

PROPOSED PUBLIC RIGHT-OF-WAY AND RAILROAD CROSSING LANGUAGE

1. To the extent not prohibited by federal law, notwithstanding any other provisions, when Railroad operations cross on a Public Right-of-Way, as defined in K.S.A. 17-1902, such Railroad operations shall be subject to and the Railroad's rights subordinate to the rights enumerated in K.S.A. 17-1902.
2. Rights of Access to Railroad Crossings not within a Public Right-of-Way, as defined in K.S.A. 17-1902.
 - (a) This act applies to:
 - (i) any Crossing not within a Public Right-of-Way in existence before the effective date of this act; and
 - (ii) any Crossing not within a Public Right-of-Way commenced on or after the effective date of this act.
 - (b) Railroad Right-of-Way Crossing; Application for Permission
 - (i) Any provider as defined in K.S.A. 17-1902(a)(2) or competitive infrastructure provider as defined in K.S.A. 17-1902(a)(4) that intends to place a Facility across or upon a Railroad right-of-way shall request prior permission from the Railroad.
 - (ii) The request must be in the form of a completed Crossing Application, including an engineering design showing the location of the proposed Crossing and the Railroad's property, tracks, and wires that the provider or competitive infrastructure provider will cross. The engineering design must conform with guidelines published in the most recent edition of the (1) National Electric Safety Code, or (2) Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association. The Communications Provider or Network Support Infrastructure Owner must submit the Crossing Application on a form provided or approved by the Railroad, if available.
 - (iii) The Application must be accompanied by the standard crossing fee specified in subsection (d). The provider or competitive infrastructure provider must send the application to the railroad by certified mail, with return receipt requested.
 - (iv) Within 15 calendar days of receipt of an Application that is not complete, the Railroad must inform the Applicant regarding any additional necessary information and submittals.
 - (c) Railroad Right-of-Way Crossing; Construction. Beginning 35 calendar days after the receipt by the railroad of a completed crossing application, crossing fee, and

certificate of insurance, the provider or competitive infrastructure provider may commence the construction of the crossing unless the railroad notifies the provider or competitive infrastructure provider in writing that the proposed Crossing or Paralleling is a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way.

(d) Standard Crossing Fee

- (1) Unless otherwise agreed by the parties, a provider or competitive infrastructure provider that crosses a Railroad right-of-way, other than a Crossing within a Public Right-of-Way, must pay the Railroad a onetime standard crossing fee of \$500 per crossing. Except as otherwise provided in this subdivision, the standard Crossing fee is paid in lieu of any license, permit, Application, processing fee, or any other fee or charge to reimburse the Railroad for direct expenses incurred by the Railroad as a result of the Crossing. No other fee or charge may be assessed to the provider or competitive infrastructure provider by the Railroad.
- (2) In addition to the standard Crossing fee, the provider or competitive infrastructure provider shall also reimburse the Railroad for any reasonable and necessary flagging expense associated with a Crossing, based on the Railroad traffic at the Crossing.
- (3) No Crossing fee is required if the Crossing is located within a Public Right-of-Way.
- (4) The placement of a single Conduit and its content is a single Facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the Conduit.

(e) Objection to Crossing; petition to department of transportation

- (1) If a Railroad objects to the proposed Crossing or Paralleling due to the proposal being a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way, the Railroad must notify the provider or competitive infrastructure provider of the objection and the specific basis for the objection. The Railroad shall send the notice of objection to the provider or competitive infrastructure provider by certified mail, with return receipt requested.
- (2) If the parties are unable to resolve the objection, either party may petition the department of transportation for assistance via mediation or arbitration of the disputed Crossing Application. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

- (3) If a petition is filed, the department of transportation must issue an order within 120 days of filing of the petition. The order may be appealed. The state enforcement authority must assess the costs associated with a petition equitably among the parties.

(f) Additional Requirements; Objection and Petition to the department of transportation.

- (1) If a Railroad imposes additional requirements on a provider or competitive infrastructure provider for crossing its lines, other than the proposed Crossing being a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way, the provider or competitive infrastructure provider may object to one or more of the requirements. If it objects, the provider or competitive infrastructure provider shall provide notice of the objection and the specific basis for the objection to the Railroad by certified mail, with return receipt requested.

- (2) If the parties are unable to resolve the objection, either party may petition the department of transportation for resolution or modification of the additional requirements. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

- (3) If a petition is filed, the department of transportation shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the Crossing. The department of transportation must issue an order within 120 days of filing of the petition. The order may be appealed. The department of transportation shall assess the costs associated with a petition equitably among the parties.

- (g) Existing Agreements. Nothing in this Article prevents a Railroad and provider or competitive infrastructure provider from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a Crossing or the resolution of any disputes relating to the Crossing. A provider or competitive infrastructure provider may elect to undertake a Crossing or Paralleling under this act. Nothing in this act impairs the authority of a provider or competitive infrastructure provider to secure crossing rights by easement through exercise of the power of eminent domain.