

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 617

Introduced by Schumacher, 22; Avery, 28.

Read first time January 23, 2013

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Nebraska Telecommunications Universal
2 Service Fund Act; to amend sections 86-316, 86-317,
3 86-318, 86-320.01, 86-323, 86-324, 86-326, 86-328, and
4 86-329, Reissue Revised Statutes of Nebraska; to change
5 collection and distribution of the universal service
6 charge; to define and redefine terms; to provide for
7 acquisition of abandoned property, termination of
8 provisions, and provision of broadband service by public
9 entities; to harmonize provisions; and to repeal the
10 original sections.

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

1 Section 1. Section 86-316, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 86-316 Sections 86-316 to 86-329 and sections 4 to 6 and
4 12 of this act shall be known and may be cited as the Nebraska
5 Telecommunications Universal Service Fund Act.

6 Sec. 2. Section 86-317, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 86-317 The purpose of the Nebraska Telecommunications
9 Universal Service Fund Act is to authorize the commission to
10 establish a funding mechanism which ~~supplements federal universal~~
11 ~~service support mechanisms and ensures~~ promotes private competition
12 and the development of broadband services over fiber optic or
13 wireless facilities so that all Nebraskans, without regard to their
14 location, have comparable accessibility to ~~telecommunications~~
15 broadband services at affordable prices.

16 Sec. 3. Section 86-318, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 86-318 For purposes of the Nebraska Telecommunications
19 Universal Service Fund Act, the definitions found in sections 86-319
20 to 86-322 and sections 4 to 6 of this act apply.

21 Sec. 4. Section 86-320.01, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 ~~86-320.01 Telecommunications~~ Broadband means the
24 transmission between or among points specified by the user of
25 information of the user's choosing without change in the form or

1 content of the information as sent and received using binary digits
2 conforming to Internet protocol at speeds in excess of five million
3 binary digits per second bidirectionally and which can access the
4 global communication network known as the world wide web at such
5 speeds.

6 Sec. 5. Broadband company means any natural person, firm,
7 partnership, limited liability company, corporation, or association
8 providing broadband service for hire in Nebraska without regard to
9 whether such company holds a certificate of convenience and necessity
10 as a telecommunications common carrier or a permit as a
11 telecommunications contract carrier from the commission.

12 Sec. 6. Competitive access means a broadband company that
13 receives money from the fund on or after the effective date of this
14 act, allowing competing broadband companies to access its network
15 facilities in any technologically feasible way, at any
16 technologically feasible location, including through colocation, in a
17 manner that does not technologically impair the ability of the
18 broadband company that receives such funds to provide service in any
19 significant way, for a reasonable fee set by the commission
20 sufficient to compensate for (1) any additional costs directly
21 incurred by the broadband company that receives such funds on account
22 of the competitive access and (2) a fair return on its investment in
23 that portion of the network accessed not funded by the fund on or
24 after the effective date of this act.

25 Sec. 7. Section 86-323, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 86-323 The Legislature declares that it is the policy of
3 the state to preserve and advance universal service based on the
4 following principles:

5 (1) Quality ~~telecommunications~~ broadband and information
6 services should be available at just, reasonable, and affordable
7 rates;

8 (2) Access to ~~advanced telecommunications~~ broadband and
9 information services should be provided in all regions of the state;

10 (3) Consumers in all regions of the state, including low-
11 income consumers and those in rural and high-cost areas, should have
12 access to ~~telecommunications~~ broadband and information services,
13 ~~including interexchange services and advanced telecommunications and~~
14 ~~information services,~~ that are reasonably comparable to those
15 services provided in urban areas and that are available at rates that
16 are reasonably comparable to rates charged for similar services in
17 urban areas;

18 ~~(4) All providers of telecommunications should make an~~
19 ~~equitable and nondiscriminatory contribution to the preservation and~~
20 ~~advancement of universal service;~~

21 ~~(5)~~ (4) There should be specific, predictable,
22 sufficient, and competitively neutral mechanisms to preserve and
23 advance universal service. Funds for the support of urban poor and
24 ~~high-cost service areas will be available only to the designated~~
25 ~~eligible telecommunications companies providing service to such~~

