

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accelerating Wireline Broadband	)	WC Docket No. 17-84
Deployment by Removing Barriers to	)	
Infrastructure Investment	)	
	)	
Accelerating Wireless Broadband	)	WC Docket No. 17-79
Deployment by Removing Barriers to	)	
Infrastructure Investment	)	
	)	

**REQUEST FOR RECONSIDERATION OF  
COUNTY ROAD ASSOCIATION OF MICHIGAN**

September 4, 2018

Michael C. Levine  
Levine Law Group, PLLC  
201 N. Washington Square  
Suite 930  
Lansing, MI 48933  
(517) 853 - 2501

## SUMMARY

The County Road Association of Michigan (“CRA”) requests that the Commission reconsider that portion of its Declaratory Ruling which declared the weight restrictions placed on many Michigan roads during March, April and May each year according to Michigan law as the type of moratoria which limits access by telecommunications providers to locations along Michigan public rights-of-way that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”<sup>1</sup>

The Commission began its Declaratory Ruling with a recitation of the operative language of Section 253(a).<sup>1</sup> The Commission then made the following declaration:

Notwithstanding that clear admonition, some states and localities have adopted moratoria on the deployment of telecommunications services or telecommunications facilities, including explicit refusals to authorize deployment and dilatory tactics that amount to de facto refusals to allow deployment. To provide regulatory certainty and further deployment, we issue this Declaratory Ruling making clear that such state and local moratoria violate section 253(a) and strike at the heart of the ban on barriers to entry that Congress enacted in that provision.<sup>2</sup>

The above quote appears to be the premise on which the extremely broad Declaratory Ruling which encompasses Michigan’s seasonal weight restrictions.<sup>3</sup> Weight restrictions in force during March, April and May of each year, commonly referred to as “Seasonal Weight Restrictions” or “Frost Law” have been part of the current Michigan Vehicle Code since it was enacted in 1949.<sup>4</sup>

It is unfortunate that there is little information in the record of this matter that describes the purpose of Seasonal Weight Restrictions or the extent of the damage that occurs when heavy

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<sup>1</sup> Section 253(a) of the Telecommunications Act of 1934, as amended (the Act).

<sup>2</sup> In The Matter Of Accelerating Wireline Broadband Deployment By Removing Barriers To Infrastructure Investment, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WC 17-84, WT 17-79, August 3, 2018 (the “Order”).

<sup>3</sup> Michigan Compiled Laws (“MCL”) 257.722(8).

<sup>4</sup> 1949 PA 300, M.C.L. 257.1, et seq.

vehicles are driven over county roads during Michigan's spring thaw. It appears that the Commission relied on a general statement from a single telecommunications provider about Michigan's Frost Law that Michigan "has frost and freeze laws that prevent construction of facilities for extended periods of time during the winter".<sup>5</sup> It is not likely that statement is accurate. Rarely are weight restrictions placed on county roads during a normal Michigan winter because when the ground is frozen that Seasonal Weight Restricts are intended to prevent.

Michigan's Seasonal Weight Restrictions are not and cannot be used as a basis to refuse a telecommunications provider the necessary authorizations and permits to deploy of telecommunications services or telecommunications facilities. Seasonal Weight Restrictions apply to all vehicles based on weight without regard to use with very limited exceptions which allow public utilities to perform work during emergencies. Under the public utility exception county road agencies retain discretion to deny public utilities access to all or part of any road determined to be unusable.<sup>6</sup> Road agencies have no role in issuing local building permits, zoning, planning or other land use approvals. Seasonal Weight restrictions apply to all vehicles without regard to destination or whether the vehicles are used in the deployment of telecommunications infrastructure. For 70 years Michigan utilities and contractors have known to schedule work and arrange for placement of equipment accordingly. Seasonal Weight Restrictions are the primary right-of way management tool which county road agencies have protect roads under their jurisdiction from significant damage from heavy vehicles during the annual spring thaw.

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<sup>5</sup> The Order, ¶143, P.73.

<sup>6</sup> M.C.L. 257.722((6))

It is unfortunate that based on a single example the Commission has characterized a legitimate right-of-way management tool as an impediment to the ability of any entity to provide interstate or intrastate telecommunications service.

The Michigan legislature is actively considering other legislation that would facilitate the deployment of advanced telecommunications and information technologies in Michigan. Relevant to right-of-way work permits, in response to industry requests, the Michigan Legislature responded by amending the County Road Law, effective July 1, 2018, to streamline the process by which telecommunications providers obtain right-of-way work permits.<sup>7</sup> The amendment to the County Road Law limits per project fees, provides for uniform fees,<sup>8</sup> prohibits road commissions from requiring a telecommunication provider supply a topographic, boundary, environmental, or other kind of survey, study, or analysis of a right-of-way as a condition of issuing a right-of-way work permit<sup>9</sup> and prohibits a county road agency from requiring a telecommunications provider from having to obtain a right-of-way work permit in order to perform routine maintenance more than once a year<sup>10</sup>.

