LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 604

Introduced by Geist, 25.
Read first time January 20, 2021
Committee: Transportation and Telecommunications

A BILL FOR AN ACT relating to telecommunications; to amend sections 86-123 and 86-134, Reissue Revised Statutes of Nebraska, and sections 86-101, 86-103, 86-124, and 86-324, Revised Statutes Cumulative Supplement, 2020; to adopt the Nebraska Accelerated Broadband Deployment Grant Program Act; to change the Nebraska Telecommunications Regulation Act and the Nebraska Telecommunications Universal Service Fund Act as prescribed; to define terms; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Nebraska Accelerated Broadband Deployment Grant Program Act.

Sec. 2. The Legislature finds and declares that the State of Nebraska should encourage private investment in broadband Internet service and aggressive competition between providers of such service, and any initiative to improve broadband Internet service in rural areas of this state should be done in a manner that does not unintentionally disrupt or hamper the highly competitive broadband marketplace. The purpose of the Nebraska Accelerated Broadband Deployment Grant Program Act is to establish a competitive grant program to award grants directly to Internet service providers that seek to expand access to broadband Internet service in the state, particularly in unserved or underserved areas of the state.

Sec. 3. For purposes of the Nebraska Accelerated Broadband Deployment Grant Program Act:

(1) Census block means the smallest geographic area for which the United States Bureau of the Census collects and tabulates decennial census data;

(2) Department means the Department of Economic Development;

(3) Eligible telecommunications carrier means an eligible telecommunications carrier as designated under 47 U.S.C. 214(e), as such section existed on January 1, 2021;

(4) Local exchange area has the same meaning as in section 86-115;

(5) Minimum broadband speeds means a download speed of fifty megabits per second and an upload speed of fifty megabits per second;

(6) Municipality means any city or village in this state;

(7) Program means the Nebraska Accelerated Broadband Deployment Grant Program created in section 4 of this act;

(8) Supported area means the census blocks within a local exchange area for which the Public Service Commission designates an eligible telecommunications carrier to receive high-cost support from the Nebraska
Telecommunications Universal Service Fund or any census block for which a company receives funding from a state or federal program to provide broadband services; and

(9) Supported voice services means the services described in 47 C.F.R. 54.101(a)(1), as such regulation existed on January 1, 2021.

Sec. 4. (1) The Nebraska Accelerated Broadband Deployment Grant Program is hereby created. The program shall be administered by the department. Funding for the program shall be subject to available appropriations.

(2) Applicants for a grant under the program shall submit an application to the department in a form and manner established by the department. The application shall include, but not be limited to, the following information:

(a) A description of the project supported area, including a listing of the census blocks to be served by the project;

(b) A description of the broadband Internet infrastructure that is proposed to be deployed;

(c) The number of locations that would obtain access to broadband Internet service or have broadband Internet service upgraded;

(d) The total cost of the proposed project and the timeframe in which the project will be completed; and

(e) Any other information required by the department.

Sec. 5. (1) The department shall establish a weighting or 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 department shall publish on the department's web site the specific criteria and the quantitative weighting or scoring system the department will use to evaluate and rank applications and award grants pursuant to the program. The department's weighting or scoring system shall include, at a minimum, the following elements:
(a) The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;

(b) The number of locations served in the most cost-efficient manner possible considering the project area density, with higher scores for a higher number of homes served;

(c) The available minimum broadband speeds, with higher scores for faster speeds;

(d) The ability of the infrastructure to be scalable to higher broadband Internet speeds in the future;

(e) Commitment of the applicant to fund a portion of the project from sources other than grants under the program, with higher scores for higher amounts of matching funds; and

(f) The length of time the applicant has been operating, the length of time the applicant has been operating broadband Internet services, and the location where the applicant has been operating.

(3) The department shall establish an independent panel to score each application based upon the department's weighting or scoring system. The independent panel shall consist of XX.

(4) Notwithstanding the weighting or scoring system described in this section, if an applicant has previously been approved by the Federal Communications Commission for funding from the Rural Digital Opportunity Fund or by the Public Service Commission for grants from the Nebraska Telecommunications Universal Service Fund, such applicant shall also be approved for a grant under the program, unless problems have been discovered since the time the applicant was approved by the Federal Communications Commission or the Public Service Commission.

