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Transportation and Telecommunications Committee
January 22, 2008

[LB755 LB815 LB823 LB829]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, January 22, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB755, LB815, LB823, and LB829. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Scott Lautenbaugh; LeRoy Louden; Dwite Pedersen; and DiAnna Schimek. Senators absent: Carol Hudkins. []

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer, and I am the Chair of the committee and I am the senator representing District 43 in central and north central Nebraska...and I'm also almost speechless. At this time, I'd like to introduce my committee members: On my far right is Senator Dwite Pedersen from Elkhorn; next to Senator Pedersen is Senator DiAnna Schimek from Lincoln; next we have the Vice Chair, Senator Arnie Stuthman, and he is from Platte Center; on my immediate right is Mr. Dustin Vaughan, and he is the committee counsel; on my left is Mrs. Pauline Bulgrin, and she is the committee clerk; and at this time I'd like to give a special welcome to Senator Scott Lautenbaugh from Omaha. He is our new committee member; he was appointed to replace Senator Mick Mines, who resigned. And it's a pleasure to have you join us as a member of this committee, Senator Lautenbaugh, so welcome. []

SENATOR LAUTENBAUGH: Thank you. It's a pleasure to be here. []

SENATOR FISCHER: Our pages this year will be Matt Pederson from North Platte, and Rhianna Needham from Bellevue. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. Please complete the yellow sign-in sheet on the on-deck table, which is the table back there, and have that ready to hand in when you testify. We have a computerized transcription program that is being used and so it is very important that the directions on the sign-in sheet are followed, and you need to hand that sign-in sheet in to Mrs. Bulgrin before you testify, please. For the record, at the beginning of your testimony, please spell your last name and also your first name if it can be spelled several different ways. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify, we may have to put some time limits on the testimony; I don't believe we will have to do that today. If you do not want to testify, but want to voice your support or your opposition to a bill, you can indicate so at the on-deck table on the sheet provided. This will be a part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at this hearing, you must complete the yellow sign-in sheet and actually testify, even if you just state your name and the position that you hold on the bill. If you do not

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choose to testify, you may submit comments in writing and they will be read into the official record. Please relax and don't be nervous; I think we have the usual suspects here (laughter), so I don't expect you to be nervous today. And if you need anything, please ask the page. I would ask at this time that you turn off your cell phones; we do not allow cell phones at the hearing. With that, I will open...oh, first of all, I'd like to welcome Senator Ray Aguilar from Grand Island, who has joined us, and also Senator LeRoy Loudon from Ellsworth. And at this time I will open the hearing on LB823, and Senator Schimek will give the introduction to it. So welcome, Senator Schimek. []

SENATOR SCHIMEK: (Exhibit 1) Thank you, Madam Chair, and members of the Transportation and Telecommunications Committee. For the record, my name is DiAnna Schimek, representing District 27. And I'm here as the Chair of the Performance Audit Committee. The Performance Audit Section, at the direction of the Performance Audit Committee, undertook an audit of the Nebraska Information Technology Commission or NITC. The audit examined three issues: NITC's compliance with the Information Technology Infrastructure Act; the sufficiency of NITC's technology project review process; and NITC's authority to address significant weaknesses in reviewed projects. The Audit Section found that NITC complies with the relevant portions of the Information Technology Infrastructure Act, and that the review process used by NITC is sufficient to identify the strengths and weaknesses in proposed information technology projects. The Section also found that NITC addresses significant weaknesses it finds in proposed technology projects through the mechanisms of review process. There were a few minor findings in the audit, which NITC has agreed to address internally. Additionally, the audit identified some larger policy issues that the Performance Audit Committee felt needed to be addressed through legislation; LB823 addresses those issues. In the audit, the Section found that the Information Technology Infrastructure Act contained unclear language about what are called "enterprise projects," chiefly, large technology projects that involve several agencies. For example, the additional oversight of such projects required by the act never came into play because the act did not give NITC or any other entity the authority to actually declare a project an "enterprise project." LB823 assigns NITC the responsibility of designating projects as such, and tasks it with creating a program to provide review and oversight of these projects. In addition, at the request of the Office of the Chief Information Officer, the bill expands the definition of "enterprise project" to encompass a project that either affects an agency's core business function or affects multiple government agencies or programs. The audit also found that NITC does not receive comparable technology information from state agencies, which hampers its ability to meet its statutory requirement to coordinate state technology projects. LB823 would compel state agencies to provide an information technology plan in a format determined by NITC to the Chief Information Officer regarding technology assets and planned acquisitions of projects. NITC's annual statewide technology plan would include analysis of the reported data. Finally, the audit found that NITC's review of projects is restricted to those requiring General Fund appropriations and those voluntarily submitted to the commission for review. This

