

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 856

Introduced by Morfeld, 46.

Read first time January 05, 2018

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to telecommunications and technology; to amend
2 sections 86-125 and 86-580, Reissue Revised Statutes of Nebraska; to
3 adopt the Internet Neutrality Act; to change requirements for
4 communications providers under the Nebraska Telecommunications
5 Regulation Act; to change provisions relating to financial
6 assistance from the Nebraska Internet Enhancement Fund; to harmonize
7 provisions; to provide an operative date; to provide severability;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the Internet Neutrality Act.

3 Sec. 2. The Legislature finds and declares that:

4 (1) The Internet enables users to communicate with one another with
5 unprecedented speed and efficiency and has dramatically changed how
6 people share and receive information. It is also a means of diverse and
7 democratic political communication and is the marketplace of ideas. In
8 many ways Internet rights are civil rights. The digital and Internet
9 revolution has provided the most diverse, democratic, interactive, and
10 participatory communications system that people have ever experienced.
11 For Nebraskans, the Internet deserves as much First Amendment protection
12 as traditional media. The role of government should be to maintain this
13 unique and vast free speech zone;

14 (2) The Internet is one of the most important components of commerce
15 in the state. Internet access and commerce not only provide for online
16 access to business customers, but also provide a viable means for new
17 businesses to compete against other established businesses. The open
18 Internet guarantees that new and innovative businesses can and will
19 provide products or services without interference or restriction from
20 competitors that are affiliated or contract with Internet service
21 providers. The Internet has provided small businesses the ability to
22 market products or services to customers or consumers in a true global
23 market and has created a means by which to reach international audiences
24 at minimal costs. Net neutrality promotes innovation by preventing large
25 companies from leveraging their market power to restrict competition from
26 smaller, dynamic, web-based innovator companies; and

27 (3) Net neutrality is the principle that Internet service providers
28 should treat online data equally by not (a) discriminating based on user
29 or content or (b) limiting or restricting access to certain web sites,
30 applications, or content. Net neutrality is the way that the Internet has
31 always worked for the majority of Nebraska Internet users.

1 Sec. 3. For purposes of the Internet Neutrality Act:

2 (1) Broadband Internet access service means a mass-market retail
3 service by wire or radio that provides the capability to transmit data to
4 and receive data from all or substantially all Internet endpoints,
5 including any capabilities that are incidental to and enable the
6 operation of the communications service, but excluding dial-up Internet
7 access service. Broadband Internet access service includes any service
8 that provides a functional equivalent of the service described in this
9 subdivision or that is used to evade the protections set forth in the
10 Internet Neutrality Act;

11 (2) Content, applications, and services means all traffic
12 transmitted to or from end users of a broadband Internet access service,
13 including traffic that may not fit clearly into any of these categories;

14 (3) Edge provider means any person or entity that provides any
15 content, application, or service over the Internet and any person or
16 entity that provides a device used for accessing any content,
17 application, or service over the Internet;

18 (4) End user means any person or entity that uses a broadband
19 Internet access service;

20 (5) Fixed broadband Internet access service means a broadband
21 Internet access service that serves end users primarily at fixed
22 endpoints using stationary equipment. Fixed broadband Internet access
23 service includes fixed wireless services, fixed unlicensed wireless
24 services, and fixed satellite services;

25 (6) Mobile broadband Internet access service means a broadband
26 Internet access service that serves end users primarily using mobile
27 stations;

28 (7) Paid prioritization means the management of a broadband Internet
29 access service provider's network to directly or indirectly favor some
30 traffic over other traffic, including through use of techniques such as
31 traffic shaping, prioritization, resource reservation, or other forms of

1 preferential traffic management, either in exchange for monetary or other
2 consideration from a third party or to benefit an affiliated entity; and

3 (8) Reasonable network management means a network management
4 practice that has a primarily technical network management justification
5 but does not include other business practices. A network management
6 practice is reasonable if it is primarily used for and tailored to
7 achieving a legitimate network management purpose, taking into account
8 the particular network architecture and technology of the broadband
9 Internet access service.

10 Sec. 4. An Internet service provider shall not provide any fixed or
11 mobile broadband Internet access service that is not in full compliance
12 with the Internet Neutrality Act.

13 Sec. 5. Any Internet service provider that provides fixed or mobile
14 broadband Internet access service shall publicly disclose accurate
15 information regarding the network management practices, performance, and
16 commercial terms of its broadband Internet access service sufficient for
17 users of those services to be able to fully and accurately determine if
18 the service is in compliance with the Internet Neutrality Act.

19 Sec. 6. No Internet service provider that provides fixed or mobile
20 broadband Internet access service may block lawful content, applications,
21 services, or nonharmful devices, subject to reasonable network
22 management.

23 Sec. 7. No Internet service provider engaged in the provision of
24 fixed or mobile broadband Internet access service shall impair or degrade
25 lawful Internet traffic on the basis of content, application, or service
26 or use of a nonharmful device, subject to reasonable network management.

27 Sec. 8. No Internet service provider engaged in the provision of
28 fixed or mobile broadband Internet access service shall engage in paid
29 prioritization. A user of such service may waive the ban on paid
30 prioritization as to a particular broadband Internet access service only
31 if the Internet service provider demonstrates that the practice would

1 provide some significant public interest benefit and would not harm the
2 open nature of such service.

3 Sec. 9. No Internet service provider engaged in the provision of
4 fixed or mobile broadband Internet access service shall unreasonably
5 interfere with or unreasonably disadvantage (1) the ability of users of
6 such services to select, access, or use broadband Internet access
7 service, lawful content, application, or service, or devices of their
8 choice or (2) the ability of edge providers to make lawful content,
9 application, service, or devices available to users of such service.
10 Reasonable network management shall not be considered a violation of this
11 section.

