

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 398

Introduced by Bostelman, 23.

Read first time January 14, 2021

Committee:

1 A BILL FOR AN ACT relating to telecommunications and technology; to amend
2 section 86-103.01, Reissue Revised Statutes of Nebraska, and
3 sections 86-324, 86-577, 86-1101, and 86-1102, Revised Statutes
4 Cumulative Supplement, 2020; to redefine terms; to change Public
5 Service Commission powers relating to the Nebraska
6 Telecommunications Universal Service Fund; to restate legislative
7 intent relating to access to broadband service; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-103.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 86-103.01 Advanced telecommunications capability service means high-
4 speed, broadband service at a minimum download speed of one hundred
5 megabits per second and a minimum upload speed of one hundred megabits
6 per second telecommunications capability provided by a local exchange
7 carrier that enables users to originate and receive high-quality voice,
8 data, graphics, and video communications using any technology.

9 Sec. 2. Section 86-324, Revised Statutes Cumulative Supplement,
10 2020, is amended to read:

11 86-324 (1) The Nebraska Telecommunications Universal Service Fund is
12 hereby created. The fund shall provide the assistance necessary to make
13 universal access to telecommunications services available to all persons
14 in the state consistent with the policies set forth in the Nebraska
15 Telecommunications Universal Service Fund Act. Only eligible
16 telecommunications companies designated by the commission shall be
17 eligible to receive support to serve high-cost areas from the fund. A
18 telecommunications company that receives such support shall use that
19 support only for the provision, maintenance, and upgrading of facilities
20 and services for which the support is intended. Any such support should
21 be explicit and sufficient to achieve the purpose of the act.

22 (2) Notwithstanding the provisions of section 86-124, in addition to
23 other provisions of the act, and to the extent not prohibited by federal
24 law, the commission:

25 (a) Shall have authority and power to subject eligible
26 telecommunications companies to service quality, customer service,
27 affordability, and billing rules and regulations. Such rules and
28 regulations adopted and promulgated by the commission shall apply ~~only~~ to
29 the extent of any telecommunications services, broadband services, or
30 offerings made by an eligible telecommunications company which are
31 eligible for support by the fund. The commission shall be reimbursed from

1 the fund for all costs related to drafting, implementing, and enforcing
2 the rules and regulations and any other services provided on behalf of
3 customers pursuant to this subdivision;

4 (b) Shall have authority and power to issue orders carrying out its
5 responsibilities and to review the compliance of any eligible
6 telecommunications company receiving support for continued compliance
7 with any such orders issued or rules and regulations adopted and
8 promulgated pursuant to the act;

9 (c) May withhold all or a portion of the funds to be distributed
10 from any telecommunications company failing to continue compliance with
11 the commission's orders or rules and regulations;

12 (d) Shall require every telecommunications company to contribute to
13 any universal service mechanism established by the commission pursuant to
14 state law. The commission shall require, as reasonably necessary, an
15 annual audit of any telecommunications company to be performed by a
16 third-party certified public accountant to insure the billing,
17 collection, and remittance of a surcharge for universal service. The
18 costs of any audit required pursuant to this subdivision shall be paid by
19 the telecommunications company being audited;

20 (e) Shall require an audit of information provided by a
21 telecommunications company to be performed by a third-party certified
22 public accountant for purposes of calculating universal service fund
23 payments to such telecommunications company. The costs of any audit
24 required pursuant to this subdivision shall be paid by the
25 telecommunications company being audited; and

26 (f) May administratively fine pursuant to section 75-156 any person
27 who violates the Nebraska Telecommunications Universal Service Fund Act.

