

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 181

FINAL READING

Introduced by Fischer, 43.

Read first time January 12, 2009

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Nebraska Telecommunications Regulation
2 Act; to amend section 86-101, Reissue Revised
3 Statutes of Nebraska; to provide requirements for
4 wire-crossing agreements between railroad carriers and
5 telecommunications carriers as prescribed; to harmonize
6 provisions; and to repeal the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 86-101 Sections 86-101 to 86-163 and section 2 of
4 this act shall be known and may be cited as the Nebraska
5 Telecommunications Regulation Act.

6 Sec. 2. (1) Any telecommunications carrier that intends
7 to place a line, wire, or cable across a railroad right-of-way
8 shall request permission for such placement from the railroad
9 carrier. The request shall be in the form of a completed crossing
10 application, including engineering specifications. Upon receipt of
11 such application, the railroad carrier and the telecommunications
12 carrier may enter into a binding wire-crossing agreement. If the
13 railroad carrier and the telecommunications carrier are unable to
14 negotiate a binding wire-crossing agreement within sixty days after
15 receipt of the crossing application by the railroad carrier, either
16 party may submit a petition to the commission for a hearing on
17 the disputed terms and conditions of the purported wire-crossing
18 agreement.

19 (2)(a) Unless otherwise agreed to by all parties, the
20 commission shall, after providing proper notice, hold and complete
21 such hearing within sixty days after receipt of the petition.
22 The commission shall issue an order of its decision within
23 thirty days after the hearing. In rendering its decision, the
24 commission shall consider whether the terms and conditions at
25 issue are unreasonable or against the public interest, taking

1 into account safety, engineering, and access requirements of the
2 railroad carrier as such requirements are prescribed by the Federal
3 Railroad Administration and established rail industry standards.

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

20 (3)(a) Except as provided in subsection (4) of this
21 section or as otherwise agreed to by all parties, if a
22 telecommunications carrier places a line, wire, or cable across a
23 railroad right-of-way pursuant to this section, it shall pay the
24 railroad carrier a one-time standard crossing fee of one thousand
25 two hundred fifty dollars for each applicable crossing. In addition

1 to the standard crossing fee, the telecommunications carrier shall
2 reimburse the railroad carrier for any actual flagging expenses
3 associated with the placement of the line, wire, or cable.

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

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

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

25 (6) (a) A wire-crossing agreement between a railroad

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

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

21 (7) For purposes of this section:

22 (a) Railroad carrier has the same meaning as in section
23 75-402; and

24 (b) Telecommunications carrier means a telecommunications
25 common carrier as defined in section 86-118 or a telecommunications

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1 contract carrier as defined in section 86-120.

2 Sec. 3. Original section 86-101, Reissue Revised Statutes

3 of Nebraska, is repealed.