Notwithstanding, Michigan's efforts to advance telecommunications and information technologies by streamlining the process for obtaining right-of-way work permits, Seasonal Weight Restrictions must be enforced to prevent significant damage to Michigan's county road infrastructure. However, neither the Congress, any federal agency nor the Michigan Legislature has the power to amend the laws of nature.

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<sup>7</sup> 2018 PA 97, M.C.L. 224.19b.

<sup>8</sup> M.C.L. 224.19(b)(6)

<sup>9</sup> M.C.L. 224.19(b)(5).

<sup>10</sup> M.C.L. 224.19(b)(7).

CRA joined with other associations that represent Michigan's cities and villages, Michigan's townships, and number of individual communities in submitting comments in response to a public notice issued after Mobilitie L.L.C. filed a Petition for Declaratory Ruling on ways to streamline the deployment of wireless infrastructure.<sup>11</sup> which the Commission incorporated in this Docket <sup>4</sup>. The impact of the Commission's order in this proceeding on county road agencies and Michigan's county road system are so significant that CRA chose to file this Request for Reconsideration to more fully inform the Commission of the serious implications of the Commission's Declaratory Ruling on its membership.

The interest of all 83 of Michigan's county road agencies is that their ability to fulfill their statutory obligation to maintain all county roads in reasonable repair so that they are reasonably safe and convenient for public travel <sup>5</sup> would be seriously impaired if as the result of the Commission's Declaratory Ruling county road agencies are prevented from enforcing seasonal weight restrictions on heavy vehicles used to for the deployment of telecommunications equipment or services. The Commission erred when identified enforcement of Michigan's Seasonal Weight Restrictions as the type of conduct prohibited by sections 253(a) of the Act, based on a single general allegation.

The Commission's Declaratory Ruling undermines the effectiveness of one of the strongest tools Michigan county road agencies available to prevent significant damage to Michigan's county roads during the spring freeze thaw cycle.

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<sup>11</sup> Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Public Notice, WT Docket No. 16-421, 31 FCC Red. 13360 (WTB 2016),

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## I. INTRODUCTION

CRA requests that the Commission reconsider that portion of its August 2, 2018 Declaratory Ruling. As explained below, the Commission's decision failed to consider the purpose of the Michigan's Frost Law authorizing the imposition of seasonal weight restrictions during the months of March, April and May, to whom the restrictions apply and that weight restrictions are applied independently of the process for issuing permits authorizing work within publicly owned or controlled rights-of-way and most importantly, that .

### A. County Road Association of Michigan

CRA is a statewide organization whose membership includes every county road agency within the State of Michigan, representing all 83 Michigan counties. The membership of CRA is composed of 77 county road commissions and 6 county road departments (collectively "county road agencies"). The County Road Law governs the operation of county road commission and county road departments.<sup>12</sup>

Michigan's extensive county road system of approximately 90,000 miles under the exclusive jurisdiction of CRA's members represents almost 75 percent of Michigan's extensive network of almost 121,000 miles of highways, roads and streets linking every part of the 37.2 million square acre land surface on Michigan's two peninsulas.<sup>13</sup>

CRA's main purpose is to promote higher efficiency in the operation of the county road systems within each Michigan county through the cooperative efforts of its members. This purpose is accomplished by conducting an annual meeting, conferences, schools and study courses related

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<sup>12</sup> 1909 PA 300, M.C.L. 224.1, et seq.

<sup>13</sup> Michigan Department of Transportation Road and Highway Facts, [https://www.michigan.gov/mdot/0,4616,7-151-9623\\_11154-129683--,00.htmlv](https://www.michigan.gov/mdot/0,4616,7-151-9623_11154-129683--,00.htmlv), accessed August 28, 2018



to county road matters; maintaining and analyzing information and research relevant to county road matters which it disseminates to the membership through the publication of bulletins, papers and articles. CRA represents the interests of its members on a variety of operational, jurisdictional and financial issues at the state Capitol and in Washington. CRA will participate as amicus curiae in cases that concern issues of substantial interest which affect county road agencies throughout Michigan and present the position of county road agencies before state and federal agencies as in this proceeding.

### B. Background

Under Michigan law Seasonal Weight Restrictions applies to all vehicles on all roads with limited exceptions. When weight restrictions are in place the maximum loads allowable on concrete pavements or pavements with a concrete base are reduced by 25% from the maximum axle loads allowed and maximum axle loads allowable on all other types of roads are reduced by 35% from the maximum axle loads otherwise allowed.<sup>14</sup>

County road agencies with respect to roads under their jurisdiction, may suspend weight restrictions when and where conditions of the roads or the public health, safety, and welfare warrant suspension, and impose weight restrictions on designated roads at any time when the conditions of the roads require.<sup>15</sup>

Roads within each county are classified as primary or local. Primary roads are those of greatest importance to the county.<sup>16</sup> The remainder of roads within a county are classified as local roads. Approximately one-third of Michigan's county road system, 33,000 miles, are primary

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<sup>14</sup> M.C.L. 257.722.

<sup>15</sup> M.C.L. 257.722(10).

