC, and other sources, numerous providers have been

identified as possibly coming under the jurisdiction of the METRO Act. As a result of our efforts, new CLECs were identified and invoiced in 2011. Most of the organizations contacted have claimed exemption from the act (i.e., as an "educational institution" or "no facilities"); some are still under review. Others have not responded to our communication efforts. Most of the ARRA funded projects are subject to paying the maintenance fee as prescribed by Section 8 of the METRO Act, and will be assessed/invoiced accordingly when the projects install and report their linear footages in municipal public rights-of-way.

Due to the Uniform Video Service Local Franchise Act (PA 480 of 2006), several major providers formerly only providing telephone or cable services, are now providing "bundled services." The METRO Authority is continuing to review whether some of these providers may be subject to the maintenance fee provisions of the METRO Act.

D. ***METRO Authority Data Base System***

The Metro Authority database performs many day-to-day functions and generates the annual telecom provider invoices, along with various reports.

The database system is also designed for use by municipalities and telecom providers and can be accessed through our website – www.michigan.gov/metro.

METRO Authority Database System for Municipalities

Municipalities registered to use the database can view their current and historical information relative to their maintenance fee payments and view the footages reported by telecom providers. They may also edit their contact information, file their annual report, and export certain information to spreadsheets. Any municipality wishing to register may do so by contacting the METRO Authority.

METRO Authority Database System for Telecom Providers

This system, made available to all telecom providers in 2009, offers registered providers the capability to:

1) View and edit their current contact information for true ups and invoicing
2) View their annual summary information for linear footages and access lines
3) View their annual summary information for invoices and payments
4) Electronically complete and submit their annual true ups

E. ***Provider Property Tax Credit Coordination***

Pursuant to Section 8(14) of the METRO Act, a telecom provider may annually receive a personal property tax credit from the state equal to the amount of maintenance fees it paid.

The METRO Authority's continued collaboration with the Michigan Public Service Commission and the Michigan Department of Treasury has resulted in a better, more efficient process of awarding property tax credits to providers who submit their applications in a timely manner.

F. ***METRO Authority 2011 Policy/Issue Guidelines***

The METRO Authority made/issued and/or reissued guidances to clarify certain issues of interest to municipalities and providers: (Refer to METRO Authority's website: www.michigan.gov/metro).

- Bundled Service Assessments
  The METRO Authority is continuing to address the issue of whether and/or how to assess maintenance fees on telecommunication providers bundling telephone, cable TV and broadband internet services. Providers that are licensed as CLECs, operate as CLECs, and charge their customers for telephone services are subject to the maintenance fee prescribed by Section 8 of the METRO Act.

G. ***Michigan Economic Recovery Planning***

The METRO Authority continued participation in State workgroups structuring plans to receive and expend federal American Reinvestment and Recovery Act funds coming to Michigan. The Authority continues to provide valuable information/insight regarding underserved and unserved areas of the state regarding broadband facilities to the Planning Consortium consisting of:

1) Municipality Linear Footages Report (lists footages reported for each municipality/by municipality
2) Telecom Provider Linear Footages Report (lists footages reported for each municipality by telecom provider)
3) Municipality Populations (lists municipalities from smallest population to largest)
4) Municipality contacts for each of the state's 1,777 municipalities

This information is of great assistance in using the federal stimulus funds to expand and improve the state's broadband/internet infrastructure.

- ***METRO Authority Administrative/Operational Needs***

  The METRO Authority staff still consists of only two full-time and one half-time staff. Due to the numerous and complex duties and responsibilities to implement the METRO Act, as well as oversee the Department's Freedom of Information Act responsibilities, there is critical need for additional staff; and a specific, detailed METRO Authority budget.

In FY 2010, METRO Authority core staff funding was transferred to the Michigan Public Service Commission. There continues to be need to consider amending the METRO Act as the previously proposed under legislation (SB 425) which would:

- Change the provider payment of their state maintenance fee from one annual payment to four quarterly annual payments of 25% of the amount owed.
- Provide that up to 3% of the annual maintenance fees collected from telecommunication providers can be used to fund the operational expenses of the METRO Authority.
- Provide that the Michigan Department of Treasury invest maintenance fee payments and that interest earned be used to fund operating expenses and administrative costs of the Authority.

Amendment of the METRO Act would have a very minor fiscal impact on the some 1,758 eligible municipalities currently sharing collected provider maintenance fees. The legislation would provide that no more than 3% of collected fees could be used for METRO Authority operating and administrative expenses. For FY11, this would have equated to about $600,000 to operate a $22-$30 million dollar annual program. Further, passage of such an amendment would favorably impact the state as it would:

- Not cost the state any GF/GP funds
- Provide the opportunity for greater collection of maintenance fees to distribute to municipalities
- Provide the opportunity to greatly enhance the state telecommunication services infrastructure by increased investments
- Provide for greater opportunities for telecommunication providers to expand services throughout the state due to standardized policies/procedures
- Provide the opportunity for greater economic development activities, emerging technologies, job creation, etc.

The enactment of such legislation would provide funds for operating and administrative expenses needed to operate this program. As one of the nation's recognized leaders in the development and encouragement of telecommunications services, such proposed legislation has the support of most of Michigan's telecommunication providers and municipalities.

The lack of a adequate METRO Authority funds for its operating and administrative expenses has curtailed its ability to adequately implement the METRO Act; and be of assistance to telecommunication providers and municipalities in the maintenance and/or expansion of telecommunication services throughout the state.

H. Freedom of Information Act

Since 2003, the METRO Authority Director has been designated as the Department's Freedom of Information Act (FOIA) Coordinator per MCL 15.236 of the FOIA. These duties include:

- Oversight/coordination of currently 25 office/bureau FOIA liaisons
- Oversight of the processing of about 44-46,000 annual requests for records/information, including subpoenas and appeals
- Coordinate training for FOIA liaisons
- Maintain FOIA policies/procedures guidelines
- Annually update department FOIA fee policies

I. Other METRO Authority/FOIA Accomplishments Additions

- Collected $6,601 of delinquent maintenance fees from three telecom providers to be added to FY12 disbursements to eligible municipalities.
- Updated METRO Authority website to include most recent information regarding METRO Act activities and operations from DLEG to LARA.
- Reviewed MPSC website information related to the METRO Act and suggested removal clarification, and/or updates to outdated information; MPSC accepted recommendations and posted updated their METRO Act FAQs information on their website.
- Remain part of the state consortium regarding the state's efforts to provide broadband services to unserved/underserved areas of Michigan.

J. Continuing Challenges

- 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—Some sections of the Act are no longer accurate or relevant and need to be updated/eliminated. However, obtaining needed amendments will be problematic due to resistance from telecom providers/others.