LEGISLATIVE BILL 1101

Introduced by Bostelman, 23.

Read first time January 19, 2022

Committee: Transportation and Telecommunications

A BILL FOR AN ACT relating to telecommunications; to amend sections 86-330, 86-1306, and 86-1307, Revised Statutes Supplement, 2021; to change universal service funding redirection provisions as prescribed; to change grant application, scoring, and challenge procedure provisions under the Nebraska Broadband Bridge Act; to change and provide duties for the Public Service Commission; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 86-330, Revised Statutes Supplement, 2021, is amended to read:

86-330 (1) Based on consumer complaints or upon its own motion, the Public Service Commission may open a docket to consider the implementation and operation of a funding redirection program that awards funding to broadband Internet service providers to support high-speed Internet infrastructure deployment projects in unserved or underserved exchanges within the State of Nebraska. The commission \textit{shall} may, in its discretion, withhold funding from the Nebraska Telecommunications Universal Service Fund to any telecommunications company for the disputed project area in question unless the telecommunications company rebuts by clear and convincing evidence the presumption established pursuant to subsection (2) of this section that the disputed project area is underserved that has not served, to the commission's satisfaction, those areas with service that meets the criteria for successful investment of funding from the Nebraska Telecommunications Universal Service Fund.

(2)(a) In considering whether to open a docket under subsection (1) of this section, the commission shall evaluate and consider the following speed data relating to the disputed project area:

(i) Current broadband data and mapping from the latest version of the Indicators of Broadband Need Public Map approved by the National Telecommunications and Information Administration of the United States Department of Commerce; and

(ii) Data and mapping submitted by any party if testing:

(A) Was performed from the premises of an active subscriber of the telecommunications company responding to a complaint or to the commission's own motion; and

(B) Was performed over a platform provided by a third party that has been designated by the commission as an authorized speed testing source.

(b) The commission shall not consider Federal Communications Commission Form 477 data.
(c) If the data demonstrates that more than ten percent of active subscriber locations in the disputed project area are actually not receiving minimum speeds of twenty-five megabits per second or greater for downloading and three megabits per second or greater for uploading, there shall be a rebuttable presumption that the area is unserved. If the data demonstrates that more than ten percent of active subscriber locations in the disputed project area are not receiving speeds of one hundred megabits per second or greater for downloading and twenty megabits per second or greater for uploading, there shall be a rebuttable presumption that the area is underserved. In considering a party's rebuttal evidence, the commission shall give consideration to the extent that the existing broadband network of the provider serving the disputed project area is currently providing or could provide such minimal broadband speeds through a standard broadband installation that could be completed by the responding telecommunications company not later than ten business days after the date on which the service request is submitted.

(3) (2) The commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska Telecommunications Universal Service Fund from any recipient, including the provision of notice and the right to a hearing prior to the issuance of an order withdrawing such funding. If the commission withdraws funding from the Nebraska Telecommunications Universal Service Fund from any telecommunications company, the commission may redirect the withdrawn funding through a reverse auction or rural-based plan to another eligible telecommunications company, except that any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted. The commission shall have wide discretion in the design, implementation, and operation of a funding redirection program but may use as a guide the reverse auction program designed by the Federal Communications Commission in its Connect America Fund Phase II Auction process.
(4)(a) (3)(a) In redirecting funding that has been withheld from an eligible telecommunications company, the commission may consider rural-based plans. To qualify for commission consideration, a rural-based plan shall include an eligible telecommunications company.

(b) The commission shall consider rural-based plans based on the following scoring criteria:

(i) The history of the participating eligible telecommunications company in providing quality and affordable telecommunications and broadband services in rural areas;

(ii) The capability of the eligible telecommunications company to use the proposed technology to provide broadband services to every location in the exchange area on a reasonably comparable basis;

(iii) The support of local businesses, hospitals, schools, colleges, agricultural producers, and residents;

(iv) Other sources of funding;

(v) Partnerships and other cooperative arrangements with local public power providers;

(vi) Partnerships and other cooperative arrangements with local wireless Internet service providers; and

(vii) The plan's willingness to pay to acquire undepreciated investment in existing infrastructure capable of providing speeds of at least one hundred megabits per second or greater for downloading and twenty megabits per second or greater for uploading, as established by clear and convincing evidence by the owner of the existing infrastructure; and

(viii) (vii) Cooperation by the incumbent local exchange carrier from which funding has been withheld.

(c) In entering an order redirecting funding, the commission shall establish a timeline for deployment that includes periodic milestones for ensuring timely deployment and shall require the eligible telecommunications company to file reports sufficient to assess
compliance with deployment milestones.

(d) The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(5) Funding support shall not be withheld from an eligible telecommunications company to the extent that the existing eligible telecommunications company's current broadband network service in the disputed area is currently providing or could provide for infrastructure found by the commission to be capable of reliably providing broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second through a standard broadband installation that could be completed by the eligible telecommunications company not later than ten business days after the date on which a service request is submitted that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

(6) For purposes of this section, rural-based plan means a proposal for redirecting funding as described in this section which is made by rural residential and business users of telecommunications and broadband services in high-cost areas of the exchange.

Sec. 2. Section 86-1306, Revised Statutes Supplement, 2021, is amended to read:

86-1306 (1) The commission shall establish a weighted scoring system to evaluate and rank the applications received each fiscal year.

