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October 28, 2026

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Nebraska Public Service Commission
300 The Atrium, 1200 N Street
Lincoln, NE 68509

Re: In the Matter of the Commission, on its own motion, seeking to update and amend Title 291, Chapter 5, Telecommunications, in its entirety.
Rule and Regulation No. 214

Dear Commission,

BNSF Railway Company ("BNSF") submits these Comments pursuant to the Order of the Nebraska Public Service Commission ("Commission") dated October 6, 2026. BNSF's Comments address the Commission's proposed amendments to its rules and regulations in Title 291, Chapter 5 of the Nebraska Administrative Code regarding Wire Crossing Agreements surrounding telecommunications crossings of railroad rights-of-way. The existing regulations in 291 NAC Chapter 5, Part 013, were enacted after the Nebraska Legislature passed Neb. Rev. Stat. § 86-164 in 2010. The Legislature established the statutory procedure for telecommunications carriers seeking to cross railroad rights-of-way in Nebraska, so any changes to the rule and regulations must give effect to the intent of the Legislature.

BNSF's Comments are set forth in three parts. The first part addresses the fee calculation for crossing railroad rights-of-way, and specifically the Commission's proposed amendment 011.04(A)(ii). The second part addresses flagging, and specifically the Commission's proposed amendment 011.04(B). The third part identifies several minor drafting errors in the proposed amendments and provides cross-references to the correct sections of the regulations.

1. Fee Calculation, 011.04(A)(ii)

Neb. Rev. Stat. § 86-164(3)(A) requires that a telecommunications carrier seeking to place "a line, wire, or cable across a railroad right-of-way … shall pay the railroad carrier a one-time standard crossing fee of one thousand two hundred fifty dollars for each applicable crossing." *Id*. (underlining added). BNSF submits that the Commission's proposed amendment to its regulation at 011.04(A)(ii) is inconsistent with the statutory language and should not be

implemented. Specifically, the proposed amendment seeks to add the following language to the existing regulation:

> "011.04(A)(ii) FEE CALCULATION. The one-time crossing fee may not be calculated on a per-strand basis."

(Commission's Proposed Amendment, 011.04(A)(ii)).

The proposed amendment is inconsistent with the plain language of the statute. Neb. Rev. Stat. 86-164(3)(a) expressly requires the payment of a one-time crossing fee "for each applicable crossing." *Id*. Telecommunications carriers should be required to comply with the statutory procedure, including the payment of the fee, for each applicable crossing as the Nebraska Legislature intended. In addition, the proposed amendment can create potential operational and public safety issues.

For example, if a telecommunications carrier places an electrified cable or a line that transmits electromagnetic interference that affects BNSF's signals and communications systems, it could potentially result in a catastrophic event, including derailment, injury, or loss. This is precisely why Neb. Rev. Stat § 86-164(1)(a) requires 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." *Id*. Once BNSF receives an application, along with the engineering specifications, BNSF's engineering department will conduct a thorough review and analyze whether the requested crossing will create safety issues or interference with railroad operations. This investigation requires time, effort, and expense on BNSF's part, which is why the statute requires a $1,250 standard crossing fee for each placement of a line, wire, or cable. If a telecommunications carrier is only required to comply with the statute for the placement of the initial crossing, and then have the ability to enter BNSF's right-of-way and place any number of additional items, without proper investigation and engineering analysis, it can create a significant public risk and impact railroad operations. Accordingly, BNSF requests the Commission not amend its regulation regarding the Fee Calculation.

In the event the Commission disagrees with the foregoing, in the alternative, BNSF proposes the following amendment to the Fee Calculation regulation:

> "For purposes of this Section, each separate line, wire, cable, conduit, or innerduct placed across a railroad right-of-way constitutes a separate crossing. The one-time crossing fee may not be calculated on a per-strand basis within a single cable."

(BNSF Proposed Amendment). BNSF submits this alternative language will help protect public safety and avoid the negative impact that can occur to railroad operations by telecommunications carriers crossing railroad rights-of-way. It will also help ensure that the intent of the Nebraska Legislature is given effect.

2. Flagging, 011.04(B)

The Nebraska Legislature intended that railroads be reimbursed actual flagging expenses. Flagging is necessary to protect public safety and enable railroads to comply with federal safety regulations. Neb. Rev. Stat. § 86-164(3)(a) expressly requires telecommunications carriers seeking to cross railroad rights-of-way "shall reimburse the railroad carrier for any actual flagging expenses associated with the placement of the line, wire, or cable." *Id*. The language is clear.

The Commission's proposed amendment seeks to add the following language to its regulation: "Actual flagging expenses must be reasonable based on standard business practices and market value in the industry." (Commission Proposed Amendment, 011.04(B). BNSF submits that the Commission's proposed language regarding "market value" invites disputes over what are the railroad's actual safety costs. It could also create disputes whether flagging is necessary by entities that are not familiar with railroad operations and federal safety regulations.

To implement the intent of the Nebraska Legislature that railroads be reimbursed for actual expenses, and to ensure that flagging is consistent with federal safety regulations and BNSF's operating rules, and to further respond to concerns by the Commission regarding flagging costs, BNSF proposes the following amendment:

> "…shall reimburse the railroad carrier for any actual flagging expenses, including labor, benefits, equipment, and administrative overhead, associated with the placement, maintenance, repair, or removal of the line, wire, or cable. ~~Actual flagging expenses must be reasonable based on standard business practices and market value in the industry.~~ The railroad carrier shall determine whether flagging is required consistent with federal safety regulations and its operating rules."

(BNSF Proposed Amendment). BNSF's proposed amendment will help ensure that it is properly reimbursed for actual expenses, as the Nebraska Legislature intended. BNSF's proposed amendment also ensures that operating rules and federal safety regulations are satisfied when telecommunications carriers seek to cross railroad rights-of-way.

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3. **Drafting Errors**

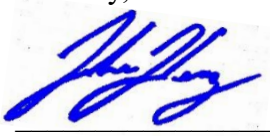
In order to facilitate drafting any future amendments to the regulations, BNSF wishes to advise the Commission that its proposed amendments contain several minor drafting efforts. BNSF notes the following:

- Proposed amendment to 011.02(B) incorrectly cites "Section 013.04"; the correct citation is 011.04.
- Proposed amendment to 011.02(D) incorrectly cites "Section 003.02(C)"; the correct citation is 011.02(C).
- Proposed amendment to 011.02(E) incorrectly cites "Section 013.02(C)"; the correct citation is 011.02(C).

4. Conclusion

BNSF appreciates the opportunity to submit these Comments to the Commission regarding its proposed amendments to the regulations governing Wire Crossing Agreements for telecommunications carriers crossing railroad rights-of-way in Nebraska, 291 NAC Chapter 5, 013. BNSF's Comments are intended to promote public safety for the residents and citizens of Nebraska, and to help protect against telecommunications carriers inadvertently or improperly interfering with railroad operations that could create a risk of derailment, injury, or loss. If the Commission has any questions, or if BNSF can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Luke Wenz
Executive Director Public Affairs
BNSF Railway Company