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means that many projects paid for with other types of funds occur without the benefit of any NITC review, even though they could pose similar risks of cost, feasibility and suitability to those associated with the projects NITC reviews, and therefore could end up costing the state money. Furthermore, NITC is not currently authorized to review progress on a project beyond the planning stage, effectively missing the highest risk periods of a project, namely, construction and implementation. LB823 requires government entities to submit projects to NITC review regardless of funding source...and this includes general funds, federal funds, cash funds, etcetera...and it allows NITC to require progress reports on these projects. It is important to note that this bill does not give NITC authority to stop an agency's technology project. Rather, the bill enhances NITC's advisory role and it helps state agencies take advantage of a wealth of knowledge and expertise represented by NITC, its members and staff. With increased oversight and review, the state of Nebraska should be able to avoid, or at least mitigate, costly technology failures. Further, with increased information about agency technology goals, NITC will be better able to coordinate projects and investments in order to save the state money. State agencies have a great resource in NITC, and this bill will help them make the most of it. Thank you, Senator Fischer, members of the committee. I might mention that the administration has several changes they would like to have made to this bill, maybe in the form of a committee amendment, and I believe that the legal counsel has those in hand, and the Performance Audit Committee is fine with these changes. Thank you. [LB823]

SENATOR FISCHER: Thank you, Senator Schimek. Are there questions? I see none. Thank you very much. [LB823]

SENATOR SCHIMEK: Thank you. [LB823]

SENATOR FISCHER: At this time, I would ask that the first proponent of the bill step forward, please. Good afternoon. [LB823]

BRENDA DECKER: Good afternoon. Senator Fischer and members of the Transportation and Telecommunications Committee, my name is Brenda Decker, it's spelled D-e-c-k-e-r, and I am the Chief Information Officer for the state for Nebraska. I'm here to testify in favor of LB823 on behalf of the Nebraska Information Technology Commission and the Office of the Chief Information Officer. As you know, this bill is the result of a performance audit on the NITC during June 2007. At the June 27, 2007 meeting of the NITC, the commissioners voted unanimously to support the points that were raised in the performance audit, and any subsequent changes the committee brought forth in legislation. Several of the points being clarified with the introduction of LB823 will assist the NITC in carrying out its responsibilities to the Governor and the Legislature for recommendations related to the funding of information technology projects. As we discussed the changes that would be offered in LB823 with the staff from the Performance Audit Committee, one additional item surfaced that I would like to

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offer to your committee for consideration: Currently in statute, there are two technology-type councils that sit outside of the authority of the NITC. The Nebraska Intergovernmental Data Advisory Council and the Geographic Information System Steering Committee, or the GIS Steering Committee, are two entities that were created by the Legislature in 1987 and 1991 respectively. Both of these entities have reporting structure within the Office of the Chief Information Officer. Their current legislation references a working relationship with the NITC. We believe the time might be right to consider moving these two entities into the NITC structure as well. With your concurrence, we would propose to work with your committee staff on an amendment that would streamline this process and create additional efficiencies for these two groups. Finally, I would like to thank the Performance Audit staff for their professionalism and the work they did with the NITC. The questions that were asked were appropriate and gave us an opportunity to look at our processes in depth and with fresh eyes. Thank you for the opportunity to testify and I'd be happy to try to answer any questions the committee may have. [LB823]

SENATOR FISCHER: Thank you, Ms. Decker. Are there any questions? Senator Stuthman. [LB823]

SENATOR STUTHMAN: Thank you, Senator Fischer. Brenda, since those entities were established in '87 and '91.... [LB823]

BRENDA DECKER: Right. [LB823]

SENATOR STUTHMAN: ...why weren't they a part of the NITC at that time, or why do you think they should be now? [LB823]

BRENDA DECKER: At the time that they were established, Senator, was prior to the NITC actually getting on its feet and doing the work that it's doing now. What we have found is a lot of those committees have crossover membership and have crossover responsibilities. For example, the Intergovernmental Data Committee, that works...we call it the NIDCAC Committee, it's...the name is longer than the acronym...their responsibility is to work with cities and counties on joint projects and to gain the efficiencies that we may be able to get by doing data in a city or a county at a local level with the state. The NITC Community Council, as it has been established, has almost the exact same responsibilities. So we've started to see an overlap of membership, an overlap of responsibility. I don't think we're looking to actually abolish them in statute; we'd like them to actually have a working relationship within it. Does that answer your question? [LB823]

SENATOR STUTHMAN: Yes, yes. Thank you. [LB823]

BRENDA DECKER: Okay. [LB823]

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SENATOR STUTHMAN: Senator Schimek? [LB823]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Brenda, thank you for being here and testifying. I have to ask about the GIS component. [LB823]

