Clarifying and Codifying Existing Law to Facilitate Michigan Rural Broadband Development

House Bill 4266

MECA's members are using fiber optic broadband facilities to serve their cooperative member-owners with more efficient electric service and, in some cases, broadband internet. MECA support's Representative Cole's proposed legislative easement language because it will improve their member-owners' lives and electric service, as well as improve the competitiveness of Michigan's rural communities and businesses.

Among other things, this language codifies existing caselaw on the use of existing easements to facilitate ongoing investment in newer, better, and faster service to rural areas - - service no one else is (or appears interested in) offering.

Three of Michigan's nine electric distribution cooperatives (Midwest Energy, Great Lakes Energy, and HomeWorks Tri-County) are currently deploying broadband in rural Michigan and two (Presque Isle Electric & Gas and Thumb Electric Cooperative) are actively studying its feasibility. Michigan's other distribution cooperatives are planning or studying the use of fiber optic cable to improve electric service to its member owners and their communities. Bringing broadband to our members' member-owners will change the face of rural Michigan – much like cooperative-driven electricity expansion did in the 1930s and 1940s – by enhancing Michigan's economic development potential and ensuring that "where you live" doesn't impact Michigan residents' access to online commerce, entertainment, or business services.

Just like the early 20th Century, when no one wanted to serve rural America with electricity, today no one else is serving rural Michigan with broadband internet or using it to enable the future of Michigan's electric grid. Michigan cooperatives and their owner members have the unique mission, ability, and renewed excitement to deliver this 21st Century technology to *themselves*.

Michigan's electric cooperatives are using existing easements for broadband deployment and while there have been numerous cases in Michigan supporting

similar use (because such use is not an "unreasonable or material increase in the burden on the land"[1]), there have been recent cautionary tales.[2]

This proposed bill language will codify existing Michigan legal precedent by ensuring that existing cooperative electric easements can be utilized for new broadband facilities if the new facilities are at least partially used for electric service and located in the same path of an existing electric line/easement. Because such new or additional facilities would be in the communications or electric space, any installation of a new broadband facility will not impact the landowner, let alone "materially burden" the property.

This legislative change will ensure the uniform application of existing law on this subject and ensure that the member owners of Michigan electric cooperatives are able to extend broadband in Michigan, to *themselves* – in Michigan's most rural spaces.

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[1] See e.g., *Mumaugh v Diamond Lake Area Cable TV Co.*, 183 Mich App 597, 606 (1990) ("Plaintiffs fail to show how defendant's use of the easement materially increases the burden on their property. Without an additional burden, there has been no taking of plaintiffs' property."); *Heydon v MediaOne*, 275 Mich App 267, 271 (2007) ("The owner of an easement cannot materially increase the burden of the easement or impose a new and additional burden on the servient estate."); *Rolland v ITC*, 2008 WL 2038025, *3, unpublished opinion per curiam of the Court of Appeals (Docket No. 274411) (2008) ("[T]he holder of easement rights may make necessary changes supporting the effective enjoyment of an easement, unless the burden on the servient estate unreasonably increases.").

[2] Chief among these cautionary tales is *Barfield v Sho-Me Power Elec Coop*, 852 F3d 795 (CA 8, 2017). This federal court case, based on a Missouri cooperative's work to extend broadband to Missouri's most rural spaces, disregarded settled state law, certified an arguably uncertifiable class, and set an unreasonable standard for damages. Codifying Michigan's law, as it stands today AND creating an appropriate and fair damages regime not only limits risk for Michigan cooperatives and their member-owners, but protects existing property rights as well.

Clarifying and Codifying Michigan Law
To Facilitate Michigan Rural Broadband
HB 4266

Frequently Asked Questions

What does this section apply to?
This section's applicability is limited to new broadband facilities, that are at least partially used for electric service, by Michigan's electric cooperatives.

What does this section do?
This proposed section of the Revised Judicature Act codifies existing standards in Michigan case law for violations of easements. The section defines such claims' elements, provides for damages, and, because landowners cannot access the communications or electric space, recognizes that actions within those spaces, associated at least partially with electric service, do not unreasonably or materially burden the easement.

What Michigan cases provide this standard?
Mumaugh v Diamond Lake Area Cable TV Co., 183 Mich App 597, 606 (1990) ("Plaintiffs fail to show how defendant's use of the easement materially increases the burden on their property. Without an additional burden, there has been no taking of plaintiffs' property.").