Sec. 6. (1) The department shall not award a grant for any project that is:

(a) Within a municipality with a population of greater than five thousand residents; or

(b) Within a municipality where more than fifty percent of the
residents have access to existing broadband Internet services greater
than the minimum broadband speeds.

(2) The department shall not award any grant funding to areas that
have previously been awarded state or federal broadband grant support,
unless such award is for incremental speeds.

Sec. 7. (1) Within fifteen business days after the close of the
grant application process, the department shall publish on the
department's web site the proposed project areas for each application
submitted.

(2) Within forty-five days after publication of the information
under subsection (1) of this section, a broadband Internet service
provider that provides existing service in or adjacent to the proposed
project area may submit a written challenge to an application to the
department. Such challenge shall contain information demonstrating that
the provider:

(a) Currently provides broadband Internet service to retail
customers at or above the minimum broadband speeds within the proposed
project area;

(b) Has begun construction to provide broadband Internet service to
customers within the proposed project area at or above the minimum
broadband speeds; or

(c) Has committed to providing broadband Internet service to retail
customers within the proposed project area within the timeframe proposed
by the applicant and can demonstrate substantial preconstruction
activities, such as engineering work, permits, or contractor bids.

(3) Within three business days after the submission of a written
challenge, the department shall notify the applicant of such challenge.
The applicant shall have ten business days after such notification to
provide any supplemental information regarding the challenged area.

(4) The department shall evaluate each challenge submitted under
this section. If the department determines that the broadband Internet
service provider currently provides, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the department may deny the challenged application. Written explanation shall be provided to both the applicant and the challenger.

(5) If the department denies an application as a result of a broadband Internet service provider challenge under this section and such provider does not fulfill its commitment made pursuant to subdivision (2)(c) of this section, the department shall not consider another challenge from such provider for the next two grant cycles, unless the department determines the failure to fulfill the commitment was due to circumstances beyond the provider's control.

Sec. 8. (1) As a condition of accepting a grant under the program, the applicant shall commit to do all of the following:

(a) Provide Internet service to all requesting households and businesses within the census blocks which make up the project supported area;

(b) Become an eligible telecommunications carrier for the supported area and provide both supported voice services and broadband services for the supported area;

(c) Offer rates in the supported area that are no greater than the rates offered outside of the supported area; and

(d) Provide both supported voice services and broadband services in the supported area for a minimum of five years.

(2) The department shall not add to the obligations required of grant recipients after the grant is awarded without the consent of the grant recipient.

Sec. 9. (1) As a condition of an award of a grant under the program, the department shall require grant recipients to meet reasonable deployment deadlines and other benchmark measures throughout the deployment process, taking into consideration the scope of the project, build seasons and weather factors, and availability of materials.
Extensions shall be granted for good cause.

(2) The department shall award grants to qualified applicants in all regions of the state.

(3) The grant recipient has sole discretion in the architectural and engineering components of the project, and ownership of the network shall remain with the grant recipient.

(4) The maximum amount to be awarded under the program with respect to any one project is XX dollars.

Sec. 10. The department may adopt and promulgate rules and regulations as needed to carry out the Nebraska Accelerated Broadband Deployment Grant Program Act.

Sec. 11. Section 86-101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-101 Sections 86-101 to 86-166 and sections 13 and 14 of this act shall be known and may be cited as the Nebraska Telecommunications Regulation Act.

Sec. 12. Section 86-103, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-103 For purposes of the Nebraska Telecommunications Regulation Act, unless the context otherwise requires, the definitions found in sections 86-103.01 to 86-121.01 and sections 13 and 14 of this act apply.

Sec. 13. Eligible telecommunications carrier means an eligible telecommunications carrier as designated under 47 U.S.C. 214(e), as such section existed on January 1, 2021.

Sec. 14. Supported area means the census blocks within a local exchange area for which the commission designates an eligible telecommunications carrier to receive high-cost support from the Nebraska Telecommunications Universal Service Fund or any census block for which a company receives funding from a state of federal program to provide broadband services.

Sec. 15. Section 86-123, Reissue Revised Statutes of Nebraska, is
amended to read:

86-123 (1) The commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service. If such a complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing. The commission may by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144, and such order may be appealed by an interested party. The appeal shall be in accordance with section 75-136.