BRENDA DECKER: Right. [LB823]

SENATOR SCHIMEK: Because that's a very important component for redistricting and generally has...in fact, probably got started under the auspices of the legislative research division. [LB823]

BRENDA DECKER: Right. [LB823]

SENATOR SCHIMEK: How would that affect the relationship during that particular period of time? [LB823]

BRENDA DECKER: Right now, what...the GIS Steering Committee has representation from the Legislature on that committee. We wouldn't look to see any of that changing as we brought this in under the NITC. What we're a little bit concerned about as we move forward is, right now the membership of...for example, the GIS Steering Committee is probably the best example...that membership is specified in statute. And as you will hear a little later, we're going to talk about GIS again through the Public Service Commission. Right now, statutorily there is not representation from the PSC on that committee. So we think that there's some work that could be done with membership as far as making sure that they're integrated. Really, the responsibility of the GIS Steering Committee is to make sure that we're giving a forum for those individuals that are doing pieces of GIS to get together on a regular basis...we're required by statute to meet at least quarterly...and bring those people in and say, you're working on this, you're working on this, do we have the same standards? Are we able to share that information? Are we reinventing the wheel every time we turn around? So I think that that's really a responsibility that someone has to take on and that group has taken that on statutorily and with the actual work that they are doing. We've seen people doing this on a voluntary basis, but they're looking at someone who actually has a policy-setting ability, which the NITC does, and so the GIS Steering Committee is looking to get that relationship more solidified. [LB823]

SENATOR SCHIMEK: Okay. Thank you. [LB823]

SENATOR STUTHMAN: Does the committee have any other questions of Ms. Decker? Seeing none, thank you. [LB823]

BRENDA DECKER: Thank you. [LB823]

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SENATOR STUTHMAN: Are there any other proponents of this bill? Any opponents? Do I see anyone that is in the neutral position? Seeing none, that closes the hearing. Senator Schimek, do you have closing? You waive the closing. Okay. Thank you. At this time we will have...Senator Fischer isn't here, so you're going to...okay. Okay, we have LB815. Senator Fischer and Dusty, the legal counsel, will give us that testimony. Good afternoon. [LB823]

DUSTIN VAUGHAN: Good afternoon. Good afternoon, Senator Stuthman and members of the Transportation and Telecommunications Committee. For the record, my name is Dustin Vaughan, spelled V-a-u-g-h-a-n, and I am the legal counsel for the committee. The next three bills that we're going to hear are all bills that were brought by the Public Service Commission, so I'm just going to give you a brief outline of what the bill does and then I'll let them explain why the bill is needed. LB815 was brought to our office by the PSC; the purpose of the bill was to exempt Geographic Information System data created, stored, or funded by the PSC from the public record statutes. The bill does not preclude the commission from sharing this data with another state agency or political subdivision for public safety purposes. This GIS data will be maintained and updated in a repository held by the commission. There is no question that this GIS data is highly valuable and expensive to maintain. The commission does this through enhanced wireless 911 fees that all cell phone users pay each month on their bills. It seems counterproductive to use the public's money to construct this data, and then turn it over to a private entity to use for profit or commercial purposes. And as I said before, the commissioner's here to testify, so I will let them answer why this bill is needed. [LB815]

SENATOR STUTHMAN: Thank you, Dusty. Any committee members have any questions? Thank you. We will now hear the proponents for this bill, LB815. Good afternoon. [LB815]

JERRY VAP: (Exhibit 1) Good afternoon, Vice Chair Stuthman, members of the committee. My name is Jerry Vap, I am the Public Service Commissioner, representing the 5th District of the Nebraska Public Service Commission, and I'm here today to testify regarding LB815. As you know, LB815, as introduced, exempts Geographic Information System data, GIS data, created, stored, or funded by the PSC from the Public Records Act, with exception that the data may be shared with other governmental agencies and political subdivisions for public safety purposes. The commission wishes to thank Senator Fischer for introducing this bill, giving the committee and the Legislature an opportunity to give the commission guidance regarding the funding and use of this data. The commission administers the Enhanced Wireless 911 Fund, which is funded through a surcharge paid by users of wireless service and wireless carriers. The fund is used to implement Phase II wireless 911 service statewide, which when complete will allow a wireless caller dialing 911 to be located by emergency responders. To date, 50 counties representing 85.75 percent of Nebraska's population are Phase II capable.