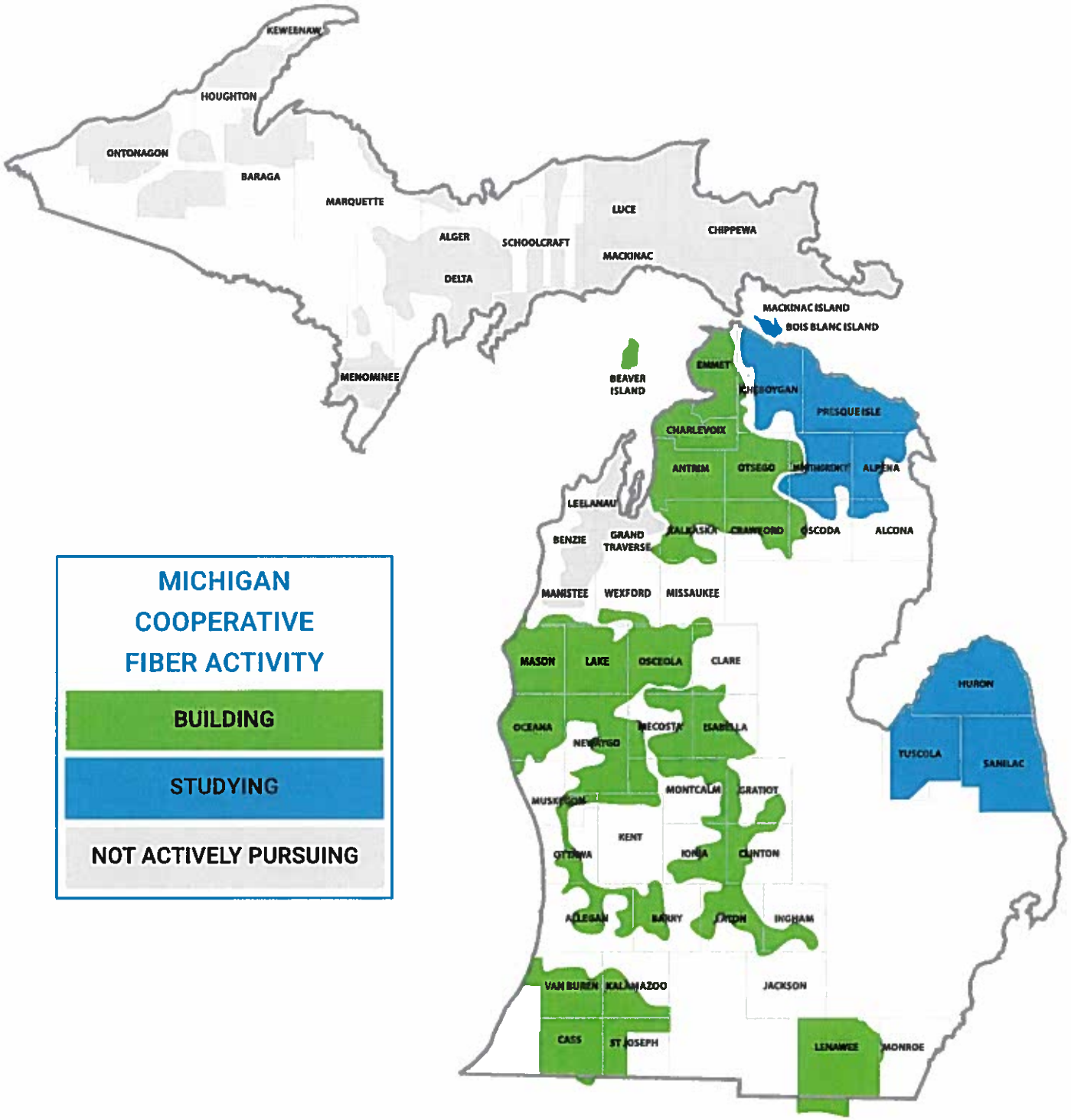
Rolland v ITC, 2008 WL 2038025, *3, unpublished opinion per curiam of the Court of Appeals (Docket No. 274411) (2008) ("[T]he holder of easement rights may make necessary changes supporting the effective enjoyment of an easement, unless the burden on the servient estate unreasonably increases. *Mumrow* adopted a two-part balancing test: (1) whether the repair or improvement is necessary for effective enjoyment of the easement, and (2) whether any necessary repair or improvement unreasonably increases the burden on the land." Citing *Mumrow v Riddle*, 67 Mich App 693, 700 (1976).)

Heydon v MediaOne, 275 Mich App 267, 271 (2007) ("The owner of an easement cannot materially increase the burden of the easement or impose a new and additional burden on the servient estate.").

Does this language impact any other rights, including pole attachments?
No. This language only relates to private causes of action associated with claims that an easement's scope was exceeded for "Facilities," as defined. All other rights, including those to pole attachments, remain intact.

