



January 20, 2026

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

Subject: Application No. C-5685/PI-259

In the Matter of the Nebraska Public Service Commission, to investigate standard crossing fees charged for telecommunications companies to access rights-of-way controlled by railroad carriers.

Dear Chairman Schram:

Thank You, Chairman Schram, for the opportunity you have provided in requesting comments on railroad crossing fees and associated expenses inflicted upon the utility and communications industries by the railroad industry. We deeply appreciate your willingness to review comments.

In light of a number of misleading and erroneous statements various railroad companies have made about me and my company, Eagle 1 Resources, LLC, I want to preface my comments with a few clarifying points. I do not provide legal advice to our customers. We do work with a team of attorneys that provide guidance and support to our Company. Similarly, I am not an engineer, and I do not provide engineering design services. We do work with engineering companies to assist in this area. Lastly, I am not a risk management consultant, and I do not provide risk management services. I am a Utility Consultant that can read and research railroad records, I can locate state laws and/or US Codes, and I can question railroad fees listed in railroad crossing agreements.

I have been challenging railroad crossing fees since 1983, beginning with my tenure in the natural gas industry. During my forty (40) plus years of research, I have undertaken considerable research pertaining to the land characteristics of railroad rights of ways nationwide. Please allow me to share some of my findings stemming from that research.

In 1913, under the Interstate Commerce Commission - Valuation Order #7, all of the railroads in the United States were required to identify their railroad land holdings as "Dedicated to Public Use" or private use. If holdings were "Dedicated to Public Use", the holdings were allowed to be added to the railroads rate base for their fee structure. Importantly, the railroads were given the option to maintain the private status of their land. In reviewing the valuation records *prepared by the railroad industry* and maintained at national archives in College Park, Maryland, it appears all of the railroad corridors in the United States were declared "Dedicated to Public Use" by the railroad industry.

The railroad industry will argue that this only applies to this specific rate determination valuation order. However, if you review the information located at national archives on the Form #107 records, there are numerous locations where the railroad industry negotiated land acquisitions by offering the land to be dedicated to public use to acquire the requested property. If “Land Dedicated to Public Use” has negotiation power, how does it only apply to rate determination factors.

In 1970, the US Department of Transportation required the railroads to identify each Highway Railroad crossing in the US as Public or Private. If it was Public, the USDOT would install safety equipment at no charge to the railroad. The USDOT Crossing Inventory reflects this designation. In reviewing the USDOT Crossing Inventory records, it appears that over 95% of the highway railroad crossings in the United States are designated as public road crossing.

The following statement was listed in the letter provided to your office on November 5, 2025, by Mr. Davis of BNSF railway.

“In light of the above, the interpretation offered by NTA in its October 6, 2025, letter is incorrect. Indeed, the first canon of statutory interpretation is the “plain meaning rule” – the words in a statute are to be given their plain and ordinary meaning. If the text is clear, that meaning is given effect and there is no need to look at the legislative intent. *See* Nebraska Journalism Tr. v. Nebraska Dep’t of Env’t & Energy, 3 N.W.3d 361, 369 (Neb. 2024) (“It is not within the province of a court to read a meaning into a statute that is not warranted by the language; neither is it within the province of a court to read anything plain, direct, or unambiguous out of a statute”).”

Based on the comments in Mr. Davis’ letter of November 5, 2025, and his citation of the “plain meaning rule,” the meaning of “Land Dedicated to Public Use” and “Public Highway Railroad Crossing” must be taken at face value and be public use land. Therefore, all of the railroad corridors in the State of Nebraska may be public use right of way land under Valuation Order #7 of the Interstate Commerce Commission records and the USDOT Crossing Inventory records.

If you review Neb. Rev. Stat. §86-164(5), it providers that “This section applies to any telecommunications carrier certified by the commission pursuant to section 86-128. This section does not apply to any longitudinal encumbrance or any line, wire, or cable **within any public right-of-way** and does not change, modify, or supersede any rights or obligations created pursuant to sections 86-701 to 86-707.”

If Neb. Rev. Stat. §86-164 is read at face value, the utility and communications industry would not have to pay the \$1,250.00 standard crossing fee for any railroad crossing in the State of Nebraska that was located on land dedicated to public use and/or a public highway railroad crossing intersection. To date, the utility and communications industry have been gracious and have not challenged the railroad industry on this \$1,250.00 charge even though it may not be required under Nebraska law, an issue which may require Commission review and consideration as part of this proceeding.

The greatest area of concern to the communications industry is the issue of flagging expenses. Neb. Rev. Stat. §86-164 references the telecommunications carrier shall **reimburse** the railroad carrier for any **actual flagging expenses** associated with the placement of the line, wire, or cable. The language is clear: flagging fees must be reflective of the railroads' actual costs and not a source of revenue to the railroads. The communications industry is committed to safe installation practices. However, providers and their customers should not be forced to pad railroads' bottom line through increasingly outrageous fees that bear no relation to the railroad's actual costs.

We are unaware of any detail / itemized records being provided to the utility and communications industry of the calculations for the expenses being invoiced. A detailed breakdown of the expenses with no added markups and/or overhead expenses should be provided with every flagging invoice. Further, consideration should be given to capping these expenses at \$1,500.00 per crossing location to stop potential abuse by the railroad industry with excessive flagging fees. During the past ten (10) years, where state laws were enacted to limit and/or eliminate railroad license fees / application fees but allowed flagging expenses, we have seen the railroad immediately raise their flagging fees to unrealistic amounts. One railroad in Minnesota raised their rates to +/- \$5,000.00 per day with a 3-day minimum for flagging and inspection services.

As stated above, the utility and communications industry want to work safely and support the use of flagging and inspection services during the boring installations under the railroad bed. This is why most of the Horizontal Directional Drilling operations are completed at a depth of 16' below the base of the railroad tracks. This practice exceeds the railroad industry requirements nationwide.

The issue of the availability of flagging professionals is a major concern. If you access the RailPros / NSRR portal, they have a statement posted that protection services are being scheduled out 180 days. This is unacceptable for timely installation of utility and communications industry projects. This could and should be addressed under any revisions of this statute.

BNSF specifically has attempted to circumvent the state statutes to increase their revenue. I have attached a 1998 BNSF memo that clearly states to BNSF management that they have no rights to require any utility and communications industry providers to accept BNSF agreements, license requirements, to follow BNSF safety rules or procedures, and/or flagging requirements. A copy of an email from Jones Long LaSalle to BNSF in 2018 confirms that public road crossings are not under the control or authority of BNSF procedures. Both of these items are included with this filing.

Lastly, I would like to address the question about Railroad Protective Insurance. We contacted the Federal Railroad Administration ("FRA") in 2010 to determine what law required such insurance for utility and communications industry projects being installed across railroad corridors. We were told by the Federal Railroad Administration that this requirement only applies to contractors working directly for a railroad on a railroad project(s). Per the FRA, this requirement does not apply to the utility and communications industry projects because the FRA

laws do not apply to the utility and communications industry. Therefore, we would like to know by what authority does the railroad require the utility and communications industry to indemnify the railroad or purchase RPL insurance in order to cross a railroad corridor within a public road ROW and/or on land dedicated to public use?

The deployment of broadband services are vital to safety, emergency services, communication with mental and physical health facilities, and interstate commerce. If the railroad industry is allowed to charge fees that deter and delay the installation of broadband services, in essence, they are controlling and/or limiting the aforementioned services. This practice cannot be allowed.

We have attached supporting documents to these comments for your review and consideration. They include the following;

- Valuation Records under the 1913 Interstate Commerce Commission Act. (#1, #2)
- 1998 BNSF Memo addressing crossing fees and agreements. (#3)
- Email from JLL / BNSF stating that public road crossings do not fall under BNSF control. (#4)
- Email from JLL and Reply letter addressing attempts by BNSF and JLL to circumvent the MN Statutes. (#5, #6)
- Flagging expense and timelines (#7, #8)
- Nebraska Revised Statute 86 with Highlights (#9)
- Questions about the railroad industry addressing their fees and other items (#10, #11)

We pray that the NEBRASKA PUBLIC SERVICE COMMISSION will review this information and make a decision that is fair to all the parties involved but also protects the citizens of the Great State of Nebraska.