1 ~~areas. Funds for the support of low income customers, schools,~~
2 ~~libraries, and providers of health care to rural areas will be~~
3 ~~available to any entity providing telecommunications services,~~
4 ~~maintenance, and upgrading of facilities. The distribution of~~
5 ~~universal service funds should encourage the continued development~~
6 ~~and maintenance of telecommunications infrastructure; should be~~
7 ~~available to any entity providing broadband services to such areas.~~
8 Funds for the support of low-income customers, schools, libraries,
9 and providers of health care to rural areas should be available to
10 any entity providing broadband services, maintenance, and upgrading
11 of facilities. The distribution of universal service funds should
12 encourage the continued development of broadband infrastructure
13 through wireless technology using radio spectrum authorized by the
14 Federal Communications Commission or through fiber optic cabling;
15 ~~(6)-(5) Elementary and secondary schools, libraries, and~~
16 ~~providers of health care to rural areas should have access to~~
17 ~~advanced telecommunications services as described in the~~
18 ~~Telecommunications Act of 1996. broadband services. To promote the~~
19 ~~efficient use of facilities broadband in rural areas, universal~~
20 ~~service rules should not preclude the sharing of facilities supported~~
21 ~~by universal service funds with other local users, if such ineligible~~
22 ~~users pay appropriate retail usage rates to the telecommunications~~
23 ~~company; encourage the creation of local area networks using fiber~~
24 ~~optic cable by and between elementary and secondary schools,~~
25 ~~libraries, providers of health care, government buildings, and, in~~

1 counties of less than ten thousand inhabitants, private consortiums
2 of industrial sites and business centers which aggregates the
3 broadband demand of those facilities making it possible to (a) access
4 the world wide web through shared ports or gateways and (b) have
5 sufficient purchasing power to enhance competitive bidding by
6 broadband companies. To reduce the cost of developing such local area
7 networks unused fiber optic cable owned by public power districts or
8 municipalities may be used if the cost of interconnection to such
9 fiber optic cable is borne by the entities developing the local area
10 network and no fee may be paid to the owner of such cable for the use
11 thereof;

12 ~~(7)-(6)~~ The prohibition of implicit support mechanisms in
13 intrastate access rates throughout the state may be replaced while
14 ensuring that local service rates in all areas of the state remain
15 affordable;~~under the Telecommunications Act of 1996 remains in~~
16 force; and

17 ~~(8)-(7)~~ The commission shall employ competitively neutral
18 broadband experts to develop a broadband plan to optimally
19 incentivize the deployment of fiber optic and federally authorized
20 wireless service in the state. The cost of such expert assistance
21 shall be charged to the fund. The costs of administration of the
22 Nebraska Telecommunications Universal Service Fund should be kept to
23 a minimum.

24 Sec. 8. Section 86-324, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 86-324 (1) The Nebraska Telecommunications Universal
2 Service Fund is hereby created. The fund shall provide the assistance
3 necessary to make universal access to ~~telecommunications~~ broadband
4 services available to all persons in the state consistent with the
5 policies set forth in the Nebraska Telecommunications Universal
6 Service Fund Act. ~~Only eligible telecommunications companies~~
7 ~~designated by the commission shall be eligible to receive support to~~
8 ~~serve high cost areas from the fund. A telecommunications company~~
9 ~~that receives such support shall use that support only for the~~
10 ~~provision, maintenance, and upgrading of facilities and services for~~
11 ~~which the support is intended. Any such support should be explicit~~
12 ~~and sufficient to achieve the purpose of the act. To be eligible to~~
13 receive support from the fund a broadband company shall agree to
14 provide competitive access. The commission may develop competitively
15 neutral standards to determine which broadband companies are eligible
16 to receive support to serve urban poor and high-cost areas from the
17 fund. A broadband company that receives such support shall use that
18 support only for the construction of identifiable wireless towers,
19 including acquisition of real estate reasonably necessary for the
20 towers and provisioning of primary and backup electric power to such
21 towers and the laying of identifiable fiber optic cable, containing
22 sufficient fiber strands to enable competitive access, along routes
23 set forth in the application. All such construction shall conform to
24 a statewide broadband network design adopted by the commission. On
25 the customer billing for the services supported by the fund,

1 recipients of support shall explicitly state the total amount
2 received from the fund in the preceding twelve months, identify the
3 names of all candidates for political office within this state
4 receiving contributions from the recipient, identify all lobbyists
5 employed by the recipient in this state, and set forth the total
6 amount expended by the recipient on political activity and lobbying
7 in this state, whether directly or indirectly, including funds raised
8 through solicitation of its personnel or contributed through
9 association memberships, in the twelve months preceding the billing.
10 The amount of the billing charged the customer pursuant to the
11 Nebraska Telecommunications Universal Service Fund Act shall be
12 explicitly set forth in the billing.

