BOONE COUNTY CONSERVATION DISTRICT ORDINANCE #98-A

WHEREAS, the BCCD deems it in the best interests of administering the Long Prairie Trail for the benefit of the Public to make special provisions for public utilities and telecommunications carrier desiring to cross the Long Prairie Trail, a former railroad right-of-way, in lieu of the application and licensing provisions of Ordinance 98, under the limited circumstances set out in this Ordinance, and

WHEREAS, it has come to the attention of the BCCD that several utilities or telecommunications carriers have, without notice to or agreement of the BCCD maintained, built, or constructed underground lines, conduits, or pipes across the Long Prairie Trail; and

WHEREAS, the BCCD’s ownership and use of the Trail is subject to the federal National Trails Systems Act through which it obtained ownership which requires that the United States can, at any time, require the BCCD to return the former railroad right-of-way to a party designated by the United States in its original condition to be used as directed by the United States and to hold the railbed for the purposes in BCCD’s Mission Statement; and

WHEREAS, the BCCD deems it beneficial to it, the Public, and any utilities or telecommunications carrier to promulgate an expedited procedure at a nominal cost for utilities or telecommunications carriers to secure permission to cross under the Long Prairie Trail;

NOW, THEREFORE, the BCCD adopts this Ordinance.

Section 1. Name. Long Prairie Trail Public Utility & Telecommunications Crossing Ordinance.

Section 2. Definitions. As used in this Act, unless the context otherwise requires:

“Crossing” means the construction, installation, operation, repair, or maintenance of a facility under any portion of the Long Prairie Trail by a utility or telecommunications carrier.

“Direct expenses” includes, is not limited to, any or all of the following:

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

(2) Administrative and engineering costs for review of specifications and for entering a crossing on the Conservation District’s books, maps, and property records and other reasonable administrative and engineering costs incurred as a result of the crossing.

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

(4) Damages assessed in connection with the rights granted to a utility or telecommunications carrier with respect to a crossing.
"Facility" means any cable, conduit, wire, pipe, or casing pipe, not exceeding ____ in diameter that is used by a utility or telecommunications carrier to furnish any of the following:

(1) Communications, video, or information services.
(2) Electricity.
(3) Gas by piped system.
(4) Sanitary and storm sewer service.
(5) Water by piped system.

"Railroad right-of-way" means any interest in a former railroad right of way.

"Public Utility" means every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water or light, except when solely for communications purposes.

"Telecommunications Carrier" means and includes every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the provision of telecommunications services.

"Telecommunications Service" means the provision or offering for rent, sale or lease, or in exchange for other value received, or the transmittal of information by means of electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services used to provide such transmission and also includes access and interconnection arrangements and services including telephone or community antenna television services.

Section 3. Notice. Terms and conditions for a crossing.

a. New installation. Any public utility or telecommunications carrier desiring a new crossing of the Long Prairie Trail shall give written notice to BCCD. The notice shall contain the name and address of the public utility or telecommunications carrier, the proposed use, the engineering specifications of the crossing, the location, and the approximate date and length of time the applicant estimates for the installation, whether or not the Long Prairie Trail will be usable by the public during preparation, installation, and clean up, and any other circumstances the applicant reasonably believes the BCCD would want to know.
b. Existing installation. Any public utility or telecommunications carrier with existing cable, conduit, wire, piping, or casing pipe under the Long Prairie Trail shall disclose said crossing to BCCD by written notice setting out the information in 3.a. and, in addition any permission, license, easement in writing from BCCD or its predecessor, Chicago Northwestern Railroad Company, to build, construct, install, or maintain said crossing.

c. All public utilities or telecommunications carrier subject to this Ordinance shall be required to agree to execute a license agreement for it, its successors or assigns not to interfere with the Public use of the Long Prairie Trail for bicycling, hiking, or other recreational use of the Long Prairie Trail, to agree to the limitations imposed now and in the future by the United States Surface Transportation Board or its successors, to return the Long Prairie Trail to its original state if so required at its cost, to indemnify the BCCD for any claims arising out of the company's use, operation, maintenance or repair of the installation, and to refrain from any activities that might be harmful to Flora or Fauna on the Long Prairie trail and remediate at its cost any harm so done.

d. After 30 days from (1) the mailing of the notice, (2) completing the engineering specifications, (3) payment of the fee, and (4) executing the required license, the utility or telecommunications carrier, absent a claim of special circumstances, shall be deemed to have authorization to commence the crossing activity.