Sincerely,

David L. Thomas

David L. Thomas
Managing Member
Eagle 1 Resources, LLC
242 Bridgewater Blvd
Auburn, AL. 36830

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Mobile **334.546.8166**

E-mail dthomas@eagle1resources.com
Web www.eagle1resources.com

Attachment #1

D.V. Form No. 107
50,000 8-5-19
Owner Illinois Central Railroad Company
Operating Company Illinois Central Railroad Company
Division Indiana Div.-Indianapolis District
State Indiana County Marion
Valuation Section No. 1-Indiana-3
From Indianapolis to Swiss City

Reprinted by Secretary, Presidents' Conference Committee, Federal Valuation
INTERSTATE COMMERCE COMMISSION
DIVISION OF VALUATION

Sheet No. 1 of 184 sheets (this form)
Map No. 1
Date compiled September 4, 1919
Compiled by J.L. Shumate
Corrected by George T. Taylor, *Brundage*
Land & Tax Comr. - *Corporate Engineer*

LANDS OWNED OR USED FOR PURPOSES OF A
COMMON CARRIER

PARCEL NO.	CUSTO- DIAN'S NO.	KIND OF INSTRU- MENT	DATE OF INSTRU- MENT	GRANTOR	GRANTEE	RECORDED		AREA		CONSIDERATION	DATE OF DEDICA- TION TO PUBLIC USE	COST OF PARCEL WHEN ORIGI- NALLY ACQUIRED		IF PORTION OF PARCEL HAS BEEN SOLD	COST AT DATE OF DEDICA- TION TO PARCEL AS NOW OWNED	REMARKS		
						Book	Page	Date	Acres	Square Feet		(14)	Character of Expenditure	Date of Sale	Actual Consideration Received			
Part 1	65	W D	4-22-05	J.F.R. Haueisen and husband	Indianapolis Southern Ry Co.	45	13	6-23 1905	9.21		\$ 4250.00	4-22-05	4250.00	Consideration 18.00 Abstracting 5.00 Exam'g opinion 1.10 Recording			4274.10	Deed recites area as 18.49 acres more or less. Cost also covers Part Parcel 1, this Map, D V Form 108.
2	66	W D	10-20-04	A.F. Shover and wife	"	44	126	12-2 1904	27640		200.00	10-20-04	200.00	Consideration 12.00 Abstracting 5.00 Exam'g opinion 1.10 Recording			218.10	
3	67	W D	9-23-03	A.F. Shover and wife	"	42	401	12-21 1903	1.90		600.00	9-23-03	600.00	Consideration 5.00 Exam'g abstract			605.00	
4	69	W D	11-2-01	L. Vorhies	"	38	508	11-9 1901	1.39		1.00	11-2-01	1.00				RR to construct and maintain fence	
5	68	W D	10-20-04	L. Vorhies	"	44	127	12-2 1904	20180		145.00	10-20-04	145.00	Consideration 10.00 Abstracting 5.00 Exam'g opinion 1.10 Recording			161.10	
6	70	Q C D	5-29-05	Barzard Powder Company	"	47	428	6-8 1905	33813		60.00	5-29-05	60.00	Consideration 12.00 Abstracting 9.00 Publishing notice 5.00 Exam'g opinion 1.10 Recording			67.10	
7	72	W D	7-27-05	J.H. McCaslin and wife	"	45	192	9-12 1905	15000		553.00	7-27-05	553.00	Consideration 55.00 Abstracting 10.00 Exam'g opinion 1.10 Recording			619.10	Deed recites area for this Parcel and Parcel 1, Map 2, as 1.23 acres more or less. Cost also covers Parcel 1, Map 2.
									12.50	96633				5964.50			5964.50	

INSTRUCTIONS TO CARRIERS—All data to be typewritten, using black record ribbon and carbon paper beneath, with carbon face next to back of sheet.

D. V. Form No. 107
50,000 3-31-1919
Owner Illinois Central Railroad Company
Operating Company Illinois Central Railroad Company
Division Indiana Div.-Indianapolis District
State Indiana County Marion
Valuation Section No.-Indiana - 3
From Indianapolis to Switz City

Reprinted by Secretary, Presidents' Conference Committee, Federal Valuation
INTERSTATE COMMERCE COMMISSION
DIVISION OF VALUATION

Sheet No. 2 of 184 sheets (this form)
Map No. 1
Date compiled September 4, 1919
Compiled by J. L. Shumate
Corrected by J. O. Tamm
Land & Tax Commission of Indiana
Under-Chief Commissioner

LANDS OWNED OR USED FOR PURPOSES OF A
COMMON CARRIER

PARCEL NO.	CUSTO- DIAN'S NO.	KIND OF INSTRU- MENT	DATE OF INSTRU- MENT	GRANTOR	GRANTEE	RECORDED		AREA		CONSIDERATION	DATE OF DEDICA- TION TO PUBLIC USE	COST OF PARCEL WHEN ORI- GINALLY ACQUIRED		IF PORTION OF PARCEL HAS BEEN SOLD	COST AT DATE OF DEDICA- TION OF PARCEL AS NOW OWNED	REMARKS	
						Book	Page	Date	Acres	Square Feet		Amount	Character of Expenditure				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
8	73	W D	7-21-05	T.A. Fletcher and wife	IS Ry Co	47	429	12-22 1906		22500	\$ 2300.00	7-21-05	2300.00 200.00 Additional consideration 25.00 Release of mortgage 10.00 Legal services .50 Recording				
2	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906	1.20			7-21-05					
3	73	W D	8-11-03	L.Templeton and wife	"	42	422	12-21 1906	1.20			8-11-03					
114	73	W D	11-3-06	L.Templeton and wife	"	47	428	12-22 1906		33750		8-11-03					
										1.00		8-11-03					
9	71	W D	9-11-03	L.Templeton and wife	IS Ry Co	42	402	12-21 1906		22500	1.00	9-11-03					
143	73	W D	9-11-03	IS Ry Co L.Templeton and wife Marion County	IS Ry Co	422	177	12-21 1910	1.40		Other liquid	9-11-03					
10	114	W D	11-3-06	L.Templeton and wife	"	47	428	12-22 1906		15000	700.00	11-3-06	700.00 28.50 Abstracting 7.15 Court costs 5.00 Exam'g opinion				
7	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906		1500		7-21-05					
6	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906		1500		7-21-05					
8	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906		1500		7-21-05					
										3.00	60000						
													3276.15				
																	3276.15

INSTRUCTIONS TO CARRIERS.—All data to be typewritten, using black record ribbon and carbon paper beneath, with carbon face next to back of sheet.

D.V. Form No. 107
50,000 3-31-1919
Owner Illinois Central Railroad Company
Operating Company Illinois Central Railroad Company
Division Indiana Div.-Indianapolis District
State Indiana County Marion
Valuation Section No I-Indiana - 3
From Indianapolis to Switz City

Reprinted by Secretary, Presidents' Conference Committee, Federal Valuation
INTERSTATE COMMERCE COMMISSION
DIVISION OF VALUATION

LANDS OWNED OR USED FOR PURPOSES OF A
COMMON CARRIER

Sheet No. 3 of 104 sheets (this form)
Map No. 2
Date compiled September 4, 1919
Compiled by J. L. Shumate
Corrected by *Aug. 1919* *of Bureau of Land & Tax Commer. Office Corporate Engineers.*

