

**Don't Let Your Row Become A Woe – Moderator:** John Idoux, Director  
Governmental Affairs, Brightspeed Communications

**Panelists:**

Lucius Duerksen, U.S. Army Corps of Engineers

Dale Kirmer, Highway Permit Administrator P.E., KDOT

Jim Hild, Union Pacific

Melissa Cannon, BNSF

**Question:** Over the past 2-5 years, there has been an increase in the number of permits and communications facilities deployed, how is your company has changed internally to accommodate influx in permit activity.

**Answer:** (Lucius) We are status quo, as permits come in, we evaluate them. The Corps is very diverse in its duties, so we have to have good internal communications. (Dale) One of my tasks with KDOT is right-of-way permits. We work to accommodate companies and safety of our highways. On broadband, KDOT is one of the funding sources, so we do have an interest in broadband deployment. (Jim) Union Pacific handles 3<sup>rd</sup> party crossings. We do 3-5,000 agreements a year. To handle uptick in applications, we have contracted out a lot of tasks and upgraded IT systems to make our processes more efficient for everyone involved. (Melissa) We have a new online permitting portal to take some burden off of our partners and utility providers. We are finishing an internal system upgrade to work with that permitting portal to help us track applications better and be more efficient.

**Q:** As a provider, I can say permitting is the longest function of a fiber build. How are you all partnering with broadband developers to not only assist yourselves, but the community? What is working well?

**A:** (Dale) KDOT does have an electronic permitting system that has helped tremendously. It allows the users to see where the permit application is in the process and makes it harder for a reviewer to lose it in the process. (Jim) The online portal does exist, but it is not set up as a communication tool. That is what we are trying to rebuild so communication is more streamlined between us and the permit applicant. We have periodic phone calls with the customer just to keep in touch and ensure we are prepared and helpful. Longitudinal applications are a much more detailed review and they do take longer than crossing applications. (Melissa) Jim hit it on the head. Communication is key. We want you to know who you should be talking to when the permit stalls. If you want to be pro-active and get information before submitting a permit, we want those resources available in a guide. (Lucius) Echo on online permitting portals. We have one for pre-application meetings and requests, and here soon it will be fully functional for permit requests. These types of events and conversations help folks to know what is required so the application process goes smoothly.

**Q:** Kansas is an easy state to work with and its companies, organizations, and governments are fantastic to work besides. How do you manage a public right-of-way and track crossing? When is a permit needed? How do you navigate multi-jurisdictions.

**A:** (Jim) We have these conversations all the time. For us, it is a property rights issue. That can mean every crossing is different. Railroads and right of ways were established in many different ways, so we have to know how they were created first. If a grant built the crossing, then it was for that specific purpose. When a utility comes in, they may see a statute saying they are in the right of way and don't need railroad permission, but the railroad *may* have jurisdiction. We *may* not. But we still want to know for safety reasons what utilities are there. It may be a license agreement and it may be consent or notice. It can always be different. To build on safety, railroads and technology have really taken off. We have a tremendous amount of high-tech infrastructure in our corridors that can be signal box wires, load detectors, barcode readers, etc., we have a lot of techs with buried cables and for safety purposes, we want to make sure that that infrastructure is protected. Electrical interference is also a real concern we deal with. (Melissa) For us as well it is an issue of property rights. We do all reviews before sending a draft agreement and may say "hey, you don't actually have rights to use this." But if you have already done research and think you have rights, send that into us so we can settle it faster.

**Q:** We as providers know we need a permit from a federal agency but would later find out we also needed a BLM permit and got conflicting permits. Any tips/suggestion when working with federal agencies?

**A:** (Lucius) That does come up often, especially with Fish and Wildlife (FWL), we are required to conduct section 7 consultation with FWL. I cannot think of too many conflicts we've had with other agencies. There are plenty of instances (such as archaeology or endangered species) that we have to work with another agency, but it shouldn't expand the review timeline significantly.

**Q:** Has KDOT run into situations where multiple agencies are involved? Any guidance?

**A:** (Dale) Have not seen any conflicts.

**Q:** How do you all assess the cost of railroad crossings and how do you come up with the prices in general?

**A:** (Jim) Union Pacific may have different methods from others, but its usually a set cost by state. If not, it's a formula depending on utility, size (i.e. pipeline vs broadband) cap rates, etc. (Melissa) Very similar. Benchmarked with other railroads to have competitive, but similar, pricing. We have minimum amounts for smaller crossing but can go up depending on project type like Jim mentioned in the formula.

