

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 617

Introduced by Hilgers, 21.

Read first time January 23, 2019

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the Nebraska Telecommunications Regulation
2 Act; to amend sections 86-101, 86-103, 86-123, 86-124, 86-143, and
3 86-144, Reissue Revised Statutes of Nebraska; to define terms; to
4 change provisions relating to quality and rate regulation,
5 nonregulated activities, local competition determination, and rate-
6 list filing requirements; to eliminate rate-review provisions; to
7 harmonize provisions; to repeal the original sections; and to
8 outright repeal sections 86-145, 86-146, 86-147, and 86-148, Reissue
9 Revised Statutes of Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 86-101 Sections 86-101 to 86-165 and sections 3 to 6 and 12 of this
4 act shall be known and may be cited as the Nebraska Telecommunications
5 Regulation Act.

6 Sec. 2. Section 86-103, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 86-103 For purposes of the Nebraska Telecommunications Regulation
9 Act, unless the context otherwise requires, the definitions found in
10 sections 86-103.01 to 86-121 and sections 3 to 6 of this act apply.

11 Sec. 3. Competitive local provider means a telecommunications
12 company offering a telecommunications service for which there are
13 alternative services available without regard to the technology employed.

14 Sec. 4. Internet protocol has the same meaning as in section
15 86-1011.

16 Sec. 5. Internet-protocol-enabled service or IP-enabled service
17 means any service, capability, functionality, or application, other than
18 voice over Internet protocol service, which uses Internet protocol or a
19 successor protocol that enables an end user to send or receive a voice,
20 data, or video communication utilizing a broadband connection at the end
21 user's location.

22 Sec. 6. Voice over Internet protocol service means any service that
23 enables real-time, two-way communication originating from or terminating
24 at the user's location using Internet protocol or a successor protocol,
25 that uses a broadband connection from the user's location, that requires
26 Internet-protocol-compatible equipment, and that permits a user to
27 receive a call that originates on the public-switched telephone network
28 and to terminate a call to the public-switched telephone network.

29 Sec. 7. Section 86-123, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 86-123 (1) Except as provided in section 86-124, the The commission

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

15 (2) Except as provided in section 86-124, the The commission may
16 regulate telecommunications company rates pursuant to sections 86-139 to
17 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 Sec. 8. Section 86-124, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 86-124 (1) The commission shall not regulate the following:

24 (a) ~~(1)~~ One-way broadcast or cable television transmission of
25 television or radio signals; ~~and~~

26 (b) ~~(2)~~ Mobile radio services, radio paging services, and wireless
27 telecommunications service; ~~and~~

28 (c) The rates, terms, conditions, definition, and standards of local
29 exchange telecommunications service provided by a telecommunications
30 company deemed or determined to be a competitive local provider as
31 provided in subsections (2) and (3) of section 86-143;

1 (d) Interexchange services;

2 (e) Local exchange telecommunications service or interexchange
3 service provided as a business service; and

4 (f) Internet-protocol-enabled service and voice over Internet
5 protocol service, including rates, service or contract terms, conditions,
6 or requirements for entry for such service;

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

8 (a) The enforcement of criminal or civil laws, including, without
9 limitation, laws concerning consumer protection and unfair or deceptive
10 trade practices which apply generally to the conduct of business;

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

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

20 (d) The eligibility and requirements for the receipt of funds from
21 the Nebraska Telecommunications Universal Service Fund and the rules,
22 regulations, and orders under the Nebraska Telecommunications Universal
23 Service Fund Act or the receipt of funds from the federal universal
24 service fund, regardless of the unregulated status of the provider's
25 service under this section; and

26 (e) Any entity's rights and obligations with respect to (i)
27 registration under section 86-125, (ii) the use of public streets, roads,
28 highways, and rights-of-way, or (iii) a certificate of public convenience
29 and necessity or a permit.

30 (3) Notwithstanding any other provision of the Nebraska
31 Telecommunications Regulation Act, the commission shall retain limited

1 authority with respect to adequacy and quality of service for local
2 exchange telecommunications services determined to be competitive under
3 subdivision (1)(c) of this section and section 86-143. Such authority is
4 limited to nonbinding mediation of disputes between customers and
5 providers.

6 Sec. 9. Section 86-143, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 86-143 (1)(a) Except as provided in subdivision (b) of this
9 subsection, in an exchange in which local competition exists,
10 telecommunications companies shall file rate lists for each
11 telecommunications service which shall be effective after ten days'
12 notice to the commission.

