

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| In the Matter of the Nebraska |) | Application No. C-5685 / PI-259 |
| Public Service Commission, to |) | |
| investigate standard crossing fees charged |) | COMMENTS OF |
| for telecommunications companies to |) | ARAPAHOE TELEPHONE |
| access rights-of-way controlled by |) | COMPANY |
| railroad carriers. |) | |

COMES NOW Arapahoe Telephone Company (“ATC”) and submits its following Comments in response to the Commission’s Order Opening Docket and Seeking Comment dated December 16, 2025 in the above-captioned action.

Because specific details of ATC’s challenges in obtaining railroad crossing were detailed in a letter dated October 6, 2025 from the Nebraska Telecommunications Association to Commissioner Tim Schram, we attach said letter to these Comments as “Attachment A” and incorporate the information stated therein by this reference.

A. How quickly are applications processed to determine whether they are complete? How are the fees quoted in response to applications?

ATC’s applications were not deemed incomplete; we have no information to share as to the timeline within which completeness determinations are made. In general, our experience has been that applications are fully processed within approximately ninety days assuming the application is complete when initially submitted.

B. What has been the most common disagreement in relation to compliance with Sec. 86-164?

In our experience, the fees charged by the railroad’s representatives for inspection and flagging are the most common area of disagreement. In other words, there is disagreement with respect to what falls within and without the phrase “actual flagging expenses” as that term is used in 86-164. Additionally, ATC was charged a series of fees – application fees, permit fees, insurance fees, and a “convenience fee” that in sum exceeded the \$1,250 one-time standard

crossing fee charge stated in the statute. We believe this to be a violation of the plain language of the statute – simply adopting a separate charge and giving it a different name should not give railroads license to exceed the \$1,250 cap for their direct expenses.

C. **Is there a specific point of contact for negotiations? How often has that point of contact changed?**

ATC has no specific information to provide in response to these questions.

D. **Factors or Special Circumstances that have led to fees above the standard fee**

See Attachment A.

E. **Insurance Fees and Flagging Costs**

See Attachment A.

F. **Flagging Fee Basis**

See Attachment A.

G. **Why petitions have not been filed with Commission**

ATC is aware of the petition procedures contained in 86-164, and we acknowledge that the statute does provide for expedited decision making from the Commission in certain situations. However, particularly with charges related to the railroad's "actual flagging expenses" – practical considerations make utilization of the Commission's petition process undesirable. Telecommunications carriers must contract with boring and installation contractors months in advance, and days wasted during a fiber construction project waiting for resolution of permit issues often lead to extensive additional construction charges. In many cases, keeping the project moving by conceding to unfair crossing charges is the lesser of two evils in terms of additional expense.

H. Need for Legislative clarification

ATC believes that 86-164 is perfectly clear in that the standard crossing fee of \$1,250 should be and is inclusive of any other fees or administrative charges such as application fees, permit fees, insurance fees, convenience fees, or other items of that nature.

DATED: January 21, 2026

ARAPAHOE TELEPHONE COMPANY
524 Nebraska Avenue
Arapahoe NE 68922



October 6, 2025

Honorable Tim Schram
Chairman, Nebraska Public Service Commission
1200 "N" Street, #300
Lincoln, Nebraska 68508

Dear Chairman Schram:

I am writing to request the Nebraska Public Service Commission to open an investigative docket on actions by BNSF Railroad to subvert the intent of provisions of Section 86-164 of the Nebraska statute relating to standard crossing fees charged for telecommunications companies to access rights-of-way controlled by railroad carriers.

The provisions of Section 86-164 were incorporated into Nebraska law by the passage of LB 181, introduced by Transportation and Telecommunications Chairperson Deb Fischer of Valentine in 2009 and passed without a dissenting vote in 2010. You testified on behalf of the PSC at the committee hearing in support of the bill. The sections that are of particular interest to the NTA are subsections 86-164 (3)(a) and 86-164 (3)(b). Section 86-164 (3)(a) was subsequently amended in 2011 by LB 47.

Following are the provisions of subsections 86-164 (3)(a) and (3)(b).

(3)(a) Except as provided in subsection (4) of this section or as otherwise agreed to by all parties, if a telecommunications carrier places a line, wire, or cable across a railroad right-of-way pursuant to this section, it shall pay the railroad carrier, owner, manager, agent, or representative of the railroad carrier a one-time standard crossing fee of one thousand two hundred fifty dollars for each applicable crossing. In addition to the standard crossing fee, the telecommunications carrier shall reimburse the railroad carrier for any actual flagging expenses associated with the placement of the line, wire, or cable.

(b) The standard crossing fee shall be in lieu of any license fee or any other fees or charges to reimburse the railroad carrier for any direct expense incurred as a result of the placement of the line, wire, or cable.

It is the NTA's position that the standard crossing fee is limited to \$1,250 for each applicable crossing, plus reimbursement to the railroad carrier for any actual flagging expenses associated with the placement of the line, wire, or cable. It is our position that BNSF Railroad and its agents, with respect to multiple NTA members, is violating the law by overcharging telecommunications carriers for crossing fees.

I am providing the most egregious example as evidence of this statutory violation. ATC Communications, based in Arapahoe, Nebraska, has been working throughout the spring and summer to get service to four customers along Highways 6 and 34 between Arapahoe and Holbrook, Nebraska.



Initially, ATC was required to obtain four separate permits—one for each customer, who all reside on private drives that serve no other customers. BNSF charged \$1,817 for each permit, which broke down as follows: \$800—application fee; \$450—permit fee; \$506—insurance fee; and \$61—convenience fee. The total for the four permits was \$7,268.

ATC was also required to coordinate with BNSF representative Wilson & Company for inspection services during construction of the railroad crossings, which construction was completed in one day. Wilson & Company charged ATC \$3,900 per permit. The charges were itemized as follows: \$1,500—inspection; \$450—mobilization; \$1,500—road worker; and 450—RWIC mobilization. The fee charged by Wilson & Company for the four crossings was \$15,600.

ATC's contractor successfully installed the innerduct under the tracks in one day, with both ends located off BNSF property. Even though the on-site representative assured ATC representatives that the company could return later to pull the fiber through the already completed crossing, ATC was informed by Wilson & Company that they would need to pay an additional \$3,000 per crossing merely to pull the fiber through the already-installed conduit. This charge would include a requirement for an inspector to be present during that work.

Four crossings, four customers--\$34,868 total charges, or \$8,717 per customer. Of course, this does not include labor or materials for ATC.

As a company with carrier of last resort obligations, ATC and all other NTA members are required by federal and state law in their local exchange areas to provide telecommunications services to their customers, no matter where they reside within the exchange. Serving customers in sparsely populated regions is already more expensive. The legislature was aware when LB 181 was introduced in 2009 and passed in 2010 that telecom companies had higher costs of providing services in rural Nebraska and wanted to ensure railroad carriers were not gouging those companies and their customers.

It is our belief that an investigation of current practices by railroad companies relating to costs of rights-of-way crossing fees by the PSC is in order. It is our request that the commission consider this matter as soon as practicable. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Tip O'Neill". The signature is written in a cursive, flowing style.

Tip O'Neill, President

Nebraska Telecommunications Association

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