

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1113**

Introduced by Walz, 15; Briese, 41.

Read first time January 18, 2018

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to amend  
2 sections 86-577, 86-593, and 86-594, Reissue Revised Statutes of  
3 Nebraska; to provide an exception for leasing dark fiber or  
4 providing broadband, Internet, telecommunications, or video services  
5 by an agency or political subdivision of the state; to define terms;  
6 to harmonize provisions; and to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-577, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 86-577 (1) Any agency or political subdivision of the state may  
4 lease its dark fiber if:

5 (a) ~~(1)~~ The lessee is a certificated telecommunications common  
6 carrier or a permitted telecommunications contract carrier pursuant to  
7 section 86-128 or an Internet service provider;

8 (b) ~~(2)~~ The lease price and profit distribution is approved by the  
9 Public Service Commission as follows:

10 (i) ~~(a)~~ The commission shall not approve any lease price which is  
11 less than the market rate for leasing such fiber as determined by the  
12 commission. The market rate is the price associated with similar  
13 unbundled network elements that may be available from the incumbent local  
14 exchange carrier or the price of any other private entity leasing dark  
15 fiber optic facilities serving the same or similar territory where the  
16 leased equipment is located. Before entering into a lease, each agency or  
17 political subdivision shall file a request with the commission for a  
18 competitive price comparison to determine the market rate. When  
19 conducting a competitive price comparison, the commission in its  
20 discretion shall use rate schedules, interconnection agreements, or other  
21 documents within its regulatory oversight and shall gather other market  
22 rate information as deemed necessary;

23 (ii) ~~(b)~~ The commission shall not approve any lease price which is  
24 agreed upon by the agency or political subdivision and the lessee unless  
25 the lease requires that the agency or political subdivision be solely  
26 responsible for the maintenance of its dark fiber and that the lessee be  
27 responsible, on a pro rata basis, for any such maintenance costs; and

28 (iii) ~~(c)~~ The commission shall not approve any lease unless fifty  
29 percent of the profit earned by the agency or political subdivision under  
30 the lease is remitted to the Nebraska Internet Enhancement Fund. Profit  
31 earned by the agency or political subdivision is the lease price less the

1 cost of infrastructure overbuilding. Before entering into a lease, each  
2 agency or political subdivision shall file a request with the commission  
3 to determine the cost of overbuilding its fiber optic infrastructure. For  
4 purposes of this subdivision, cost of infrastructure overbuilding means  
5 the cost of each leased optic fiber, including the cost, on a pro rata  
6 basis, associated with the agency's or political subdivision's  
7 installation of such fiber;

8 (c) ~~(3)~~ Any interconnection agreement subject to section 86-122 is  
9 approved by the commission; and

10 (d) ~~(4)~~ The lessee makes every reasonable effort to activate the  
11 maximum amount of the leased fiber as is possible, within one year after  
12 entering into the lease, unless good cause is shown.

13 (2) Subdivision (1)(b) of this section shall not apply to leases of  
14 dark fiber pursuant to a public-private partnership as defined in section  
15 86-593.

16 Sec. 2. Section 86-593, Reissue Revised Statutes of Nebraska, is  
17 amended to read:

18 86-593 For purposes of sections 86-593 to 86-598:

19 (1) Broadband services means the offering of a capability for high-  
20 speed broadband telecommunications capability at a speed or bandwidth in  
21 excess of two hundred kilobits per second that enables users to originate  
22 and receive high-quality voice, data, and video telecommunications using  
23 any technology;

24 (2) Internet services means the offering of Internet service  
25 provider services, providing voice over Internet protocol services, or  
26 providing Internet protocol-based video services;

27 (3) Private partner means a telecommunications common carrier  
28 holding a certificate of convenience and necessity, a telecommunications  
29 contract carrier holding a permit from the Public Service Commission  
30 pursuant to section 86-128, or an Internet service provider;

31 (4) ~~(3)~~ Public power supplier means a public power district, a

1 public power and irrigation district, a municipal electric system, a  
2 joint entity formed under the Interlocal Cooperation Act, a joint public  
3 agency formed under the Joint Public Agency Act, an agency formed under  
4 the Municipal Cooperative Financing Act, or any other governmental entity  
5 providing electric service;

6 (5) Public-private partnership means an agreement between an agency  
7 or political subdivision of the state and a private partner relating to  
8 (a) any public infrastructure assets for which the agency or political  
9 subdivision is responsible, (b) the development or enhancement of such  
10 public infrastructure assets in conjunction with the provision of  
11 broadband services, Internet services, telecommunications services, or  
12 video services, (c) any combination of federal, state, or local funds,  
13 grants, loans, debt, or other public or private sources of funding or  
14 financing to meet the objectives set forth in subdivision (b) of this  
15 subdivision, and (d) the deployment and operation of a system for the  
16 delivery of broadband services, Internet services, telecommunications  
17 services, or video services by the private partner;

18 (6) (4) Telecommunications has the same meaning as  
19 telecommunications defined in section 86-117;

20 (7) (5) Telecommunications services has the same meaning as  
21 telecommunications service defined in section 86-121; and

22 (8) (6) Video services means the delivery of any subscription video  
23 service except those described in section 70-625.

24 Sec. 3. Section 86-594, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 86-594 (1) Except as provided in the Educational Service Units Act  
27 and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, 85-1501  
28 to 85-1542, and 86-575, and subsection (2) of this section, an agency or  
29 political subdivision of the state that is not a public power supplier  
30 shall not provide on a retail or wholesale basis any broadband services,  
31 Internet services, telecommunications services, or video services.

1           (2) Broadband services, Internet services, telecommunications  
2 services, or video services may be provided on a retail or wholesale  
3 basis by an agency or political subdivision of the state through a  
4 public-private partnership.

5           ~~(3)~~ (2) The provisions of subsection (1) of this section shall not  
6 apply to services which an agency or political subdivision of the state  
7 was authorized to provide and was providing prior to January 1, 2005.

8           Sec. 4.   Original sections 86-577, 86-593, and 86-594, Reissue  
9 Revised Statutes of Nebraska, are repealed.