

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

1 A BILL FOR AN ACT relating to telecommunications; to amend sections
2 86-123 and 86-134, Reissue Revised Statutes of Nebraska, and
3 sections 86-101, 86-103, 86-124, and 86-324, Revised Statutes
4 Cumulative Supplement, 2020; to adopt the Nebraska Accelerated
5 Broadband Deployment Grant Program Act; to change the Nebraska
6 Telecommunications Regulation Act and the Nebraska
7 Telecommunications Universal Service Fund Act as prescribed; to
8 define terms; to harmonize provisions; and to repeal the original
9 sections.

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

1 Section 1. Sections 1 to 10 of this act shall be known and may be
2 cited as the Nebraska Accelerated Broadband Deployment Grant Program Act.

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

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

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

19 (2) Department means the Department of Economic Development;

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

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

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

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

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

29 (8) Supported area means the census blocks within a local exchange
30 area for which the Public Service Commission designates an eligible
31 telecommunications carrier to receive high-cost support from the Nebraska

1 Telecommunications Universal Service Fund or any census block for which a
2 company receives funding from a state or federal program to provide
3 broadband services; and

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

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

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

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

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

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

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

22 (e) Any other information required by the department.

23 Sec. 5. (1) The department shall establish a weighting or scoring
24 system to evaluate and rank the applications received each fiscal year.

25 (2) In each fiscal year, at least thirty days prior to the first day
26 that applications may be submitted, the department shall publish on the
27 department's web site the specific criteria and the quantitative
28 weighting or scoring system the department will use to evaluate and rank
29 applications and award grants pursuant to the program. The department's
30 weighting or scoring system shall include, at a minimum, the following
31 elements:

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

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

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

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

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

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

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

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

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

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

31 (b) Within a municipality where more than fifty percent of the

1 residents have access to existing broadband Internet services greater
2 than the minimum broadband speeds.

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

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

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

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

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

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

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

30 (4) The department shall evaluate each challenge submitted under
31 this section. If the department determines that the broadband Internet

1 service provider currently provides, has begun construction to provide,
2 or commits to provide broadband Internet service in the proposed project
3 area, the department may deny the challenged application. Written
4 explanation shall be provided to both the applicant and the challenger.

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

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

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

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

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

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

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

27 Sec. 9. (1) As a condition of an award of a grant under the
28 program, the department shall require grant recipients to meet reasonable
29 deployment deadlines and other benchmark measures throughout the
30 deployment process, taking into consideration the scope of the project,
31 build seasons and weather factors, and availability of materials.

1 Extensions shall be granted for good cause.

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

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

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

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

12 Sec. 11. Section 86-101, Revised Statutes Cumulative Supplement,
13 2020, is amended to read:

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

17 Sec. 12. Section 86-103, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 86-103 For purposes of the Nebraska Telecommunications Regulation
20 Act, unless the context otherwise requires, the definitions found in
21 sections 86-103.01 to 86-121.01 and sections 13 and 14 of this act apply.

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

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

31 Sec. 15. Section 86-123, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 86-123 (1) The commission shall regulate the quality of
3 telecommunications service provided by telecommunications companies and
4 shall investigate and resolve subscriber complaints concerning quality of
5 telecommunications service, subscriber deposits, and disconnection of
6 telecommunications service. If such a complaint cannot be resolved
7 informally, then, upon petition by the subscriber, the commission shall
8 set the matter for hearing in accordance with the commission's rules and
9 regulations for notice and hearing. The commission may by order grant or
10 deny, in whole or in part, the subscriber's petition or provide such
11 other relief as is reasonable based on the evidence presented at the
12 hearing. Any such order of the commission may be enforced against any
13 telecommunications company as provided in sections 75-140 to 75-144, and
14 such order may be appealed by an interested party. The appeal shall be in
15 accordance with section 75-136.

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

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

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

24 Sec. 16. Section 86-124, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 86-124 (1) The commission shall not regulate the following:

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

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

31 (c) Interexchange services; and

1 (d) Internet-protocol-enabled service and voice over Internet
2 protocol service, including rates, service or contract terms, conditions,
3 or requirements for entry for such service; and -

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

7 (2) This section shall not affect or modify:

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

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

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

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

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

30 (f) Any entity's rights and obligations with respect to (i)
31 registration under section 86-125, (ii) the use of public streets, roads,

1 highways, and rights-of-way, or (iii) a certificate of public convenience
2 and necessity or a permit.

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

5 86-134 No telecommunications company which provides intrastate
6 interexchange service or basic local exchange service may abandon or
7 otherwise discontinue such service in or to a local exchange area or
8 supported area which it serves unless:

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

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

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

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

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

30 Sec. 18. Section 86-324, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 86-324 (1) The Nebraska Telecommunications Universal Service Fund is
2 hereby created. The fund shall provide the assistance necessary to make
3 universal access to telecommunications services available to all persons
4 in the state consistent with the policies set forth in the Nebraska
5 Telecommunications Universal Service Fund Act. Only eligible
6 telecommunications companies designated by the commission shall be
7 eligible to receive support to serve high-cost areas from the fund. A
8 telecommunications company that receives such support shall use that
9 support only for the provision, maintenance, and upgrading of facilities
10 and services for which the support is intended. Any such support should
11 be explicit and sufficient to achieve the purpose of the act. The
12 commission shall not designate more than one eligible telecommunications
13 carrier per supported area to receive high-cost support from the fund,
14 nor shall the commission designate any eligible telecommunications
15 company to receive support from the fund in any supported area that has
16 one or more companies providing advanced telecommunications capability
17 service. Any telecommunications company opting not to receive high-cost
18 support from the fund for a supported area shall notify the commission,
19 and the commission shall grant such request within ninety days. For
20 purposes of this subsection:

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

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

25 (c) Supported area has the same meaning as in section 14 of this
26 act.

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

30 (a) Shall have authority and power to subject eligible
31 telecommunications companies to service quality, customer service, and

1 billing regulations. Such regulations shall apply only to the extent of
2 any telecommunications services or offerings made by an eligible
3 telecommunications company which are eligible for support by the fund.
4 The commission shall be reimbursed from the fund for all costs related to
5 drafting, implementing, and enforcing the regulations and any other
6 services provided on behalf of customers pursuant to this subdivision;

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

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

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

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

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

30 (3) Any money in the fund available for investment shall be invested
31 by the state investment officer pursuant to the Nebraska Capital

1 Expansion Act and the Nebraska State Funds Investment Act, and for the
2 period July 1, 2017, through June 30, 2019, any interest earned by the
3 fund shall be credited to the General Fund.

4 Sec. 19. Original sections 86-123 and 86-134, Reissue Revised
5 Statutes of Nebraska, and sections 86-101, 86-103, 86-124, and 86-324,
6 Revised Statutes Cumulative Supplement, 2020, are repealed.