<sup>16</sup> M.C.L. 247.652.

roads of which over 2,400 miles are unpaved. The remaining 63,000 miles are local roads. County primary roads are funded at a higher level.<sup>17</sup> Of the 63,000 mile of local roads, approximately 35,200 miles are unpaved.

In Michigan the spring thaw usually occurs during the months of March, April and May. The frost is still in the ground during the spring. The ground warms and cools intermittently with the fluctuations in spring temperatures. The frost melts from the surface down. When the frost melts beneath a paved road, the roadbed becomes wet and spongy because the water is trapped between the pavement and the remaining ice layer beneath. Permanent damage can occur when heavy trucks and heavy equipment travel over a layer of pavement that isn't well supported beneath.

Unpaved roads become a saturated layer of mud over a barrier of ice. The lower ice prevents moisture from draining down or away from the road surface. Late winter wet snow or early spring rain contribute to the wet conditions that make some classes of paved roads and all unpaved roads subject to extensive damage by heavy trucks and equipment.

Attached as Exhibit 1 is the statement of Steven M. Puuri, P.E. in which Mr. Puuri explains the purpose of Seasonal Road Restrictions, safety considerations related to the application of Seasonal Weight Restrictions and the making process as to when the Restrictions are applied and removed. In addition, Mr. Puuri more fully explains how heavy vehicles damage Michigan roads during the spring freeze-thaw cycle. CRA acknowledges that SWR Mr. Puuri attached to his statement indicates that Spring Weight Restrictions in parts of Michigan were in place for extended periods of time. That is the reality of what can occur. In other years Spring Weight Restrictions

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<sup>17</sup> MCL 247.662.

may be in place for fewer than a third as many days. Nonetheless, Spring Weight Restrictions are required solely to protect the road infrastructure.

### C. The Inquiries

The Commission's Declaratory Ruling is the result of two inquiries. The first, Wireline Infrastructure Notice of Inquiry<sup>18</sup> in which it solicited comments on whether "moratoria on market entry or the deployment of telecommunications facilities[]" are inconsistent with section 253(a). *and* whether to provide an exception if moratoria were imposed with "sharply restricted time limits[]" or under "exigent circumstances[.]"<sup>19</sup> In the second, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket 17-79 in which the Commission sought comments on promulgating a preemption rule to address state or local zoning authorities' unreasonable delays in acting on applications. That item also initiated a Notice of Inquiry, which sought comment, among other things, on whether state or local governments have imposed restrictions on deployment comparable to moratoria.<sup>20</sup>

From the comments responses submitted in the wireline and wireless proceeding the commission concluded that from a range of examples reported by industry participants that state and local governments had engaged in activities that were either express or de facto moratoria.

The range of examples cited by the Commission it deemed to be moratoria including a 145-day moratorium on permits for construction in rights-of-way, a five-year moratorium on pavement cuts for construction in rights-of-way, wireless moratoria, localities that refuse to issue work permits unless a carrier pays, states refusing to issue permits for deploying fiber on bridges, a

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<sup>18</sup> *Wireline Infrastructure Notice*, 32 FCC Rcd at 3297, ¶102, footnote omitted.

<sup>19</sup> The Order ¶142, P.72, footnotes omitted.

<sup>20</sup> The Order ¶142, P.73, footnotes omitted.

moratorium banning Frontier from building new infrastructure within a state and the one cited by Frontier in Michigan which “has frost and freeze laws that prevent construction of facilities for extended periods of time during the winter”.<sup>21</sup>

In some instance the actions by state or local governments were formal actions which the commission defined as “Express Moratoria” or “De Facto Moratoria” as state or local actions that are not express but have the effect of delaying deployment of telecommunication services or facilities. The commission dismissed comments that temporary moratoria were necessary for planning purposes based on congressional intent to severely limit state the ability to provide telecommunications services noting the congress did not approve of study and planning that would delay build-out or upgrades.

For the purpose of the ruling the Commission defined express moratoria as:

“state or local statutes, regulations, or other written legal requirements that expressly, by their very terms, prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities.”<sup>22</sup>

.and de facto moratoria as:

“state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium.”<sup>23</sup>

The commission recognized that in certain “limited” circumstances where temporary moratoria could fall under the exceptions in section 253(b) or 253(c).<sup>24</sup>

CRA’s position is that Michigan’s Frost Law does not violate Section 253(a) because it is falls squarely within the safe harbor of Section 253(c). Even though CRA need not make the argument that Michigan’s Seasonal Weight Restriction may also be exempt under Section 253(b)

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<sup>21</sup> The Order, ¶ 143, P.73, footnotes omitted.

<sup>22</sup> The Order, ¶ 145, P.73.

<sup>23</sup> The Order, ¶ 149, P.76.

<sup>24</sup> The Order, ¶ 148, P.76, footnotes omitted.

because the law is essential to protect the public safety and welfare. Even so, Michigan's Constitution expressly permits the legislature may provide for the laying out, construction, improvement and maintenance of highways by counties,<sup>25</sup> provide the powers and duties of counties in relation to highways and may provide for county road commissioners to be appointed or elected, with powers and duties provided by law.<sup>26</sup>

#### D. CRA'S Interest in This Proceeding

The Commission's Order would wrongly prohibit the enforcement of weight restriction on the rights-of-way of Michigan county roads against telecommunications providers as prohibiting or having the effect of prohibiting their ability to provide interstate or intrastate telecommunications services.