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

16 (a) Shall have authority and power to subject eligible
17 ~~telecommunications~~ broadband companies receiving support from the
18 fund and those accessing competitive access to service quality,
19 customer service, and billing regulations. ~~Such regulations shall~~
20 ~~apply only to the extent of any telecommunications services or~~
21 ~~offerings made by an eligible telecommunications company which are~~
22 ~~eligible for support by the fund.~~ The commission shall be reimbursed
23 from the fund for all costs related to drafting, implementing, and
24 enforcing the regulations and any other services provided on behalf
25 of customers pursuant to this subdivision;

1 (b) Shall have authority and power to issue orders
2 carrying out its responsibilities and to review the compliance of any
3 ~~eligible telecommunications~~ broadband company receiving support for
4 continued compliance with any such orders or regulations adopted
5 pursuant to the act;

6 (c) May withhold all or a portion of the funds to be
7 distributed from any ~~telecommunications~~ broadband company failing to
8 continue compliance with the commission's orders or regulations;

9 (d) Shall require every telecommunications company to
10 ~~contribute to any universal service mechanism established by the~~
11 ~~commission pursuant to state law.~~ collect from its customers the
12 surcharge as determined by the commission on services for which the
13 Nebraska universal service charge was explicitly billed on January 1,
14 2013, which surcharge shall not exceed six and ninety-five hundredths
15 percent through December 31, 2018, five and one-half percent through
16 December 31, 2019, four and four-tenths percent through December 31,
17 2020, and three and one-half percent on and after January 1, 2021.
18 The commission shall require, as reasonably necessary, an annual
19 audit of any telecommunications company to be performed by a third-
20 party certified public accountant to insure the billing, collection,
21 and remittance of a surcharge for universal service. The costs of any
22 audit required pursuant to this subdivision shall be paid by the
23 telecommunications company being audited;

24 (e) Shall require an audit of information provided by a
25 ~~telecommunications~~ broadband company to be performed by a third-party

1 certified public accountant for purposes of calculating universal
2 service fund payments to such ~~telecommunications~~ broadband company.
3 The costs of any audit required pursuant to this subdivision shall be
4 paid by the ~~telecommunications~~ broadband company being audited; and

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

8 (3) Any money in the fund available for investment shall
9 be invested by the state investment officer pursuant to the Nebraska
10 Capital Expansion Act and the Nebraska State Funds Investment Act.

11 ~~(4)(a) The State Treasurer shall transfer funds from the~~
12 ~~Nebraska Telecommunications Universal Service Fund to the General~~
13 ~~Fund upon certification by the Director of Administrative Services~~
14 ~~that the current cash balances in the General Fund and the Cash~~
15 ~~Reserve Fund are inadequate to meet current obligations. Such~~
16 ~~certification shall include the dollar amount to be transferred which~~
17 ~~shall not exceed the amount by which the General Fund and Cash~~
18 ~~Reserve Fund are inadequate to meet current obligations. The total of~~
19 ~~such transfers shall not reduce the Nebraska Telecommunications~~
20 ~~Universal Service Fund balance below an amount sufficient to meet the~~
21 ~~obligations on the fund for the next sixty days. Any transfers made~~
22 ~~pursuant to this subsection shall be reversed upon notification by~~
23 ~~the Director of Administrative Services that sufficient funds are~~
24 ~~available or on June 30, 2007, whichever occurs first.~~

25 (b) ~~Any transfer under this subsection not reversed~~

1 ~~within thirty days after the initial transfer shall accrue interest~~
2 ~~in the amount of five percent annually. Interest shall be calculated~~
3 ~~beginning on the thirty first day after the initial transfer and~~
4 ~~continue until the transfer is completely reversed. The interest~~
5 ~~calculated shall be credited to the Nebraska Telecommunications~~
6 ~~Universal Service Fund.~~

7 ~~(c) Any transfer of funds which has not been reversed as~~
8 ~~provided in this subsection, with accrued interest, shall be~~
9 ~~considered an encumbrance against the General Fund.~~

10 ~~(d) This subsection terminates on June 30, 2007.~~

11 Sec. 9. Section 86-326, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 86-326 The fund may be administered by a neutral third-
14 party administrator. The commission shall oversee the preparation and
15 selection process of the administrator through a request for proposal
16 process established by the commission. If a third-party administrator
17 is selected, the administrator shall serve at the will of the
18 commission. The administrator shall: Gather the necessary data to
19 estimate fund obligations; notify telecommunications companies of
20 their obligations to the fund; collect and distribute money from the
21 fund in accordance with the Nebraska Telecommunications Universal
22 Service Fund Act and the rules and regulations established by the
23 commission; and notify the commission of any violations of the act
24 and rules and regulations by ~~telecommunications~~ broadband companies
25 with respect to the fund. The commission shall audit the