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Approximately 96 percent of Nebraska's population is covered by at least Phase I service. Mapping of the entire state is a necessary component of Phase II wireless service. The mapping data being developed consists of: street centerline data and address ranges; municipal and county boundaries; areas such as cemeteries and parks; railways; water features; fire districts; ambulance service boundaries; law enforcement areas; emergency service boundaries; wireless cell tower locations; and cell tower coverage. To date, the commission has approved funding of \$1,769,237 for development of this data. Of that amount, the fund has already paid \$1,188,332.75. Currently, of Nebraska's 93 counties, 86 have been or are in the process of being mapped. Even after the data is complete, it will require continuous updates and the fund will continue to pay expenses for maintenance in the amount of around \$475,000 annually, in addition to expenses for storage and access to the data through a central repository. The wireless surcharge is capped at \$0.50 for Douglas County and \$0.70 for all other counties. Therefore, available funding for the implementation, maintenance and operation of the statewide wireless system is limited. The commission continues the process of developing a permanent fund mechanism pursuant to LB1222. In doing so, we will face important challenges in allocating the limited funding available for the maintenance and operation of the system and in addressing other increasing demands on the fund due to the decline of landline 911 surcharge revenues for local governments and continuing upgrades to equipment and infrastructure to address changes in technology, such as Voice Over the Internet. The commission believes that the compilation of GIS data may have significant commercial value. In fact, requests for access to the data have been made by two wireless carriers. Any company who utilizes GPS technology may be interested in the data. Some of the information, such as tower location and coverage, are proprietary and those data layers will not be released except to 911 centers and law enforcement agencies requiring the data for 911 purposes. LB815 opens a forum for discussion regarding a policy for the funding and use of the GIS data. Although this data is being developed for 911 purposes, its potential uses by both public and private entities is broad. In light of that potential, it is inequitable for a dedicated fund such as the 911 Fund to be solely responsible for the development, storage, distribution, and maintenance of GIS data. The commission recognizes that duplication of efforts in the development, maintenance, and storage of GIS data is inefficient. With the exception of the proprietary information contained within the data, the commission is not opposed to making GIS data available to anyone; however we do believe that it is only fair for those who wish to use this data for commercial purposes be responsible for a portion of the cost, and that those costs should not be borne solely by wireless users and the 911 Fund. Therefore, the commission will make available a proposed amendment to LB815 to allow the commission to require reimbursement of costs from those asking for access or use of GIS data for other than 911 purposes. The amendment would allow reimbursement to be made to the fund to offset costs for the development, maintenance, and storage of the data. I ask for your support of LB815 and the proposed amendment. I would be happy to answer any questions you may have. [LB815]

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SENATOR STUTHMAN: Thank you, Commissioner Vap. Any of the committee members have any questions? Senator Schimek. [LB815]

SENATOR SCHIMEK: Thank you. Thank you, Commissioner Vap, I appreciate your testimony. Would there ever be a point in time where there would be a genuine disagreement over what was "proprietary information"? And is there any other approach that would work other than this one? I get really nervous when we start talking about keeping records, essentially government records, from the public. But I understand the purpose, I'm not..... [LB815]

JERRY VAP: Um-hum. [LB815]

SENATOR SCHIMEK: ...arguing. [LB815]

JERRY VAP: Yeah. [LB815]

SENATOR SCHIMEK: This might be the best approach, I just wondered if any other thoughts...about any other thoughts you might have. [LB815]

JERRY VAP: This has been our best effort to date in coming up with a solution to what we consider a potential problem with the data and the use of it. The "proprietary" part really is about the location of cell towers and the network that the cell tower and the cell phone companies have. And there's a lot of reasons, I suppose, you could say that should be restricted: One of them is competition from other companies; another one could be a homeland security issue and allowing anybody to get access to where those towers are and what that network looks like. [LB815]

SENATOR SCHIMEK: And there's no other way for, say, a competitor to get this kind of information except from the Public Service Commission? [LB815]

JERRY VAP: They don't share it very readily with anybody. And so rather than them going out and actually mapping them themselves, a competitor doing that...there's not a very easy way to find out where those towers are and who owns them. [LB815]

SENATOR SCHIMEK: So it is doable, if you want to go to the trouble. [LB815]

JERRY VAP: Oh, I'm sure you could do it, yeah. Some cell companies are proud of their tower locations, and they got their names all over the side of the building; others don't put their name anywhere on the building. So it's...they consider it trade secrets, I guess. We're definitely not opposed to anyone gaining access to it for whatever legitimate reason they may have, it's just that if it's going to be used for a commercial purpose, we believe that the cost of maintaining the system should be borne in part by those wanting

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to use it. Any state agency certainly is welcome to use the data. [LB815]

SENATOR SCHIMEK: Do other states have a similar kind of scheme or process for regulating this, or do you know? [LB815]

JERRY VAP: That I don't know. This is relatively new from the standpoint of the 911 system and the mapping. By "relative," I say, you know, it's within the last five to six, seven, eight years that states have developed this data. And there are very few states that even have a complete mapping done, and I would guess there's a lot of states going to face this particular dilemma depending on who is developing their data and who is paying for it. In this case, the people that are paying for it are the cell phone users of the state, and there are no General Fund dollars used in this database, in the development of it or the maintenance of it. [LB815]