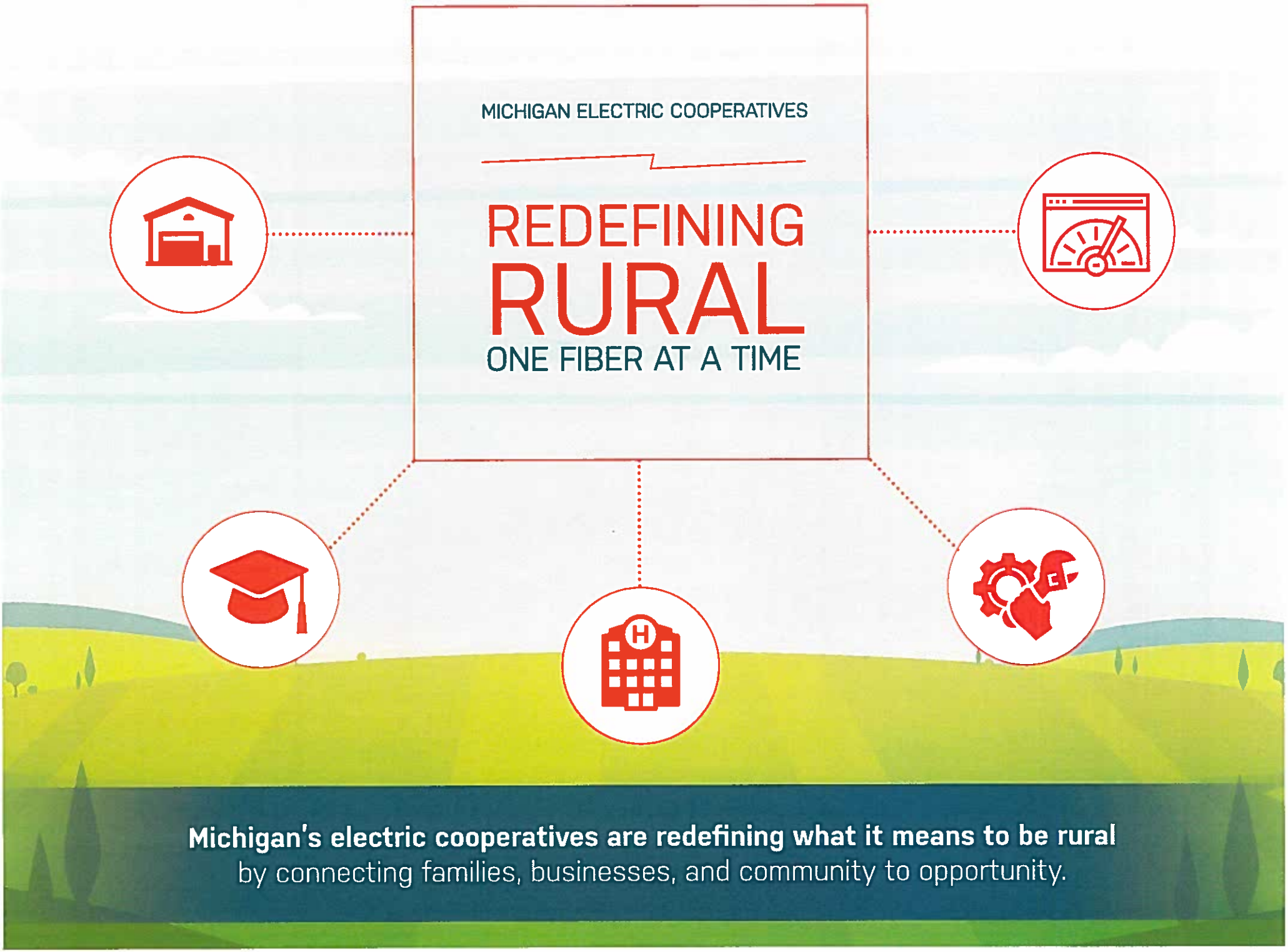
MICHIGAN COOPERATIVES

MEETING MICHIGAN'S RURAL BROADBAND NEEDS



MICHIGAN COOPERATIVE FIBER ACTIVITY

- **BUILDING**
- **STUDYING**
- **NOT ACTIVELY PURSUING**


MICHIGAN ELECTRIC COOPERATIVES
REDEFINING
RURAL
ONE FIBER AT A TIME
Michigan's electric cooperatives are redefining what it means to be rural
by connecting families, businesses, and community to opportunity.

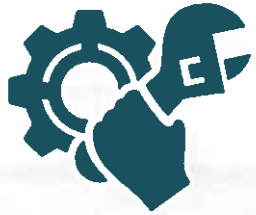
POWERFUL CONNECTIONS

BRIDGING MICHIGAN'S DIGITAL DIVIDE.....

