

LEGISLATIVE BILL 338

Approved by the Governor May 5, 2021

Introduced by Bostelman, 23; Kolterman, 24.

A BILL FOR AN ACT relating to telecommunications and technology; to amend section 86-135, Reissue Revised Statutes of Nebraska, and sections 86-103, 86-316, 86-330, and 86-1102, Revised Statutes Cumulative Supplement, 2020; to redefine a term under the Nebraska Telecommunications Regulation Act; to provide powers and duties to the Public Service Commission relating to broadband infrastructure and speed testing under the Nebraska Telecommunications Universal Service Fund Act; to change provisions relating to the withholding of funding from the Nebraska Telecommunications Universal Service Fund and provide for rural-based plans as prescribed; to change a duty of the Rural Broadband Task Force; to state intent relating to broadband service; to harmonize provisions; to repeal the original sections; to outright repeal section 86-103.01, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 86-103, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-103 For purposes of the Nebraska Telecommunications Regulation Act, unless the context otherwise requires, the definitions found in sections ~~86-103.01~~ 86-103.01 to 86-121.01 apply.

Sec. 2. Section 86-135, Reissue Revised Statutes of Nebraska, is amended to read:

86-135 (1) For purposes of sections 86-135 to 86-138, advanced telecommunications capability service means high-speed, broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second provided by a local exchange carrier that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

(2) ~~(1)~~ Any person may file an application with the commission to obtain advanced telecommunications capability service furnished by a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides.

(3) ~~(2)~~ The commission shall serve upon each telecommunications company directly affected a copy of the application and notice of the hearing at least thirty days prior to the hearing on the application, which shall be held if all of the telecommunications companies involved do not consent to the application.

(4) ~~(3)~~ If an application for the revision of an exchange service area includes more than one customer in a particular exchange, the commission shall consider the circumstances of each customer and the impact to the obligations of any affected telecommunications company which has not consented to the application.

Sec. 3. Section 86-316, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-316 Sections 86-316 to 86-329 and sections 4 and 5 of this act shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Sec. 4. Beginning on January 1, 2022, the commission shall ensure that funds distributed from the Nebraska Telecommunications Universal Service Fund for construction of new broadband infrastructure shall go to projects that provide broadband service scalable to one hundred megabits per second or greater for downloading and one hundred megabits per second or greater for uploading. This section shall not apply to any disbursements from any Nebraska Telecommunications Universal Service Fund wireless infrastructure grant program, the purpose of which is to improve wireless telecommunications service coverage through grants for the construction of wireless telecommunications service facilities.

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

Sec. 6. Section 86-330, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-330 (1) Based on consumer complaints or upon its own motion, the Public Service Commission may open a docket to consider the implementation and operation of a ~~funding redirection reverse auction~~ program that awards funding to broadband Internet service providers to support high-speed Internet infrastructure deployment projects in unserved or underserved exchanges within the State of Nebraska. The commission may, in its discretion, withhold funding from the Nebraska Telecommunications Universal Service Fund to any telecommunications company that has not served, to the commission's

satisfaction, those areas with service that meets the criteria for successful investment of funding from the Nebraska Telecommunications Universal Service Fund.

(2) The commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska Telecommunications Universal Service Fund from any recipient, including the provision of notice and the right to a hearing prior to the issuance of an order withdrawing such funding. If the commission withdraws funding from the Nebraska Telecommunications Universal Service Fund from any telecommunications company, the commission may redirect the withdrawn funding through a reverse auction or rural-based plan to another eligible telecommunications company use the funding that is withdrawn to implement and operate a reverse auction program, except that any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted. The commission shall have wide discretion in the design, implementation, and operation of a funding redirection reverse auction program but may use as a guide the reverse auction program designed by the Federal Communications Commission in its Connect America Fund Phase II Auction process.

(3)(a) In redirecting funding that has been withheld from an eligible telecommunications company, the commission may consider rural-based plans. To qualify for commission consideration, a rural-based plan shall include an eligible telecommunications company.