SENATOR SCHIMEK: Thank you. [LB815]

JERRY VAP: Which makes it a little different animal in itself. [LB815]

SENATOR SCHIMEK: Thank you. [LB815]

SENATOR STUTHMAN: Thank you, Senator Schimek. Senator Pedersen. [LB815]

SENATOR PEDERSEN: Thank you, Senator. Commissioner Vap, does anybody else have access to this information now? [LB815]

JERRY VAP: We've had cell phone companies ask for access to it, as I've testified to. I don't know that we've had any state agency; we are talking with NITC and the State Patrol, and they obviously... [LB815]

SENATOR PEDERSEN: They have it now? [LB815]

JERRY VAP: We are talking...they don't know, they haven't accessed it yet because it basically is not complete. But I'm sure that they will definitely want to have access to it at some not-too-distant point in the future. [LB815]

SENATOR PEDERSEN: Do you have a backup now besides your computer information? [LB815]

JERRY VAP: Do we have a backup system? [LB815]

SENATOR PEDERSEN: Um-hum. [LB815]

JERRY VAP: A storage, that would be in the storage database. And I can't answer that

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right now, but I can get that answer for you. [LB815]

SENATOR PEDERSEN: Aren't some of these towers shared by people that are in, by companies that are in competition anyway? [LB815]

JERRY VAP: In rare occasions do they share towers. Some of them do; there are two different cell phone technologies being used in the state and those two technologies never share the same tower. [LB815]

SENATOR PEDERSEN: Okay. Thank you. [LB815]

SENATOR STUTHMAN: Thank you. Any other questions? Senator Lautenbaugh. [LB815]

SENATOR LAUTENBAUGH: Thank you, Senator. Commissioner Vap, are you saying that the only things that will ever be proprietary, as we are discussing it here, would be those cell phone tower locations and coverage? [LB815]

JERRY VAP: At this time, I would say yes, but I can't say that there may never be something else enter into that. [LB815]

SENATOR LAUTENBAUGH: Because I think I was picking up on Senator Schimek's concern; maybe we need to say what the proprietary information is going to be in the statute so that we don't have someone making a determination down the road... [LB815]

JERRY VAP: Um-hum. [LB815]

SENATOR LAUTENBAUGH: ...unfettered as to what is proprietary and what isn't. Is that kind of what you were saying, in a way? As far as the fees go, would you be talking about recouping the ongoing maintenance cost for the use of this data, or for the cost of setting it up? [LB815]

JERRY VAP: I think that's still something that needs to be determined. The cost of maintaining it, as I say right now, is going to run around \$500,000 a year, or close to that. Every time a new home gets built somewhere or a new subdivision goes in...in the Omaha and Lincoln, Grand Island, Kearney, the growing areas...they all have to be put in that database, some of them on a monthly basis, some of them in some counties may be once a year. But the maintenance is an ongoing thing and I don't know that the fund is going to be able to keep that up indefinitely based on the current surcharge levels. [LB815]

SENATOR LAUTENBAUGH: Thank you, sir. [LB815]

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JERRY VAP: But we have to determine what it would cost at some point in the future, should this bill pass, as to how much we charge for access by a private enterprise. [LB815]

SENATOR STUTHMAN: Thank you. Any other questions from the committee? Commissioner Vap, I do have a question and a concern about governmental agencies and the sharing of information. And what I'm referring to is the 911 system between counties, cities...in that respect. And I'll tell you my experience: Two weeks ago, I had a tractor fire on the road, I called 911...well, my boy called me with our business radios and told me he had a fire in the tractor. And I was at home at my Platte Center address. I called the fire department from my Platte Center address, told them where the fire was, it was in the Columbus district, eight miles north on 18th Avenue and a mile and a half west. I proceed and she says, is it at our residence? I says, no, it's out on a farm north of Columbus, on the road. And I gets to the fire, which is seven miles away and nobody was there yet. I figured they should be there, and I asked the boy and a couple of people there, why...they should be here. Well, we hear the sirens to the west; they should have been coming from the east. So I called from my cell phone to the fire station and asked if I had given to the 911 receptionist, asked if I had given the right directions; instead of another road, I could have misspoke. She says, no, but, she says, Platte Center is having a hard time finding you. They dispatched from my residence, eight miles north of my residence, which made them 15 miles away; Platte Center couldn't find it. And that is...I don't know if that's a problem with the 911 system or if it's the receptionist there not being (inaudible) enough. You know, it comes up on their screen my address. [LB815]