13 (b) Notwithstanding any other provision of Chapter 86, a
14 telecommunications company shall not be required to file rate lists,
15 tariffs, or contracts for any telecommunications service, including local
16 exchange and interexchange services, provided as a business service. Upon
17 written notice to the commission, a telecommunications company may
18 withdraw any rate list, tariff, or contract not required to be filed
19 under this subdivision if the telecommunications company posts the rates,
20 terms, and conditions of its telecommunications service on the company's
21 web site.

22 (2)(a) A telecommunications company shall be deemed a competitive
23 local provider pursuant to this subsection and its telecommunications
24 services exempt from regulation pursuant to subdivision (1)(c) of section
25 86-124 in any geographic area defined by that company's telephone
26 exchange boundary. (2) Local competition shall be deemed to exist in an
27 exchange if a telecommunications company files an application with the
28 commission requesting a determination as to whether local competition
29 exists in one or more exchanges specified in the application and the
30 commission enters an order after public notice and a hearing which
31 determines that local competition exists in such exchange or exchanges.

1 ~~Notwithstanding any other provision of the Nebraska Telecommunications~~
2 ~~Regulation Act, the commission may consider any wireless~~
3 ~~telecommunications service provided in the exchange or exchanges when~~
4 ~~determining whether local competition exists.~~

5 (b) On the effective date of this act, all telecommunications
6 companies shall be deemed competitive local providers in telephone
7 exchanges that are part of a city of the metropolitan class or a city of
8 the primary class and in any telephone exchange in which the population
9 is at least one hundred thousand inhabitants.

10 (c) A telecommunications company shall be deemed a competitive local
11 provider in a telephone exchange in which the population is less than one
12 hundred thousand inhabitants if it files a verified statement with the
13 commission that one of the following conditions exists with respect to
14 the exchange designated by the telecommunications company in its verified
15 statement: (i) The number of active residential local exchange
16 telecommunications subscribers it then serves constitutes fifty percent
17 or less of the households located in the exchange or (ii) at least sixty
18 percent of the households in the exchange can choose voice service
19 communications capability from among two or more other unaffiliated
20 providers. Within ninety days after receipt of the telecommunication
21 company's verified statement, the commission shall review the information
22 provided in the verified statement, and upon failure of the commission
23 within ninety days after receipt of the verified statement to determine
24 that both of the conditions in subdivisions (2)(c)(i) and (ii) of this
25 section are not met, the telecommunications company that filed the
26 verified statement shall be deemed a competitive local provider in the
27 exchange designated in its verified statement. Notwithstanding any other
28 provision of the Nebraska Telecommunications Regulation Act, in
29 determining whether at least sixty percent of the households in an
30 exchange can choose voice service communications capability from among
31 two or more other unaffiliated providers, the commission shall include

1 the availability of all types of voice communications service offered by
2 unaffiliated providers, regardless of the technology employed and the
3 regulatory classification of such other providers under state or federal
4 law, including, without limitation, wireless service, satellite service,
5 and voice over Internet protocol service in the exchange.

6 (3) On or after January 1, 2021, if a telecommunications company
7 files a verified statement that sixty-seven percent or more of the total
8 number of households in all of its exchanges are in exchanges in which it
9 has been deemed a competitive local provider, the telecommunications
10 company shall be deemed a competitive local provider in all of its
11 exchanges. Within ninety days after receipt of the telecommunications
12 company's verified statement, the commission shall review the information
13 provided in the verified statement. Upon failure of the commission within
14 ninety days after receipt of the verified statement to determine that
15 less than sixty-seven percent of the total number of households in all of
16 the telecommunications company's exchanges are in exchanges for which the
17 telecommunications company has been deemed a competitive local provider,
18 the telecommunications company shall be deemed a competitive local
19 provider in all of its exchanges. The notice of the hearing on the
20 telecommunications company's application shall be given once each week
21 for two consecutive weeks in a newspaper of general circulation in the
22 affected area and shall state that a determination of local competition
23 may result in the freeing of the telecommunications company from rate
24 regulation by the commission. The notice of the hearing on the
25 commission's motion shall be sent to the telecommunications company by
26 certified mail, return receipt requested, and notice of such hearing
27 shall be published in a newspaper of general circulation in the exchange
28 area. The hearing on the commission's motion shall be held no sooner than
29 ten days after the receipt of notice by the telecommunications company.

