

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 514

Introduced by Transportation Committee: Bromm, 23, Chairperson;
Jones, 43; Dw. Pedersen, 39; C. Peterson, 35;
Thompson, 14; and Kristensen, 37; Landis, 46

Read first time January 15, 1999

Committee: Transportation

A BILL

1 FOR AN ACT relating to the Public Service Commission; to amend
2 section 75-609, Reissue Revised Statutes of Nebraska, and
3 sections 75-609.01, 86-1401, and 86-1405, Revised
4 Statutes Supplement, 1998; to restrict ex parte
5 communications; to provide for closed executive staff
6 sessions; to change provisions relating to access charges
7 and universal service; to eliminate a termination date;
8 to harmonize provisions; to repeal the original sections;
9 to outright repeal section 86-1411, Revised Statutes
10 Supplement, 1998; and to declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. With respect to any matter of fact or law at
2 issue in a contested case and notwithstanding any other provision
3 of law, a member, staff, or agent of the Public Service Commission
4 shall not during the pendency of any contested case heard before
5 the commission have any ex parte communication with any party
6 having an interest in the outcome of the contested case. For
7 purposes of this section, the definitions in section 84-901 shall
8 apply.

9 Sec. 2. (1) The Legislature finds that the Public
10 Service Commission confronts issues of unusual technical and legal
11 complexity in its duties with regard to the regulation of
12 telecommunications. Such issues require members to consult with
13 commission staff and agents as well as expert consultants for the
14 purposes of education, gathering of technical information, and
15 informed debate within the context of an executive staff session.
16 Meetings of this nature need to be held in closed sessions for the
17 protection of the public interest; however, such meetings shall
18 meet the requirements set forth in section 84-1410 and this
19 section.

20 (2) In addition to the reasons set forth in section
21 84-1410, a meeting may be closed for purposes of an executive staff
22 session upon a finding that at least two of the following
23 conditions are met:

24 (a) The commission has allowed or required sworn
25 testimony in portions of the meeting prior to the point at which
26 the vote to move to a closed executive staff session has been
27 proposed;

28 (b) The matter under consideration by the commission

1 involves a technical, economic, or scientific issue on which the
2 commission has received or requires testimony from experts that are
3 beyond the expertise of members of the commission or general
4 members of the public;

5 (c) Parties participating in the public meeting filed
6 written testimony at or prior to the time of the public meeting; or

7 (d) The matter under consideration by the commission
8 involves an issue of unusual legal complexity.

9 Sec. 3. Section 75-609, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 75-609. (1) When two or more telephone carriers jointly
12 furnish interexchange service or extended area service, the revenue
13 from such jointly furnished service shall be divided in such manner
14 as may be agreed upon by the carriers furnishing such service. In
15 the event of inability to agree, any one of the carriers jointly
16 furnishing such service may file an application with the commission
17 requesting that the commission enter an order prescribing an
18 equitable division of revenue from such jointly furnished service.
19 The order entered pursuant to such application may be appealed from
20 by any party to the proceeding in the same manner as from other
21 orders of the commission.

22 (2) Access charges imposed by telephone carriers for
23 access to a local exchange network for interexchange services shall
24 be negotiated by the carriers involved. Any affected carrier may
25 apply for review of such charges by the commission or the
26 commission may make a motion to review such charges. Upon such
27 application or motion and unless otherwise agreed to by all parties
28 thereto, the commission shall, upon proper notice, hold and

1 complete a hearing thereon within sixty days of the filing. The
2 commission may, within sixty days after the close of the hearing,
3 enter an order setting access charges which are fair and
4 reasonable. The commission shall set an access charge structure
5 for each local exchange carrier but may order discounts where there
6 is not available access of equal type and quality for all
7 interexchange carriers, except that the commission shall not order
8 access charges which would cause the annual revenue to be realized
9 by the local exchange carrier from all interexchange carriers to be
10 less than the annual costs, as determined by the commission based
11 upon evidence received at hearing, incurred or which will be
12 incurred by the local exchange carrier in providing such access
13 services. Any actions taken pursuant to this subsection shall be
14 substantially consistent with the federal act and federal actions
15 taken under its authority.

16 (3) Reductions made to access charges pursuant to
17 subsection (2) of this section shall be passed on to the customers
18 of interexchange service carriers in Nebraska whose payment of
19 charges have been reduced. The commission shall have the power and
20 authority to ensure that any access charge reductions made pursuant
21 to subsection (2) of this section are passed on in a manner that is
22 fair and reasonable. The commission shall have the power to review
23 actions taken by any telephone carrier to ensure that this
24 subsection is carried out.

25 (4) For purposes of this section, access charges means
26 the charges paid by telephone carriers to local exchange carriers
27 in order to originate and terminate calls using local exchange
28 facilities.