JERRY VAP: Yeah, but the PSAP is in Columbus, probably. [LB815]

SENATOR STUTHMAN: Yeah. [LB815]

JERRY VAP: And generally they try and dispatch from the closest responder, which would have then probably been Platte Center. [LB815]

SENATOR STUTHMAN: Would have been Columbus. [LB815]

JERRY VAP: They would have...Columbus would have been closer? [LB815]

SENATOR STUTHMAN: Um-hum. [LB815]

JERRY VAP: They were probably looking at your address, thinking Platte Center was closer, is probably what it amounts to. And that's something that it's a judgment call, probably, on their part. Now, if that had been a cell phone call with Phase II in effect in Platte County, then the selective router would have sent them to Columbus and Columbus would have responded rather than Platte Center. [LB815]

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SENATOR STUTHMAN: But the county and Columbus is all under one receiver. [LB815]

JERRY VAP: Right, um-hum. But the selective router would have taken it to Columbus and it would have told them where exactly that fire was, and they would have sent it from there, probably not from Platte Center but from Columbus because it would have been closer then. [LB815]

SENATOR STUTHMAN: That would have been if I would have been calling from the fire. [LB815]

JERRY VAP: But...from the cell phone, but since you called from your residence, they were making a judgment call in the PSAP, saying Platte Center ought to answer this one. [LB815]

SENATOR STUTHMAN: Well, I was very disappointed, so. [LB815]

JERRY VAP: Yeah. [LB815]

SENATOR STUTHMAN: And I think... [LB815]

JERRY VAP: And that's something that has to be worked out within the county as to...some discussions there, probably to determine how they're going to route calls like that. [LB815]

SENATOR STUTHMAN: Um-hum. If I would have called from my cell phone from my residence... [LB815]

JERRY VAP: It would have been the same thing. [LB815]

SENATOR STUTHMAN: It would have been the same thing? [LB815]

JERRY VAP: Yeah, because that identifies where you're calling from. If you called from the cell phone at the tractor, it would have said, go to this area here. [LB815]

SENATOR STUTHMAN: It would have? [LB815]

JERRY VAP: Yeah, on the screen it would have told them where to go. [LB815]

SENATOR STUTHMAN: The second time I called, I called from the tractor. [LB815]

JERRY VAP: Um-hum. [LB815]

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SENATOR STUTHMAN: Okay, thank you. Any other questions? If not, thank you, Commissioner Vap. [LB815]

JERRY VAP: Thank you. [LB815]

SENATOR STUTHMAN: I will turn it back over to Senator Fischer. We have heard the first proponents on LB815, the first one. [LB815]

SENATOR FISCHER: Thank you, Senator Stuthman. Are there other proponents of the bill? Any other proponents? Any in opposition? Would you please step forward. Good afternoon. [LB815]

ALAN PETERSON: Thank you; same to you. Madam Chairman and members of the committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I am the attorney and the lobbyist for Media of Nebraska. That is a coalition of the broadcast and print news media in our state and the members...there are five, which are the Omaha World-Herald company, the Journal Star company of Lincoln; the Association of the Nebraska Broadcasters; the Nebraska Press Association; and then the Nebraska Newspaper Association, which is essentially the dailies organization. We're limited in our duties, as an organization called Media of Nebraska, to fighting for free speech, free press, open records, open meetings, and issues related to those. In 1978, our current public records law was drafted, introduced by Senator Murphy of South Sioux City. It passed the following year, in 1979. The basic principle of that law then and right up to this minute has been that the public records of our state, while they are held by government, belong to the people. They are public records. And the public records law's primary goal and statement of purpose is that the people, members of the public, anybody, may either examine the public records for free or have a copy of any public record and pay the cost of the copy, not the cost of creating the information that is in the public record, as is proposed by LB815. And I am here to oppose this bill most strongly because it sets foot where no public records exception has ever gone before in attempting to use the people's records as a way to finance a governmental project or system. The Legislature is the guardian in trust of our public records system, and there are exceptions. And I took a hard look at them, they're in Section 84-712.05, and over the years since 1979, 16 exceptions have developed. Eight of them are exceptions to protect personal privacy of our citizens, one of those being specifically aimed at protecting the personal privacy and work privacy of the state senators. Your work records, your phone call records, and so forth are covered in a specific privacy exception; they're not public records. Another 5 out of the 16, so that will get us to 13, are devoted to items of security: Investigatory records, the records to protect law enforcement locks and procedures that protect the safety of the persons and property of our state. So that's 13. There is one which is for trade secrets and proprietary information. If that is what is sought to be protected by this bill, that is already covered; but I don't understand that to be the primary purpose of this bill. You

