Dark Fiber

This Act authorizes and directs how political subdivisions or agencies of the state may own, sell or lease dark fiber. Dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

The Act creates an Internet Enhancement Fund to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state.

Submitted as:
Nebraska
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Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as the “Dark Fiber Act.”

Section 2. [Definitions.] For purposes of this Act, dark fiber means any unused fiber optic cable through which no light is transmitted or any installed fiber optic cable not carrying a signal.

Section 3. [Dark Fiber: Owning, Selling or Leasing by Political Subdivisions.]

(1) Any agency or political subdivision of the state may:
   (a) Own dark fiber;
   (b) Sell dark fiber pursuant to section 3 of this Act; and
   (c) Lease dark fiber pursuant to section 3 of this Act.

(2) No agency or political subdivision of the state shall provide telecommunications services for a fee, except as authorized in [insert citation], or be issued a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier. Any agency or political subdivision that sells or leases its dark fiber pursuant to this Act shall not be deemed to be providing telecommunications services for a fee.

(3) Any agency or political subdivision of the state may sell its dark fiber by any method, including auction, sealed bid, or public sale, which it deems to be most advantageous to the public. The sales agreement may require that the agency or political subdivision be solely responsible for the maintenance of the dark fiber and that the buyer is responsible, on a pro rata basis, for any such maintenance costs.

(4) Any agency or political subdivision of the state may lease its dark fiber if:
   (a) The lessee is a certificated telecommunications common carrier or a permitted telecommunications contract carrier pursuant to [insert citation], or an Internet service provider;
   (b) The lease price and profit distribution is approved by the [Public Service Commission] as follows:
      (i) The [commission] shall not approve any lease price that is less than the market rate for leasing such fiber as determined by the [commission]. The market rate is the price associated with similar unbundled network elements that may be available from the incumbent local exchange carrier or the price of any other private entity leasing dark fiber optic facilities serving the same or similar territory where the leased equipment is located. Before entering into a lease, each agency or political subdivision shall file a request with the [commission] for a competitive price comparison to determine the market rate. When conducting a competitive price comparison, the [commission] in its discretion shall use rate schedules, interconnection agreements, or other documents within its regulatory oversight and shall gather other market rate information as deemed necessary;
(ii) The [commission] shall not approve any lease price which is agreed upon by the
agency or political subdivision and the lessee unless the lease requires that the agency or political subdivision
be solely responsible for the maintenance of its dark fiber and that the lessee be responsible, on a pro rata
basis, for any such maintenance costs; and

(iii) The [commission] shall not approve any lease unless [fifty (50)] percent of the
profit earned by the agency or political subdivision under the lease is remitted to the [Internet Enhancement
Fund]. Profit earned by the agency or political subdivision is the lease price less the cost of infrastructure
overbuilding. Before entering into a lease, each agency or political subdivision shall file a request with the
[commission] to determine the cost of overbuilding its fiber optic infrastructure. For purposes of this
subdivision, cost of infrastructure overbuilding means the cost of each leased optic fiber, including the cost,
on a pro rata basis, associated with the agency’s or political subdivision’s installation of such fiber;

(5) Any interconnection agreement subject to [insert citation] is approved by the [commission]; and

(6) The lessee makes every reasonable effort to activate the maximum amount of the leased fiber as is
possible, within [one (1)] year after entering into the lease, unless good cause is shown.

Section 4. [Internet Enhancement Fund]
The [Internet Enhancement Fund] is created. The [fund] shall be used to provide financial assistance
to install and deliver broadband or other advanced telecommunications infrastructure and service throughout
the state. It is the intent of the [Legislature] that [two hundred fifty thousand (250,000)] dollars shall be
appropriated to the [fund] to be used for startup costs and seed money for [date]. The [Public Service
Commission] may receive gifts, contributions, property, and equipment from public and private sources for
purposes of the [fund]. The [fund] shall consist of money appropriated by the [Legislature] and gifts, grants,
or bequests from any source, including federal, state, public, and private sources. Money in the [fund] shall be
distributed by the [commission] pursuant to section 6 of this Act. Any money in the [fund] available for
investment shall be invested by the [state investment officer] pursuant to [insert citation].

Section 5. [Internet Enhancement Fund Application Process.]
(1) The [Public Service Commission] shall establish an application process through which any county
or municipality in the state may apply for financial assistance from the [Internet Enhancement Fund]. The
process shall allow the county or municipality to obtain a service provider for broadband or other advanced
telecommunications services in an exchange or other area defined by the county or municipality where such
telecommunications services are to be delivered at rates of service agreed upon between the service provider
and county or municipality. The application shall state the projected cost, identify the service provider,
describe the process for selection of the service provider, list terms and considerations of any agreement
between the applicant and the service provider, and include other information as required by the
[commission].

(2) The [commission] shall not provide assistance unless the service provider is an eligible service
provider of telecommunications, video, the commission and the applicant can provide matching funds of at
least [twenty-five (25)] percent of the total projected cost.

(3) The [commission] shall establish a system to prioritize applications. Highest priority shall be
given to applicants based on high-cost factors, including population scarcity and location remoteness. Other
factors, including financial need, may be considered by the commission as deemed necessary.

(4) Funds for financial assistance to counties and municipalities may be distributed by the
[commission] on and after [date]. Funds committed for future use are deemed to be used in the year
committed.

Section 6. [Other Entities and Dark Fibers Sales and Leasing.]
(1) Excepting the provisions of [insert citation], any city or village owning or operating electric
generation or transmission facilities as defined in [insert citation] may sell or lease its dark fiber pursuant to
sections 2 to 5 of this Act.
(2) Excepting the provisions of [insert citation], a public power district as defined by [insert citation], may sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.

(3) Excepting the provisions of [insert citation], a corporation as defined by [insert citation], shall have power to sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.

(4) Excepting the provisions of [insert citation], a joint authority as defined by [insert citation] shall have all the rights and powers to sell or lease its dark fiber pursuant to sections 2 to 5 of this Act.

Section 7. [Violations.] An original action or appeal concerning a violation of any provision of sections 2 to 5 of this Act by an agency or political subdivision of the state shall follow the procedures set forth in [insert citation].

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]