Introduced by Bostelman, 23.

Read first time January 14, 2021

Committee: Transportation and Telecommunications

A BILL FOR AN ACT relating to telecommunications and technology; to amend
section 86-103.01, Reissue Revised Statutes of Nebraska, and
sections 86-324, 86-577, 86-1101, and 86-1102, Revised Statutes
Cumulative Supplement, 2020; to redefine terms; to change Public
Service Commission powers relating to the Nebraska
Telecommunications Universal Service Fund; to restate legislative
intent relating to access to broadband service; to harmonize
provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 86-103.01, Reissue Revised Statutes of Nebraska, is amended to read:

86-103.01 Advanced telecommunications capability service means high-speed, broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of one hundred megabits per second telecommunications capability provided by a local exchange carrier that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

Sec. 2. Section 86-324, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-324 (1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the act.

(2) Notwithstanding the provisions of section 86-124, in addition to other provisions of the act, and to the extent not prohibited by federal law, the commission:

(a) Shall have authority and power to subject eligible telecommunications companies to service quality, customer service, affordability, and billing rules and regulations. Such rules and regulations adopted and promulgated by the commission shall apply only to the extent of any telecommunications services, broadband services, or offerings made by an eligible telecommunications company which are eligible for support by the fund. The commission shall be reimbursed from
the fund for all costs related to drafting, implementing, and enforcing
the rules and regulations and any other services provided on behalf of
customers pursuant to this subdivision;

(b) Shall have authority and power to issue orders carrying out its
responsibilities and to review the compliance of any eligible
telecommunications company receiving support for continued compliance
with any such orders issued or rules and regulations adopted and
promulgated pursuant to the act;

(c) May withhold all or a portion of the funds to be distributed
from any telecommunications company failing to continue compliance with
the commission's orders or rules and regulations;

(d) Shall require every telecommunications company to contribute to
any universal service mechanism established by the commission pursuant to
state law. The commission shall require, as reasonably necessary, an
annual audit of any telecommunications company to be performed by a
third-party certified public accountant to insure the billing,
collection, and remittance of a surcharge for universal service. The
costs of any audit required pursuant to this subdivision shall be paid by
the telecommunications company being audited;

(e) Shall require an audit of information provided by a
telecommunications company to be performed by a third-party certified
public accountant for purposes of calculating universal service fund
payments to such telecommunications company. The costs of any audit
required pursuant to this subdivision shall be paid by the
telecommunications company being audited; and

(f) May administratively fine pursuant to section 75-156 any person
who violates the Nebraska Telecommunications Universal Service Fund Act.

(3) Any money in the fund available for investment shall be invested
by the state investment officer pursuant to the Nebraska Capital
Expansion Act and the Nebraska State Funds Investment Act, and for the
period July 1, 2017, through June 30, 2019, any interest earned by the
fund shall be credited to the General Fund.

Sec. 3. Section 86-577, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-577 (1) For purposes of this section:

(a) Served location means a location receiving, or at the time the lease is filed with the Public Service Commission able to receive, communications service at a minimum download speed of one hundred twenty-five megabits per second and a minimum upload speed of one hundred three megabits per second or higher speeds, as determined by the Public Service Commission; and

(b) Unserved location means a location not receiving, and at the time the lease is filed with the Public Service Commission not able to receive, communications service at a minimum download speed of one hundred twenty-five megabits per second and a minimum upload speed of one hundred three megabits per second or higher speeds, as determined by the Public Service Commission.

(2) Any agency or political subdivision of the state may lease its dark fiber if:

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

(b) The lease terms are fair, reasonable, and nondiscriminatory; and

(c) The lease complies with this section.

(3)(a) Before a lease of dark fiber under this section becomes effective, it shall be filed with the commission which shall expeditiously cause notice of the lease, including lease rates, to be published.

(b)(i) The lease shall become effective fourteen business days after the date of the published notice unless a protest is filed with the commission, in which event the commission shall consider the lease as a contested matter and consider the contested lease according to the
commission's rules of procedure.

(ii) If the allocation of served location and unserved location in the lease is contested, the commission shall determine such allocation under the lease as a contested matter and consider the contested lease according to the commission's rules of procedure.

(4) For the lease of dark fiber:

(a) The commission shall establish a safe harbor range of market rates for all dark fiber leases using a competitive price determination comparison. When conducting a competitive price determination comparison, the commission, in its discretion, shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary. If a lease utilizes rates within the safe harbor range, such rates shall be deemed approved. Any other term of the lease may be contested pursuant to subdivision (3)(b) of this section; and

(b) Fifty percent of the profit earned by the agency or political subdivision under a lease of dark fiber leased to serve a served location shall be remitted to the State Treasurer for credit to the Nebraska Telecommunications Universal Service Fund. For purposes of this subdivision, profit earned by the agency or political subdivision means the lease price less the cost of infrastructure deployment. This subdivision does not apply to a lease or portion of a lease of dark fiber leased to exclusively serve unserved locations.