(2) In each fiscal year, at least thirty days prior to the first day that applications may be submitted, the commission shall publish on the commission's website the specific criteria and the quantitative weighted scoring system the commission will use to evaluate and rank applications and award grants pursuant to the program. Such weighted scoring system shall consider, at a minimum:

(a) The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;
Whether the provider is designated as an eligible telecommunications carrier or will be so designated prior to the project completion date;

(c) The commitment ability of an applicant to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area;

(d) The applicant's commitment to serve high-cost areas outside of cities and villages, including plans both within the initial project footprint and outside the initial project footprint;

(e) The applicant's past record of providing reliable and affordable broadband services in high-cost rural areas;

(f) The applicant's willingness to pay to acquire undepreciated investment in existing infrastructure capable of providing speeds of at least one hundred megabits per second or greater for downloading and twenty megabits per second or greater for uploading, as established by clear and convincing evidence by the owner of the existing infrastructure;

(g) The actual provision of available minimum broadband speeds, with higher scores for faster speeds, except that no grant shall be awarded based on speeds less than those scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater;

(h) The commitment ability of the applicant to deploy broadband infrastructure to be scalable to higher broadband Internet speeds in the future; and

(i) Whether the applicant has committed to fund more than fifty percent of the total development costs of the project from sources other than grants under the program, with higher scores for higher amounts of matching funds.

Sec. 3. Section 86-1307, Revised Statutes Supplement, 2021, is amended to read:
Within three business days after the application deadline described in subdivision (1)(a) of section 86-1304, the commission shall publish on its website the proposed projects, project areas, and broadband Internet service speeds for each application submitted.

Any provider currently providing service in the proposed project area may, within ten thirty days after the publication under subsection (1) of this section, file a protest according to rules and regulations established by the commission. The provider may protest all or part of the proposed project area set forth in the application. If the protesting provider rebuts by clear and convincing evidence the presumptions established pursuant to subsection (4) of this section, then the commission shall deny the application to the extent of the area successfully protested.

Submit to the commission, on forms provided by the commission, a challenge to an application. Such challenge shall contain information demonstrating that, at the time of submitting the challenge, (a) the provider provides or has begun construction to provide a broadband network in the proposed project area with access to the Internet at speeds equal to or greater than one hundred megabits per second for downloading and twenty megabits per second for uploading or (b) the provider provides broadband service through a broadband network in or proximate to the proposed project area and the provider commits to complete construction of broadband infrastructure and provide a broadband network to the proposed project area with access to the Internet at speeds equal to or greater than one hundred megabits per second for downloading and twenty megabits per second for uploading, no later than eighteen months after the date grant awards are made under the program.

Other than public notice requirements, deadlines provided for protests filed with the commission or deadlines under the Administrative Procedure Act shall not apply to protests filed under this section. The commission shall adopt an expedited procedural process for handling...
protests filed under this section Within three business days after the submission of a challenge as provided in subsection (2) of this section, the commission shall notify the applicant of such challenge. The applicant shall have ten business days after receipt of such notification to provide any supplemental information regarding the challenged application to the commission.

(4)(a) In considering a protest filed under subsection (2) of this section, the commission shall evaluate and consider the following speed data relating to the proposed project area:

(i) Current broadband data and mapping from the latest version of the Indicators of Broadband Need Public Map approved by the National Telecommunications and Information Administration of the United States Department of Commerce; and

(ii) Data and mapping submitted by either party if testing:

(A) Was performed from the premises of an active subscriber of the protesting provider; and

(B) Was performed over a platform provided by a third party that has been designated by the commission as an authorized speed testing source.

(b) The commission shall not consider Federal Communications Commission Form 477 data.

(c) If the data demonstrates that more than ten percent of active subscriber locations in the proposed project area are actually not receiving minimum speeds of twenty-five megabits per second for downloading and three megabits per second or greater for uploading, there shall be a rebuttable presumption that the area is unserved. If the data demonstrates that more than ten percent of active subscriber locations in the disputed project area are not receiving speeds of one hundred megabits per second or greater for downloading or twenty megabits per second or greater for uploading, there shall be a rebuttable presumption that the area is underserved. In considering a party's rebuttal evidence, the commission shall give consideration to the extent that the existing
broadband network of the provider serving the proposed project area is currently providing or could provide such minimal broadband speeds through a standard broadband installation that could be completed by the protesting provider not later than ten business days after the date on which the service request is submitted.

(4) The commission shall evaluate the information submitted in a challenge and shall not award a grant if the information submitted under subsection (2) of this section is credible and if the provider submitting the challenge agrees to submit documentation no later than eighteen months after the date grant awards are made for the then-current fiscal year under the program substantiating that the provider submitting the challenge has fulfilled its commitment to deploy broadband Internet service with access to the Internet at the stated speeds in the proposed project area.

(5) In the event that the commission denies a protest or any part of a protest, the commission shall assess all of the commission's administrative costs, including those costs associated with consideration of speed data pursuant to subsection (4) of this section, against the protestant and shall also award reasonable attorney's fees to the applicant in addition to any other costs otherwise assessed. If the commission denies an application for a grant based on a challenge and the provider which submitted the challenge does not provide broadband Internet service to the proposed project area within eighteen months, the provider shall not challenge any grant for the following two fiscal years unless the failure is due to factors beyond the provider's control.

Sec. 4. Original sections 86-330, 86-1306, and 86-1307, Revised Statutes Supplement, 2021, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.