28 (3) Any money in the fund available for investment shall be invested
29 by the state investment officer pursuant to the Nebraska Capital
30 Expansion Act and the Nebraska State Funds Investment Act, ~~and for the~~
31 ~~period July 1, 2017, through June 30, 2019, any interest earned by the~~

1 ~~fund shall be credited to the General Fund.~~

2 Sec. 3. Section 86-577, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 86-577 (1) For purposes of this section:

5 (a) Served location means a location receiving, or at the time the
6 lease is filed with the Public Service Commission able to receive,
7 communications service at a minimum download speed of one hundred ~~twenty-~~
8 ~~five~~ megabits per second and a minimum upload speed of one hundred ~~three~~
9 megabits per second or higher speeds, as determined by the Public Service
10 Commission; and

11 (b) Unserved location means a location not receiving, and at the
12 time the lease is filed with the Public Service Commission not able to
13 receive, communications service at a minimum download speed of one
14 ~~hundred~~ ~~twenty-five~~ megabits per second and a minimum upload speed of one
15 ~~hundred~~ ~~three~~ megabits per second or higher speeds, as determined by the
16 Public Service Commission.

17 (2) Any agency or political subdivision of the state may lease its
18 dark fiber if:

19 (a) The lessee is a certificated telecommunications common carrier
20 or a permitted telecommunications contract carrier pursuant to section
21 86-128 or an Internet service provider;

22 (b) The lease terms are fair, reasonable, and nondiscriminatory; and

23 (c) The lease complies with this section.

24 (3)(a) Before a lease of dark fiber under this section becomes
25 effective, it shall be filed with the commission which shall
26 expeditiously cause notice of the lease, including lease rates, to be
27 published.

28 (b)(i) The lease shall become effective fourteen business days after
29 the date of the published notice unless a protest is filed with the
30 commission, in which event the commission shall consider the lease as a
31 contested matter and consider the contested lease according to the

1 commission's rules of procedure.

2 (ii) If the allocation of served location and unserved location in
3 the lease is contested, the commission shall determine such allocation
4 under the lease as a contested matter and consider the contested lease
5 according to the commission's rules of procedure.

6 (4) For the lease of dark fiber:

7 (a) The commission shall establish a safe harbor range of market
8 rates for all dark fiber leases using a competitive price determination
9 comparison. When conducting a competitive price determination comparison,
10 the commission, in its discretion, shall use rate schedules,
11 interconnection agreements, or other documents within its regulatory
12 oversight and shall gather other market rate information as deemed
13 necessary. If a lease utilizes rates within the safe harbor range, such
14 rates shall be deemed approved. Any other term of the lease may be
15 contested pursuant to subdivision (3)(b) of this section; and

16 (b) Fifty percent of the profit earned by the agency or political
17 subdivision under a lease of dark fiber leased to serve a served location
18 shall be remitted to the State Treasurer for credit to the Nebraska
19 Telecommunications Universal Service Fund. For purposes of this
20 subdivision, profit earned by the agency or political subdivision means
21 the lease price less the cost of infrastructure deployment. This
22 subdivision does not apply to a lease or portion of a lease of dark fiber
23 leased to exclusively serve unserved locations.

24 (5) The lessee shall make every reasonable effort to activate the
25 maximum amount of the leased fiber as is possible, within one year after
26 entering into the lease, unless good cause is shown.

27 Sec. 4. Section 86-1101, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 86-1101 The Legislature finds and declares that:

30 (1) The availability, quality, and affordability of broadband
31 telecommunications service is important to the residents of Nebraska; and

1 (2) Because availability, quality, and affordability of broadband
2 ~~telecommunications~~ service is lacking in certain rural areas in Nebraska,
3 combined with greater investment in urban areas, the state may be facing
4 a digital divide.

5 It is the intent of the Legislature that broadband
6 ~~telecommunications~~ service in rural areas of the state should be
7 comparable in download and upload speed and price to urban areas in the
8 state where possible and that state resources should be utilized to
9 ensure that the rural residents of the state should not be penalized
10 simply because of their rural residence. It is further the intent of the
11 Legislature that the residents of this state should have access to
12 broadband ~~telecommunications~~ service at a minimum download speed of one
13 hundred ~~twenty-five~~ megabits per second and a minimum upload speed of one
14 hundred ~~three~~ megabits per second.

