BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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.	))))))	Application No. C-5685/PI-259

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("RIC")[1] submit these Comments in response to the Order Opening Docket and Seeking Comment entered by the Nebraska Public Service Commission (the "Commission") in this matter on December 16, 2025.[2] In Section II of the below Comments, RIC will first set forth the topic or question in response to which comments are requested in the *Dec. 16 Order* followed by RIC's responsive comments. RIC appreciates the opportunity to provide these Comments to the Commission.

I. Legislative History and Interpretation of Neb. Rev. Stat. § 86-164

LB 181 was introduced by then state senator, Deb Fischer, on January 12, 2009, and was referred to the Transportation and Telecommunications Committee of which Senator Fischer was the Chair. At the Committee hearing on February 9, 2009, Committee legal counsel, Dustin Vaughan, provided the bill introducer's statement in which he stated: "The bill requires the

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[1] Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Great Plains Communications, LLC, Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Sodtown Communications, Inc., and Three River Telco.

[2] *In the Matter of the Commission, on its own motion, to investigate standard crossing fees charged for telecommunications companies to access rights-of-way controlled by railroad carriers,* Order Opening Docket and Seeking Comment (Dec. 16, 2025) (the "*Dec. 16 Order*").

telecommunications carrier to bear a one-time standard crossing fee of $1,250 to the railroad. This fee will be in lieu of any direct expenses incurred as result of the placement of the wire. The carrier shall also reimburse the railroad for any flagging expenses." LB 181 was the outcome of negotiations held in connection with LR 313 in which representatives of the railroads, telecommunications companies, the Commission and the Legislature participated. Drafts of the legislation were circulated to all interested parties and input was received prior to introduction of LB 181.[3]

LB 181 was carried over to the 2010 Legislative session. On February 5, 2010, the Legislature approved LB 181 on a vote of 45-0-4. As approved, Section (3)(a) provided "a one-time standard crossing fee of one thousand two hundred fifty dollars for each applicable crossing." Further, Section (3)(b) provided that 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." (emphasis added) These sections of LB 181 were codified as Section 86-164(3)(a) and (3)(b) which are currently in effect and provide:

> (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.
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> (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.* (emphasis added)

[3] Transportation and Telecommunications Committee Hearing Transcript, Feb. 9, 2009, p. 21 2009-02-09.pdf.

Consistent with the foregoing statutory terms, the Commission has adopted Telecommunications Rules 013.04A and 13.04B that provide:

> 013.04A STANDARD CROSSING FEE. Except as provided in Section 013.04D, 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 Section 013, 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 ($1,250.00) for each applicable crossing.
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> 013.04A1 ONE-TIME FEE. The one-time crossing fee, with or without special circumstances as provided in Section 013.04D, shall be for the life of the line, wire, or cable placed across the railroad right-of-way.
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> 013.04B FLAGGING EXPENSES. In addition to the standard crossing fee as provided in Section 013.04A, the telecommunications carrier shall reimburse the railroad carrier for any actual flagging expenses associated with the placement of the line, wire, or cable.[4]

II. Commission Inquiries and RIC's Responses

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

RIC's Response: The experience by one of RIC's member companies is that following submission of a railroad crossing application, four to six contacts with the designated Burlington Northern Santa Fe ("BNSF") representative over a three- to five-month period are required to obtain the approval of a crossing application.

This same member's experience is that BNSF's crossing agreement contains a requirement to renegotiate the agreement ten years after its effective date. This provision is unacceptable to the telecommunications provider. Notwithstanding the fact that Section 86-

[4] Telecommunications Rule 013.04D provides: SPECIAL CIRCUMSTANCES. 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 modification of the standard crossing fee in its initial petition to the Commission pursuant to Section 013.02C. The Commission shall determine if a special circumstance exists that necessitates additional requirements for such placement or a modification of the standard crossing fee.

164(3)(a) and Commission Telecommunications Rule 013.04A specify a one-time crossing fee of $1,250, in 2025 BNSF imposed a surcharge on the telecommunications provider of $506 to change the ten-year renegotiation provision to twenty years, imposing a $1,756 crossing fee on the provider. RIC believes that this practice is in violation of the statute and the Commission's Rules.

It is RIC's understanding that both BNSF and Union Pacific require the telecommunications provider to pay the crossing fee "up front" as a condition to the railroad's processing of the application.

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

RIC's Response: In addition to the practice described in response to Commission Inquiry a above, the flagging company that BNSF requires to be used in connection with railroad crossings, Wilson & Company, Inc. ("Wilson"), charges telecommunications providers unreasonably high amounts for flagging service reimbursement. In 2024 a RIC member company was charged $3,820 per crossing for Wilson's flagging expenses. In 2025 this same member company was charged $7,265 per crossing for Wilson's flagging expenses. If Wilson provided two workers to perform flagging operations during an entire 8-hour day, the rate for each worker would calculate to *$454 per hour*. RIC believes that these charges do not represent actual costs incurred by Wilson but rather represent arbitrary flat fee charges for flagging services by Wilson which is the flagging company that BNSF requires to be used for flagging.