1 administrator to ensure the duties are being performed in accordance
2 with the act and its rules and regulations. Any ~~telecommunications~~
3 ~~broadband~~ company not ~~meeting its obligation to the fund in~~
4 ~~compliance with the act that is a recipient of the fund or that~~
5 ~~avails itself of competitive access under the act~~ shall not be
6 eligible to receive further payments from the fund, shall be subject
7 to administrative penalties to be determined by the commission, and
8 shall be subject to the revocation of any certificate or permit
9 issued pursuant to section 86-128 or any predecessor statute.

10 Sec. 10. Section 86-328, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 86-328 (1) Annually the commission shall hold a public
13 hearing to determine the level of the fund necessary to carry out the
14 Nebraska Telecommunications Universal Service Fund Act. The
15 commission shall publish notice of the hearing in at least one
16 newspaper of general circulation in each county of the state at least
17 once each week for ~~two~~ three consecutive weeks before the hearing.
18 After the hearing, the commission shall determine the amount of the
19 fund for the following year, including a reasonable reserve. ~~In the~~
20 ~~initial year of the fund's operation, the commission shall determine~~
21 ~~the amount of the fund to be equivalent to the amount which, in the~~
22 ~~commission's judgment, after careful analysis, is necessary to keep~~
23 ~~approximately ninety six percent of Nebraska households subscribed to~~
24 ~~local telecommunications service.~~

25 (2) In an emergency as determined by the commission, the

1 commission may adjust the level of the fund, not to exceed the level
2 specified in subdivision (2)(d) of section 86-324 but only after a
3 public hearing for such purpose.

4 Sec. 11. Section 86-329, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 86-329 (1) The commission shall establish the Nebraska
7 Telephone Assistance Program. The purpose of the Nebraska Telephone
8 Assistance Program is to promote the provision of universal service
9 to low-income households by local exchange carriers. Support provided
10 by the program shall be specifically targeted to maintain affordable
11 rates for residential basic local exchange services supported by
12 federal and state universal service mechanisms. The commission shall
13 establish means-tested eligibility guidelines and standards for the
14 provision of support from the program which are consistent with the
15 Telecommunications Act of 1996 and 47 C.F.R. 54.400 through 54.409,
16 as such act and regulations existed on January 1, 2002.

17 (2) Any local exchange carrier receiving state universal
18 service support shall be prohibited from disconnecting the basic
19 local exchange service of any customer receiving low-income support
20 from the program for the nonpayment of any interexchange toll service
21 charges. The commission may grant limited waivers of this requirement
22 in a manner consistent with 47 C.F.R. 54.400 through 54.409, as such
23 regulations existed on January 1, 2002.

24 (3) ~~Any~~ The state, all political subdivisions, and any
25 person receiving low-income support from the program shall be exempt

1 from the payment of any surcharge established by the commission
2 pursuant to the Nebraska Telecommunications Universal Service Fund
3 Act.

4 Sec. 12. (1) Fiber optic cabling, towers, and associated
5 real estate funded by the fund on or after the effective date of this
6 act shall be subject to the right of the commission to acquire for
7 one dollar if abandoned. The commission may assign this right to a
8 municipality or public power district providing electric power in the
9 area of the cabling or tower. The abandoning party shall not destroy
10 or impair the functionality of such cable or tower abandoned. Any
11 sale, merger, acquisition, or transfer of rights associated with such
12 cabling or towers shall be subject to the terms of the Nebraska
13 Telecommunications Universal Service Fund Act.

14 (2) Beginning January 1, 2020, a municipality or public
15 power district in a county which does not have broadband, exclusive
16 of satellite broadband, available to ninety-six percent of its
17 population at a cost comparable to that in a county in which there is
18 a city of the metropolitan class may engage in providing broadband to
19 the public for a fee within such county or within its borders as the
20 case may be. Such municipalities or public power districts shall be
21 considered to be broadband companies for purposes of the act.

22 Sec. 13. Original sections 86-316, 86-317, 86-318,
23 86-320.01, 86-323, 86-324, 86-326, 86-328, and 86-329, Reissue
24 Revised Statutes of Nebraska, are repealed.