15 Sec. 5. Section 86-1102, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 86-1102 (1) The Rural Broadband Task Force is hereby created. Task
18 force members shall include the chairperson of the Transportation and
19 Telecommunications Committee of the Legislature and a member of the
20 Legislature selected by the Executive Board of the Legislative Council
21 who shall both serve as nonvoting, ex officio members, a member of the
22 Public Service Commission who shall be selected by the chairperson of
23 such commission, the chairperson of the Nebraska Information Technology
24 Commission or his or her designee who shall act as chairperson of the
25 task force, the Director of Economic Development or his or her designee,
26 the Director of Agriculture or his or her designee, and the following
27 members to be appointed by the Governor: A representative of the
28 agribusiness community, a representative of the Nebraska business
29 community, a representative of the regulated wireline telecommunications
30 industry, a representative of the wireless telecommunications industry, a
31 representative of the public power industry, a representative of health

1 care providers, a representative of Nebraska postsecondary educational
2 institutions, and a representative of rural schools offering kindergarten
3 through grade twelve. The members appointed by the Governor shall serve
4 for a term of two years and may be reappointed.

5 (2) The task force may appoint advisory groups to assist the task
6 force in providing technical expertise and advice on any issue. The
7 advisory groups may be composed of representatives of stakeholder groups
8 which may include, but not necessarily be limited to, representatives
9 from small and large wireline companies, wireless companies, public power
10 districts, electric cooperative corporations, cable television companies,
11 Internet service providers, low-income telecommunications and electric
12 utility customers, health care providers, and representatives of
13 educational sectors. No compensation or expense reimbursement shall be
14 provided to any member of any advisory group appointed by the task force.

15 (3) The Nebraska Information Technology Commission shall provide
16 staff assistance to the task force in consultation with staff from the
17 Public Service Commission and other interested parties. The task force
18 may hire consultants to assist in carrying out its duties. The task force
19 shall review issues relating to availability, adoption, and affordability
20 of broadband services in rural areas of Nebraska. In particular, the task
21 force shall:

22 (a) Determine how Nebraska rural areas compare to neighboring states
23 and the rest of the nation in average download and upload speeds and in
24 subscription rates to higher speed tiers, when available;

25 (b) Examine the role of the Nebraska Telecommunications Universal
26 Service Fund in bringing comparable and affordable broadband services to
27 rural residents and any effect of the fund in deterring or delaying
28 capital formation, broadband competition, and broadband deployment;

29 (c) Review the feasibility of alternative technologies and providers
30 in accelerating access to faster and more reliable broadband service for
31 rural residents;

1 (d) Examine alternatives for deployment of broadband services to
2 areas that remain unserved or underserved, such as reverse auction
3 programs described in section 86-330, public-private partnerships,
4 funding for competitive deployment, and other measures, and make
5 recommendations to the Public Service Commission to encourage deployment
6 in such areas;

7 (e) Recommend state policies to effectively utilize state universal
8 service fund dollars to leverage federal universal service fund support
9 and other federal funding;

10 (f) Make recommendations to the Governor and Legislature as to the
11 most effective and efficient ways that federal broadband rural
12 infrastructure funds received after July 1, 2018, should be expended if
13 such funds become available; and

14 (g) Determine other issues that may be pertinent to the purpose of
15 the task force.

16 (4) Task force members shall serve on the task force without
17 compensation but shall be entitled to receive reimbursement for expenses
18 incurred for such service as provided in sections 81-1174 to 81-1177.

19 (5) The task force shall meet at the call of the chairperson and
20 shall present its findings in a report to the Executive Board of the
21 Legislative Council no later than November 1, 2019, and by November 1
22 every odd-numbered year thereafter. The report shall be submitted
23 electronically.

24 (6) For purposes of this section, broadband services means high-
25 speed telecommunications capability at a minimum download speed of one
26 hundred twenty-five megabits per second and a minimum upload speed of one
27 hundred three megabits per second, and that enables users to originate
28 and receive high-quality voice, data, and video telecommunications using
29 any technology.

30 Sec. 6. Original section 86-103.01, Reissue Revised Statutes of
31 Nebraska, and sections 86-324, 86-577, 86-1101, and 86-1102, Revised

1 Statutes Cumulative Supplement, 2020, are repealed.