PARCEL NO.	CUSTO- DIAN'S NO.	KIND OF INSTRUMENT	DATE OF INSTRUMENT	GRANTOR	GRANTEE	RECORDED		AREA		CONSIDERATION	DATE OF DEDICATION TO PUBLIC USE	COST OF PARCEL WHEN ORIGINALLY ACQUIRED		IF PORTION OF PARCEL HAS BEEN SOLD	COST AT DATE OF DISPOSITION OF PARCEL AS NOW OWNED	REMARKS									
						Book	Page	Date	Acres	Square Feet		(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	
1	72	W D	7-27-05	J.H. McCaslin and wife	IS Ry Co	45	192	9-12 1905		36760		7-27-05													Cost and remarks included in Parcel 7, Map 1.
2	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906	1.27	504 8 150.00		7-21-05	150.00	150.00	150.00										Cost and remarks included in Parcel 8, Map 1.
3	71	W D	9-11-03	L.Templeton and wife	"	42	402	12-21 1903	1.27	36760		9-11-03													Remarks included in Parcel 9, Map 1.
4	114	W D	11-3-06	L.Templeton and wife	"	47	428	12-22 1906		3000		11-3-06													Cost and remarks included in Parcel 10, Map 1.
5	74	W D	9-22-02	J.S. Urne and wife	"	42	400	12-21 1903		100.00		9-22-02	150.00	150.00	150.00										Across S ¹ Bessemer Street. No deed or ordinance. Land sold in possession.
6	143	Vacation	3-8-10	Board of Commissioners, Marion County	IS Ry Co	463	177	7-2 1910	1.40	718	Other land	3-8-10	20.00	20.00	20.00										As consideration for vaca- tion of Franklin Avenue RR dedicated to public 2553 sq.ft. which RR ac- quired by deed 75, shown for Parcel 8, Map 1 and 8511 sq.ft. which RR ac- quired by deed 123, shown for Parcel 11, this Map.
7	73	W D	11-3-06	L.Templeton and wife	"	47	429	12-22 1906		1518		11-3-06													Cost and remarks included in Parcel 8, Map 1.
8	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906		1529		7-21-05	125.00	125.00	125.00										Cost and remarks included in Parcel 8, Map 1.
9	73	W D	7-21-05	T.A. Fletcher and wife	"	47	429	12-22 1906		1330		7-21-05	125.00	125.00	125.00										Cost and remarks included in Parcel 8, Map 1.
									3.94	80897															
									3.94	718															

INSTRUCTIONS TO CARRIERS.—All data to be typewritten, using black record ribbon and carbon paper beneath, with carbon face next to back of sheet.

Attachment #2

VALUATION ORDER No. 7.

INTERSTATE COMMERCE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of November, A. D. 1914.

It is ordered, That every common carrier owning or operating a steam railroad and whose property is to be valued by the Commission under the valuation act of March 1, 1913, shall prepare and file in the office of the Commission at Washington, D. C., within 30 days after the date fixed by the Commission as that as of which the carrier's property shall be valued, on forms each of which shall be like the form hereto attached, No. 107, a typewritten schedule in duplicate, showing as to each instrument through which such carrier has derived title to or interest in any parcel of land owned or used by it for the purposes of a common carrier, character, custodian's number and date of execution of the instrument, grantor and grantee named therein, date of record and book and page of book wherein recorded, and the consideration recited in the instrument. Such schedule shall also show as to each parcel of land owned or used by the carrier for its purposes as a common carrier, the number assigned thereto on the right of way and station maps required by the Map Order, so called, made and entered by the Commission under date of January 12, 1914, the area of the parcel at the time it was originally acquired, at the time it was dedicated to public use, the cost of the parcel to the carrier when originally acquired, and a statement in detail of the amount and character of each expenditure which entered into such cost, and the cost at the time of its dedication to public use of so much of each parcel as is owned or used for common-carrier purposes at the present time, showing separately the cost of condemnation and damages, or of purchase ascertained as of the time of such dedication. If a portion of the parcel has been sold either before or after the parcel was first dedicated to common-carrier purposes as aforesaid, the carrier now owning or using the unsold portion of such parcel for common-carrier purposes shall show in said schedule the date of such sale, and the amount of money or other consideration received for the portion so sold by the carrier who made the sale.

It is further ordered, That every common carrier owning or operating a steam railroad, and whose property is to be valued by the Commission under said valuation act of March 1, 1913, shall prepare and file in the office of the Commission at Washington, D. C., on or before the date fixed by the Commission as that as of which the carrier's property shall be valued, on forms each of which shall be like the form hereto attached, No. 108, another typewritten schedule, in duplicate, showing as to each instrument through which such carrier has derived title to or interest in any parcel of land held by it for purposes other than those of a common carrier, the same information and data required by the Commission in the next preceding paragraph of this order in connection with each instrument through which such carrier has derived title to or interest in any parcel of land owned or used by it for common-carrier purposes. Such schedule shall also show, as to each parcel of land held by the carrier for purposes other than those of a common carrier, the number assigned thereto on the right of way and station maps required by the Map Order, so called, made and entered by the Commission under date of January 12, 1914, the area of the parcel at the time it was originally acquired and at the present time, the cost of the parcel, including the improvements thereon, when originally acquired, together with a statement in detail of the amount and character of each expenditure which entered into such cost, the date and cost of any improvements placed by the carrier on the parcel subsequent to its acquisition, and the cost of the portion of each parcel and the improvements thereon which is now held by such carrier for purposes other than those of a common carrier. If a portion of a parcel or the improvements thereon has been sold since originally acquired, or if a portion of any improvements placed on a parcel subsequent to its acquisition has been sold, the carrier now holding the unsold portion of such parcel shall show in said schedule the date of such sale, and the amount of money or other consideration received for the portion so sold, by the carrier who made the sale.

Provided, however, That this order shall not be construed so as to include the land grants covered by the second provision of the paragraph marked "Fifth" of said valuation act of March 1, 1913, so far as such grants may have been made by the Government of the United States or by a State government.

By the Commission.

[SEAL.]

GEORGE B. McGINTY,
Secretary.

5. 7.

or owning or operating to be valued by the March 1, 1913, shall prepare Washington, D. C., on or as that as of which the as each of which shall be her typewritten schedule, sent through which such any parcel of land held by on carrier, the same information in the next preceding each instrument through interest in any parcel of carrier for purposes. Such schedule held by the carrier for carrier, the number assigned maps required by the Map Commission under date 1 at the time it was originally cost of the parcel, including acquired, together at and character of each the date and cost of any the parcel subsequent to its of each parcel and the interest such carrier for purposes on of a parcel or the originally acquired, or if a parcel subsequent to its holding the unsold portion the date of such sale, and on received for the portion

not be construed so as to bind provision of the act of March 1, 1913, so by the Government of the

ORGE B. McGINTY,
Secretary.

INSTRUCTIONS FOR D. V. FORM NO. 107.

The first column shall contain the number which has been assigned to each parcel of land on the right of way and station maps required under the Map Order, so called, promulgated by the Commission on January 12, 1914.

The second column shall contain the number of the file in which each instrument conveying title to or interest in each parcel of land is kept by the custodian of the railroad company.

The third column shall contain the legal character of the instrument through which title to or interest in each parcel of land has been derived, such as deed, quitclaim deed, condemnation, ordinance, lease, agreement, grant, donation, etc.

The fourth column shall contain the date of the execution of the instrument.

The fifth column shall contain the name of the grantor in deeds, the defendant in condemnation suits, the name of the town, city, or village in ordinances, the first party in leases and agreements, and the donor in grants and donations.

The sixth column shall contain the name of the individual or corporation to whom the conveyance, lease, etc., was made.

The seventh column shall contain the book of the public record in which the instrument is recorded.

The eighth column shall contain the page of the book of the public record in which the instrument is recorded.

The ninth column shall contain the date of the recording of the instrument. Where the instrument is not recorded in the county records of the county designated on the upper left-hand corner of the form, the place of record shall be shown immediately below the entries in the seventh, eighth, and ninth columns.

The tenth column shall contain the area of each parcel of land as now owned or used for common-carrier purposes where said area is 1 acre or more. If part of a parcel has been sold before its dedication to public use, the area of the original parcel shall be shown in the nineteenth column: if such a sale has been made after the dedication of the parcel, the area of the parcel at the time of dedication shall also be shown in the nineteenth column.

The eleventh column shall contain the area of each parcel of land as now owned or used for common-carrier purposes where said area is less than 1 acre. If part of a parcel has been sold before its dedication to public use, the area of the original parcel shall be shown in

the nineteenth column; if such a sale has been made after the dedication of the parcel, the area of the parcel at the time of dedication shall also be shown in the nineteenth column.

The twelfth column shall contain the consideration shown in each instrument, the awards by courts in condemnations, and any special provisions, conditions, or covenants affecting the consideration.

 The thirteenth column shall contain the date when each parcel of land now owned or used for common-carrier purposes was dedicated to public use.

The fourteenth column shall contain the amount paid by the carrier for the acquisition of each parcel when originally acquired and the incidental expenses in connection therewith, showing separately the amount paid for the land, cost of condemnation and damages, or of purchase, cost of improvements placed on abutting property, and any other expenditures incurred as part of the consideration for the conveyance, lease, etc. Notarial, appraisal recording fees, and other analogous items may be shown in one aggregate sum.