(b) The commission shall consider rural-based plans based on the following scoring criteria:

(i) The history of the participating eligible telecommunications company in providing quality and affordable telecommunications and broadband services in rural areas;

(ii) The capability of the eligible telecommunications company to use the proposed technology to provide broadband services to every location in the exchange area on a reasonably comparable basis;

(iii) The support of local businesses, hospitals, schools, colleges, agricultural producers, and residents;

(iv) Other sources of funding;

(v) Partnerships and other cooperative arrangements with local public power providers;

(vi) Partnerships and other cooperative arrangements with local wireless Internet service providers; and

(vii) Cooperation by the incumbent local exchange carrier from which funding has been withheld.

(c) In entering an order redirecting funding, the commission shall establish a timeline for deployment that includes periodic milestones for ensuring timely deployment and shall require the eligible telecommunications company to file reports sufficient to assess compliance with deployment milestones.

(d) The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(4) Funding support shall not be withheld from an eligible telecommunications company for infrastructure found by the commission to be capable of reliably providing broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

(5) For purposes of this section, rural-based plan means a proposal for redirecting funding as described in this section which is made by rural residential and business users of telecommunications and broadband services in high-cost areas of the exchange.

Sec. 7. Section 86-1102, Revised Statutes Cumulative Supplement, 2020, is amended to read:

86-1102 (1) The Rural Broadband Task Force is hereby created. Task force members shall include the chairperson of the Transportation and Telecommunications Committee of the Legislature and a member of the Legislature selected by the Executive Board of the Legislative Council who shall both serve as nonvoting, ex officio members, a member of the Public Service Commission who shall be selected by the chairperson of such commission, the chairperson of the Nebraska Information Technology Commission or his or her designee who shall act as chairperson of the task force, the Director of Economic Development or his or her designee, the Director of Agriculture or his or her designee, and the following members to be appointed by the Governor: A representative of the agribusiness community, a representative of the Nebraska business community, a representative of the regulated wireline telecommunications industry, a representative of the wireless telecommunications industry, a representative of the public power industry, a representative of health care providers, a representative of Nebraska postsecondary educational institutions, and a representative of rural schools offering kindergarten through grade twelve. The members appointed by the Governor shall serve for a term of two years and may be reappointed.

(2) The task force may appoint advisory groups to assist the task force in providing technical expertise and advice on any issue. The advisory groups may be composed of representatives of stakeholder groups which may include, but not necessarily be limited to, representatives from small and large wireline companies, wireless companies, public power districts, electric cooperative corporations, cable television companies, Internet service providers, low-income telecommunications and electric utility customers, health care

providers, and representatives of educational sectors. No compensation or expense reimbursement shall be provided to any member of any advisory group appointed by the task force.

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

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

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

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

(d) Examine alternatives for deployment of broadband services to areas that remain unserved or underserved, such as ~~funding redirection reverse auction~~ programs described in section 86-330, public-private partnerships, funding for competitive deployment, and other measures, and make recommendations to the Public Service Commission to encourage deployment in such areas;

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

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

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

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

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

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

Sec. 8. The Legislature declares that it is in the public interest for the state, cities of all classes, villages, and counties to expend federal funds received for the creation and expansion of high-speed broadband services throughout the state. Any political subdivision that directly receives federal funds used for broadband service enhancement purposes shall ensure that the construction of any new infrastructure to provide broadband service is scalable to one hundred megabits per second or greater for downloading and one hundred megabits per second or greater for uploading. Such federal funds shall not be used to serve locations currently capable of receiving broadband service at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology. Any broadband infrastructure built with federal funds is subject to section 86-594.

Sec. 9. Original section 86-135, Reissue Revised Statutes of Nebraska, and sections 86-103, 86-316, 86-330, and 86-1102, Revised Statutes Cumulative Supplement, 2020, are repealed.

Sec. 10. The following section is outright repealed: Section 86-103.01, Reissue Revised Statutes of Nebraska.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.