

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1101

Introduced by Bostelman, 23.

Read first time January 19, 2022

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications; to amend sections
2 86-330, 86-1306, and 86-1307, Revised Statutes Supplement, 2021; to
3 change universal service funding redirection provisions as
4 prescribed; to change grant application, scoring, and challenge
5 procedure provisions under the Nebraska Broadband Bridge Act; to
6 change and provide duties for the Public Service Commission; to
7 harmonize provisions; to repeal the original sections; and to
8 declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-330, Revised Statutes Supplement, 2021, is
2 amended to read:

3 86-330 (1) Based on consumer complaints or upon its own motion, the
4 Public Service Commission may open a docket to consider the
5 implementation and operation of a funding redirection program that awards
6 funding to broadband Internet service providers to support high-speed
7 Internet infrastructure deployment projects in unserved or underserved
8 exchanges within the State of Nebraska. The commission ~~shall~~ may, in its
9 ~~discretion,~~ withhold funding from the Nebraska Telecommunications
10 Universal Service Fund to any telecommunications company for the disputed
11 project area in question unless the telecommunications company rebuts by
12 clear and convincing evidence the presumption established pursuant to
13 subsection (2) of this section that the disputed project area is
14 underserved that has not served, to the commission's satisfaction, those
15 areas with service that meets the criteria for successful investment of
16 funding from the Nebraska Telecommunications Universal Service Fund.

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

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

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

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

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

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

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

17 (3) ~~(2)~~ The commission shall adopt and promulgate rules and
18 regulations that establish standards governing the withholding of funding
19 from the Nebraska Telecommunications Universal Service Fund from any
20 recipient, including the provision of notice and the right to a hearing
21 prior to the issuance of an order withdrawing such funding. If the
22 commission withdraws funding from the Nebraska Telecommunications
23 Universal Service Fund from any telecommunications company, the
24 commission may redirect the withdrawn funding through a reverse auction
25 or rural-based plan to another eligible telecommunications company,
26 except that any funding that is withdrawn shall be utilized in the
27 exchange area for which the funding was originally granted. The
28 commission shall have wide discretion in the design, implementation, and
29 operation of a funding redirection program but may use as a guide the
30 reverse auction program designed by the Federal Communications Commission
31 in its Connect America Fund Phase II Auction process.

1 (4)(a) ~~(3)(a)~~ In redirecting funding that has been withheld from an
2 eligible telecommunications company, the commission may consider rural-
3 based plans. To qualify for commission consideration, a rural-based plan
4 shall include an eligible telecommunications company.

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

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

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

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

15 (iv) Other sources of funding;

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

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

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

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

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

1 compliance with deployment milestones.

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

4 (5) ~~(4)~~ Funding support shall not be withheld from an eligible
5 telecommunications company to the extent that the existing eligible
6 telecommunications company's current broadband network service in the
7 disputed area is currently providing or could provide for infrastructure
8 found by the commission to be capable of reliably providing broadband
9 service at a minimum download speed of one hundred megabits per second
10 and a minimum upload speed of twenty megabits per second through a
11 standard broadband installation that could be completed by the eligible
12 telecommunications company not later than ten business days after the
13 date on which a service request is submitted that enables users to
14 originate and receive high-quality voice, data, graphics, and video
15 communications using any technology.

16 (6) ~~(5)~~ For purposes of this section, rural-based plan means a
17 proposal for redirecting funding as described in this section which is
18 made by rural residential and business users of telecommunications and
19 broadband services in high-cost areas of the exchange.

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

22 86-1306 (1) The commission shall establish a weighted scoring system
23 to evaluate and rank the applications received each fiscal year.

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

30 (a) The financial, technical, and legal capability of the applicant
31 to deploy and operate broadband Internet service;

1 (b) Whether the provider is designated as an eligible
2 telecommunications carrier or will be so designated prior to the project
3 completion date;

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

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

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

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

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

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

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

30 Sec. 3. Section 86-1307, Revised Statutes Supplement, 2021, is
31 amended to read:

1 86-1307 (1) Within three business days after the application
2 deadline described in subdivision (1)(a) of section 86-1304, the
3 commission shall publish on its website the proposed projects, project
4 areas, and broadband Internet service speeds for each application
5 submitted.

6 (2) Any provider currently providing service in the proposed project
7 area may, within ten thirty days after the publication under subsection
8 (1) of this section, file a protest according to rules and regulations
9 established by the commission. The provider may protest all or part of
10 the proposed project area set forth in the application. If the protesting
11 provider rebuts by clear and convincing evidence the presumptions
12 established pursuant to subsection (4) of this section, then the
13 commission shall deny the application to the extent of the area
14 successfully protested submit to the commission, on forms provided by the
15 commission, a challenge to an application. Such challenge shall contain
16 information demonstrating that, at the time of submitting the challenge,
17 (a) the provider provides or has begun construction to provide a
18 broadband network in the proposed project area with access to the
19 Internet at speeds equal to or greater than one hundred megabits per
20 second for downloading and twenty megabits per second for uploading or
21 (b) the provider provides broadband service through a broadband network
22 in or proximate to the proposed project area and the provider commits to
23 complete construction of broadband infrastructure and provide a broadband
24 network to the proposed project area with access to the Internet at
25 speeds equal to or greater than one hundred megabits per second for
26 downloading and twenty megabits per second for uploading, no later than
27 eighteen months after the date grant awards are made under the program.

28 (3) Other than public notice requirements, deadlines provided for
29 protests filed with the commission or deadlines under the Administrative
30 Procedure Act shall not apply to protests filed under this section. The
31 commission shall adopt an expedited procedural process for handling

1 ~~protests filed under this section~~ ~~Within three business days after the~~
2 ~~submission of a challenge as provided in subsection (2) of this section,~~
3 ~~the commission shall notify the applicant of such challenge. The~~
4 ~~applicant shall have ten business days after receipt of such notification~~
5 ~~to provide any supplemental information regarding the challenged~~
6 ~~application to the commission.~~

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

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

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

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

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

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

21 (c) If the data demonstrates that more than ten percent of active
22 subscriber locations in the proposed project area are actually not
23 receiving minimum speeds of twenty-five megabits per second for
24 downloading and three megabits per second or greater for uploading, there
25 shall be a rebuttable presumption that the area is unserved. If the data
26 demonstrates that more than ten percent of active subscriber locations in
27 the disputed project area are not receiving speeds of one hundred
28 megabits per second or greater for downloading or twenty megabits per
29 second or greater for uploading, there shall be a rebuttable presumption
30 that the area is underserved. In considering a party's rebuttal evidence,
31 the commission shall give consideration to the extent that the existing

1 broadband network of the provider serving the proposed project area is
2 currently providing or could provide such minimal broadband speeds
3 through a standard broadband installation that could be completed by the
4 protesting provider not later than ten business days after the date on
5 which the service request is submitted.

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

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

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

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