

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1031**

Introduced by Bostelman, 23.

Read first time January 05, 2024

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to amend  
2 sections 86-324.02, 86-577, 86-1101, and 86-1102, Revised Statutes  
3 Cumulative Supplement, 2022; to change speed test requirements for  
4 ongoing high-cost support from the Nebraska Telecommunications  
5 Universal Service Fund; to change defined terms relating to the  
6 lease of dark fiber by any agency or political subdivision of the  
7 state and broadband services; to change legislative intent; to  
8 harmonize provisions; to repeal the original sections; and to  
9 declare an emergency.  
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-324.02, Revised Statutes Cumulative  
2 Supplement, 2022, is amended to read:

3 86-324.02 (1) Any recipient of ongoing high-cost support from the  
4 Nebraska Telecommunications Universal Service Fund shall agree to submit  
5 to speed tests as determined by the commission. Upon the commission's  
6 request, such recipient shall conduct the speed tests and submit the  
7 results to the commission. The speed tests shall be conducted for one  
8 week using a random sample of locations of consumers who subscribe to  
9 services provided over infrastructure for which ongoing high-cost support  
10 is received.

11 (2) Beginning July 1, 2025, the commission shall not provide ongoing  
12 high-cost support from the Nebraska Telecommunications Universal Service  
13 Fund for infrastructure not capable of providing access to the Internet  
14 at speeds of at least one hundred megabits per second for downloading and  
15 at least one hundred megabits per second for uploading.

16 Sec. 2. Section 86-577, Revised Statutes Cumulative Supplement,  
17 2022, is amended to read:

18 86-577 (1) For purposes of this section:

19 (a) Served location means:

20 (i) Before the effective date of this act, a location receiving, or  
21 at the time the lease is filed with the Public Service Commission able to  
22 receive, communications service at a minimum download speed of twenty-  
23 five megabits per second and a minimum upload speed of three megabits per  
24 second or higher speeds, as determined by the Public Service Commission;  
25 and

26 (ii) On and after the effective date of this act, a location  
27 receiving, or at the time the lease is filed with the Public Service  
28 Commission able to receive, communications service at a minimum download  
29 speed of one hundred megabits per second and a minimum upload speed of  
30 twenty megabits per second or higher speeds, as determined by the Public  
31 Service Commission; and

1 (b) Unserved location means:

2 (i) Before the effective date of this act, a location not receiving,  
3 and at the time the lease is filed with the Public Service Commission not  
4 able to receive, communications service at a minimum download speed of  
5 twenty-five megabits per second and a minimum upload speed of three  
6 megabits per second or higher speeds, as determined by the Public Service  
7 Commission; and -

8 (ii) On and after the effective date of this act, a location not  
9 receiving, and at the time the lease is filed with the Public Service  
10 Commission not able to receive, communications service at a minimum  
11 download speed of one hundred megabits per second and a minimum upload  
12 speed of twenty megabits per second or higher speeds, as determined by  
13 the Public Service Commission.

14 (2) Any agency or political subdivision of the state may lease its  
15 dark fiber if:

16 (a) The lessee is a certificated telecommunications common carrier  
17 or a permitted telecommunications contract carrier pursuant to section  
18 86-128 or an Internet service provider;

19 (b) The lease terms are fair, reasonable, and nondiscriminatory; and

20 (c) The lease complies with this section.

21 (3)(a) Before a lease of dark fiber under this section becomes  
22 effective, it shall be filed with the commission which shall  
23 expeditiously cause notice of the lease, including lease rates, to be  
24 published.

25 (b)(i) The lease shall become effective fourteen business days after  
26 the date of the published notice unless a protest is filed with the  
27 commission, in which event the commission shall consider the lease as a  
28 contested matter and consider the contested lease according to the  
29 commission's rules of procedure.

30 (ii) If the allocation of served location and unserved location in  
31 the lease is contested, the commission shall determine such allocation

1 under the lease as a contested matter and consider the contested lease  
2 according to the commission's rules of procedure.

3 (4) For the lease of dark fiber:

4 (a) The commission shall establish a safe harbor range of market  
5 rates for all dark fiber leases using a competitive price determination  
6 comparison. When conducting a competitive price determination comparison,  
7 the commission, in its discretion, shall use rate schedules,  
8 interconnection agreements, or other documents within its regulatory  
9 oversight and shall gather other market rate information as deemed  
10 necessary. If a lease utilizes rates within the safe harbor range, such  
11 rates shall be deemed approved. Any other term of the lease may be  
12 contested pursuant to subdivision (3)(b) of this section; and

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

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

24 Sec. 3. Section 86-1101, Revised Statutes Cumulative Supplement,  
25 2022, is amended to read:

26 86-1101 The Legislature finds and declares that:

27 (1) The availability, quality, and affordability of broadband  
28 telecommunications service is important to the residents of Nebraska; and

29 (2) Because availability, quality, and affordability of broadband  
30 telecommunications service is lacking in certain rural areas in Nebraska,  
31 combined with greater investment in urban areas, the state may be facing

1 a digital divide.