Specifically, the Commission's declaration that the imposition of Seasonal Weight Restrictions pursuant to state statute during the spring thaw intended to preserve and protect the transportation infrastructure constitutes a moratorium that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service" under 47 U.S.C. §253(a), without an examination of the purpose of the law or the harm to Michigan's transportation infrastructure that result if the state and local road agencies are prevented from enforcing weight restrictions against telecommunications providers. The Commission chose not to reach specific determinations on all the examples discussed by parties in the record of this proceeding but did find that the types of conduct specifically identified in its Declaratory Ruling, including Michigan's Frost Law, are prohibited by section 253(a).

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<sup>25</sup> 1963 Mich. Const. Art. VII, sec. 16.

<sup>26</sup> 1963 Mich. Const. Art. VII, sec. 29.

CRA recognizes that the Commission excluded fees from its order,<sup>27</sup> even so, permit fees are not associated with Seasonal Weight Restrictions.

The ruling does not clearly distinguish when restricting the weight of vehicles on the right-of-way roads under a state statutory scheme intended to preserve publicly owned or controlled right-of-way from regulations applied to telecommunications providers in a manner that impacts their ability to obtain approvals or permits within the either definition of moratoria. The state statute applies independently of the acceptance, processing or approval of applications, or permits necessary for deploying telecommunications services and/or facilities.

## II. MICHIGAN'S SEASONAL WEIGHT RESTRICTIONS SERVE A LEGITIMATE RIGHT-OF-WAY MANAGEMENT PURPOSE

Seasonal Weight Restrictions are distinguishable from the types government statutes, regulations, policies or actions that may fall within the Commission's definitions of moratoria in that they are unrelated to Land use decisions, zoning approvals, aesthetics, design, equipment type or need. Further, the Commission distinguished de facto moratoria, "which inherently violate section 253(a), from state and local actions that simply entail some delay in deployment".<sup>28</sup> Michigan's Seasonal Weight Restrictions are not inherently violative because of the delay when public rights-of-way are inaccessible during Michigan's spring thaw.

### A. Michigan's Seasonal Weight Restrictions Are Competitively Neutral and Nondiscriminatory

Michigan's Seasonal Weight Restrictions, with amendments, have been a part of chapter Michigan Vehicle Code that establish the maximum dimensions and weights for vehicles on Michigan's roads since its adoption in 1949.<sup>29</sup> Seasonal Weight restrictions are enforced by law

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<sup>27</sup> The Order Fn. 551, P. 76.

<sup>28</sup> The Order, ¶ 150, P. 77.

<sup>29</sup> 1949 PA 300, M.C.L. 257.1, et. seq.

enforcement and weighmasters.<sup>30</sup> A violation is determined by the weights permitted under the Vehicle Code, not its use with limited exceptions as outlined in the Vehicle Code. Even in those limited circumstances when exceptions apply, county road agencies may not deny access to a road it determines to be not usable.

B. A Telecommunications Provider Whose Proposed Construction Was Delayed When Weight Restrictions Were in Place Would Have Had to Have Had All Necessary Approvals and Permits Before Commencing Construction.

A telecommunications provider would have had to have all necessary approvals or permits before commencing before assigning crews and equipment to commence construction or installation of facilities or equipment. At that stage of a project, acceptance, processing or approval of applications or permits necessary for deployment of telecommunications services or facilities had to have occurred. Mr. Puuri indicated in his statement that “temporary springtime weight restrictions have no impact on processing permit applications and granting approvals<sup>31</sup>.” Mr. Puuri further indicated that “Road agencies continue to process and approve permits during springtime weight restrictions, and these permits can be acted upon immediately by the applicant provided they reduce their heavy loads and do not disturb the road surface or surrounding ground.”<sup>32</sup>

The conclusory statement of a single provider characterizing Michigan’s Seasonal Weight Restrictions as a moratorium of the type in which the law, regulation, policy or action of a local governmental body interferes with the acceptance or processing of the requisite approvals or permits necessary for deployment of telecommunications services or facilities without fully explaining the circumstances of the delay is incomplete and inaccurate. The provider did not even state length of the unspecified “extended” delay it experienced. Any delay this provider

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<sup>30</sup> M.C.L. 257.726b, M.C.L. 257.726c.

<sup>31</sup> Exhibit 1, P.2.

<sup>32</sup> Exhibit 1, P.2.

experienced related to commencement construction of its facilities for any period when Seasonal Weight Restrictions were in place was because of the condition of the roads. All vehicles of the type and weight used by that provider would have been similarly restricted.