Further, and as evidenced by the letter from BNSF's Executive Director of State Government Affairs to Commissioner Schram dated November 5, 2025, BNSF takes the position that it may assess a separate $1,250 charge on a telecommunications provider for each fiber optic fiber contained in a single conduit that crosses the railroad's property in contrast to a single

$1,250 charge for the conduit crossing.[5] RIC believes that this interpretation of Section 86-164(3) is incorrect and that the intent of the statute (and the Commission's Rules) is that only a single charge of $1,250 may be assessed for a conduit placed under railroad tracks, irrespective of the number of fibers carried by the conduit. As addressed in response to Commission Inquiry h below, if a statutory amendment is required to clarify and resolve this issue, then RIC urges the Commission to introduce such an amendment before the Legislature.

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

RIC's Response: RIC does not have data for a response to this Inquiry.

d. What sort of factors or special circumstances have led to fees above the standard crossing fee?

RIC's Response: One RIC member reports that it had requested expedited approval of a railroad crossing application. BNSF required an approximately $9,000 up front payment and ultimately the approval process was not expedited.

e. Are insurance fees and flagging costs standardized for all railroad carriers or do they differ among railroad carriers? How are actual flagging expenses determined? Do they differ by location or contractor? Are they different for aerial versus buried fiber? Are these standard fees charged in all states or are they specific by state, railroad carrier, or project?

RIC's Response: The insurance fees charged by BNSF to a telecommunications provider for a railroad crossing are dictated by BNSF and are not subject to negotiation. Further, the provider must obtain insurance coverage from the insurance carrier identified by BNSF.

Flagging costs are imposed by BNSF's contractor, Wilson. Again, these costs are not subject to negotiation. Based upon the experience of RIC's member companies, RIC believes that Wilson's flagging costs billed to providers are not based on actual expenses for time and

[5] *See,* letter from Jeffrey N. Davis, BNSF Railway Executive Director State Government Affairs to Commission Chairman Schram at p. 2 (Nov. 5, 2025).

materials expended but rather are based upon a fixed fee for an 8-hour day irrespective of the time actually expended by Wilson. As stated in response to Commission Inquiry b above, a RIC member was charged $7,265 per crossing for Wilson's flagging expenses during 2025. This is an exorbitant and unreasonable charge.

f. Are flagging fees charged based on installation, or are they separately charged based on the number of lines, wires or cables being installed?

<u>RIC's Response</u>: Please refer to RIC's response to the preceding inquiry.

g. If special circumstances leading to requests for fees above the standard crossing fee have impeded negotiations, why has that not resulted in a petition being filed with the Commission?

<u>RIC's Response</u>: While BNSF's crossing fees, insurance costs and flagging costs have been unreasonably high and are inconsistent with applicable provisions of Section 86-164 and Commission Rules, the current process provided pursuant to Commission Telecommunications Rule 013.02 to petition the Commission to review such charges entails costs and time commitments that make it uneconomical to pursue. In other words, legal fees and provider staff time required to prepare a petition, to gather relevant documentation and to participate in a Commission hearing typically would exceed the amount of the charges in dispute with the railroad. Further, while the current petition process is being completed, the telecommunications provider's construction project is either shut down or progression of the project to completion is disrupted.

The Commission has asked whether steps can be taken to improve the petition process. Creating a standardized form of "fill in the blanks" petition and adopting a binding alternative dispute resolution practice of either mediation or arbitration in lieu of a formal hearing should decrease the costs of seeking Commission intervention to resolve railroad crossing disputes between telecommunications providers and the railroads. Such reduced costs should result in a greater willingness of providers to seek Commission review of railroad crossing issues.

h. Is there a need to have the Legislature clarify or modify § 86-164?

RIC's Response: Modifications of Section 86-164 may be needed. Possible statutory amendments might include: (1) addition of "conduit" and "duct" to the list of facilities currently set forth in Section 86-164(3) for which the railroad may charge the $1,250 crossing fee making it clear that a conduit is a single charge without regard to the number of fibers it carries; (2) allowing the railroad to charge for insurance only if the telecommunications provider or its contractor cannot demonstrate that the provider already has bodily injury and property damage insurance in existence and can provide the railroad with a certificate from its insurer confirming such coverages; and (3) adding language to limit flagging reimbursement to only reasonable charges for time and materials actually expended in connection with a specific crossing permit.

III. Conclusion

As stated above, the Nebraska Rural Independent Companies appreciate the opportunity to provide these Comments in response to the *Dec. 16 Order*. RIC looks forward to continuing its participation in this proceeding.

Dated: January 21, 2026.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of January 2026, electronic copies of the foregoing pleading were delivered to the Nebraska Public Service Commission at psc.telecom@nebraska.gov and to the parties of record in this proceeding.

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