2 It is the intent of the Legislature that broadband  
3 telecommunications service in rural areas of the state should be  
4 comparable in download and upload speed and price to urban areas in the  
5 state where possible and that state resources should be utilized to  
6 ensure that the rural residents of the state should not be penalized  
7 simply because of their rural residence. It is further the intent of the  
8 Legislature that the residents of this state should have access to  
9 broadband telecommunications service at a minimum download speed of one  
10 hundred ~~twenty-five~~ megabits per second and a minimum upload speed of one  
11 hundred ~~three~~ megabits per second.

12 Sec. 4. Section 86-1102, Revised Statutes Cumulative Supplement,  
13 2022, is amended to read:

14 86-1102 (1) The Rural Broadband Task Force is hereby created. Task  
15 force members shall include the chairperson of the Transportation and  
16 Telecommunications Committee of the Legislature and a member of the  
17 Legislature selected by the Executive Board of the Legislative Council  
18 who shall both serve as nonvoting, ex officio members, a member of the  
19 Public Service Commission who shall be selected by the chairperson of  
20 such commission, the chairperson of the Nebraska Information Technology  
21 Commission or his or her designee who shall act as chairperson of the  
22 task force, the Director of Economic Development or his or her designee,  
23 the Director of Agriculture or his or her designee, and the following  
24 members to be appointed by the Governor: A representative of the  
25 agribusiness community, a representative of the Nebraska business  
26 community, a representative of the regulated wireline telecommunications  
27 industry, a representative of the wireless telecommunications industry, a  
28 representative of the public power industry, a representative of health  
29 care providers, a representative of Nebraska postsecondary educational  
30 institutions, and a representative of rural schools offering kindergarten  
31 through grade twelve. The members appointed by the Governor shall serve

1 for a term of two years and may be reappointed.

2 (2) The task force may appoint advisory groups to assist the task  
3 force in providing technical expertise and advice on any issue. The  
4 advisory groups may be composed of representatives of stakeholder groups  
5 which may include, but not necessarily be limited to, representatives  
6 from small and large wireline companies, wireless companies, public power  
7 districts, electric cooperative corporations, cable television companies,  
8 Internet service providers, low-income telecommunications and electric  
9 utility customers, health care providers, and representatives of  
10 educational sectors. No compensation or expense reimbursement shall be  
11 provided to any member of any advisory group appointed by the task force.

12 (3) The Nebraska Information Technology Commission shall provide  
13 staff assistance to the task force in consultation with staff from the  
14 Public Service Commission and other interested parties. The task force  
15 may hire consultants to assist in carrying out its duties. The task force  
16 shall review issues relating to availability, adoption, and affordability  
17 of broadband services in rural areas of Nebraska. In particular, the task  
18 force shall:

19 (a) Determine how Nebraska rural areas compare to neighboring states  
20 and the rest of the nation in average download and upload speeds and in  
21 subscription rates to higher speed tiers, when available;

22 (b) Examine the role of the Nebraska Telecommunications Universal  
23 Service Fund in bringing comparable and affordable broadband services to  
24 rural residents and any effect of the fund in deterring or delaying  
25 capital formation, broadband competition, and broadband deployment;

26 (c) Review the feasibility of alternative technologies and providers  
27 in accelerating access to faster and more reliable broadband service for  
28 rural residents;

29 (d) Examine alternatives for deployment of broadband services to  
30 areas that remain unserved or underserved, such as funding redirection  
31 programs described in section 86-330, public-private partnerships,

1 funding for competitive deployment, and other measures, and make  
2 recommendations to the Public Service Commission to encourage deployment  
3 in such areas;

4 (e) Recommend state policies to effectively utilize state universal  
5 service fund dollars to leverage federal universal service fund support  
6 and other federal funding;

7 (f) Make recommendations to the Governor and Legislature as to the  
8 most effective and efficient ways that federal broadband rural  
9 infrastructure funds received after July 1, 2018, should be expended if  
10 such funds become available; and

11 (g) Determine other issues that may be pertinent to the purpose of  
12 the task force.

13 (4) Task force members shall serve on the task force without  
14 compensation but shall be entitled to receive reimbursement for expenses  
15 incurred for such service as provided in sections 81-1174 to 81-1177.

16 (5) The task force shall meet at the call of the chairperson and  
17 shall present its findings in a report to the Executive Board of the  
18 Legislative Council no later than November 1, 2019, and by November 1  
19 every odd-numbered year thereafter. The report shall be submitted  
20 electronically.

21 (6) For purposes of this section, broadband services means high-  
22 speed telecommunications capability at a minimum download speed of one  
23 hundred ~~twenty-five~~ megabits per second and a minimum upload speed of one  
24 hundred ~~three~~ megabits per second, and that enables users to originate  
25 and receive high-quality voice, data, and video telecommunications using  
26 any technology.

27 Sec. 5. Original sections 86-324.02, 86-577, 86-1101, and 86-1102,  
28 Revised Statutes Cumulative Supplement, 2022, are repealed.

29 Sec. 6. Since an emergency exists, this act takes effect when  
30 passed and approved according to law.