C. Michigan's Seasonal Weight Restrictions Are Necessary to Protect the Physical Integrity of Michigan's Roads

The condition of many Michigan roads during the spring when those roads are subject to damage by the spring freeze thaw cycle is described above. Mr. Puuri provides a more detailed explanation of how the roads are damaged when conditions are such that Spring Weight Restrictions must be applied. Section 253 c) is a straight forward exemption from the prohibitions in Section 253(a). The Commission expressly recognizes the express exemption in Section 253(c) quoting its description of activities that fall within ambit of appropriate rights-of-way management as "coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and keeping track of the various systems using the rights-of-way to prevent interference between them." <sup>33</sup> The Commission continued "Thus, section 253(c) protects certain activities that involve the actual use of the right-of-way. In contrast, to the extent they implicate rights-of-way issues at all, moratoria bar providers from obtaining approval to access the right-of-way. Hence, we fail to see how section 253(c) could save a moratorium from preemption".

Spring Weight Restrictions protect the road infrastructure from significant damage. All contractors intended to access construction sites necessitating the use of heavy vehicles and equipment must plan accordingly has have building contractors and utilities have done for decades.

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<sup>33</sup>The Order, ¶160, P.82, footnotes omitted.



Following the commission's analysis in paragraph 160, Spring Weight Restrictions apply to the actual use of the right-of-way may delay deployment of telecommunications services or facilities but only after all approvals and permits are obtained and for that period during which roads are subject to structural damage during the spring freeze thaw cycle.

Accordingly, Michigan's Seasonal Weight Restrictions enacted for the sole purpose of protecting the road infrastructure is within the exemption provided to state and local governments for statutes and activities that serve a right-of-way management purpose. A state statute unrelated to the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities is not an impermissible moratorium under Section 253(a) or under either definition developed by the Commission. As such, the Commission erroneously included the example of the type of moratorium given by a single provider about a delay that it experienced in its' deployment of telecommunication equipment when Seasonal Weight Restriction were place as the type of conduct specifically identified in its Declaratory Ruling prohibited by section 253(a).

### III. CONCLUSION

Inclusion of Michigan's statutory Seasonal Weight Restrictions as one of the industry examples discussed by the Commission in the Order which it found to be the type of conduct prohibited under Section 253(a), based on the comment of a single provider without the benefit of full record as to the purpose of the statute and it application was erroneous. Accordingly, CRA asks that upon reconsideration that the Commission modify its Order by removing any reference to the effect that the application of Michigan's Seasonal Weight Restrictions violates Section 253(a) of the Act.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael C. Levine". The signature is fluid and stylized, with a large loop at the end.

September 4, 2018

Michael C. Levine, Partner  
Levine Law Group, PLLC  
201 N. Washington Square  
Suite 930  
Lansing, MI 48933  
517.853.2501

# EXHIBIT 1

## **Steven M. Puuri, P.E.**

6480 Zeeb Road  
Dexter, MI 48130

734-426-3097  
spuuri@gmail.com

### **Career Summary**

A proficient transportation infrastructure chief executive with an impressive background of building partnerships, securing innovative funding and delivering context sensitive solutions. An accomplished engineering director with an established track record of accomplishing projects on time and on budget. Mentored technical staff to handle challenges associated with rapid growth and workload expansion. An assertive public relations leader who successfully engaged stakeholders from US Congress, State Legislators, Local Officials as well as project stakeholders in a progressive university community.

### **Areas of Expertise/Core Competency**

Extensive executive level expertise in Road Construction, Design, Traffic Operations, Routine Maintenance, Construction Contracts, Transportation Funding, Legal Issues, Property Acquisition, Board Relations, Government Relations, Employee and Public Relations

Extensive experience in Michigan County Road Law, Tort Liability, Road Construction, Road Maintenance, Traffic Operation, Riparian Rights, Storm Water Management, Wetland Mitigation, Organizational Policies, Management Dashboards, Information Technology and Computer Networks.

Extensive working knowledge of American Association of State Highways and Transportation Officials Guidelines; Michigan Department of Transportation Guidelines and Specifications; Michigan Vehicle Code; Michigan Manual for Uniform Traffic Control; Federal NEPA Guidelines and Federal Relocation & Assistance Guidelines.

### **Work Experience**

Puuri Engineering LLC 2014 - Present

#### **Engineering Specialist**

Serves as an engineering consultant to advise the County Road Association, Michigan Municipal League and the Michigan Department of Transportation on technical matters related to local road agencies. Provides the Road Commissions and Michigan Municipal League with an experienced road engineering resource to assist with road maintenance and construction initiatives related to legislation, policy development, rule writing and dispute resolutions.

Puuri Engineering LLC 2012 - Present

#### **Managing Director**

Owner and lead engineer of a consulting engineering practice which provides technical advice on legislative and policy development related to local road agencies. Provides planning, design and construction engineering services for transportation projects. Serving a variety of Municipal and

private clients to assist with advancing infrastructure improvements. Provides expert witness services on road liability cases, including cases where I have been qualified and testified in several Michigan Courts as a road design, drainage and maintenance expert. Also, I have never been rejected by a court to testify as an expert.

