

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 208

Introduced by Walz, 15; Blood, 3; Bostelman, 23; Brandt, 32; Briese, 41;
Cavanaugh, 6; DeBoer, 10; Kolowski, 31; McCollister, 20;
Morfeld, 46.

Read first time January 11, 2019

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to telecommunications and technology; to amend
- 2 sections 86-577, 86-593, and 86-594, Reissue Revised Statutes of
- 3 Nebraska; to provide an exception for leasing dark fiber or
- 4 providing broadband, Internet, telecommunications, or video services
- 5 by an agency or political subdivision of the state; to define terms;
- 6 to harmonize provisions; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-577, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 86-577 (1) Any agency or political subdivision of the state may
4 lease its dark fiber if:

5 (a) ~~(1)~~ The lessee is a certificated telecommunications common
6 carrier or a permitted telecommunications contract carrier pursuant to
7 section 86-128 or an Internet service provider as defined in section
8 86-593;

9 (b) ~~(2)~~ The lease price and profit distribution is approved by the
10 Public Service Commission as follows:

11 (i) ~~(a)~~ The commission shall not approve any lease price which is
12 less than the market rate for leasing such fiber as determined by the
13 commission. The market rate is the price associated with similar
14 unbundled network elements that may be available from the incumbent local
15 exchange carrier or the price of any other private entity leasing dark
16 fiber optic facilities serving the same or similar territory where the
17 leased equipment is located. Before entering into a lease, each agency or
18 political subdivision shall file a request with the commission for a
19 competitive price comparison to determine the market rate. When
20 conducting a competitive price comparison, the commission in its
21 discretion shall use rate schedules, interconnection agreements, or other
22 documents within its regulatory oversight and shall gather other market
23 rate information as deemed necessary;

24 (ii) ~~(b)~~ The commission shall not approve any lease price which is
25 agreed upon by the agency or political subdivision and the lessee unless
26 the lease requires that the agency or political subdivision be solely
27 responsible for the maintenance of its dark fiber and that the lessee be
28 responsible, on a pro rata basis, for any such maintenance costs; and

29 (iii) ~~(c)~~ The commission shall not approve any lease unless fifty
30 percent of the profit earned by the agency or political subdivision under
31 the lease is remitted to the Nebraska Internet Enhancement Fund. Profit

1 earned by the agency or political subdivision is the lease price less the
2 cost of infrastructure overbuilding. Before entering into a lease, each
3 agency or political subdivision shall file a request with the commission
4 to determine the cost of overbuilding its fiber optic infrastructure. For
5 purposes of this subdivision, cost of infrastructure overbuilding means
6 the cost of each leased optic fiber, including the cost, on a pro rata
7 basis, associated with the agency's or political subdivision's
8 installation of such fiber;

9 (c) (3) Any interconnection agreement subject to section 86-122 is
10 approved by the commission; and

11 (d) (4) The lessee makes every reasonable effort to activate the
12 maximum amount of the leased fiber as is possible, within one year after
13 entering into the lease, unless good cause is shown.

14 (2) Subdivision (1)(b) of this section shall not apply to leases of
15 dark fiber pursuant to a public-private partnership as defined in section
16 86-593.

17 Sec. 2. Section 86-593, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 86-593 For purposes of sections 86-593 to 86-598:

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

25 (2) Internet service provider means a privately owned and operated
26 organization which provides access to Internet services or broadband
27 services to users through fiber optics, satellite, wireless technology,
28 copper wire, or other technology. The term does not include any public
29 entity as defined in section 70-1809 or any entity or organization owned
30 or controlled by (a) such public entity, (b) the United States or any of
31 its agencies, or (c) any state or agency or political subdivision of such

1 state, including, but not limited to, any public power supplier.

2 (3) (2) Internet services means the offering of Internet service
3 provider services, providing voice over Internet protocol services, or
4 providing Internet protocol-based video services;

5 (4) Private partner means a telecommunications common carrier
6 holding a certificate of convenience and necessity, a telecommunications
7 contract carrier holding a permit from the Public Service Commission
8 pursuant to section 86-128, or an Internet service provider;

9 (5) (3) Public power supplier means a public power district, a
10 public power and irrigation district, a municipal electric system, a
11 joint entity formed under the Interlocal Cooperation Act, a joint public
12 agency formed under the Joint Public Agency Act, an agency formed under
13 the Municipal Cooperative Financing Act, or any other governmental entity
14 providing electric service;

15 (6) (4) Telecommunications has the same meaning as
16 telecommunications defined in section 86-117;

17 (7) Public-private partnership means an agreement between an agency
18 or political subdivision of the state and a private partner relating to
19 (a) any public infrastructure assets for which the agency or political
20 subdivision is responsible, (b) the development or enhancement of such
21 public infrastructure assets in conjunction with the provision of
22 broadband services, Internet services, telecommunications services, or
23 video services, (c) any combination of federal, state, or local funds,
24 grants, loans, debt, or other public or private sources of funding or
25 financing to meet the objectives set forth in subdivision (b) of this
26 subdivision, and (d) the deployment and operation of a system for the
27 delivery of broadband services, Internet services, telecommunications
28 services, or video services by the private partner;

29 (8) (5) Telecommunications services has the same meaning as
30 telecommunications service defined in section 86-121; and

31 (9) (6) Video services means the delivery of any subscription video

1 service except those described in section 70-625.

2 Sec. 3. Section 86-594, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 86-594 (1) Except as provided in the Educational Service Units Act
5 and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, 85-1501
6 to 85-1542, and 86-575, and subsection (2) of this section, an agency or
7 political subdivision of the state that is not a public power supplier
8 shall not provide on a retail or wholesale basis any broadband services,
9 Internet services, telecommunications services, or video services.

10 (2) Broadband services, Internet services, telecommunications
11 services, or video services may be provided on a retail or wholesale
12 basis through a public-private partnership.

13 (3) {2} The provisions of subsection (1) of this section shall not
14 apply to services which an agency or political subdivision of the state
15 was authorized to provide and was providing prior to January 1, 2005.

16 Sec. 4. Original sections 86-577, 86-593, and 86-594, Reissue
17 Revised Statutes of Nebraska, are repealed.