12 Sec. 10. Nothing in the Internet Neutrality Act supersedes any
13 obligation or authorization or limits the ability of a provider of fixed
14 or mobile broadband Internet access service to address the needs of
15 emergency communications or law enforcement, public safety, or national
16 security authorities consistent with or as permitted by applicable law.
17 Nothing in the Internet Neutrality Act prohibits reasonable efforts by a
18 fixed or mobile provider of broadband Internet access service to address
19 copyright infringement or other unlawful activity.

20 Sec. 11. Section 86-125, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 86-125 Notwithstanding the provisions of section 86-124:

23 (1) All communications providers providing service in Nebraska shall
24 file a registration form with and pay a registration fee to the Public
25 Service Commission. A communications provider which provides such service
26 prior to August 1, 2007, and which continues to provide such service on
27 and after August 1, 2007, shall register with the commission no later
28 than January 1, 2008. Any communications provider which begins to provide
29 service in Nebraska on or after August 1, 2007, shall register with the
30 commission prior to providing such service;

31 (2) The commission shall prescribe the registration form to be filed

1 pursuant to this section. Communications providers as defined in
2 subdivision (8)(a) of this section shall provide:

3 (a) The name, address, telephone number, and email address of a
4 contact person concerning the Nebraska Telecommunications Universal
5 Service Fund Act and related surcharges, if applicable;

6 (b) The name, address, telephone number, and email address of a
7 contact person concerning the Telecommunications Relay System Act and
8 related surcharges, if applicable;

9 (c) The name, address, telephone number, and email address of a
10 contact person concerning the Enhanced Wireless 911 Services Act and
11 related surcharges, if applicable; and

12 (d) The name, address, telephone number, and email address of a
13 contact person concerning consumer complaints and inquiries;

14 (3) Communications providers as defined in subdivision (9)(b) ~~(8)(b)~~
15 of this section shall provide the commission with the name, address,
16 telephone number, and email address of a person with managerial
17 responsibility for Nebraska operations;

18 (4) The communications provider shall submit a registration fee at
19 the time of submission of the registration form. The commission shall set
20 the fee in an amount sufficient to cover the costs of administering the
21 registration process but not to exceed fifty dollars;

22 (5) The communications provider shall keep the information required
23 by this section current and shall notify the commission of any changes to
24 such information within sixty days after the change;

25 (6) The communications provider shall ensure that all Internet
26 service it offers, or any Internet service provider it hosts or
27 accommodates in the provision of its Internet service, is in compliance
28 with the Internet Neutrality Act;

29 (7) ~~(6)~~ The commission may administratively fine pursuant to section
30 75-156 any communications provider which violates this section;

31 (8) ~~(7)~~ This section applies to all communications providers

1 providing service in Nebraska except for those communications providers
2 otherwise regulated under the Nebraska Telecommunications Regulation Act;
3 and

4 (9) ~~(8)~~ For purposes of this section, communications provider means
5 any entity that:

6 (a) Uses telephone numbers or Internet protocol addresses or their
7 functional equivalents or successors to provide information of a user's
8 choosing by aid of wire, cable, wireless, satellite, or other like
9 connection, whether part of a bundle of services or offered separately,
10 (i) which provides or enables real-time or interactive voice
11 communications and (ii) in which the voice component is the primary
12 function; or

13 (b) Provides any service, whether part of a bundle of services or
14 offered separately, used for transmission of information of a user's
15 choosing regardless of the transmission medium or technology employed,
16 that connects to a network that permits the end user to engage in
17 electronic communications, including, but not limited to, service
18 provided directly (i) to the public or (ii) to such classes of users as
19 to be effectively available directly to the public.

20 Sec. 12. Section 86-580, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 86-580 (1) The Public Service Commission shall establish an
23 application process through which any county or municipality in the state
24 may apply for financial assistance from the Nebraska Internet Enhancement
25 Fund. The process shall allow the county or municipality to obtain a
26 service provider for broadband or other advanced telecommunications
27 services in an exchange or other area defined by the county or
28 municipality where such telecommunications services are to be delivered
29 at rates of service agreed upon between the service provider and county
30 or municipality. The application shall state the projected cost, identify
31 the service provider, describe the process for selection of the service

1 provider, list terms and considerations of any agreement between the
2 applicant and the service provider, and include other information as
3 required by the commission.

4 (2) The commission shall not provide assistance unless (a) the
5 service provider is an eligible service provider of telecommunications,
6 video, Internet, or other related services as determined by rule and
7 regulation of the commission, ~~and~~ (b) the applicant can provide matching
8 funds of at least twenty-five percent of the total projected cost, and
9 (c) the service provider ensures that any Internet service provider it
10 utilizes is in compliance with the Internet Neutrality Act.

11 (3) The commission shall establish a system to prioritize
12 applications. Highest priority shall be given to applicants based on
13 high-cost factors, including population scarcity and location remoteness.
14 Other factors, including financial need, may be considered by the
15 commission as deemed necessary.

16 (4) Funds for financial assistance to counties and municipalities
17 may be distributed by the commission on and after January 1, 2002. Funds
18 committed for future use are deemed to be used in the year committed.

19 Sec. 13. This act becomes operative on January 1, 2019.

20 Sec. 14. If any section in this act or any part of any section is
21 declared invalid or unconstitutional, the declaration shall not affect
22 the validity or constitutionality of the remaining portions.

23 Sec. 15. Original sections 86-125 and 86-580, Reissue Revised
24 Statutes of Nebraska, are repealed.