Washtenaw County Road Commission

1987 - 2011

**Managing Director**

2003 - 2011

As the Chief Executive Officer provided direction and leadership for the Board of Directors and 156 employees. Led a \$70 million organization recognized as a progressive trendsetter in management practices. Successfully administered an autonomous organization requiring transparent Board Meetings, Audited Financial Statements, Tort Liability, Self-funded Insurance programs, fleet acquisition and maintenance for 150 licensed vehicles, property management of 25 building and 300 acres, public relations, extensive construction and maintenance programs for 1650 miles of roads, 111 bridges and 150 traffic signals.

In this capacity key accomplishments included:

- Established a 5 Year Capital Improvement Program which dramatically improved the coordination of all projects in the region
- Established a multi-year budgeting process creating consistently increasing reserves
- Recognized innovative project funding leader who delivered results
- Established design, construction and maintenance standards that lead to high quality projects, cost effective maintenance practices and improved road safety.
- Established a model partnership program that successfully collaborated with private developers resulting in over \$100 million of private investment in public infrastructure projects
- Transformed accounting methods to fully recognize unfunded liabilities
- Successfully negotiated benefit reductions to sustainable levels
- Established Planning and Public Relations programs leading to enhance stakeholder involvement and documented improvements in public perception
- Modernized storm water management and environmental programs earning recognition from community environmental leaders as an outstanding example for maintenance practices and environmental stewardship
- Conducted organization assessments implemented cultural transforming strategies earning recognition from local officials for improvements in performance
- Lead an innovative public agency initiative obtaining recognition for Best Management Practices International Standards Organization 9001-2008

**Director of Engineer**

1990 - 2003

Engineer responsible for providing technical leadership for a rapidly developing community while modernizing construction practices, rigorously enforcing contractual and permit compliance. Supervised a department of 56 engineers, professional specialist and administrative staff. Established a quality based consultant selection program leading to improved consultant performance and financial accountability. Successfully completed hundreds of major infrastructure projects

totaling over \$200 million. Administered a state of the art traffic operations program including construction and maintenance of integrated operations center for 150 signals, 30,000 signs and 800 miles of pavement markings. Successfully served as Project Engineer on planning, design, property acquisition and construction projects often handling numerous concurrent projects in various stages of development. Served as the Contract Administrator on numerous construction and consultant contracts involving preparation of contract documents, advertising, awarding, claims resolution and legal disputes. Successfully served as an expert witness for numerous tort liability cases.

Key accomplishments in this capacity:

- Jackson Road \$50 million multi-phase boulevard construction and research project
- Dixboro Road bridge \$20 million 550 ft. long multi-lane multi-modal bridge
- US 23, Geddes Rd, Dixboro Rd. and Huron River Dr. \$5 million corridor expansion project
- Earhart Road \$3 million new road enabling 100-acre medical & commercial development
- Ellsworth Road \$8 million realignment & corridor expansion project
- Served as the local catalyst for \$50 million in state interchange expansion projects
- Served as the Project Engineer on 8 Federal NEPA clearance projects involving interchanges, new road alignments, capacity projects, wetland mitigation, new and historic bridges
- Served as Project Manager for 27,000 sf. new office building construction project involving architectural design, interior planning, access roads, parking areas, landscaping, relocation coordinator and building demolition
- Served as the Lead Engineer who successfully collaborated with hundreds of Residential and Commercial Developers to assure that the new developments were completed with appropriate public infrastructure investments

**Assistant Director of Engineering** 1987 - 1990

Provided direction and leadership for design, construction, survey and traffic services. Transformed the culture of a 23 member engineering staff by successfully solving low morale, improving quality and increasing productivity. Developed a staffing plan to address rapid population growth challenges, secured Management endorsement, leading to increasing staff capabilities, increased project output and improved project quality.

USDA Soil Conservation Service 1978 - 1987

**Area Engineer** 1983 - 1987

Provided design and field engineering services for stream and shoreline stabilization, flood control and storm water management projects for several counties in Northwest Michigan. Ensured prompt delivery of project services including land surveys, design, contract documents, construction administration and claims resolution. Successfully worked with public officials and private landowner to accomplish a variety of clients in a positive work relationship. Supervised technicians and clerical staff in regional office locations. Key accomplishments:

- Rouge River Flood Control Projects Design and Construction
- Numerous Private Landowner drainage systems design and construction

**Civil Engineer**

1978 – 1983

Assisted the State Office Hydraulic Engineer and Other Professional Staff Specialists to develop watershed hydraulic analysis and flood plain mapping projects.

- Petoskey Winter Sports Park Drainage Construction
- Woolsey Airport Tile Drainage Construction

**Education**

B.S. Civil Engineering Michigan State University 1978

Extensive Continuing Education Credits and training programs in water resources and transportation related areas

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National Association County Engineers

County Road Association of Michigan

County Road Association Engineering Committee Chair

Governors Traffic Safety Advisory Commission

Michigan County Road Association Self-Insurance Pool Board



Federal Communications Commission  
Third Report and Order and Declaratory Ruling  
Adopted: August 2, 2018  
Comments Regarding Michigan Frost and Freeze Laws

**Background**

While it seems like it should go without saying that Michigan is a winter climate state, I think it is important to clarify why road agencies in Michigan have adopted policies to protect the road infrastructure from the effects of extremely cold winter conditions. The prolonged freezing conditions that routinely occur from November through April cause the pavement base and ground under the roads to freeze up to six foot deep. In addition, during the late winter and spring months, we typically experience above freezing daytime temperatures which causes thawing by day and refreezing at night. It is during these periods of surface melting and prolonged thawing of the road base materials when the road surfaces and surrounding ground are most vulnerable to heavy truck and construction equipment damage.

