

# Public-Private Partnerships Findings and Recommendations

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*Examine alternatives for deployment of broadband services to areas that remain unserved or underserved, such as reverse auction programs described in section 4 of this act, public-private partnerships, funding for competitive deployment, and other measures, and make recommendations to the Public Service Commission to encourage deployment in such areas;*

—Nebraska Revised Statutes 86-1102(3)(d)

## Findings

- Public-private broadband partnerships have primarily been utilized in communities, but not rural areas. Some models, however, could be adapted for use in rural areas.<sup>1</sup> Stakeholders should take the following considerations into account:
  - Public-private partnerships should include consumer protections and ensure quality of service.
  - Stakeholders should be aware that forming a public-private partnership takes time.
  - Stakeholders should be careful of forming a public-private partnership that addresses business needs only and leaves out residential and/or rural areas out.
- Public power districts and cooperatives could play a role in advancing the deployment of broadband services in rural Nebraska through public-private partnerships. Public power districts and cooperatives may own fiber rings to connect necessary electric controls and data points. The communications network enables public power districts to safely operate and manage the electric grid. The communications network could be leveraged to facilitate the deployment of broadband in rural areas. Possible models are described below:
  - A public power district or cooperative could work with a local telecommunications provider to put fiber in to connect electric communication needs. The local telecommunications provider could sell some of the fiber to the public power district or cooperative. The

### **Key Recommendations**

- *Encourage local and regional broadband planning, including communications planning between telecommunications providers and public power districts and cooperatives.*
- *Explore the creation of broadband cooperatives in unserved and underserved localities.*
- *Retain the existing prohibition on retail provision of broadband service by public entities.*
- *Explore ways to make it easier for public entities to lease dark fiber.*
- *Explore legislation clarifying communications as an approved use for private easements set up for telephone and electric use.*
- *Encourage local governments to review their rights of way and permitting processes and take steps if necessary to make the processes less burdensome for telecommunications providers.*

<sup>1</sup> See Appendix 8 Supplemental Information--Public-Private Partnerships for more information.

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- A public power district or cooperative could work with a local telecommunications provider to put fiber in to connect electric communication needs and could then lease services from the telecommunications provider. The telecommunications provider could also connect homes and businesses passed by the newly installed fiber.
  - As public power districts replace aging infrastructure, fiber could be placed overhead at a cost of a few dollars per foot. The dark fiber could be leased to telecommunications providers.
  - Public power districts and other public entities could aggregate their demand for telecommunications services through a joint RFP which could be put out for bid by the State of Nebraska Office of the CIO or Network Nebraska. Telecommunications providers could connect homes and businesses passed by the newly installed fiber.
  - An electric cooperative could create a communications subsidiary and provide retail service, however a public power district could not.
- The formation of broadband cooperatives may be an option for unserved and underserved areas.
  - Neb. Revised Statutes Section 86-577 places restrictions on leasing of dark fiber by public entities. The current legislation requires public entities to lease dark fiber at the market rate, have the lease price and profit distribution approved by the public service commission, and contribute 50 percent of the profit to the Nebraska Internet Enhancement Fund.

This process adds additional time and uncertainty to a provider's implementation schedule. Currently one lease is in place. The burden of complying with the restrictions may factor into the low number of leases. However, it is likely that other factors are involved. Factors cited by telecommunications providers include:

- Existing public power-owned leasable fiber is not "last-mile fiber."
- Existing fiber is limited in quantity in routes and number of fibers.
- Existing public owned fiber is generally in areas that have alternative private sector fiber available.
- Private sector fiber is generally connected to a much more robust and established set of telecommunications carrier networks.
- Existing fiber may primarily be aerial fiber.
- There may not be any appreciable cost savings.

As more fiber is deployed by public entities, however, leasing could become more attractive in the future.

Another issue appears to be a lack of trust between the public power and telecommunications industries and a lack of familiarity with the other industry's regulatory structure.

- It is unclear if private easements set up for telephone and electric use could also be used for communications. Legislation clarifying that communications is an approved use for private easements set up for telephone and electric use would eliminate uncertainty and litigation.

## Recommendations

- **Encourage local and regional broadband planning.** Each community, county or region is different and will likely require a unique solution. Bringing stakeholders together to develop a local, county or regional plan can lay the groundwork for public-private partnerships.
- **Encourage each county or region to have a broadband coordinator to facilitate broadband planning and coordination.**
- **Encourage communications planning between telecommunications providers and public entities, such as public power districts and other private entities, such as cooperatives.** This could be done in a number of ways, including:
  - Convening local or regional meetings of telecommunications providers and public power districts to explore how the communications needs of public power could be leveraged to improve broadband availability in rural areas.
  - Developing a joint RFP for public power districts which could be put out for bid by Network Nebraska or the Nebraska Office of the CIO.
- **Explore the creation of broadband cooperatives in unserved and underserved localities.**
- **Establish a state broadband coordinator position to provide assistance to local and regional broadband coordinators and to coordinate with state agencies, telecommunications providers, local governments and other stakeholders.**
- **Explore the creation of a statewide broadband association.** The association could include telecommunications providers, public power districts, schools, hospitals, municipalities, counties, and other stakeholders interested in advancing broadband in Nebraska. The association could convene regional and statewide discussions and develop and distribute resources such as model or sample agreements.
- **Retain the existing prohibition on retail provision of broadband service by public entities.** The public power industry has stated that it is not interested in retail provision of broadband services. In some states, municipalities are providing retail broadband service. Municipal provision of broadband does not help rural areas and may hinder rural broadband deployment by eroding a telecommunications provider's business case to provide service to a rural area.
- **The public power industry, telecommunications industry, and the Transportation and Telecommunications Committee should work together to reach an agreement on what steps which should be taken to make it less burdensome for public entities to lease dark fiber.** Possible steps include:
  - The Nebraska Public Service Commission (PSC) could work with the Nebraska Rural Electric Association (NREA) and Nebraska Public Power District (NPPD) to communicate

information on the current process to provide additional clarity and address any misperceptions about the process.

- The current legislation could be modified to ease the restrictions. Options include:
  - Public entities could be required to file their lease rate with the Public Service Commission. The PSC would publish the rate for 30 days. If no protest is filed, the PSC would approve the lease. If a protest is filed, a hearing would be scheduled.
  - The percent of profits contributed to the Nebraska Internet Enhancement Fund could be reduced or eliminated.
  - All of the restrictions on leasing dark fiber could be eliminated.
- **The NREA and NPPD should work with the members of the Transportation and Telecommunications Committee to explore legislation clarifying communications as an approved use for private easements set up for telephone and electric use.**
- **Identify funding for public-private partnerships.** Possible funding sources for public-private partnerships include LB 840 funds, USDA broadband grants and loans, Community Reinvestment Act, and New Market Tax Credits. Additional sources of funding such as a state broadband grant program would facilitate the development of public-private partnerships. Approximately 25 states have created broadband grant funds.
- **Encourage local governments to review their rights of way and permitting processes and take steps if necessary to make the processes less burdensome for telecommunications providers.**

### Metrics

Measure	2019 Most Recent Data July 2019, Nebraska Public Service Commission
The number of leases of dark fiber from public entities	1