The fifteenth column shall contain a brief description of the character of each entry made in the fourteenth column. The entry covering notarial, appraisal, recording fees, and other analogous items may be characterized as miscellaneous expenditures.

The sixteenth column shall contain the date of sale of any portion of the original parcel which has been sold either before or after the dedication of said parcel to public use.

The seventeenth column shall contain the actual consideration received by the carrier for any portion of the original parcel which has been sold either before or after the dedication of said parcel to public use.

The eighteenth column shall contain the cost of the remainder of the original parcel now owned or used for common-carrier purposes ascertained as of the time of dedication to public use, showing in two separate items the cost of condemnation and damages, or of purchase, and the other elements of cost in one aggregate sum, so that the sum of the two items shall represent the total cost.

The nineteenth column shall contain any miscellaneous information relevant to the data required to be placed in the other columns.

INSTRUCTIONS FOR D. V. FORM NO. 108.

Follow instructions for columns 1 to 9, inclusive, of D. V. Form No. 107.

The tenth column shall contain the area of each parcel of land as now held for purposes other than those of a common carrier where said area is 1 acre or more. If part of a parcel has been sold since its original acquisition, the area of the original parcel shall be shown in the nineteenth column.

The eleventh column shall contain the area of each parcel of land as now held for purposes other than those of a common carrier where said area is less than 1 acre. If part of a parcel has been sold since its original acquisition, the area of the original parcel shall be shown in the nineteenth column.

The twelfth column shall contain the amount paid by the carrier for the acquisition of each parcel of land, including the improvements thereon, when originally acquired, the incidental expenses of acquisition, and any other expenditures incurred as part of the consideration for the conveyance, lease, etc. Notarial, appraisal, recording fees, and other analogous items may be shown in one aggregate sum.

The thirteenth column shall contain a brief description of the character of each entry made in the twelfth column. The entry covering notarial, appraisal, recording fees, and other analogous items may be characterized as miscellaneous expenditures.

The fourteenth column shall contain the date of the construction of any improvements by the carrier on each parcel of land subsequent to its acquisition.

The fifteenth column shall contain the cost of improvements placed by the carrier on each parcel of land subsequent to its acquisition.

The sixteenth column shall contain the date of sale of any portion of a parcel of land or the improvements thereon which has been sold since originally acquired. If a portion of any improvements placed on a parcel subsequent to its acquisition has been sold, the date of such sale shall also be shown in this column.

The seventeenth column shall contain the actual consideration received by the carrier for any portion of the original parcel or the improvements thereon which has been sold. If a portion of any improvements placed on a parcel subsequent to its acquisition has been sold, the actual consideration received therefor shall also be shown in this column.

D: V. Form No. 107.

Owner

Operating Company

vision

County

Classification Section No.

From to

**LANDS OWNED OR USED
COMMON C**

-17"

sheets (this form).

- 19 -

IMERCE COMMISSION OF VALUATION

**E FOR PURPOSES OF A
N CARRIER**

Sheet No.

Map No.

Date compiled

Compiled by

Correct . . .

(Title.)

D. V. Form No. 108.

Owner ..

Operating Company

·sion

County

valuation Section No.

From . .

**INTERSTATE COMMERCIAL
DIVISION OF VA**

LANDS, INCLUDING IMPROVE FOR PURPOSES OTHER A COMMON C

COMMERCE COMMISSION
OF VALUATIONMENTS THEREON, HELD
H... THAN THOSE OF
ON CARRIER

Sheet No. of sheets (this form).
 Map No.
 Date compiled
 Compiled by
 Correct
 (Title.)

INIAL COST OF PROPERTY WHEN ACQUIRED.	DATE AND COST OF SUB- SEQUENT IMPROVEMENTS.		AMOUNT REALIZED FROM SALE OF PORTION OF PROPERTY.		ORIGINAL COST OF PORTION OF PROPERTY NOW HELD	REMARKS.
	Character of Expenditure.	Date.	Amount.	Date of Sale.	Amount Received.	
(13)	(14)	(15)	(16)	(17)	(18)	(19)
1 ⁵ ''	1 ⁸ ''	1 ¹² ''	1 ⁹ ''	1 ⁰ ''	1 ⁸ ''	1 ³ ''

Attachment #3

Re: Rights of Public Utilities in Street Crossings of BNSF's Rail Corridor

Schaumburg - November 25, 1993

VIA TELECOPY

Mr. M. W. Franke
Mr. R. J. Boileau
Mr. R. L. Engle
Mr. W. E. Van Hook
Mr. M. J. Nelson:

Recently, BNSF field personnel have removed from our rail corridor employees of public utilities who were working within city streets or public roads. This generally is beyond BNSF's rights in such circumstances, and has led to threats of lawsuits against BNSF and strained relations with various utilities and communities along BNSF's rail corridors.

Accordingly, this memorandum is to advise you of the extent of BNSF's rights where utilities are undertaking activities within the boundaries of public road crossings of BNSF's rail corridor. In these circumstances, utilities generally do not need license or permits from BNSF, do not need to follow BNSF safety rules or procedures, and do not need to follow BNSF's flagging requirements or wear any safety protective equipment. There are two exceptions: (1) where BNSF or Catellus has persuaded a utility company to sign a BNSF license agreement (which a utility has no obligation to sign, but sometimes does sign), BNSF can enforce the terms of the license agreement; and (2) case law indicates that where the utilities' activities endanger BNSF employees or rail passengers, or interfere with train movements, BNSF can take steps to restrict and control the utilities' activities (note that a court would judge whether the utilities' activities cause danger or interference with train operations, and the court might not agree with BNSF's employees in the field).

An additional factor in some states are section line roads. These are existing roads, by state law, whether a physical road has yet been constructed in the section line road boundaries. Utilities crossing BNSF's rail corridor on these roads have the same rights as utilities crossing in other roads. BNSF cannot require licenses or any safety procedures in these circumstances.

BNSF's rights are not limited at private road crossings of its rail corridors. In these cases, BNSF generally can insist that utilities sign license agreements and comply with all BNSF safety rules and procedures. Where utility construction and maintenance activities are proceeding in a roadway that might be a private road instead of a public roadway, this should be checked promptly. Catellus is available to assist BNSF field personnel as required.

Catellus, as BNSF's property manager, will continue to try to convince utilities to sign licenses from BNSF covering their activities on BNSF's rail corridor, whether or not they are also in public road crossings. Unfortunately, utilities are becoming more sophisticated and are refusing to sign these licenses more often than in the past. As a fallback, Catellus should attempt to persuade utilities to sign right of entry agreements to enter BNSF's rail corridor. These no fee permits provide notice of occupancy to BNSF, contractual liability protection and liability insurance. In fact, a court might agree that BNSF could require these agreements where the utilities activities cause danger to railroad employees or passengers, or interference with train operations.

Before BNSF takes action against contractors or employees of public utilities working on BNSF's rail corridor, it is important to check whether those activities are within a public road, and if so, whether the utility has signed a license or permit agreement with BNSF.

Dennis W. Wilson
Dennis W. Wilson
Property and Transactions Counsel

DWW:kk1

cc: Mr. J. J. O'Neil (via telexcopy)
Mr. E. R. Spangler (via telexcopy)
Mr. W. D. Werner (via telexcopy)
Ms. M. N. Doran (via telexcopy)
Mr. Jimmy Ball, Catellus (via telexcopy)

~~Rec'd npsc 01/21/2026~~

Attachment #4

From: David L. Thomas
Sent: Tuesday, March 6, 2018 9:45 AM
To:
Subject: Email from JLL / BNSF

Good Morning,

Hope you are doing well.

A recent email from the Associate Manager-Permits for Jones Lang Lasalle, the property manager for BNSF railroad, was very enlightening. The issue pertained to a public road crossing bore under a BNSF corridor. She conceded that "if it is under a public road row, all we can do is try to get them on a no fee permit or last resort, an indemnity letter." The railroad industry is finally learning what E1R has been trying to explain for years. The email E1R received on March 2, 2018 is shown below;

Carl,

There was a permit sent to the applicant last June/July for a crossing at this location, however, they never sent back anything. I never received a response from my emails or the 60-day letter that was sent in September. So this was filed under inactive and the next time I heard anything about it was an email from Client Name Deleted stating that I did not follow-up with David Thomas from Eagle One. I responded to his email saying that I had not heard anything from him but would be happy to reopen the permit, but I still have not heard anything back. So, in short, they do not have BNSF permission to bore, but if it is under a public road row, all we can do is try to get them on a no fee permit or last resort, an indemnity letter.