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would not need it to protect what can be shown to be proprietary or trade secret information, and that definition you would find in 84-712.05 to basically say: Trade secret and proprietary information, which has a commercial value, which would be destroyed by distribution. And it goes to the formulas that companies turn in sometimes to Health and Human Services, or whoever else, business strategies, that sort of thing. There's nothing that I know of quite comparable to what we're talking about here. Nevertheless, if in fact the particular GIS information that is held by the Public Service Commission is truly proprietary or a trade secret, it's already protected. But I don't hear the introducer nor the proponent saying that that's the function of this bill. The purpose of this bill is to take a public record and make it a new way of paying for an aspect of government. You might decide to do that, but I want you to know, that's never been the public record bill's...public record law's purpose. And every effort in that direction has been strongly resisted and voted down. There have been several previous efforts to make public records a substantial source of income to pay the office expense of clerks of the district court or a number of other public agencies. There's a slight exception; the Department of Roads, the Department of Motor Vehicles, the driver's license records. There's a slightly higher cost than the actual cost of creating the copy. But it's still in the area of \$3 or \$5 or so. And that is a specific exception right in statutes other than the public records law. The rule in the public records law is, cost, not profit, but cost to the governmental agency or custodian of the record to reproduce it and give it to John Q. Public. So that the news media, who in fact use, in a way, use every public record, and that's their number 1 source to get protected, straight news, to get it right, is to look at the public records or listen to the public meeting testimony. To them, every public record certainly has a commercial purpose, in a sense. They take the public records, they turn them into the newspaper that you read, I hope, every morning in our state. And so, they would have tremendous fear, as would the broadcasters, that if you start down this road of charging for the public records, not just what it costs to make the copy, but what it costs to compile the information. Think about extending that into all the other areas where public records are created: The courts; the State Patrol; the Department of Motor Vehicles. Each of these, if they take this route that this bill proposes, could start making public records frankly prohibitive, prohibitive for John Q. Public to obtain. And what about the general rule of the public records law that says anybody, at no cost, may examine them and make notes or abstracts from them? We thought a few years ago as government began using more and more computerized versions to keep public records safe, secure and accessible, that well, this may be a new era. And in fact, our public records law has been amended a couple of times to make it clear, number 1, that it does include computer records, as are treated in this GIS-oriented bill. It does cover them. But the costs may include the computer time that is necessitated in order to create the extra copy for John Q. Public. So the costs can be a little higher, but not the cost of compiling the information that's reflected. Never has this Legislature gone that route, and I implore it not to go that route. That is opening a door that will be very hard to close, and would be devastating to the whole concept that they are the public's records. They're not PSC's records, they're not PSC's records, they're your records,

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they're my records, they're the media's records, they're records of every citizen. I understand that only those who use cell phones...which sometimes seems like everybody above the age of five anymore (laughs)...but only the people who use cell phones are paying the \$0.50 surcharge. Well, that's a huge base, I must say, a large part of the public. I simply think that the idea of, for that reason allowing the PSC, when it gets hold of this information, to treat it as a money source is absolutely dead wrong, and I really hope you don't go that route. Let me just mention so it's clear what we're talking about when we talk about GIS information: It's not limited to the maps that show the location of towers. There's a definition in statute and the number of it is 86-...oops, fine print...86-569, Senator Fischer. And the first sentence, this is the, oh, five or six statutes that deal with the Geographic Information System. And the definition is the very first sentence, "The Legislature finds that the Geographic Information System is a computer-based technology that captures, stores, analyzes, and displays information about the earth's surface from a geographically referenced system..." It's any such thing that contains any, you know, any like Google "earthmaps" and so forth would qualify. It's very broad. It's not limited to this one, you know, where the towers are or anything like that. So I guess what I'm saying, to sum up and to shut up, is there may be some solution to this problem of the PSC holding a valuable asset and not wanting to give it away. But please don't make the solution to turn our public records law into a financing method for various agencies. It's a terrible precedent. And with that, I close. I ask that this bill not proceed from this committee in any form like this. It doesn't just tamper with public records; it destroys the basic concept. Thank you very much. [LB815]

SENATOR FISCHER: Thank you, Mr. Peterson. Are there questions? I have a couple questions for you. You were giving the examples that there were 16 examples...you only gave us 14. What are the last two? [LB815]

ALAN PETERSON: Ah-ha. There is one for when public bodies are negotiating for the sale or purchase of land, those negotiations are confidential; like if the town wants to buy some property for whatever purpose, those negotiations are confidential. And the last one is... [LB815]

SENATOR FISCHER: Lawsuits? [LB815]

ALAN PETERSON: The last one is the attorney-client privilege. If this body or any other public body would want to deal with its attorney in the matter of a litigation, approaching or already going on, those communications are not a public record. [LB815]

