



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0467

Introduced 2/16/2005, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

220 ILCS 5/13-714 new

Amends the Telecommunications Article of the Public Utilities Act. Provides terms and conditions for a crossing of railroad right-of-way. Allows the Illinois Commerce Commission to adopt rules prescribing additional terms and conditions to ensure that any crossing be consistent with the public convenience and necessity and reasonable service to the public. Provides that telecommunications carriers that locate their facilities within the railroad right-of-way for a crossing shall pay the railroad a one-time standard crossing fee of \$750 for each crossing. Provides special circumstances under which the standard crossing fee is not imposed. Provides that, pending Commission resolution of a claim of special circumstances raised in a petition, a telecommunications carrier may, upon securing the payment of any damages and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the Commission, unless the Commission, upon application for emergency relief, determines that there is a reasonable likelihood that the proposed crossing either (i) involves a significant and imminent likelihood of danger to the public health or safety or (ii) is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

LRB094 09486 MKM 39737 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by adding
5 Section 13-714 as follows:

6 (220 ILCS 5/13-714 new)

7 Sec. 13-714. Crossing of railroad right-of-way.

8 (a) As used in this Section, unless the context otherwise
9 requires:

10 "Crossing" means the construction, operation, repair, or
11 maintenance of a facility over, under, or across a railroad
12 right-of-way by a telecommunications carrier.

13 "Direct expenses" includes, but is not limited to, any or
14 all of the following:

15 (1) The cost of inspecting and monitoring the crossing
16 site.

17 (2) Administrative and engineering costs for review of
18 specifications and for entering a crossing on the
19 railroad's books, maps, and property records and other
20 reasonable administrative and engineering costs incurred
21 as a result of the crossing.

22 (3) Document and preparation fees associated with a
23 crossing, and any engineering specifications related to
24 the crossing.

25 (4) Damages assessed in connection with the rights
26 granted to a telecommunications carrier with respect to a
27 crossing.

28 "Facility" means any cable, conduit, wire, pipe, casing
29 pipe, supporting poles and guys, manhole, or other material or
30 equipment, that is used by a telecommunications carrier to
31 furnish communications services.

32 "Railroad" or "railroad corporation" means a railroad

1 corporation that is the owner, operator, occupant, manager, or
2 agent of a railroad right-of-way or the railroad corporation's
3 successor in interest. "Railroad" and "railroad corporation"
4 includes an interurban railway.

5 "Railroad right-of-way" means one or more of the following:

6 (1) A right-of-way or other interest in real estate
7 that is owned or operated by a railroad corporation, the
8 trustees of a railroad corporation, or the successor in
9 interest of a railroad corporation.

10 (2) A right-of-way or other interest in real estate
11 that is occupied or managed by or on behalf of a railroad
12 corporation, the trustees of a railroad corporation, or the
13 successor in interest of a railroad corporation, including
14 an abandoned railroad right-of-way that has not otherwise
15 reverted.

16 (3) Any other interest in a former railroad
17 right-of-way that has been acquired or is operated by a
18 land management company or similar entity.

19 "Special circumstances" means either or both of the
20 following:

21 (1) The existence of characteristics of a segment of
22 railroad right-of-way or of a proposed utility facility
23 that increases the direct expenses associated with a
24 proposed crossing.

25 (2) A proposed crossing that involves a significant and
26 imminent likelihood of danger to the public health or
27 safety or that is a serious threat to the safe operations
28 of the railroad or to the current use of the railroad
29 right-of-way, necessitating additional terms and
30 conditions associated with the crossing.

31 (b) Notification by a telecommunications carrier to a
32 railroad required prior to the commencement of any crossing
33 activity shall not exceed 30 days.

34 (c) The railroad and the telecommunications carrier must
35 maintain and repair its own property within the railroad
36 right-of-way and bear responsibility for its own acts and

1 omissions, except that the telecommunications carrier shall be
2 responsible for any bodily injury or property damage that
3 typically would be covered under a standard railroad protective
4 liability insurance policy.

5 (d) A telecommunications carrier shall have immediate
6 access to a crossing for repair and maintenance of existing
7 facilities in case of emergency.

8 (e) Applicable engineering standards shall be complied
9 with for facilities crossing railroad rights-of-way.