(2) The commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157.

(3) The Nebraska Telecommunications Regulation Act shall preempt and prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

(4) This section shall only apply to a telecommunications company designated as an eligible telecommunications carrier and only in supported areas.

Sec. 16. Section 86-124, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-124 (1) The commission shall not regulate the following:

(a) One-way broadcast or cable television transmission of television or radio signals;

(b) Mobile radio services, radio paging services, and wireless telecommunications service;

(c) Interexchange services; and
(d) Internet-protocol-enabled service and voice over Internet protocol service, including rates, service or contract terms, conditions, or requirements for entry for such service; and -

(e) Telecommunications service by any telecommunications company not designated as the eligible telecommunications carrier for the relevant supported area.

(2) This section shall not affect or modify:

(a) The enforcement of criminal or civil laws, including, but not limited to, laws concerning consumer protection and unfair or deceptive trade practices which apply generally to the conduct of business;

(b)(i) Any entity's obligations or rights or commission authority under section 86-122 and under 47 U.S.C. 251 and 252, as such sections existed on January 1, 2019, and (ii) any carrier-to-carrier tariff rates, service quality standards, interconnection agreements, or other obligations for which the commission has jurisdiction under state or federal law;

(c) Any requirement to contribute to any fund administered by the commission authorized by the Enhanced Wireless 911 Services Act or the Nebraska Telecommunications Universal Service Fund Act;

(d) Any commission jurisdiction over intrastate switched access rates, terms, and conditions, including the resolution of disputes arising from, and implementation of federal and state law with respect to, intercarrier compensation;

(e) The eligibility and requirements for the receipt of funds from the Nebraska Telecommunications Universal Service Fund and the rules, regulations, and orders under the Nebraska Telecommunications Universal Service Fund Act or the receipt of funds from the federal universal service fund, regardless of the unregulated status of the provider's service under this section; and

(f) Any entity's rights and obligations with respect to (i) registration under section 86-125, (ii) the use of public streets, roads,
highways, and rights-of-way, or (iii) a certificate of public convenience
and necessity or a permit.

Sec. 17. Section 86-134, Reissue Revised Statutes of Nebraska, is
amended to read:

86-134 No telecommunications company which provides intrastate
interexchange service or basic local exchange service may abandon or
otherwise discontinue such service in or to a local exchange area or
supported area which it serves unless:

(1) The commission finds upon application and hearing that one or
more other telecommunications companies (a) are furnishing voice
communications comparable telecommunications service to the subscribers
or (b) have been designated as an eligible telecommunications carrier, in
such local exchange area or supported area at the time of abandonment;
and

(2) The telecommunications company discontinuing telecommunications
service to such local exchange area or supported area:

(a) Notifies its subscribers in the local exchange area or supported
area in writing of the abandonment, which notice shall be sent at least
thirty days prior to the effective date of such abandonment;

(b) Refunds any unused prepaid subscription charges or other unused
prepaid charges to each customer in the local exchange area or supported
area prior to the effective date of the abandonment; and

(c) Prior to the effective date of the abandonment, reimburses its
customers in the local exchange area or supported area for service
charges which its customers incur in obtaining substitute service from
another telecommunications company or, in lieu thereof, pays other
telecommunications companies directly for such service charges on behalf
of its customers making changes in their telecommunications service as a
result of the abandonment.

Sec. 18. 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. The commission shall not designate more than one eligible telecommunications carrier per supported area to receive high-cost support from the fund, nor shall the commission designate any eligible telecommunications company to receive support from the fund in any supported area that has one or more companies providing advanced telecommunications capability service. Any telecommunications company opting not to receive high-cost support from the fund for a supported area shall notify the commission, and the commission shall grant such request within ninety days. For purposes of this subsection:

(a) Advanced telecommunications capability service has the same meaning as in section 86-103.01;

(b) Eligible telecommunications carrier has the same meaning as in section 13 of this act; and

(c) Supported area has the same meaning as in section 14 of this 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, and
billing regulations. Such regulations shall apply only to the extent of any telecommunications 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 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 or regulations adopted 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 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. 19. Original sections 86-123 and 86-134, Reissue Revised Statutes of Nebraska, and sections 86-101, 86-103, 86-124, and 86-324, Revised Statutes Cumulative Supplement, 2020, are repealed.