**Temporary Weight Reductions and Construction Limitations**

In Michigan and other northern states, road agencies temporarily reduce the heavy truck loading and suspend construction work in the road rights-of-way and are known as springtime weight restrictions. The temporary work suspensions that Frontier referenced in their comments in paragraph 143 described as "frost and freeze laws" have been in place for many years. In Michigan the legislature enacted a state law in 1949 mandating that road agencies protect the pavements and gravel roads surfaces infrastructure during the months of March, April and May, due to weakened road subgrades, as the frozen ground is thawing during these spring months. The springtime weight restrictions impose temporary weight reductions on heavy vehicles and there are limitations imposed on construction in the road right-of-way during this period as well. These limitations have proven to minimize the road surface damage during this critical period, as well as preventing the disruption of roadside drainage and vegetation damage when these facilities are most needed to control flooding and environmental impacts.

Road agencies in Michigan have experienced pavement rutting and cracking failures during these critical periods due to saturated conditions in the pavement, aggregate layers and native soils beneath the roadbed as the deeper frozen ground begin to thaw out and soften. The pavement failure is accelerated when fully loaded trucks drive over these pavements which are basically floating on soft saturated aggregate and native soil layers which offer minimal structural support. The pavement failure can lead to severe cracking and potholes. This phenomenon is demonstrated by the attached graphic, Why Michigan Need Springtime Weight Restrictions, which shows a tandem tire, the pavement structure, saturated base material and frozen ground under the pavement. The condition shown on this graphic lead to very unstable base materials and road surface failure.

On gravel roads a similar failure can occur as a fully loaded truck drives over a gravel road surface when saturated aggregate and the native soils are partially thawed. The gravel road failure comes in the form of surface fitting and native soils being pumped up through the gravel surface, which destroys the structural support integrity of the gravel surface. Even if the native soil is not visible through the gravel surface, a fully loaded truck can cause the weakened aggregate surface material to be pushed down into the saturated soil layer above the deeper frozen native soil. Once the gravel is contaminated with saturated native soil the effective gravel layer is reduced leading to accelerated total gravel surface failure.

Additionally, the roadside vegetated areas in the right of way serves multiple functions including: providing a safe vehicle recovery area for vehicles that slide off the road; conveying snow melt and rain runoff to the roadside ditches; and to provide a vegetated slope to lower rain runoff from the road surface to the ditches without causing erosion. These roadside areas need to remain undisturbed during the winter months to serve the



intended purpose of facilitating a safe roadside recovery area. Any construction activity, while the ground is unstable, often results in deep tire ruts in the roadside which can refreeze, causing vehicles that slid off the road to roll. Any excavation or construction in these roadside areas can cause a hazardous condition for the travel public or it could compromise the roadside drainage which can impact the road stability or cause flooding in the public right of way and adjoining properties. During these springtime periods in Michigan, we still experience snowfalls, icy conditions and heavy rainfalls, which means it is essential to maintain safe roadside areas and to minimize the amount of heavy equipment along the roads. The weather in Michigan is so unpredictable during these periods, that road agencies restrict construction in the road right of way due to safety concerns and slippery conditions.

### **Springtime Restriction Decision-making and Coordination**

The road agencies in Michigan are very mindful of the significant impact that weight restriction can have on Michigan's economy, so the decision to impose restrictions is given serious consideration. Counties typically coordinate with their neighboring counties to assure that there is a consensus of more expertise prior to imposing these restrictions. This coordination with neighboring counties can be demonstrated with the attached map, 2018 Michigan Seasonal Weight Restrictions Periods, which shows the number of days weight restrictions were in effect during the spring of 2018. In addition, the county engineers in Michigan have been focused on improving the method for determining the most effective date to impose weight restrictions and when they should consider suspending the restriction. The county engineers have determined the best method available is a method developed in Minnesota, known as the Thaw-Caster program. The Michigan county engineers have been adapting and testing this method in recent years to provide a more objective method to determine the most effective date to impose and lift restrictions. This method is being widely used by Michigan counties to determine the optimal time to impose and lift weight restrictions to assure the roads are protected while minimizing the impacts on commerce.

### **Permit Application Processing**

Finally, temporary springtime weight restrictions have no impact on processing permit applications and granting approvals. The seasonal restrictions only impose temporary weight reductions on heavy trucks traveling on roads which are not built to handle the full weight and these restrictions limit new construction work in the right of way. Road agencies continue to process and approve permits during springtime weight restrictions, and these permits can be acted upon immediately by the applicant provided they reduce their heavy loads and do not disturb the road surface or surrounding ground.

