



Townships and Broadband Internet

There is no general prohibition in the law on a township spending public money on broadband infrastructure. But there are state laws that limit the authority for the state to finance a local government broadband infrastructure project, and for the most part, a local government cannot provide broadband/telecommunications services to residential or commercial customers unless it is in partnership with the private sector.

Resources:

Broadband USA (*National Telecommunications and Information Administration, U.S. Dept. of Commerce*)—Serves state, local, and tribal governments, industry, and nonprofits that need to enhance broadband connectivity and promote digital inclusion.

Merit Network/Michigan Moonshot (*Broadband Internet Access*)—Informing policy makers, fostering public-private partnerships and convening collaboration between citizens and organizations in Michigan.



Townships and
Broadband_July ...

1) What current Michigan laws authorize:

Broadband internet is one form of **telecommunications service**.

The Michigan Telecommunications Act, PA 179 of 1991, MCL 484.2101, et seq., authorizes a township to provide telecommunications services within its boundaries (services offered to customers for the transmission of two-way interactive communication and associated usage). However, MCL 484.2252 does limit the situations in which that may be done, including a requirement to start with a competitive bid process involving private providers:

484.2252 Telecommunication services offered by public entity.

Sec. 252.

(1) A public entity may provide telecommunication services within its boundaries if the public entity has complied with the requirements of section 14 of the metropolitan extension telecommunications right-of-way oversight act, 2002 PA 48, MCL 484.3114, and all of the following apply:

(a) The public entity has issued a request for competitive sealed bids to provide telecommunication services.

(b) The public entity has received less than 3 qualified bids from private providers.

(c) It is more than 60 days from the date the request for bids was issued.

(d) The public entity is providing the telecommunication services under the same terms and conditions as required under the request for bids issued pursuant to subdivision (a).

(2) Except as provided under subsection (3), a public entity shall not provide telecommunication services outside its boundaries.

(3) Two or more public entities may jointly request bids under subsection (1) and provide telecommunication services if all participating public entities meet the requirements of this section. **if a public entity does not receive a qualified bid as required under subsection (1), the public entity may contract with another public entity to receive telecommunication services.**

(4) A public entity shall not establish a board or other entity for the purpose of providing regulation of a private provider of services under this section.

(5) This section does not apply to all of the following:

(a) Public safety systems.

(b) Systems used only for the internal use of the public entity or for the sharing of information between the public entity and another public entity.

(c) A public entity that is currently providing telecommunication services or that has held a public hearing by November 1, 2005 on a proposal to provide telecommunication services, or has issued a request for bids by November 1, 2005 to provide telecommunication services, or has an enforceable contract to begin construction of a telecommunication system by November 1, 2005.

(d) A public entity that is currently providing service in another public entity's boundaries.

(e) Services offered by a public entity to the public within a facility owned and operated by the public entity.

(f) Systems or services used or offered by 1 or more public entities or consortiums to advance or promote the public health, safety, and provision of e-government services.

(6) This section may not be construed to prevent a municipally-owned utility from providing to its energy customers, either directly or indirectly, any energy related service involving the transfer or receipt of information or data concerning the use, measurement, monitoring, or management of energy services provided by the municipally-owned utility, including services such as load management or automated meter reading.

(7) As used in this section, "public entity" means a county, city, village, township, or any agency or subdivision of the public entity.

History: Add. 2005, Act 235, Imd. Eff. Nov. 22, 2005

Compliance with Section 14 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act, PA 48 of 2002, MCL 484.3101, et seq., including a public hearing with notice, is also required.

MCL 484.3114 provides authority under limited circumstances for a township to construct telecommunication facilities or provide cable modem service through a broadband internet access transport service:

484.3114 Telecommunication or cable modem service through broadband internet access transport service; requirements; exceptions; violation; complaint.

Sec. 14.

(1) Except as otherwise provided by subsection (2), a county, municipality, or an affiliate, shall comply with all of the following requirements:

(a) Before the passage of any ordinance or resolution authorizing a county or municipality to either construct telecommunication facilities or provide a telecommunication or cable modem service provided through a broadband internet access transport service, **a county or municipality shall conduct at least 1 public hearing**. A notice of the public hearing shall be provided as required by law.

(b) Not less than 30 days before the hearing required under subdivision (a), the county or municipality shall **prepare reasonable projections of at least a 3-year cost-benefit analysis**. This analysis shall identify and disclose the total projected direct costs of and the revenues to be derived from constructing the telecommunication facilities and providing the telecommunication or cable modem service through a broadband internet access transport service. The costs shall be determined by using accounting standards developed under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) A county or municipality shall prepare and maintain accounting records in accordance with accounting standards developed under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a. The accounting records required under this subdivision are subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(d) Charges for telecommunication service and cable modem services provided through a broadband internet access transport service shall include all of the following:

(i) All capital costs attributable to the provision of the service.

(ii) All costs attributable to the provision of the service that would be eliminated if the service was discontinued.

(iii) The proportionate share of costs identified with the provision of 2 or more county or municipal services including telecommunication services.

