

LEGISLATIVE BILL 645

Approved by the Governor June 3, 2005

Introduced by Brashear, 4; Dw. Pedersen, 39

AN ACT relating to telecommunications and technology; to amend sections 25-2602.01 and 86-575, Revised Statutes Supplement, 2004; to define terms; to prohibit agencies, political subdivisions, and public power suppliers from providing certain technology-based services as prescribed; to create a task force; to eliminate provisions relating to county telephone systems; to harmonize provisions; to repeal the original sections; and to outright repeal sections 86-581 to 86-592, Revised Statutes Supplement, 2004.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 7 of this act:

(1) Broadband services means the offering of a capability for high-speed broadband telecommunications capability at a speed or bandwidth in excess of two hundred kilobits per second that enables users to originate and receive high-quality voice, data, and video telecommunications using any technology;

(2) Internet services means the offering of Internet service provider services, providing voice over Internet protocol services, or providing Internet protocol-based video services;

(3) Public power supplier means a public power district, a public power and irrigation district, a municipal electric system, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service;

(4) Telecommunications has the same meaning as telecommunications defined in section 86-117;

(5) Telecommunications services has the same meaning as telecommunications service defined in section 86-121; and

(6) Video services means the delivery of any subscription video service except those described in section 70-625.

Sec. 2. (1) Except as provided in the Educational Service Units Act and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, 85-1501 to 85-1542, and 86-575, an agency or political subdivision of the state that is not a public power supplier shall not provide on a retail or wholesale basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which an agency or political subdivision of the state was authorized to provide and was providing prior to January 1, 2005.

Sec. 3. (1) A public power supplier shall not provide on a retail basis any broadband services, Internet services, telecommunications services, or video services.

(2) The provisions of subsection (1) of this section shall not apply to services which a public power supplier was authorized to provide and was providing prior to January 1, 2005.

Sec. 4. (1) A public power supplier shall not provide on a wholesale basis any broadband services, Internet services, telecommunications services, or video services.

(2) This section terminates on December 31, 2007.

Sec. 5. (1) For purposes of sections 2 to 4 of this act, providing a service on a retail or wholesale basis shall not include an agency or political subdivision of the state, whether or not a public power supplier, deploying or utilizing broadband services, Internet services, telecommunications services, or video services, for its own use either individually or jointly through the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act for the internal use and purpose of the agency, political subdivision, or public power supplier or to carry out the public purposes of the agency, political subdivision, or public power supplier.

(2) Nothing in sections 1 to 7 of this act prohibits or restricts the ability of an agency, political subdivision, or public power supplier from deploying or utilizing broadband services, Internet services, telecommunications services, or video services for the internal use and purpose of the agency, political subdivision, or public power supplier, or to

carry out the public purposes of the agency, political subdivision, or public power supplier.

Sec. 6. Except as otherwise provided in sections 3 and 4 of this act, nothing in sections 1 to 7 of this act shall be construed to restrict or expand any authority of a public power supplier as that authority existed prior to the effective date of this act.

Sec. 7. (1) The Broadband Services Task Force is created. The members shall be appointed as follows:

(a) Three members appointed by the Executive Board of the Legislative Council;

(b) Six members appointed by the Governor, of whom one member shall be appointed from each congressional district and shall represent consumers and three members shall be appointed on an at-large basis;

(c) Three members of the Public Service Commission;

(d) Three members of the Nebraska Power Review Board or their designees; and

(e) Three members of the Nebraska Information Technology Commission or their designees.

(2) Appointments under this section shall be completed within thirty days after the effective date of this act and reported to the Executive Board of the Legislative Council. The chairperson of the executive board shall convene the first meeting of the task force within forty-five days after the appointments are reported, and the task force shall select a chairperson at such time.

(3) On behalf of the task force, the Executive Board of the Legislative Council shall, in consultation with the task force, contract for the services of a meeting facilitator and such other assistance as the executive board, in consultation with the task force, deems necessary within the limits of the funds appropriated. In making its selection of a meeting facilitator, the executive board shall consider experience in the areas of telecommunications and public power.