Thank you,

Katrina Salazar

Katrina Salazar
Associate Manager-Permits
JLL
4200 Buckingham Road
Suite 110
Fort Worth, TX 76155
817-230-2631
katrina.salazar@am.jll.com<<mailto:katrina.salazar@am.jll.com>>

E1R did respond to their requests. They ignored us. If a railroad representative or land management company ever tries to tell you that E1R did not respond to a railroad request, you should know that we document every communication in or out of the company so that the railroad cannot make this claim. We can provide verification of all contacts with railroads.

Please let me know if you have any questions.

Thanks,

Dave

David L. Thomas
Managing Member
Eagle 1 Resources, LLC
1181 Falls Crest Place
Auburn, AL. 36830

Office 334.209.0508
Mobile 334.546.8166

E-mail dthomas@eagle1resources.com
Web www.eagle1resources.com

The people who make a difference in our lives are not the ones with the most credentials, the most money, or the most awards. They are the ones that care.

Attachment #5

From: Villegas, Patricia <Patricia.Villegas@jll.com>
Sent: Tuesday, October 24, 2023 6:38 PM
To: rwoods@logis.org; David L. Thomas <dthomas@eagle1resources.com>
Cc: Jordan, Sean <Sean.Jordan@jll.com>
Subject: LOGIS - Proposed installation - Robbinsdale, MN 242225

Mr. Thomas and Ms. Woods,

BNSF is in receipt of LOGIS's application for fiber optic crossings in Robbinsdale, Minnesota. I am writing to inform you that LOGIS's application is incomplete for the following reasons: (1) the application did not enclose the certificate of insurance required by Minnesota Statutes Section 237.045, and (2) the application is for the installation of two separate conduits, which constitute two crossings under the statute, and therefore LOGIS is required to pay two statutory crossing fees totaling \$2,500.00 for its application to be complete under the statute. Please note that, pursuant to the Statute, BNSF also requires proof of Railroad Protective Liability Insurance with the statutorily-required limits.

BNSF understands that LOGIS believes its crossings may be located within a public right-of-way, but LOGIS has not provided any documentation that demonstrates that BNSF granted an easement for a public right-of-way at the location of the crossings. BNSF will review information related to LOGIS's public right-of-way claim to determine whether the crossings are located within a public right-of-way. If you have any documentation that you believe would assist with BNSF's review, please provide it at your earliest convenience.

Please provide the required proof of insurance and statutory crossing fees to complete LOGIS's application. Let me know if you have any questions.

Thanks,

BNSF Rail Permitting website: <https://bnsf.railpermitting.com>
Website assistance phone number: 1-785-228-3235

Patricia Villegas
Vice President, Permits
JLL
2650 Lou Menk Drive – MOB2
Fort Worth, TX 76131
817-352-1008
patricia.villegas@jll.com



**November 6, 2023****Emailed on 11/07/2023****Patricia.Villegas@jll.com**

Patricia Villegas
Vice President, Permits
JLL
2650 Lou Menk Drive – MOB2
Fort Worth, TX 76131

Subject: **Proposed installation of a fiber optics cable across the Burlington Northern Santa Fe (BNSF) railroad corridor within the public roadway limits of 38th Avenue North in Robbinsdale, Hennepin County, Minnesota.**

**USDOT Crossing # 095622P - 38th Avenue North
Robbinsdale, Hennepin County, Minnesota
Milepost 04.55, Lndale J-Montic Line
Twin Cities Division / Monticello Subdivision**

LAT: **45.024100**
LONG: **-93.335398**

Good Afternoon Patricia;

I hope this letter finds you doing well.

Thank you for your assistance in reviewing LOGIS (Local Government Information Systems, a consortium of Minnesota local governmental units) planned installation at this location. As always, our customer stands ready to work with the railroad in a very cooperative, problem-solving manner that will promote SAFETY and TIMELY project installations.

A copy of our customers insurance is attached.

We have secured a copy of the Valuation Order #7 records, and it appears the land associated with this crossing was listed on Form #107 in April 1916. This form lists all the land that was dedicated to public use as required under Valuation Order #7. If you claim this is not public use land at the proposed crossing location, we will need to review a copy of your Interstate

Commerce Commission Valuation Order # 7 / Form #108 identifying this parcel of land as private. Please provide us with a copy.

Secondly, do you have a copy of the Minnesota Court decision that confirms “Land Dedicated to Public Use” does not mean the Land is Dedicated to Public Use?

In your email you make the following statement;

“The application is for the installation of two separate conduits, which constitute two crossings under the statute, and therefore LOGIS is required to pay two statutory crossing fees totaling \$2,500.00 for its application to be complete under the statute.”

Please note that our customer is placing a single 4" HDPE SDR 11 casing pipe across the BNSF corridor as required by BNSF. You would be correct that two statutory crossing fees would be applicable if a single casing pipe was not being installed. As stated under section 6(e), "No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the conduit." We have discussed this with the Minnesota PUC and they are in agreement with this determination that a single bore constitutes a single crossing. You are more than welcome to file a complaint with the Minnesota PUC if you disagree.

If you need to discuss this matter further, please contact me at the telephone numbers listed below. I will be happy to address any questions/ concerns you may have with this planned public ROW installation.

Sincerely,

David L. Thomas

**David L. Thomas
Managing Member
Eagle 1 Resources, LLC
1815 Keystone Drive
Auburn, AL. 36830**

Office 334.209.0508
Mobile 334.546.8166

E-mail dthomas@eagle1resources.com
Web www.eagle1resources.com

cc: **Ms. Roni Woods**
LOGIS | Fiber Project Manager
5750 Duluth Street
Golden Valley, MN 55422

Telephone: Direct: (763) 543-2673 Cell: 612-730-3298
E-mail: rwoods@logis.org

Attachment #7



Application Fee Update:

Dear Customers:

This message is to inform you that effective February 01, 2025, Norfolk Southern will be increasing certain application fees. These rates have been unchanged since 2020, while the price of goods and services have increased every year. These moderate increases will help us to mobilize the resources that are necessary to continue providing the highest quality of service going forward.

We appreciate your understanding, and we look forward to working with you this year.

Aerial Wireline Application - \$2,000.00
Underground Wireline Application - \$2,250.00
Pipeline Occupancy Application - \$2,500.00
Non-Environmental Right of Entry - \$1,600

Thank you,
Norfolk Southern

Protection Services Update:

Our team is working diligently to secure the requested resources for your project. Due to a large influx of new requests and projects in the queue, we are not able to confirm an exact start date for your project. We apologize for this inconvenience.

At this time, we are averaging 180 days from completion of all requirements of the Protection Services process. As we have cancellations, schedule changes or additional personnel become available, we will contact you immediately to offer schedule updates. Ensuring accuracy of the required number of days and working hours will greatly assist RailPros in providing a final confirmation date and potentially expedite the project start date.

We appreciate your patience and we will continue to provide updates as they come. Please let us know if you have any additional questions.

Thank you,
RailPros



**Wilson & Company, Inc.,
Engineers & Architects
PO Box 74954
Chicago, IL 60675-4954**

PREPAYMENT INVOICE

To: Mid Century Telephone Cooperative
285 Mid Century Lane
Fairview, IL 61432

Invoice No: 2482406770 - 1
Invoice Date: March 20, 2024

Permit Tracking No.:	24-06770
Division:	Chicago
Subdiv.:	Yates City
Station:	Ipava
MP:	87.34
L.S.:	0111
State:	IL

Project: Utility Inspection & Roadway Worker In Charge Services

Project 2482406770 BNSF CH UIC 24-06770 MidCentury Tel Coop
Permit Description: 4" Conduit w/ 3-1.25" Innerducts, 1 for Fiber Optic, 2 Vacant @ 16' Under Rail

Inspection	# Units	Unit Price		Total Amount
Inspection	2	\$1,400.00	per 10 hour day	\$2,800.00
Inspector Mobilization	1	\$400.00	each	\$400.00
Inspection Overtime	4	\$155.00	per hour over 10	\$620.00
Total Inspection:				\$3,820.00

Roadway Worker in Charge (RWIC)	# Units	Unit Price		Total Amount
RWIC	2	\$1,400.00	per 10 hour day	\$2,800.00
RWIC Overtime	4	\$155.00	per hour over 10	\$620.00
Total (RWIC):				\$3,420.00

Invoice Amount: **\$7,240.00**

PAYMENT DUE UPON RECEIPT

*Confirmed pre-payment is required before services will be scheduled. Note that a minimum lead time of 15 days from confirmation of payment is required to schedule all utility installations.