(5) The lessee shall make every reasonable effort to activate the maximum amount of the leased fiber as is possible, within one year after entering into the lease, unless good cause is shown.

Sec. 4. Section 86-1101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-1101 The Legislature finds and declares that:

(1) The availability, quality, and affordability of broadband telecommunications service is important to the residents of Nebraska; and
(2) Because availability, quality, and affordability of broadband telecommunications service is lacking in certain rural areas in Nebraska, combined with greater investment in urban areas, the state may be facing a digital divide.

It is the intent of the Legislature that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence. It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications service at a minimum download speed of one hundred twenty-five megabits per second and a minimum upload speed of one hundred three megabits per second.

Sec. 5. Section 86-1102, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-1102 (1) The Rural Broadband Task Force is hereby created. Task force members shall include the chairperson of the Transportation and Telecommunications Committee of the Legislature and a member of the Legislature selected by the Executive Board of the Legislative Council who shall both serve as nonvoting, ex officio members, a member of the Public Service Commission who shall be selected by the chairperson of such commission, the chairperson of the Nebraska Information Technology Commission or his or her designee who shall act as chairperson of the task force, the Director of Economic Development or his or her designee, the Director of Agriculture or his or her designee, and the following members to be appointed by the Governor: A representative of the agribusiness community, a representative of the Nebraska business community, a representative of the regulated wireline telecommunications industry, a representative of the wireless telecommunications industry, a representative of the public power industry, a representative of health
care providers, a representative of Nebraska postsecondary educational
institutions, and a representative of rural schools offering kindergarten
through grade twelve. The members appointed by the Governor shall serve
for a term of two years and may be reappointed.

(2) The task force may appoint advisory groups to assist the task
force in providing technical expertise and advice on any issue. The
advisory groups may be composed of representatives of stakeholder groups
which may include, but not necessarily be limited to, representatives
from small and large wireline companies, wireless companies, public power
districts, electric cooperative corporations, cable television companies,
Internet service providers, low-income telecommunications and electric
utility customers, health care providers, and representatives of
educational sectors. No compensation or expense reimbursement shall be
provided to any member of any advisory group appointed by the task force.

(3) The Nebraska Information Technology Commission shall provide
staff assistance to the task force in consultation with staff from the
Public Service Commission and other interested parties. The task force
may hire consultants to assist in carrying out its duties. The task force
shall review issues relating to availability, adoption, and affordability
of broadband services in rural areas of Nebraska. In particular, the task
force shall:

(a) Determine how Nebraska rural areas compare to neighboring states
and the rest of the nation in average download and upload speeds and in
subscription rates to higher speed tiers, when available;

(b) Examine the role of the Nebraska Telecommunications Universal
Service Fund in bringing comparable and affordable broadband services to
rural residents and any effect of the fund in deterring or delaying
capital formation, broadband competition, and broadband deployment;

(c) Review the feasibility of alternative technologies and providers
in accelerating access to faster and more reliable broadband service for
rural residents;
(d) Examine alternatives for deployment of broadband services to areas that remain unserved or underserved, such as reverse auction programs described in section 86-330, public-private partnerships, funding for competitive deployment, and other measures, and make recommendations to the Public Service Commission to encourage deployment in such areas;

(e) Recommend state policies to effectively utilize state universal service fund dollars to leverage federal universal service fund support and other federal funding;

(f) Make recommendations to the Governor and Legislature as to the most effective and efficient ways that federal broadband rural infrastructure funds received after July 1, 2018, should be expended if such funds become available; and

(g) Determine other issues that may be pertinent to the purpose of the task force.

(4) Task force members shall serve on the task force without compensation but shall be entitled to receive reimbursement for expenses incurred for such service as provided in sections 81-1174 to 81-1177.

(5) The task force shall meet at the call of the chairperson and shall present its findings in a report to the Executive Board of the Legislative Council no later than November 1, 2019, and by November 1 every odd-numbered year thereafter. The report shall be submitted electronically.

(6) For purposes of this section, broadband services means high-speed telecommunications capability at a minimum download speed of one hundred twenty-five megabits per second and a minimum upload speed of one hundred three megabits per second, and that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology.

Sec. 6. Original section 86-103.01, Reissue Revised Statutes of Nebraska, and sections 86-324, 86-577, 86-1101, and 86-1102, Revised
1 Statutes Cumulative Supplement, 2020, are repealed.