30 (4) Upon a telecommunications company being deemed a competitive
31 local provider in all of its exchanges and during the two-year period

1 thereafter, the commission may reimpose its service quality standards for
2 voice services on such telecommunications company in any of its exchanges
3 that were not previously deemed competitive in accordance with
4 subdivision (2)(b) or (c) of this section only upon a finding that the
5 telecommunications company has engaged in a pattern or practice of
6 inadequate voice service and that the reimposition of such standards is
7 necessary to ensure the protection of consumer rights or public safety.
8 Prior to public notice and hearing, the commission shall notify the
9 telecommunications company of any deficiencies and provide such
10 telecommunications company an opportunity to remedy such deficiencies in
11 a reasonable amount of time, but not less than ninety days. If the
12 telecommunications company remedies such deficiencies within a reasonable
13 amount of time, the commission shall not reimpose its service quality
14 standards. If the telecommunications company fails to remedy such
15 deficiencies, the commission may reimpose its service quality standards
16 for voice service for a time period not to exceed twelve months upon a
17 finding that:

18 (a) The reimposition of such service quality standards is necessary
19 for the protection of the majority of the telecommunications company's
20 customers or public safety;

21 (b) No alternative or less burdensome action is adequate to protect
22 the majority of the telecommunications company's customers; and

23 (c) Competitive market forces have been or will continue to be
24 insufficient to protect the majority of the telecommunications company's
25 customers.

26 (5) Notwithstanding anything in Chapter 75 or Chapter 86 to the
27 contrary, no exchange in which the incumbent telecommunications company
28 has been deemed a competitive local provider pursuant to subsection (2)
29 and (3) of this section shall receive support for voice services under
30 any high-cost program of the Nebraska Telecommunications Universal
31 Service Fund. The commission shall reallocate any support for voice

1 services previously accruing to an exchange in which the incumbent
2 telecommunications company has been deemed a competitive local provider
3 to the high-cost program for redistribution to telecommunications
4 companies, including the incumbent telecommunications company, for the
5 deployment of advanced services in unserved rural areas of the state (4)
6 ~~The commission may, on its own motion at any time after a determination~~
7 ~~as to whether local competition exists, reexamine and redetermine the~~
8 ~~determination after notice and a hearing on the issue.~~

9 Sec. 10. Section 86-144, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 86-144 In exchanges in which the incumbent telecommunications
12 company has not been deemed a competitive local provider pursuant to
13 subsection (2) or (3) of section 86-143 (1)(a) Except as provided in
14 subdivision (b) of this subsection, in an exchange in which local
15 competition does not exist, telecommunications companies shall file rate
16 lists which, for all telecommunications service not exempt from
17 commission regulation by section 86-124. The rate lists except for basic
18 local exchange rates, shall be effective after ten days' notice to the
19 commission.(b) Notwithstanding any other provision of Chapter 86, a
20 telecommunications company shall not be required to file rate lists,
21 tariffs, or contracts for any telecommunications service, including local
22 exchange and interexchange services, provided as a business service. Upon
23 written notice to the commission, a telecommunications company may
24 withdraw any rate list, tariff, or contract not required to be filed
25 under this section subdivision if the telecommunications company posts
26 the rates, terms, and conditions of its telecommunications service on the
27 company's web site.

28 ~~(2) In an exchange in which local competition does not exist, basic~~
29 ~~local exchange rates may be increased by a telecommunications company~~
30 ~~only after ninety days' notice to all affected subscribers. Such notice~~
31 ~~of increase shall include (a) the reasons for the rate increase, (b) a~~

1 ~~description of the affected telecommunications service, (c) an~~
2 ~~explanation of the right of the subscriber to petition the commission for~~
3 ~~a public hearing on the rate increase, (d) a list of exchanges which are~~
4 ~~affected by the proposed rate increase, and (e) the dates, times, and~~
5 ~~places for the public informational meetings required by this section.~~

6 ~~(3) A telecommunications company which proposes to increase its~~
7 ~~basic local exchange rates shall hold at least one public informational~~
8 ~~meeting in each public service commissioner district as established by~~
9 ~~section 75-101.01 in which there is an exchange affected by the proposed~~
10 ~~rate increase.~~

11 Sec. 11. Nothing in the Nebraska Telecommunications Regulation Act
12 as amended by this legislative bill shall be construed to affect sections
13 86-133 and 86-134 or the commission's oversight authority over 911
14 service.

15 Sec. 12. Original sections 86-101, 86-103, 86-123, 86-124, 86-143,
16 and 86-144, Reissue Revised Statutes of Nebraska, are repealed.

17 Sec. 13. The following sections are outright repealed: Sections
18 86-145, 86-146, 86-147, and 86-148, Reissue Revised Statutes of Nebraska.