

Crown Castle – Railroad Crossings

Crown Castle is a national leader in wireless infrastructure:

- ❖ Crown Castle is the nation's largest owner and operator of shared wireless infrastructure, including more than 40,000 cell towers, 50,000 small cell nodes on air or under contract, and approximately 60,000 route miles of fiber optic cable in 41 states and the District of Columbia.

Railroad crossings impede Crown Castle's deployment of broadband infrastructure:

- ❖ Railroads routinely inhibit Crown Castle's ability to deploy by imposing commercially unreasonable fees and requirements for crossings within public rights-of-way ("ROW").
 - Examples of fees required by railroads include a \$21,500 document preparation fee, \$66,807 ROW crossing fee, \$2,000 reoccurring annual fee, and \$1,500 engineering review fee.
 - Additional requirements regularly imposed by railroads include the scheduling and costs of safety flaggers for all crossings including underground crossings which do not require any incursion onto active tracks as well as expensive insurance covering minimal risks, with fees up to \$2,500 per crossing.
 - Railroads are frequently slow to respond to Crown Castle's requests for ROW crossings.

The Commission's Section 253 authority extends to preemption of state or local laws that allow railroads to act as gatekeepers to the ROW

- ❖ Section 253 of the Communications Act authorizes the preemption of state or local laws that prohibit or have the effect of prohibiting Crown Castle's ability to provide telecommunications service or which "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."¹
- ❖ Crown Castle requests the Commission use its Section 253 authority to preempt any state and local legal authority that facially or effectively impedes the ability to deploy telecommunications infrastructure (1) providing railroads with monopoly control over public ROW access, or (2) restricting utilities' rights costly eminent domain actions.

¹ 47 U.S.C. § 253(a),(d).; *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, Cal. Pursuant to Section 253(d) of the Communications Act of 1934*, Memorandum Opinion and Order, 12 FCC Rcd 14191, ¶ 31 (1997). Many commenters have suggested that the Commission affirm that this standard is the proper test for determining whether state or local action violates Section 253(a). See Comments of AT&T, WT Docket No. 17-79 at 3 (filed June 15, 2017); Comments of T-Mobile, WT Docket No. 17-79 at 35-36 (filed June 15, 2017).