*Also note that a positive balance of pre-paid inspection and/or roadway worker in charge services are required throughout the entire duration of the project to maintain continuation of services. If all prepaid days have been used, construction will be stopped and cancellation charges will be assessed accordingly. It is your responsibility to ensure that a sufficient number of days to complete construction have been fully funded.

*All cancellations must be submitted to WilsonCompany.Utility.IC@wilsonco.com with "Cancellation Request" and your permit number in the subject line. Your cancellation must be verified by the Scheduling Agent and confirmed by all parties before it is valid.

*The prepayment invoice is based on the estimated duration of project as discussed. Unused funds will be refunded to Licensee by the Scheduling Agent.

• For Electronic Payments, see attached instructions.

• Credit Card Payments will include an additional 3.29% Non-Cash Adjustment

- 1. Standard of Care.** The standard of care for all services performed or furnished by Wilson & Company (Scheduling Agent) under this Agreement will be the skill and care used by members of the profession practicing under similar circumstances at the same time and in the same locality. Scheduling Agent makes no warranties, express or implied, under this Agreement or otherwise, in connection with Scheduling Agent's services. The Scheduling Agent is not responsible for any work performed by the Licensee or its Representatives.
- 2. Mutual Indemnification.** To the fullest extent permitted by law, Scheduling Agent, Licensee (or Licensee's representative) each agree to indemnify the other party and the other party's officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subcontractors in the performance of services under this Agreement, as adjudicated in a court of competent jurisdiction, or an arbitration order. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of Scheduling Agent and Licensee, or Licensee's representative, they shall be borne by each party in proportion to its negligence.
- 3. Force Majeure.** Scheduling Agent shall not be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control.
- 4. Cancellation:** Prior to the start of the project, the Licensee or Licensee's representative, shall notify Scheduling Agent of cancellation at least 48 hours in advance of project start to avoid minimum charges outlined in the attached invoice. Subsequent to project start, the Scheduling Agent shall be notified at least 24 hours in advance in the event of cancellation, rescheduling, or completion of services, to avoid minimum charges outlined in the attached invoice.
 - ❖ All cancellations must be submitted to WilsonCompany.Utility.IC@wilsonco.com with "Cancellation Request" and your permit number in the subject line. Your cancellation must be verified by the Scheduling Agent and confirmed by all parties before it is valid.
- 5. Payment.** Licensee agrees to pay the Scheduling Agent in advance for the services stated in the attached invoice. Prepayment is required to avoid construction delays or cancellation charges. A positive balance shall be maintained, or work activities on BNSF right-of-way may be stopped at the Scheduling Agent's sole discretion. Unused funds will be refunded by the Scheduling Agent after the project is completed and reconciled, provided the Licensee has no outstanding balances with the Scheduling Agent.
- 6. Multiple Permits.** Services provided on multiple permits on a single day, will be assessed and charged individually per day, plus applicable mobilization fees per permit.
- 7. Service Duration.** For all projects not fully completed within the prepaid balance or projected to exceed the prepaid balance, the Licensee agrees to pay additional invoicing. The duration of required services includes all phases of the project, including final installation of utilities through carrier pipes.
- 8. Forfeiture.** Inspection and RWIC services are required under the terms of the licensee's agreement to utilize BNSF right-of-way. Failure to schedule Inspection and RWIC services with the Scheduling Agent shall result in the forfeiture of all funds paid for these services. Refund checks not cashed within 90 days will be voided and the funds forfeited to the Scheduling Agent.
- 9. Acceptance.** Payment by Licensee, or its representative, acknowledges and constitutes agreement to the services and these terms and conditions, without modification, by Licensee and its representative.



Electronic Payment Information:

Routing/ABA: 101100621

Sunflower Bank
2070 S. Ohio Street
Salina, KS 67401

For Account # 0109146348

Wilson & Company Inc., Engineers & Architects
4401 Masthead Street NE
Suite 150
Albuquerque, NM 87109

Mailing Instructions for Checks:

► **Remittances sent via first class mail:**

Wilson & Company Inc, Engineers & Architects Utility Inspection
PO Box 74954
Chicago IL 60675-4954

► **Remittance packages via overnight delivery (i.e. Federal Express, UPS, USPS, etc.):**
Please note: Bank will not accept first class mail deliveries to this address

Wilson & Company Inc, Engineers & Architects Utility Inspection
Dept # 74954
5450 N Cumberland Ave
Chicago, IL 60656

Note to Licensee:

Wilson & Company does not complete vendor forms for Utility Inspector Coordinator services as we are acting in our capacity as the authorized agent of BNSF for inspection coordination of permitted utility crossings. Information needed to process payments is only provided in the format given on this form. Utility Inspector and RWIC services have already been agreed to under section 7.2 of the Licensee's agreement with BNSF to utilize their private ROW, and per the agreement the permitted project cannot utilize BNSF ROW without them.

**Request for Taxpayer
Identification Number and Certification**► Go to www.irs.gov/FormW9 for instructions and the latest information.**Give Form to the
requester. Do not
send to the IRS.****Print or type.**
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Wilson & Company, Inc., Engineers & Architects	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input checked="" type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ►	
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____	
5 Address (number, street, and apt. or suite no.) See instructions. 4401 Masthead Street NE, Suite 150	
6 City, state, and ZIP code Albuquerque, NM 87109	
7 List account number(s) here (optional)	

Remit to: PO Box 74954, Chicago, IL 60675-4954

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
<input type="text"/>	<input type="text"/>	-	<input type="text"/>	<input type="text"/>	-	<input type="text"/>	<input type="text"/>	<input type="text"/>

or

Employer identification number									
4	8	-	1	1	7	6	3	0	0

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign
Here**Signature of
U.S. person ►

Date ► 03/21/2023

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding, later.**

Attachment #9

Nebraska Revised Statute 86-164

[Revised Statutes](#) » [Chapter 86](#) » 86-164

[Print Friendly](#)

86-164. Telecommunications carrier; placement of line, wire, or cable across railroad right-of-way; application; petition; hearing; order; standard crossing fee; expenses; agreement.

(1) Any telecommunications carrier that intends to place a line, wire, or cable across a railroad right-of-way shall request permission for such placement from the railroad carrier. The request shall be in the form of a completed crossing application, including engineering specifications. Upon receipt of such application, the railroad carrier and the telecommunications carrier may enter into a binding wire-crossing agreement. If the railroad carrier and the telecommunications carrier are unable to negotiate a binding wire-crossing agreement within sixty days after receipt of the crossing application by the railroad carrier, either party may submit a petition to the commission for a hearing on the disputed terms and conditions of the purported wire-crossing agreement.

(2)(a) Unless otherwise agreed to by all parties, the commission shall, after providing proper notice, hold and complete such hearing within sixty days after receipt of the petition. The commission shall issue an order of its decision within thirty days after the hearing. In rendering its decision, the commission shall consider whether the terms and conditions at issue are unreasonable or against the public interest, taking into account safety, engineering, and access requirements of the railroad carrier as such requirements are prescribed by the Federal Railroad Administration and established rail industry standards.

(b) Upon issuance of an order by the commission under subdivision (a) of this subsection, the railroad carrier and the telecommunications carrier shall have fifteen days after the date of issuance to file a conforming wire-crossing agreement with the commission. The commission shall have fifteen days after the date of such filing to approve or reject the agreement. If the commission does not issue an approval or rejection of such agreement within the fifteen-day requirement, the agreement shall be deemed approved. The commission may reject a wire-crossing agreement if it finds that the agreement does not conform to the order issued by the commission. If the commission enters such a finding, the parties shall revise the agreement to comply with the commission's order and shall refile the agreement to the commission for further review. If the commission does not approve or reject the revised agreement within fifteen days after the date of refiling, the agreement shall be deemed approved.

(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.

