

**86-103.01. Advanced telecommunications capability service, defined.**

Advanced telecommunications capability service means high-speed, broadband telecommunications capability provided by a local exchange carrier that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

**Source:**Laws 2012, LB715, § 3.

**Effective Date: July 19, 2012**

**86-135. Advanced telecommunications capability service; application; notice; commission; considerations.**

(1) Any person may file an application with the commission to obtain advanced telecommunications capability service furnished by a telecommunications company in the local exchange area adjacent to the local exchange area in which the applicant resides.

(2) The commission shall serve upon each telecommunications company directly affected a copy of the application and notice of the hearing at least thirty days prior to the hearing on the application, which shall be held if all of the telecommunications companies involved do not consent to the application.

(3) If an application for the revision of an exchange service area includes more than one customer in a particular exchange, the commission shall consider the circumstances of each customer and the impact to the obligations of any affected telecommunications company which has not consented to the application.

**Source:**Laws 1969, c. 601, § 1, p. 2457; Laws 1993, LB 121, § 471; Laws 1994, LB 414, § 108; R.S.1943, (1996), § 75-612; Laws 2002, LB 1105, § 34; Laws 2012, LB715, § 4.

**Effective Date: July 19, 2012**

**Annotations**

Applicants are required, irrespective of whether phone company currently providing service participates, to present evidence to establish their case. In re Application of Jantzen, 245 Neb. 81, 511 N.W.2d 504 (1994).

An order of the Public Service Commission will be affirmed if it acted within the scope of its authority, if its order is reasonable and not arbitrary, and if there is evidence

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to support its findings. In re Application of The Mickow Corp., 210 Neb. 580, 316 N.W.2d 66 (1982).

Intent of statute is to permit users to petition for telephone service outside the exchange of residence. Hartman v. Glenwood Tel. Membership Corp., 197 Neb. 359, 249 N.W.2d 468 (1977).

### **86-136. Commission; application approval.**

Upon the completion of the hearing on such an application made pursuant to section [86-135](#), if a hearing is required, the commission may grant the application, in whole or in part, if the evidence establishes the following:

(1) That such applicant is not receiving, and will not within a reasonable time receive, reasonable advanced telecommunications capability service from the telecommunications company which furnishes telecommunications service in the local exchange area in which the applicant resides;

(2) That the revision of the exchange service area required to grant the application is economically sound, will not impair the capability of any telecommunications company affected to serve the remaining subscribers in any affected exchanges, and will not impose an undue and unreasonable technological or engineering burden on any affected telecommunications company; and

(3) That the applicant is willing and, unless waived by the affected telecommunications company, will pay such construction and other costs and rates as are fair and equitable and will reimburse the affected telecommunications company for any undepreciated investment in existing property as determined by the commission. The amount of any payment by the applicant for construction and other costs associated with providing service to the applicant may be negotiated between the applicant and the affected telecommunications company.

**Source:**Laws 1969, c. 601, § 2, p. 2457; Laws 1982, LB 229, § 1; Laws 1994, LB 414, § 109; R.S.1943, (1996), § 75-613; Laws 2002, LB 1105, § 35; Laws 2012, LB715, § 5.

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### **Annotations**

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Applicants are required, irrespective of whether phone company currently providing service participates, to present evidence to establish their case. Public Service Commission may consider, in determining the adequacy of service the applicant receives, the evidence that toll charges deter others in the applicant's community of interest from calling him. In re Application of Jantzen, 245 Neb. 81, 511 N.W.2d 504 (1994).

A toll charge as contemplated in subsection (1) of this statute (formerly section 75-613) is a charge for a single long-distance call, not a monthly flat fee for service. In re Application of George Farm Co., 233 Neb. 23, 443 N.W.2d 285 (1989).

The determination of what is economically sound under this section (formerly section 75-613) is peculiarly within the discretion and expertise of the Public Service Commission. Where the evidence is in conflict, the weight of the evidence is for the determination of the commission and not the appellate court. Reis v. Glenwood Telephone Membership Corp., 207 Neb. 575, 299 N.W.2d 771 (1980).

Terminology of this section (formerly section 75-613) has acquired new meanings requiring case-by-case evaluation. Hartman v. Glenwood Tel. Membership Corp., 197 Neb. 359, 249 N.W.2d 468 (1977).

An applicant may obtain authority from the State Railway Commission for telephone service furnished in adjacent service area without proving inadequacy of service or unfairness of rates in the tradition of public utility law. Schoen v. American Communication Co., Inc., 189 Neb. 78, 199 N.W.2d 716 (1972).

### **86-137. Certificate of convenience and necessity.**

After the commission has lawfully granted an application pursuant to section [86-136](#), the telecommunications company ordered to provide the advanced telecommunications capability service shall be issued a certificate of convenience and necessity to serve that area added to its local exchange area by the commission, if necessary. The commission shall set the date when the service granted shall take effect and, in doing so, shall take into consideration any construction or major repair which will be required of the telecommunications company involved.

**Source:**Laws 1969, c. 601, § 3, p. 2458; Laws 1994, LB 414, § 110; R.S.1943, (1996), § 75-614; Laws 2002, LB 1105, § 36; Laws 2012, LB715, § 6.

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### **86-138. Application denial.**

If the commission refuses to grant an application made pursuant to section [86-135](#), no new application for the same advanced telecommunications capability service shall be filed or shall be considered by the commission until one year has elapsed after the date of mailing of the commission order.

**Source:**Laws 1969, c. 601, § 4, p. 2458; Laws 1994, LB 414, § 111; R.S.1943, (1996), § 75-615; Laws 2002, LB 1105, § 37; Laws 2012, LB715, § 7.

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