e. The Conservation District and the utility or telecommunications carrier must maintain and repair its own property within the Long Prairie Trail and bear responsibility for its own acts and omissions.

f. A utility or telecommunications carrier shall have immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

g. Applicable engineering standards shall be complied with for utility or telecommunications carrier facilities crossing the Long Prairie Trail.

h. The utility or telecommunications carrier shall be provided an expedited crossing, absent a claim of special circumstances, after payment by the utility or telecommunications carrier of the standard crossing fee, if applicable, submission of completed engineering specifications to the Conservation District, and executing the license. The engineering specifications shall address the applicable requirements as established by the National Electrical Safety Code for underground cable or piping.

i. The utility or telecommunications carrier and the Conservation District may agree to other terms and conditions necessary to provide for reasonable use of the Long Prairie Trail by the utility or telecommunications carrier.
Section 4. Crossing Fee.

Unless otherwise agreed by the parties and subject to Section ____, a utility or telecommunications carrier that locates its facilities under the Long Prairie Trail other than a crossing along the public roads of the State pursuant to the Telephone Line Right of Way Act, shall pay the Conservation District a one-time standard crossing fee of $1,500 for each crossing plus the costs associated with modifications to existing insurance contracts of the utility or telecommunications carrier and the Conservation District and execute the License required by the District. The standard crossing fee shall be in lieu any other fees or charges to reimburse the Conservation District for the direct expenses incurred by the Conservation District as a result of the crossing.

Section 5. License Agreement.

The license agreement shall contain requirements set out in Section 3c and any other provisions to implement this Ordinance in conformance with the Mission of the Conservation District as set out in Ordinance 98 in the manner deemed necessary by the Boone County Conservation District from time to time.

Section 6. Powers not Limited.

Notwithstanding Section 3, nothing shall prevent the Conservation District and a utility or telecommunications carrier from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing.

Section 7. Special Circumstances.

a. If the parties cannot agree that special circumstances exist, the dispute shall be submitted to non-binding arbitration (informal arbitration). Any party proposing informal arbitration shall serve an arbitration notice detailing a description of the dispute, including, without limitation, the position and proposed resolution of the party requesting arbitration and shall name one arbitrator chosen by that party. Within 20 days after receipt of an arbitration notice, the receiving party shall serve a written notice on the other party containing (I) a detailed response to the claim giving the position and proposed resolution of the receiving party, and (ii) an acceptance of the arbitrator designated in the arbitration notice or rejection of same and suggestion of no less than 2 other alternatives (reply notice). The informal arbitration shall be decided by a single arbitrator. In the event that the parties do not agree on the selection of an arbitrator within 7 business days after service of the reply notice, either party may apply to the American Arbitration Association for the purpose of appointing an independent arbitrator. To the extent practicable, the arbitrator shall be a person with expertise in the principal areas of dispute.

b. A conference shall be commenced by the arbitrator within 15 calendar days after the appointment of the arbitrator and a recommendation regarding the matter submitted shall be rendered within 10 business days after the conference or as soon as practicable thereafter. During the 30 calendar days following the filing of the arbitration notice, the parties will meet and confer
to attempt to resolve the dispute. The decision of the arbitrator and the rationale for its decision shall be in writing and signed by the arbitrator; provided, however, that such written recommendation shall have no evidentiary value and shall not be deemed to set forth any findings of fact for purposes of any future proceedings. Except as otherwise provided in this Section, the informal arbitration shall be held in accordance with the rules and procedures of the American Arbitration Association. Each party shall bear its own expenses, including, without limitation, legal and accounting fees, and the cost of the arbitrator shall be shared equally by each party. The parties may or may not elect to abide by the decision of the arbitrator.

c. If the parties cannot resolve their dispute based on the arbitrator's recommendation within 30 days, either party may, upon the expiration of the 30-day period, give written notice to the other party of the commencement of a binding arbitration proceeding in accordance with the Commercial Rules of Arbitration in the American Arbitration Association (formal arbitration). Any decision by the Board of Arbitration shall be final, binding, and conclusive as to the parties. Nothing provided in this Section shall prevent either party from submission of disputes to the court, limited to requests for injunctive or equitable relief in advance of a breach or threatened breach of this Agreement, if necessary to prevent serious and irreparable injury to such party or the public and if such injury cannot be appropriately addressed by informal or formal arbitration.

d. If the dispute over special circumstances concerns only the compensation associated with a crossing, then the licensee may proceed with installation of the crossing during the pendency of the arbitration.