(4) Issues to be studied by the task force shall include, but are not limited to:

(a) The implications upon competition of agencies or political subdivisions of the state or public power suppliers offering infrastructure access for broadband services, Internet services, telecommunications services, and video services and private sector investment in networks for the provision of such services;

(b) The need and necessity for the provision of wholesale broadband services, Internet services, telecommunications services, or video services by agencies or political subdivisions of the state and public power suppliers;

(c) Issues regarding the establishment of fair and equitable requirements for the regulation and taxation of the provision of wholesale broadband services, Internet services, telecommunications services, and video services by agencies or political subdivisions of the state and public power suppliers;

(d) An assessment of the extent and availability of public power infrastructure in the state and an evaluation of how such infrastructure could be utilized to enhance the provision of broadband services, Internet services, telecommunications services, and video services to consumers and businesses and the feasibility of using such technology in all regions of the state;

(e) A determination of how parity could be established for competing interests in the provision of broadband services, Internet services, telecommunications services, and video services, including, but not limited to, the amount of property taxes paid, income taxes, in lieu of tax payments paid, gross receipts taxes, sales taxes paid, tax credits and funds provided under current federal and state laws, and financing capabilities, including shareholder equity;

(f) An evaluation of the statutory and regulatory frameworks of other states' publicly owned utilities as they relate to providing broadband services, Internet services, telecommunications services, and video services; and

(g) An analysis of the geographic areas in which broadband services, Internet services, telecommunications services, and video services are being offered in the state, the degree of regulation and competition with respect to each such service within such geographic areas, and the implications of permitting agencies, political subdivisions, and public power suppliers to provide such services on the geographic reach of such services and the degree of competition in such geographic areas.

(5) The task force shall study the issues described in subsection (4) of this section, identify options for the resolution of such issues, and make recommendations to the Legislature and the Governor relating to any

policy changes the task force deems desirable. The task force shall complete its work by December 1, 2006, and submit its report to the Legislature, the Governor, the Natural Resources Committee of the Legislature, and the Transportation and Telecommunications Committee of the Legislature by such date.

(6) This section terminates on December 1, 2006.

Sec. 8. Section 25-2602.01, Revised Statutes Supplement, 2004, is amended to read:

25-2602.01. (a) A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(b) A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly.

(c) The Uniform Arbitration Act applies to arbitration agreements between employers and employees or between their respective representatives.

(d) Contract provisions agreed to by the parties to a contract control over contrary provisions of the act other than subsections (e) and (f) of this section.

(e) Subsections (a) and (b) of this section do not apply to a claim for workers' compensation.

(f) Subsection (b) of this section does not apply to:

(1) A claim arising out of personal injury based on tort;

(2) A claim under the Nebraska Fair Employment Practice Act;

(3) Any agreement between parties covered by sections 60-1401.01 to 60-1440; and

(4) Except as provided in section 44-811, any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract.

(g) When a conflict exists, the Uniform Arbitration Act shall not apply to the Uniform Act on Interstate Arbitration and Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329. ~~7 and 86-588 to 86-590.~~

Sec. 9. Section 86-575, Revised Statutes Supplement, 2004, is amended to read:

86-575. (1) Any agency or political subdivision of the state may:

(a) Own dark fiber;

(b) Sell dark fiber pursuant to section 86-576; and

(c) Lease dark fiber pursuant to section 86-577.

(2) ~~No agency or political subdivision of the state shall provide telecommunications services for a fee, except as authorized in sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, and 85-1501 to 85-1542, or be issued a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier. Any agency or political subdivision which sells or leases its dark fiber pursuant to sections 86-574 to 86-578 shall not be deemed to be providing telecommunications services for a fee as defined in section 1 of this act.~~

Sec. 10. Original sections 25-2602.01 and 86-575, Revised Statutes Supplement, 2004, are repealed.

Sec. 11. The following sections are outright repealed: Sections 86-581 to 86-592, Revised Statutes Supplement, 2004.