10 (f) The telecommunications carrier shall be provided an
11 expedited crossing, absent a claim of special circumstances,
12 after payment by the telecommunications carrier of the standard
13 crossing fee, if applicable, and submission of completed
14 engineering specifications to the railroad.

15 (g) The telecommunications carrier and the railroad may
16 agree to other terms and conditions necessary to provide for
17 reasonable use of a railroad right-of-way by a
18 telecommunications carrier.

19 (h) The Commission may adopt rules prescribing terms and
20 conditions in addition to those contained in this Section for a
21 crossing to ensure that any crossing be consistent with the
22 public convenience and necessity and reasonable service to the
23 public.

24 (i) Unless otherwise agreed by the parties and subject to
25 subsection (j), a telecommunications carrier that locates its
26 facilities within the railroad right-of-way for a crossing,
27 other than a crossing along the public roads of the State
28 pursuant to the Telephone Line Right of Way Act, shall pay the
29 railroad a one-time standard crossing fee of \$750 for each
30 crossing plus the costs associated with modifications to
31 existing insurance contracts of the telecommunications carrier
32 and the railroad. The standard crossing fee shall be in lieu of
33 any license or any other fees or charges to reimburse the
34 railroad for the direct expenses incurred by the railroad as a
35 result of the crossing. The telecommunications carrier shall
36 also reimburse the railroad for any actual flagging expenses

1 associated with a crossing in addition to the standard crossing
2 fee.

3 (j) Notwithstanding subsections (b) through (h), rules
4 adopted by the Commission shall not prevent a railroad and a
5 telecommunications carrier from otherwise negotiating the
6 terms and conditions applicable to a crossing or the resolution
7 of any disputes relating to the crossing.

8 (k) Notwithstanding subsection (j), This Section shall not
9 impair the authority of a telecommunications carrier to secure
10 crossing rights by easement pursuant to the exercise of the
11 power of eminent domain.

12 (l) A railroad or telecommunications carrier that believes
13 special circumstances exist for a particular crossing may
14 petition the Commission for relief. If a petition for relief is
15 filed, the Commission shall determine whether special
16 circumstances exist that necessitate either a modification of
17 the direct expenses to be paid or the need for additional terms
18 and conditions. The Commission may make any necessary findings
19 of fact and determinations related to the existence of special
20 circumstances, as well as any relief to be granted. A
21 determination of the Commission, except for a determination on
22 the issue of damages for the rights granted to a
23 telecommunications carrier with respect to a crossing, shall be
24 considered final agency action subject to judicial review under
25 the Administrative Review Law. The Commission shall assess the
26 costs associated with a petition for relief equitably against
27 the parties.

28 (m) A railroad or telecommunications carrier that claims to
29 be aggrieved by a determination of the Commission on the issue
30 of damages for the rights granted to a telecommunications
31 carrier with respect to a crossing may seek judicial review as
32 provided in the Administrative Review Law.

33 (n) Pending Commission resolution of a claim of special
34 circumstances raised in a petition, a telecommunications
35 carrier may, upon securing the payment of any damages and upon
36 submission of completed engineering specifications to the

1 railroad, proceed with a crossing in accordance with the rules
2 adopted by the Commission, unless the Commission, upon
3 application for emergency relief, determines that there is a
4 reasonable likelihood that either of the following conditions
5 exist:

6 (1) That the proposed crossing involves a significant
7 and imminent likelihood of danger to the public health or
8 safety.

9 (2) That the proposed crossing is a serious threat to
10 the safe operations of the railroad or to the current use
11 of the railroad right-of-way.

12 If the Commission determines that there is a reasonable
13 likelihood that the proposed crossing meets either condition,
14 then the Commission shall immediately intervene to prevent the
15 crossing until a factual determination is made.

16 (o) Notwithstanding any provision law to the contrary, this
17 Act shall apply in all crossings of railroad rights-of-way
18 involving a telecommunications carrier and shall govern in the
19 event of any conflict with any other provision of law.

20 (p) This Section applies to (i) a crossing commenced prior
21 to the effective date of this Section if an agreement
22 concerning the crossing has expired or is terminated and (ii) a
23 crossing commenced on or after the effective date of this
24 Section.