(4) If a railroad carrier or telecommunications carrier believes a special circumstance exists for the placement of a line, wire, or cable across a railroad right-of-way, the railroad carrier or telecommunications carrier may petition the commission for additional requirements or for modification of the standard crossing fee in its initial petition to the commission pursuant to subsection (1) of this section. If the petition is filed with the request for additional requirements or modification, the commission shall determine if a special circumstance exists that necessitates additional requirements for such placement or a modification of the standard crossing fee.

(5) This section applies to any telecommunications carrier certified by the commission pursuant to section [86-128](#). This section does not apply to any longitudinal encumbrance or any line, wire, or cable within any public right-of-way and does not change, modify, or supersede any rights or obligations created pursuant to sections [86-701](#) to [86-707](#).

(6)(a) A wire-crossing agreement between a railroad carrier and a telecommunications carrier that includes a provision, clause, covenant, or agreement contained in, collateral to, or affecting such wire-crossing agreement that purports to indemnify, defend, or hold harmless the railroad carrier from any liability for loss or damage resulting from the negligence or willful and wanton misconduct of the carrier or its agents, employees, or independent contractors who are directly responsible to such carrier or has the effect of indemnifying, defending, or holding harmless such carrier from the negligence or willful and wanton misconduct of the carrier or its agents, employees, or independent contractors who are directly responsible to the carrier is against the public policy of this state and is unenforceable.

(b) Nothing in this section shall affect a provision, clause, covenant, or agreement in which the telecommunications carrier indemnifies, defends, or holds harmless a railroad carrier against liability for loss or damage to the extent that the loss or damage results from the negligence or willful and wanton misconduct of the telecommunications carrier or its agents, employees, or independent contractors who are directly responsible to the telecommunications carrier.

(7) For purposes of this section:

(a) Railroad carrier has the same meaning as in section [75-402](#); and

(b) Telecommunications carrier means a telecommunications common carrier as defined in section [86-118](#) or a telecommunications contract carrier as defined in section [86-120](#).

Source

Laws 2010, LB181, § 2;
Laws 2011, LB47, § 1.

Attachment #10

3 Simple Questions;

1. Please reveal the State law that requires a utility to gain permission and enter into an agreement with the railroad for the use of the public right of way within a public highway railroad crossing intersection.
2. Do you have any documentation removing this crossing from the Federal Railroad Administration database as a public crossing?
3. Do you have a copy of the State Court decision that confirms "**Land Dedicated to Public Use**" does not mean the Land is Dedicated to Public Use? If you claim this is not public use land at the proposed crossing location, we will need to review a copy of your Interstate Commerce Commission Valuation Order # 7 / Form #108 identifying this parcel of land as private. Please provide us a copy.

In addition, our attorneys have provided the following advice concerning potential violations of federal law concerning the impedance of crossings that I would like to bring to your attention:

"[E]ven without regard to state law, federal law may provide authority to reject railroad demands for agreements, permits, and fees from telecommunications providers. 47 U.S.C. § 253(a) states that 'No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'

"The Federal Communications Commission (the "FCC") interpreted this federal statutory provision as prohibiting state or local legal requirements which materially inhibit the introduction of new services or the improvement of existing services, including by the charging of any fees which exceed the actual costs of the governmental body incurred in reviewing the proposed installation. State law which gives a railroad the right to impose permit or agreement requirements, or fees in excess of its actual costs of review, might be preempted and made unenforceable by §253(a). Any state requirement that a permit from the railroad must be first obtained before any state permit is granted might also be defective based on the specific permit demands imposed by the railroad."

"It should be specifically noted that §253(c) does authorize state or local governments to charge fees and permitting costs, but only to the extent of its actual costs. That federal statute does not authorize railroads to impose any fees or permitting costs on public utilities or telecommunications providers."

"The FCC's interpretation was affirmed and upheld by the 9th Circuit Court of Appeals in 2020, the Supreme Court declined to allow further review of that decision in 2021, and the FCC's interpretation is now settled law. Hence, unless there are otherwise lawful state statutes which

authorize railroads to engage in permitting activities, §253(a) should prohibit a railroad from prohibiting or materially inhibiting a utility from accessing the public right of way occupied by a railroad in order to construct, install, or maintain a facility for the provision of telecommunications services.”

Our office is not aware of any State law authorizing railroad operators to engage in permitting activities with respect to utilities. Thus, our customers belief is that §253 likely precludes any attempts by a railroad operator to prohibit or materially inhibit our customer access to the public right of way at this location for the purpose of deploying or maintaining facilities designed for the provisioning of telecommunications services.

Attachment #11

Railroad Questions
October 7, 2025

1. UPRR (the largest railroad in the nation) requests an application / engineering review fee of \$2,055.00 for both aerial and HDD crossings. This is for both public and private crossings of the railroad corridor.

The railroads listed below have a fee structure for HDD underground installations as:

- a. CSX = \$4,400.00
- b. NSRR = \$2000.00
- c. G&W = \$5500.00 (includes a right of entry fee of \$1500.00)
- d. BNSR = \$2000.00
- e. KCS RR = \$2500.00
- f. ORM = \$3000.00

2. Why does your railroad charge a fee greater than \$1,250.00?
 - a. The railroad will say that their goal is safety. Our question is simple;
 - b. How does giving you more money increase safety? If we are meeting and/or exceeding your minimum requirements, how are we decreasing safety?
 - c. Do you farm out the engineering review to third parties? What percentage of the fee do they get to keep?
3. The railroads will say this is to offset their costs. Our question is:
 - a. What Costs? We are not reinventing the wheel. This is a very straight forward procedure. The railroads all have standards for HDD installations and AREMA also has a national standard that in some cases is more stringent than the rr's. If the utility / communication company is meeting or exceeding the rr's minimum standards, what is the justification for the excessive fees?
 - b. Don't the RR's third party "land managers" earn a percentage of the fees they can collect? How is that a legitimate cost?
4. CSX calls HDD a variance. Why? HDD has been a standard installation procedure since 1983. HDD is now the standard procedure in the utility and communication industry nationwide. HDD also has less potential impact on the railroad industry than a traditional jack and bore procedure, which is a standard installation with CSX. Traditional Jack and Bore procedures can leave voids under the rr tracks and HDD would not. CSX has an HDD installation procedure in place.
 - a. What is your justification for the higher charge?
 - b. Is this called a variance in order to charge a higher application review fee?
5. If this railroad says that HDD is unsafe and they must make a more detailed review, ask them to name 1 location where a properly installed HDD crossing has created a reportable incident? We have reviewed the FRA Accident Reports for the last 15 years and no HDD installations have been reported as the cause of a train accident.

6. The railroad will say there are no accidents because of how closely they monitor the installations, at this point it may be a good question addressed to the audience for a show of hands to the following question:
 - a. During HDD installations when utility / communications company has had a rr inspector on the job site during an HDD installation, by a show of hands, did you ever have one rail inspector that never got out of the truck during the HDD installation? Has this happened most every time during an HDD installation?
 - b. Secondly, what are you going to inspect during an HDD installation? They are below ground.
 - c. Third, historically, UPRR and BNSF do not send flagmen or inspectors during an HDD installation. Why do the rr now require this? Is it just for the money?
7. Somewhere in this conversation, the railroad will state that they have an ***established procedure*** for utility / communication company installations and they see no reason to change their procedure. This is not a rational basis for continuing an unnecessary or improper procedure. Otherwise, slavery would never have been abolished, women would not be able to vote, and we would still be burning witches. "We've always done it that way" is the lazy man's excuse.

Moving On to Justification of Crossing Fees:

8. NSRR provided a letter in 2012 stating that they do not charge a license fee for public crossings. CSX has stated in their master agreements that that do not charge a license fee for public crossings.
 - a. How do you define / determine a public crossing?
 - b. Does this include bridge crossings of highway railroad corridor intersections? (Both RR over and RR under crossings)
 - c. Does the approaching road right of way decrease when it crosses the railroad corridor at a public Highway Railroad crossing intersection?
 - d. If they say yes, ask them to explain and give their legal statute that supports their determination.