1 Sec. 4. Section 75-609.01, Revised Statutes Supplement,
2 1998, is amended to read:

3 75-609.01. (1) Telephone carriers which serve less than
4 five percent of the state's subscriber lines in the aggregate
5 statewide shall not be subject to rate regulation by the commission
6 pursuant to section 75-609 unless (a) the carrier elects by action
7 of its board of directors to be subject to such rate regulation by
8 the commission, (b) the proposed increase exceeds thirty percent in
9 any one year, (c) five percent of the subscribers petition the
10 commission to regulate rates pursuant to subsections (2) through
11 (4) of this section, or (d) the commission declares that the
12 carrier shall be subject to rate regulation by the commission
13 pursuant to subsection (5) of this section.

14 (2) Each such telephone carrier not subject to rate
15 regulation shall, at least ninety days before the effective date of
16 any proposed rate change, notify the commission and each of the
17 carrier's subscribers of the proposed rate change. Notice to the
18 commission shall include a list of the carrier's published
19 subscribers. Notice by the carrier to all subscribers shall be in
20 a form prescribed by the commission, shall be by first-class mail,
21 and shall include a schedule of the proposed rates, the effective
22 date of the rates, and the procedure necessary for the subscribers
23 to petition the commission to determine rates in lieu of the
24 proposed rates.

25 (3) The subscribers of a telephone carrier not subject to
26 the commission's rate regulation may petition the commission to
27 determine rates in lieu of any rate change proposed by the carrier
28 pursuant to subsection (2) of this section. A petition

1 substantially in compliance with the rules and regulations of the
2 commission shall not be deemed invalid due to minor errors in its
3 form.

4 (4) If, by the effective date of the carrier's proposed
5 rate change, the commission has received petitions from less than
6 five percent of the subscribers requesting that the commission
7 determine rates, the commission shall certify such fact to the
8 carrier and the carrier's proposed rates shall become effective as
9 published in the notice to subscribers. If, on or before the
10 effective date of the proposed rate change, the commission has
11 received petitions from five percent or more of the subscribers
12 requesting that the commission determine rates, the commission
13 shall notify the carrier that it will determine rates for the
14 carrier in lieu of the carrier's proposed rate change. Rates
15 established by the commission or by a telephone carrier pursuant to
16 subsections (2) through (4) of this section shall be in force for
17 at least one year.

18 (5) In addition to the procedure for petition prior to
19 any proposed rate change pursuant to subsections (2) through (4) of
20 this section, the subscribers of a telephone carrier not subject to
21 the commission's rate regulation may at any time petition the
22 commission to declare that the carrier shall be subject to such
23 rate regulation. If the commission determines that at least
24 fifty-one percent of a carrier's subscribers have properly
25 petitioned that the carrier be subject to the commission's rate
26 regulation, the commission shall certify such fact to the carrier
27 and thereafter the carrier shall be subject to rate regulation by
28 the commission until at least fifty-one percent of the carrier's

1 subscribers properly petition that the carrier no longer shall be
2 subject to the commission's rate regulation. This section shall
3 not be construed to exempt any local exchange carrier from
4 regulation of its access charges pursuant to subsection (2) or (3)
5 of section 75-609.

6 Sec. 5. Section 86-1401, Revised Statutes Supplement,
7 1998, is amended to read:

8 86-1401. Sections 86-1401 to ~~86-1411~~ 86-1410 shall be
9 known and may be cited as the Nebraska Telecommunications Universal
10 Service Fund Act.

11 Sec. 6. Section 86-1405, Revised Statutes Supplement,
12 1998, is amended to read:

13 86-1405. The Nebraska Telecommunications Universal
14 Service Fund is hereby created. The fund shall provide the
15 assistance necessary to make universal access to telecommunications
16 services available to all persons in the state consistent with the
17 policies set forth in the Nebraska Telecommunications Universal
18 Service Fund Act. Only eligible telecommunications companies
19 designated by the commission pursuant to 47 U.S.C. 214(e) and in
20 substantial compliance with the law and commission orders shall be
21 eligible to receive support to serve high-cost areas from the fund.
22 A telecommunications company that receives such support shall use
23 that support only for the provision, maintenance, and upgrading of
24 facilities and services for which the support is intended. Any
25 such support should be explicit and sufficient to achieve the
26 purpose of the Nebraska Telecommunications Universal Service Fund
27 Act. The commission shall have authority and power to issue orders
28 carrying out its responsibilities, and any such support shall not

1 be distributed to an eligible telecommunications company until a
2 commission order is adopted that ensures corresponding reductions
3 in the price of services currently subsidizing service in high-cost
4 areas. The commission shall have the authority to review the
5 compliance of any eligible telecommunications company receiving
6 support for continued compliance with any such order and may
7 withhold all or a portion of the funds to be distributed from any
8 telecommunications company failing to continue compliance with its
9 order. Any money in the fund available for investment shall be
10 invested by the state investment officer pursuant to the Nebraska
11 Capital Expansion Act and the Nebraska State Funds Investment Act.

12 Sec. 7. Original section 75-609, Reissue Revised
13 Statutes of Nebraska, and sections 75-609.01, 86-1401, and 86-1405,
14 Revised Statutes Supplement, 1998, are repealed.

15 Sec. 8. The following section is outright repealed:
16 Section 86-1411, Revised Statutes Supplement, 1998.

17 Sec. 9. Since an emergency exists, this act takes effect
18 when passed and approved according to law.