Comments provided by:  
Steven M. Puuri, P.E.  
Puuri Engineering LLC  
August 30, 2018

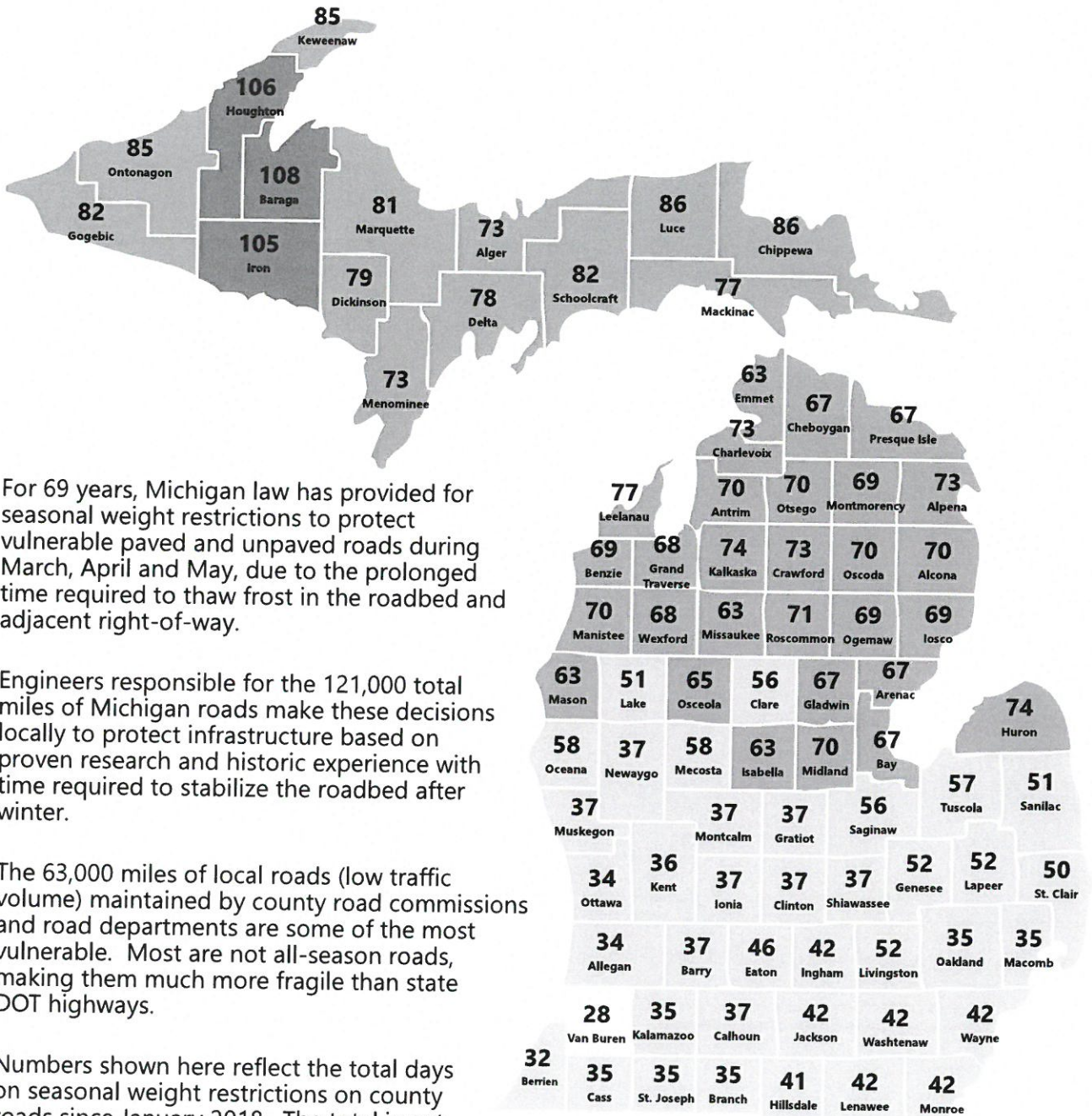


# Why Michigan Needs Spring Weight Restrictions





## 2018 Michigan seasonal weight restriction periods



For 69 years, Michigan law has provided for seasonal weight restrictions to protect vulnerable paved and unpaved roads during March, April and May, due to the prolonged time required to thaw frost in the roadbed and adjacent right-of-way.

Engineers responsible for the 121,000 total miles of Michigan roads make these decisions locally to protect infrastructure based on proven research and historic experience with time required to stabilize the roadbed after winter.

The 63,000 miles of local roads (low traffic volume) maintained by county road commissions and road departments are some of the most vulnerable. Most are not all-season roads, making them much more fragile than state DOT highways.

Numbers shown here reflect the total days on seasonal weight restrictions on county roads since January 2018. The total is not necessarily consecutive, as a "cold snap" may allow the road agency to turn seasonal weight restrictions off for a weekend or a week at a time to allow commerce.

**Note:** County road agencies make seasonal weight restriction decisions utilizing standardized methods to determine frost depths, as well as coordinating with neighboring counties with similar soil/climate conditions in order to facilitate commerce.

