

AMENDMENTS TO LB1031

(Amendments to Standing Committee amendments, AM2780)

Introduced by Bostelman, 23.

1 1. Strike section 6 and insert the following new section:

2 Sec. 6. Section 86-577, Revised Statutes Cumulative Supplement,
3 2022, is amended to read:

4 86-577 (1) For purposes of this section:

5 (a) Enforceable commitment means a binding legal agreement between
6 an Internet service provider and the federal government or this state by
7 which the Internet service provider receives a grant of federal or state
8 funds in exchange for the Internet service provider deploying broadband
9 service infrastructure to one or more unserved locations and that
10 includes administrative or other penalties if the Internet service
11 provider fails to meet the terms of such agreement; and

12 (b) Unserved location means a location, as determined in accordance
13 with the Nebraska location fabric broadband access map created by the
14 Nebraska Broadband Office pursuant to section 86-333, where:

15 (i) Broadband is not available by fiber-optic technology or cable
16 modem or hybrid fiber-coaxial technology at speeds of at least one
17 hundred megabits per second for downloading and at least twenty megabits
18 per second for uploading with a latency sufficient to support real-time,
19 interactive applications; and

20 (ii) No Internet service provider has an enforceable commitment to
21 make broadband service available at speeds of at least one hundred
22 megabits per second for downloading and at least twenty megabits per
23 second for uploading with a latency sufficient to support real-time,
24 interactive applications.

25 ~~(a) Served location means a location receiving, or at the time the~~
26 ~~lease is filed with the Public Service Commission able to receive,~~

1 ~~communications service at a minimum download speed of twenty-five~~
2 ~~megabits per second and a minimum upload speed of three megabits per~~
3 ~~second or higher speeds, as determined by the Public Service Commission;~~
4 ~~and~~

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

10 (2) Any agency or political subdivision of the state may lease or
11 license its dark fiber and related infrastructure under such terms as
12 determined by such agency or political subdivision pursuant to its duly
13 adopted and promulgated rules and regulations, issued orders, written
14 policies, enacted ordinances, or adopted resolutions if:

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

18 (b) The lease or license terms are fair, reasonable, and
19 nondiscriminatory;~~and~~

20 (c) All locations where service will be made available pursuant to
21 the lease or license are, at the time the lease or license is filed
22 pursuant to subsection (3) of this section, unserved locations; and

23 (d) ~~(e)~~ The lease or license complies with this section.

24 (3)(a) Before a lease or license of dark fiber under this section
25 becomes effective, it shall be filed by the lessee or licensee with the
26 commission, and the which shall expeditiously cause notice of the lease,
27 including lease rates, to be published. ~~(b)(i)~~ The lease or license shall
28 become effective upon such filing. The lease or license rate shall be
29 within or above the safe harbor range of market rates established
30 pursuant to subdivision (4)(a) of this section ~~fourteen business days~~
31 ~~after the date of the published notice unless a protest is filed with the~~

1 ~~commission, in which event the commission shall consider the lease as a~~
2 ~~contested matter and consider the contested lease according to the~~
3 ~~commission's rules of procedure.~~

4 (b) Within five days after a lease or license is filed, the
5 commission shall provide notice of the lease or license to all Internet
6 service providers providing service in the counties where any unserved
7 locations subject to the lease or license are located.

8 (c) Any Internet service provider may challenge a lease or license
9 filed with the commission pursuant to this subsection alleging that such
10 lease or license does not serve an unserved location in violation of
11 subdivision (2)(c) of this section. A provider shall file such challenge
12 with the commission within thirty days after receipt of the notice
13 described in subdivision (b) of this subsection. The commission shall
14 make a determination regarding such alleged violation within thirty days
15 after the challenge is filed.

16 (d) If an Internet service provider files a challenge under
17 subdivision (c) of this subsection alleging that a location is not an
18 unserved location and the commission finds that it is an unserved
19 location, the Internet service provider filing such challenge may be
20 prohibited from filing any other challenge pursuant to subdivision (c) of
21 this subsection for a period of two years from the date such challenge
22 was filed.

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

27 (4)(a) (4) For the lease or license of dark fiber under this
28 section, the ~~(a)~~ The commission shall establish a safe harbor range of
29 market rates for all dark fiber leases or licenses using a competitive
30 price determination comparison. When conducting a competitive price
31 determination comparison, the commission, in its discretion, shall use

1 rate schedules, interconnection agreements, or other documents within its
2 regulatory oversight and shall gather other market rate information as
3 deemed necessary. If a lease or license utilizes rates within or above
4 the safe harbor range, such rates shall be deemed approved.—~~Any other~~
5 ~~term of the lease may be contested pursuant to subdivision (3)(b) of this~~
6 ~~section; and~~

7 (b) Revenue obtained by any agency or political subdivision from the
8 lease or license of dark fiber under this section shall only be used for
9 billing, construction, operation, and maintenance costs associated with
10 the lease or license of such dark fiber or for any existing dark fiber or
11 fiber-related infrastructure.

12 (c) Revenue obtained by any agency or political subdivision from the
13 sale or delivery of electricity shall not be used for billing,
14 construction, operation, or maintenance costs associated with the lease
15 or license of dark fiber under this section.

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

24 (5)(a) If a dispute arises between an Internet service provider
25 claiming an enforceable commitment for a location and an Internet service
26 provider seeking to utilize a dark fiber lease or license to serve such
27 location, either party may file a request with the state entity with
28 which there is an enforceable commitment to verify the enforceable
29 commitment. Upon the filing of the request, such state entity shall
30 require, and the Internet service provider claiming the enforceable
31 commitment shall provide, documentation related to the enforceable

1 commitment. The state entity shall review the documentation and make a
2 finding as to the Internet service provider's compliance with the
3 enforceable commitment and the reasonable likelihood of meeting its
4 deployment obligations under the enforceable commitment. All
5 documentation submitted to the state entity under this subdivision shall
6 be deemed confidential and not subject to public disclosure pursuant to
7 sections 84-712 to 84-712.09.

8 (b) There is no enforceable commitment and a location is considered
9 an unserved location when:

10 (i) A grant of federal or state funds is forfeited by the Internet
11 service provider for such location;

12 (ii) The Internet service provider is disqualified by the granting
13 governmental entity from receiving a grant of federal or state funds to
14 deploy broadband service infrastructure to such location; or

15 (iii) After reviewing documentation submitted pursuant to this
16 subsection, the state entity verifying the enforceable commitment finds
17 that the Internet service provider is not in compliance with the
18 enforceable commitment or will fail to meet the terms of the enforceable
19 commitment for such location.

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