

196.04 Facilities granted other utilities; physical telecommunications connections; petition; investigation.

(1) (a) *Definitions.* In this section:

1. “Transmission equipment and property” means any conduit, subway, pole, tower, transmission wire or other equipment on, over or under any street or highway.

2. “Physical connection” means the number of trunk lines or complete circuits and connections, including connections by wire, optics, radio signal or other means, required to furnish reasonably adequate telecommunications service between telecommunications providers.

(b) *Transmission equipment and property access.*

1. Any person who owns transmission equipment and property shall permit, for reasonable compensation, the use of the transmission equipment and property by any public utility or telecommunications provider if public convenience and necessity require such use and if the use will not result in irreparable injury to any owner or user of the transmission equipment and property or in any substantial detriment to the service to be rendered by the owner or user.

2. Every telecommunications utility shall permit physical connections to be made, and telecommunications service to be furnished, between any telecommunications system operated by it and the telecommunications toll line operated by another telecommunications provider, or between its toll line and the telecommunications system of another telecommunications provider, or between its toll line and the toll line of another telecommunications provider, or between its telecommunications system and the telecommunications system of another telecommunications provider if all of the following apply:

a. Public convenience and necessity require the connection.

b. The connection will not result in irreparable injury to the owners or other users of the facilities of the public utility making the connection.

c. The connection will not result in any substantial detriment to the service to be rendered by a public utility making the connection.

(2) If there is a failure to agree upon use of transmission equipment and property under sub. (1) or the conditions or compensation for the use, or if there is a failure to agree upon the physical connections or the terms and conditions upon which the physical connections shall be made, any public utility, any telecommunications provider or any other person interested may apply to the commission. If, after investigation, the commission determines that public convenience and necessity require the use or physical connections and that the use or physical connections will not result in irreparable injury to the owner or other users of the transmission equipment and property or of the facilities of the public utility or in any substantial detriment to the service to be rendered by the owner or the public utility or other users of the transmission equipment and property or facilities, the commission, by order, shall direct that the use be permitted and that the physical connections be made. The commission shall prescribe reasonable conditions and compensation for the use and shall determine how and within what time the connections shall be made and by whom the expense of making and maintaining the connections shall be paid. An order under this subsection may be revised by the commission.

(4) (a) In this subsection, “sewerage system operator” means any of the following:

1. A municipality that operates a sewerage system under s.66.0821.

2. A town sanitary district commission that operates a sewerage system under 60.77 (4).

3. A city or village that obtains a sewerage system under s. 60.79.

4. A metropolitan sewerage district commission that operates a sewerage system under s. 200.11 (2) or 200.31 (1).

5. A public inland lake protection and rehabilitation district that exercises the powers of a town sanitary district under s. 33.22 (3) and that operates a sewerage system under s. 60.77 (4).

(b) If the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility, telecommunications provider, sewerage system operator, or video service provider be permitted to extend its lines on, over or under the right-of-way of any railroad, or requires that the tracks of any railroad be extended on, over or under the right-of-way of any public utility, telecommunications provider, sewerage system operator, or video service provider, the commission may order the extension by the public utility, telecommunications provider, sewerage system operator, video service provider, or railroad on, over or under the right-of-way of the other if it will not materially impair the ability of the railroad, telecommunications provider, sewerage system operator, video service provider, or public utility, on, over or under whose right-of-way the extension would be made, to serve the public. The commission shall prescribe lawful conditions and compensation which the commission deems equitable and reasonable in light of all the circumstances.

History: 1983 a. 53; 1985 a. 297 ss. 25, 76; 1993 a. 496; 1995 a. 27; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2007 a. 42.

Cross Reference: See also ch. PSC 132, Wis. adm. code. It was reasonable to determine that an award under sub. (4) should consist of compensation for: 1) the right of crossing the railway, measured by the diminution of value; and 2) the consequential damages that result directly from the construction and maintenance of the utility's crossing. Wisconsin