

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1113

Introduced by Walz, 15; Briese, 41.

Read first time January 18, 2018

Committee:

- 1 A BILL FOR AN ACT relating to telecommunications and technology; to amend
- 2 sections 86-577, 86-593, and 86-594, Reissue Revised Statutes of
- 3 Nebraska; to provide an exception for leasing dark fiber or
- 4 providing broadband, Internet, telecommunications, or video services
- 5 by an agency or political subdivision of the state; to define terms;
- 6 to harmonize provisions; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-577, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 86-577 (1) Any agency or political subdivision of the state may
4 lease its dark fiber if:

5 (a) ~~(1)~~ The lessee is a certificated telecommunications common
6 carrier or a permitted telecommunications contract carrier pursuant to
7 section 86-128 or an Internet service provider;

8 (b) ~~(2)~~ The lease price and profit distribution is approved by the
9 Public Service Commission as follows:

10 (i) ~~(a)~~ The commission shall not approve any lease price which is
11 less than the market rate for leasing such fiber as determined by the
12 commission. The market rate is the price associated with similar
13 unbundled network elements that may be available from the incumbent local
14 exchange carrier or the price of any other private entity leasing dark
15 fiber optic facilities serving the same or similar territory where the
16 leased equipment is located. Before entering into a lease, each agency or
17 political subdivision shall file a request with the commission for a
18 competitive price comparison to determine the market rate. When
19 conducting a competitive price comparison, the commission in its
20 discretion shall use rate schedules, interconnection agreements, or other
21 documents within its regulatory oversight and shall gather other market
22 rate information as deemed necessary;

23 (ii) ~~(b)~~ The commission shall not approve any lease price which is
24 agreed upon by the agency or political subdivision and the lessee unless
25 the lease requires that the agency or political subdivision be solely
26 responsible for the maintenance of its dark fiber and that the lessee be
27 responsible, on a pro rata basis, for any such maintenance costs; and

28 (iii) ~~(c)~~ The commission shall not approve any lease unless fifty
29 percent of the profit earned by the agency or political subdivision under
30 the lease is remitted to the Nebraska Internet Enhancement Fund. Profit
31 earned by the agency or political subdivision is the lease price less the

1 cost of infrastructure overbuilding. Before entering into a lease, each
2 agency or political subdivision shall file a request with the commission
3 to determine the cost of overbuilding its fiber optic infrastructure. For
4 purposes of this subdivision, cost of infrastructure overbuilding means
5 the cost of each leased optic fiber, including the cost, on a pro rata
6 basis, associated with the agency's or political subdivision's
7 installation of such fiber;

8 (c) ~~(3)~~ Any interconnection agreement subject to section 86-122 is
9 approved by the commission; and

10 (d) ~~(4)~~ The lessee makes every reasonable effort to activate the
11 maximum amount of the leased fiber as is possible, within one year after
12 entering into the lease, unless good cause is shown.

13 (2) Subdivision (1)(b) of this section shall not apply to leases of
14 dark fiber pursuant to a public-private partnership as defined in section
15 86-593.

16 Sec. 2. Section 86-593, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 86-593 For purposes of sections 86-593 to 86-598:

19 (1) Broadband services means the offering of a capability for high-
20 speed broadband telecommunications capability at a speed or bandwidth in
21 excess of two hundred kilobits per second that enables users to originate
22 and receive high-quality voice, data, and video telecommunications using
23 any technology;

24 (2) Internet services means the offering of Internet service
25 provider services, providing voice over Internet protocol services, or
26 providing Internet protocol-based video services;

27 (3) Private partner means a telecommunications common carrier
28 holding a certificate of convenience and necessity, a telecommunications
29 contract carrier holding a permit from the Public Service Commission
30 pursuant to section 86-128, or an Internet service provider;

31 (4) ~~(3)~~ Public power supplier means a public power district, a

1 public power and irrigation district, a municipal electric system, a
2 joint entity formed under the Interlocal Cooperation Act, a joint public
3 agency formed under the Joint Public Agency Act, an agency formed under
4 the Municipal Cooperative Financing Act, or any other governmental entity
5 providing electric service;

6 (5) Public-private partnership means an agreement between an agency
7 or political subdivision of the state and a private partner relating to
8 (a) any public infrastructure assets for which the agency or political
9 subdivision is responsible, (b) the development or enhancement of such
10 public infrastructure assets in conjunction with the provision of
11 broadband services, Internet services, telecommunications services, or
12 video services, (c) any combination of federal, state, or local funds,
13 grants, loans, debt, or other public or private sources of funding or
14 financing to meet the objectives set forth in subdivision (b) of this
15 subdivision, and (d) the deployment and operation of a system for the
16 delivery of broadband services, Internet services, telecommunications
17 services, or video services by the private partner;

18 (6) (4) Telecommunications has the same meaning as
19 telecommunications defined in section 86-117;

20 (7) (5) Telecommunications services has the same meaning as
21 telecommunications service defined in section 86-121; and

22 (8) (6) Video services means the delivery of any subscription video
23 service except those described in section 70-625.

24 Sec. 3. Section 86-594, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 86-594 (1) Except as provided in the Educational Service Units Act
27 and sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418, 85-1501
28 to 85-1542, and 86-575, and subsection (2) of this section, an agency or
29 political subdivision of the state that is not a public power supplier
30 shall not provide on a retail or wholesale basis any broadband services,
31 Internet services, telecommunications services, or video services.

1 (2) Broadband services, Internet services, telecommunications
2 services, or video services may be provided on a retail or wholesale
3 basis by an agency or political subdivision of the state through a
4 public-private partnership.

5 ~~(3) (2)~~ The provisions of subsection (1) of this section shall not
6 apply to services which an agency or political subdivision of the state
7 was authorized to provide and was providing prior to January 1, 2005.

8 Sec. 4. Original sections 86-577, 86-593, and 86-594, Reissue
9 Revised Statutes of Nebraska, are repealed.