**Q:** You're missing a large stakeholder in Saline County in the local right of way. A large percentage of broadband is in local right of ways. Rural counties see issues in that these projects are well planned out and then try to get permits where issues tend to come up in the differences in how are right of ways are built. They aren't the same size across the entire state. (John adds) What are the providers doing wrong? What can we improve on?

**A:** (Melissa) No one is doing anything wrong, but what could help is more time available for

your permit. Submit plans that are easier to review if you can. Fully complete applications are a huge help. We run into issues with property rights. Review the agreements quickly. Advance planning is a super big help for us. (Jim) Agree that timing is important. Another thing we offer is if you know you'll have a project coming up and you want to investigate a site before install, we offer a free non-intrusive permit application to allow you to investigate the site. 7-10 day turnaround to help you see the site and hopefully save time for all of us. (Dale) Contact us early and we can fix problems before they arise. (Lucius) We love the fiber industry because it's minimal impact. Easy permit review on our end. Something to think about, even if you are a couple miles away from water, you still need to get a permit because there may be restrictions. Just reach out and we can prevent future issues.

**Q:** What is a realistic timeframe that we can expect? And do timeframes differ from urban to rural?

**A:** (Jim) Timeframes on a crossing are 30-60 days. Well, we strive for that. Longitudinals are 6-9 months. I'm embarrassed by that, but they just take a lot of time. We are trying to shorten it. We offer rush services, but they are expensive to put you on the top of the list. (Melissa) We are about the same. (Dale) If you're just crossing a highway or two, we can turn that around in a week. More population might take longer time. Rural areas can be done pretty quick. Longitudinal depends on the highway and structures and the length. 30 days is about average, 60 is probably the longest. (Lucius) If you need to work in a stream or wetland, temporary crossing is more of an issue than actually installing a line. Those look like 30-60 days. Levies, lakes, and, larger rivers are a minimum of 60 days.

**Q:** Why is an additional permit required for adding on to existing agreements we have?

**A:** (Dale) You're conducting work on a right of way, and we want to know what that is. Should be very quick. (Jim) We just want to know how much is out there for safety reason. Broadband is unlikely to matter, but we just want to be safe. Should be a fairly simple supplemental to the agreement. (Melissa) I agree with everything that has been said. Permits are written specifically for exactly what was installed, so any additional deployments are likely outside the original agreement.

**Q:** What are some of the negotiating suggestions you have to reach arbitration on disagreements.

**A:** (Dale) We just want to put you in a position that your fiber is safe. We want to work with you to fix any issues and not straight-up deny your application. (Jim) Crossing may be rejected for engineering issues and railroad standards, and those we will reject. The solution is to try and move the lines, it is usually simple, and we will work with you on a solution. Another common issue is requests to edit agreements. For example, I've been asked to take out a termination clause (and to be fair, we haven't used those recently) but if I remove that clause, then I've basically given you rights to our property. (Melissa) I've been doing permits for a while, and I cannot think of even a few outright rejections from us. I think we are good at working with people to resolve issues to come to a solution. It may take more time, but we want to work with

you and get permits up to our standards to move forward. (Lucius) From a Corps standpoint, you'd have to work hard to get a project outright rejected. We're going to work with you.

**Q:** Jim could you define Longitudinal vs Crossing?

**A:** (Jim) Long-haul and short-haul. 1,500 ft I think is considered long-haul.

**Q:** An issue we have on county roads, infrastructure built on narrow roads and right of ways is tight. You have to have lane closures, and that is not planned out very well.

**A:** (Dale) Absolutely agree. We are big on traffic control and won't let construction happen without the proper safety equipment out there. (Jim) Flagging is critical when working on right of ways. Railroads are good at looking at flags when permitting.

**Q:** Are there different levels of review for different types of utilities? Is there appetite to make fiber easier to review?

**A:** (Jim) We have a preliminary and secondary review. Standard crossings do not need to go to secondary reviews that power lines and pipelines need to go through. Fiber shouldn't be as difficult to review as other utilities. (Melissa) Everything has to meet our UAP, and that isn't changing, but if you just reach out and learn about our UAP it can be easier. Just reach out and we can talk about your plans. We are trying to make processes easier, but it's difficult.