Proposed Public Crossing Definition for Railroad Agreements:

The term "**Public Crossing**" shall mean any crossing by Utility and/or Communications Company within the boundaries of public streets, highways, and/or roads, as designated by the State, County or City where Utility and/or Communications Company has the right to place its facilities. The width of the public right of way at the highway railroad crossing will be determined by extending the existing boundaries of the public road right of way from the points where each boundary intersects with the existing boundary of the railroad right of way across the railroad corridor to the same intersecting point on the opposite side of the highway railroad crossing. A public crossing will include all highway railroad crossings listed on the USDOT Crossing Inventory Report as RR over, RR under, and/or RR at grade crossings. This will also include private crossings with public access as listed on the USDOT Crossing Inventory Report.

9. The railroad states they own the underlying land at public Highway / Railroad Crossing intersections and they have a right to charge a crossing fee. However:
 - a. In 1913, under Valuation Order #7, all of the railroads in the United States were required to identify their railroad land holdings as "Dedicated to Public Use" or private use. If it was "Dedicated to Public Use", it was allowed to be added to the railroads rate base for their fee structure. The railroad was given the option to maintain their private status of their land. However, it appears all of the railroad corridors in the United States was declared "Public Use" land.
 - b. When we actually look at underlying recorded instruments, the RR may not actually hold anything other than a right to use the corridor for a RR. Anything that doesn't interfere with the RR's easement is not up to them to prohibit or regulate or charge for.
 - c. In 1976, the US Department of Transportation required the railroads to identify each Highway Railroad crossing in the US as Public or Private. If it was Public, the USDOT would install safety equipment at no charge to the railroad. The USDOT Crossing Inventory reflects this designation.
 - d. Railroads are classified as public utilities and receive sufficient federal funds on an annual basis for railroad facility upgrades. If they are private companies with private landowner rights, why are federal tax dollars being provided for their facility upgrades?
 - e. In every railroad agreement, it has a similar statement as shown below;

14. It is expressly understood Railroad does not warrant title to the premises and Licensee accepts the grant of privileges contained herein subject to all lawful outstanding existing liens and superior rights. Licensee agrees it shall not have to make any claim against Railroad for damages on account of any deficiency in title and agrees that in the event of failure or insufficiency of such title the sole remedy of Licensee shall be the right to return of the consideration paid in advance, provided for herein, or a proportionate part thereof in the event of a partial deficiency or insufficiency of title. Licensee further agrees to indemnify and save harmless the Railroad and to assure all risk, responsibility and liability (including any expenses, attorneys' fees and costs incurred or sustained by Railroad) arising from, growing out of, or in any manner or degree directly or indirectly attributable to or resulting from any deficiency or insufficiency of its title affecting the right of the Railroad to make this grant.

So if the railroad does not warrant title and has identified the land as public under past US government regulations, why would the utilities and communications industry have to pay the railroad an excessive (over \$1,250.00, which we believe is a fair review fee) and/or recurring annual fee for an installation across the railroad corridor at a public crossing?

What if the true owner of the property showed up and told you to remove your installation? You tell them you have an agreement with the RR. But the RR says, we never said we had the right to grant you permission to cross, and we never promised your installation wouldn't be disturbed by the true owner. So...why pay money to the RR for nothing?

Moving On to Agreements;

10. Up until 2015, BNSF had a 2-page agreement it was using (example attached) as the standard agreement for all public utility / communications crossings nationwide. This 2-page BNSF Agreement was submitted to all the other railroads nationwide as an example and the question was posed of why this is an acceptable agreement with BNSF and all the other railroads wanted a 16-page "Give up your First Born Child" type of overly one sided agreement in favor of the railroad. It does seem odd that in 2016, after Eagle 1 Resources, LLC raised this question of why the BNSF 2-page agreement was not acceptable to all the railroads nationwide, BNSF changed their 2-page form to a similar 16-page agreement that strangely mirrored the other railroads nationwide. It appears BNSF may have been approached and requested to get in line with the other railroads.

Secondly, UPRR recently lost a lawsuit in Texas (January 2015) addressing Highway Railroad Crossing installations. We are sure you have seen this decision. After this Texas court decision, UPRR has adjusted their crossing agreement to be more accommodating to the utility / communications industry but the time frame to get an agreement sometimes exceeds 6 months.

Our question is:

- a. When installing a utility / communication facility at an identified public Highway / Railroad Crossing intersection, what law requires the execution of an agreement with the railroad being crossed?
- b. The utilities / communication industry does not mind entering into an agreement with the railroad at any public crossing. However, what is unacceptable about the 2-page agreement previously being used by BNSF?

11. The railroad agreements are expressly stated they are confidential and cannot be recorded or reviewed outside of the companies involved.

- a. Why? Is there some agreement among the railroads about these agreements?
- b. If this is an anti-trust issue, please provide the anti-trust statute being used for this justification.
- c. If the railroad has an anti-trust issue, why are they sharing any information with any other railroad?
- d. Can a public utility even agree that an agreement it signs can be withheld from the public record?

12. The agreements always require Railroad Protective Liability insurance. What law requires this coverage be provided to a railroad for a utility / communications company facility installation at a public Highway Railroad Crossing intersection? The revised UPRR agreement excepts existing coverage and does not require additional RPL insurance at a public crossing.

- a. Some railroads have stated in the past that they will review and except existing insurance coverages. However, after their review, the insurance coverage provided is **NEVER** good enough for them and they always require their RPL insurance (or worse, an RPL policy that is provided by the rr that goes straight to their bottom line.)
- b. By what authority does the railroad require the utility / communications industry to indemnify the railroad, or purchase RPL insurance, in order to cross a railroad corridor

within a public road ROW and/or on land dedicated to public use? Once you provide me with a copy of this authority, the utility / communications industry attorneys would be happy to review your information.

13. Flagmen: The agreements always require flagmen for both aerial and underground. We fully understand the use of flagmen for aerial installations. Most aerial installations can be completed in less than 15 minutes. Our questions are:

- a. Why do we need a flagman for 8 hours to complete a 15 minute or less job?
- b. Why is scheduling a flagman such a problem (excessive notice and cancellations of available workforce)?
- c. Why do we need a flagman on an underground installation? How does a flagman sitting in a truck improve safety? You do not flag pedestrians crossing at public highway railroad crossings / Why do you need one for an underground installation? In the past, BNSF and UPRR have not required flagmen on underground installations.
- d. Is there a law requiring certified flagmen be used at public highway railroad crossings for utility / communications installations? Why can't utilities use their own trained flagmen?
- e. Why can't the utility / communications construction coordinator be placed in contact with the train master / rail master for the proposed aerial highway railroad crossing installation and they coordinate the work when a train is not scheduled to be crossing that location? If you don't know when a train is coming, how does having a flagman on the jobsite help improve safety?
- f. Utilities didn't sign the flagmen union contracts, so they shouldn't have to pay according to those agreements?

14. Why do the agreements, which appear to be standard generic agreements with fill in the blank sections, take greater than 30 days to be provided?

- a. The standard 2-page agreement could be submitted with the railroad crossing plans if this could be developed as the acceptable agreement for public highway railroad corridor crossings.

15. Line location requests:

- a. Why does the railroad industry charge \$260.00 to locate the signal equipment in the public right of way? Under the agreement with the USDOT, the railroad industry was required to maintain the highway railroad safety equipment that was installed. Public utilities and communication companies nationwide locate their facilities at no charge and they participate in statewide one call systems. Why do you – railroad, as a public utility, not participate in the one call system?

Closing Notes:

Railroad crossing issues are a hot topic. The utility and communication companies nationwide are willing to enter an appropriate highway railroad crossings agreement and would like to work cooperatively with the railroad industry toward that end.

However, the utilities and communications industry is tired of subsidizing the railroad industry with excessive railroad crossing fees. The end user customers

don't know that when they pay their bills, they are subsidizing the railroad industry.

The utilities and communications companies understand the railroad may incur actual costs associated with review of a project. The utilities and communications companies are willing to pay reasonable actual costs incurred in connection with plan review. We understand that the Wisconsin Public Service Commission has established a rate of Five Hundred Dollars (\$500.00) per installation for plan review, which we believe is a reasonable amount, and industry is prepared to pay this amount for plan review. There is also a new crossing fee statute in Minnesota where no crossing fee is required for public road crossing. Illinois has a similar statute.

3 court cases (Indiana in 2005 / Texas 2015 / Michigan 2025) all agreed that utilities / communication companies had the right to install their facilities at highway railroad crossings. These decisions did not require any agreements be executed and/or any fees be paid to the railroads as part of the installations.

Please let us know your path forward.