(e) A county or municipality that provides a telecommunication service or cable modem service provided through a broadband internet access transport service shall not adopt an ordinance or a policy that unduly discriminates against another person providing the same service. Subject to other requirements of this section, this subsection shall not be construed as precluding a county or municipality from establishing rates different from those of another person providing the same service.

(f) In providing a telecommunication or cable modem service provided through a broadband internet access transport service, **a municipality shall not employ terms more favorable or less burdensome than those imposed by the municipality upon other providers of the same service within its jurisdiction concerning access to public rights-of-ways.**

(g) A municipality shall not impose or enforce against a provider any local regulation with respect to public rights-of-way that is not also applicable to the municipality in its provision of a telecommunication or cable modem service provided through a broadband internet access transport service.

(h) **In providing a telecommunication or a cable modem service provided through a broadband internet access transport service, a municipality shall not employ terms more favorable or less burdensome than those imposed by the municipality** upon other providers of the same service within its jurisdiction concerning access to and rates for pole attachments.

(2) **Subsection (1) does not apply to either of the following:**

(a) Telecommunication facilities constructed and operated by a county, municipality, or an affiliate, to provide telecommunication service or a cable modem service provided through a broadband internet access transport service that is not provided to any residential or commercial premises.

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(b) Telecommunication facilities that are owned or operated by a county, municipality, or an affiliate for compensation, and that are located within the territory served by the county, municipality or its affiliate that provided a telecommunications service or a cable modem service provided through broadband internet access transport service before December 31, 2001 or that allowed any third party to use the county's or municipality's telecommunication facilities for compensation before December 31, 2001, to provide such a service.

(3) If a complaint is filed under section 18 alleging a violation of this section, the commission shall allow a county or municipality to take reasonable steps to correct a violation found by the commission before the commission imposes any penalties.

(4) The commission, in reviewing a complaint under subsection (3), shall consider, in determining whether charges imposed by a county or municipality are in compliance with subsection (1), the applicable federal, state, county, and local taxes and fees paid by the complainant or providers serving that county or municipality.

History: 2002, Act 48, Eff. Nov. 1, 2002

2) Funding broadband:

A township may finance broadband/wireless communications using:

- General operating or other unrestricted funds (including revenue sharing),
- Extra-voted millage for the specific purpose, or
- User fees.

There is no current statutory authorization for a special assessment, but House Bill 5673 proposes to authorize townships to create special assessment districts for the construction, improvement and maintenance of communications infrastructure, including broadband and high-speed internet.

ARPA: Without changes in state or federal law, it is unlikely that guidance on the use of federal ARPA funds would provide statutory authorization to a township to use such funds in any way counter to the existing state laws. But to the extent that Michigan law allows a township to provide broadband, it is one of the areas that townships may find the ARPA funds helpful.

MCL 21.604 places limitations on what government-owned broadband projects the state's **Michigan Infrastructure Council** may fund:

“(2) The multiyear programs, work plans, budgets, and funding recommendations required in subsection (1)(a), the annual reports required by subsection (1)(c), the 3-year strategy for establishing a statewide integrated asset management system required by subsection (1)(e), and the second phase of the statewide system for asset management implementation required in subsection (1)(f) **shall comply with both of the following:**

[continued]

(a) Not propose, recommend, or fund any government-owned broadband or telecommunications network to provide service to residential or commercial premises, except that this prohibition does not apply to state expenditures for a transportation purpose, connected vehicle communication technologies, or other transportation-related activities.

(b) To the extent government funding is proposed or recommended to subsidize non-government-owned broadband networks to expand service to residential or commercial premises, require that the proposals and recommendations must be limited to areas unserved by broadband, must be technology neutral, and include a competitive bid process that results in the award of the subsidy based on objective and efficient procedures.

The Michigan Broadband Development Authority Act, PA 49 of 2002, puts limits on how the Authority may finance any broadband infrastructure for a governmental entity:

484.3207 Powers of authority.

Sec. 7.

(2) Notwithstanding any other provision of this act, the authority shall not make loans to, or enter into any joint venture and partnership arrangements or participation with, any governmental entity or nonprofit organization except in connection with the financing or refinancing of development costs for that allocable portion of the broadband infrastructure used or to be used exclusively by governmental entities or nonprofit organizations, including, but not limited to, universities, colleges, hospitals, school districts, public safety agencies, judicial organizations, libraries, cities, townships, and counties. No allocable portion of the broadband infrastructure financed by a loan to a governmental entity or a nonprofit organization shall be used to serve residential, business, or other commercial customers.

(3) Notwithstanding any other provision of this act, except in connection with financing or refinancing under subsection (2) or enforcement procedures authorized under subsection (1)(m), the authority shall acquire real or personal property constituting portions of the broadband infrastructure only in connection with the participation of persons other than governmental entities or nonprofit organizations through joint ventures and partnership arrangements, or other co-ownership arrangements and only if the participation is necessary to assure availability of financing or refinancing derived from the issuance by the authority of bonds or notes, the interest on which is exempt from taxation under the United States internal revenue code, and the financing derived from the tax-exempt bonds or notes is allocated only to those development costs relating to that portion of the broadband infrastructure that is to be used by governmental bodies or nonprofit organizations.