EDUCATION

HEALTHCARE

UNTAPPED ECONOMIC BENEFIT



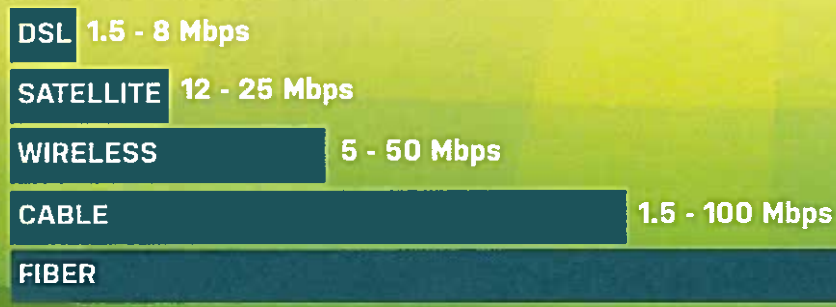
1,000 SCHOOLS & 100 HOSPITALS

LACK MEANINGFUL BROADBAND ACCESS

$12 BILLION

.....WITH LIFE-CHANGING SPEED

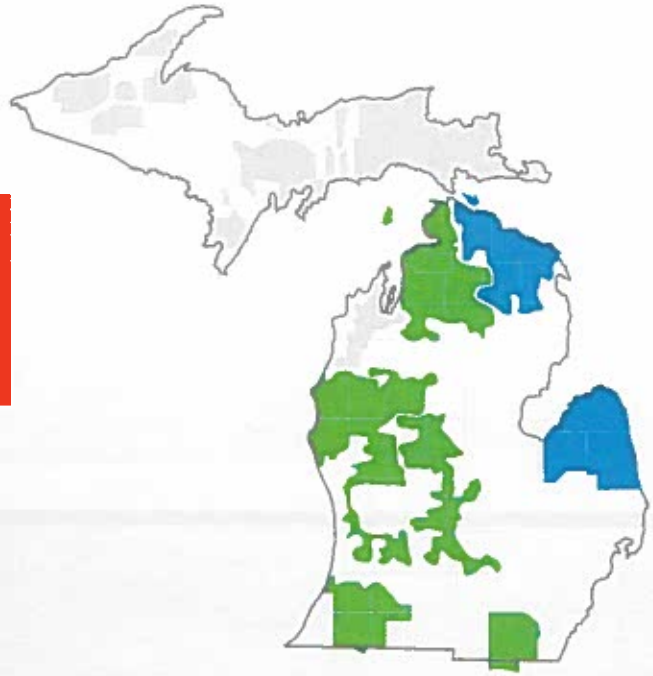
internet connection speeds



FIBER IS **40x FASTER** THAN SATELLITE

POWERFUL INVESTMENT

MICHIGAN ELECTRIC CO-OPS
SERVE MEMBERS IN
61
COUNTIES



CO-OPS BUILDING

CO-OPS STUDYING

$250 MILLION
ALREADY
COMMITTED TO
FIBER
INFRASTRUCTURE

ANTICIPATED TOTAL
INVESTMENT:
$1BILLION

EVERY DOLLAR
INVESTED
RETURNS
4X
TO MICHIGAN'S
ECONOMY

NEARLY **250** JOBS
ALREADY CREATED

POWERFUL IMPACT

BRIDGING FAMILIES

"For the first time since Griffin was born, we were able to successfully FaceTime with his grandparents in Florida. No static, no lag, no blurry faces. Just family connecting across time and space the way the internet age originally intended! Now that's a dream come true!"

- Brian Bates

Mike Stephens recommends **Truestream.**
January 5 ·

Excellent service. All my devices have enough bandwidth to work flawlessly now. Having a fast,reliable isp has opened many new doors for our family.

Louis Simmons If I was wearing a hat I'd give you a hats off and a bow. So pleased with the internet service you are providing. We were stuck with Satellite Service with High $$, poor service and so slow it was like having line service. Your service is a dream come true for all of us living out in the country where cable would not go. Thank you.

Like · Reply · 6w · 2

Justin Roberts recommends **Truestream.**
November 18, 2018 ·

vary ready for a great service to be out in my area, and what better provider then a company that has been helping many for decades

1

Gretchen Dorian recommends **Truestream.**
August 11, 2018 ·

20 years waiting for any kind of internet service above DSL...and it's my electric company that is making it happen!

2 · 1 Comment

BRIDGING BUSINESS

"Speaking from a personal level the service improves our standard of living, ability to work efficiently and relieves stress. Living in southwest Michigan most of my life and being part of a family business/community development promoter (Swiss Valley celebrates our 50 year Anniversary as a seasonal recreational business. We have been making it snow since 1968!) I see the big picture. Our region/county serves as a gateway to Pure Michigan. Updating our rural internet service will lead to more development, more employers, more residents and ultimately more skiers! GO TEAM MIDWEST!"

- Jamie Stafne

OVERWHELMING DEMAND