SENATOR FISCHER: You said that there was some examples of other agencies that were trying to make a profit and not just cover costs, and that had never been allowed. Can you give me some of those? [LB815]

ALAN PETERSON: There have been some efforts involving geographical...GIS

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information that I believe county assessors come into possession of in the course of their work of assessing, appraising and assessing property. And over the last five years, there were twice introduced bills that would either make those more costly or make them no longer a public record, with the same idea that, well, it costs money to put them together, why shouldn't we sell them? And we testified against that. There have been attempts to raise court docket fees...excuse me, I don't mean docket fees...to raise fees at courts, clerks of courts, substantially in order to pay more of the costs of running the court system. And those were turned away. Those are the only two I can think of at the moment. [LB815]

SENATOR FISCHER: Okay. It's obvious you don't feel the state of Nebraska should have costs covered on the input of information into those computer systems that are available by public record. [LB815]

ALAN PETERSON: That's correct. I think that the...all of our GIS system, some of it's paid for this way, this little aspect of it, but all kinds of other GIS information is being gathered. There's a steering committee for GIS with representation all over the state, as was mentioned earlier; the PSC's not on that, by the way. And I looked at their reports,...they do an annual report to the Legislature, Larry Zink is their coordinator...the 2006 report does not say there is a problem of financing that ought to be passed on through public records or anything of the kind. I asked Mr. Zink today by phone, well, are you seeing a need to do this as to GIS information that's in your 2007 report, which he said is just about to come out. And he said, no. [LB815]

SENATOR FISCHER: You have wireless users in Douglas County paying \$0.50; the rest of the state happens to pay \$0.70. They're paying user fees for those phones. [LB815]

ALAN PETERSON: Yes. [LB815]

SENATOR FISCHER: Is it right that people that are paying that then, in essence, they're bearing the cost completely for it, for E-911? [LB815]

ALAN PETERSON: You know, it's...this Legislature chose that method of financing a great public project. I might feel a little bit different if I had heard one word about the fees being collected under this bill being turned back to those cell phone users, but that's not what's in mind. [LB815]

SENATOR FISCHER: You mean the fees for the copying... [LB815]

ALAN PETERSON: We had PSC talking about... [LB815]

SENATOR FISCHER: The fees for the copying of the records? [LB815]

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ALAN PETERSON: Yeah. Right. As far as I can tell, the PSC has in mind collecting or selling these and making a lot of money. I didn't hear anything about them turning them back to me, I have a couple of cell phones, or you. [LB815]

SENATOR FISCHER: I doubt if the Public Service Commission would make a lot of money on this, considering the cost for Phase I and especially Phase II under E-911. Wouldn't you agree with that? [LB815]

ALAN PETERSON: You know, I'm just not expert enough to know. They seem to think there's a market that they ought to take advantage of, and I don't know how big it is. [LB815]

SENATOR FISCHER: I don't think the PSC thinks there's a market on it. [LB815]

ALAN PETERSON: The phone companies might, perhaps? [LB815]

SENATOR FISCHER: When they have to implement for E-911 because of actions by this Legislature... [LB815]

ALAN PETERSON: Um-hum. [LB815]

SENATOR FISCHER: ...they have to balance that to see if they can afford it. In some cases in, for example, my area of the state, it's hard to convince many of those companies that the market is out there. [LB815]

ALAN PETERSON: Yeah. You know, we do lots of things for the people of this state; very frequently they're paid for by general funds, but not always. But to create... [LB815]

SENATOR FISCHER: Not always. [LB815]

ALAN PETERSON: ...what amounts to a new tax for a very small group of people to pay for it seems like a pretty huge legislative decision. And you do have the power to do it, I just think it would be quite a precedent. [LB815]

SENATOR FISCHER: What about...my concern is other companies, possibly individuals, that request this information... [LB815]

ALAN PETERSON: Um-hum. [LB815]

SENATOR FISCHER: ...specifically so they can make a profit off the work that's been done by employees of the state of Nebraska. I'm certainly not trying to hide anything from the public...what I consider public as the media, citizens themselves...coming and

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looking for information. But what about competitors in this industry that is very competitive, and they want this information so that they can take advantage of it and make a profit? How would you address that? [LB815]

ALAN PETERSON: I would say that if, in fact, some part of this information is truly proprietary and of a trade secret nature, that that particular information can already be withheld under 84-712.05 There is an exception for that. [LB815]

SENATOR FISCHER: Is that your opinion or... [LB815]

ALAN PETERSON: Yes? [LB815]

SENATOR FISCHER: ...is that the way it is? [LB815]

ALAN PETERSON: That's the way it reads. Oh, I have too many papers, as usual, but... [LB815]

SENATOR FISCHER: I've only been here three years, and we do have an attorney on the committee, but I would say anything that we pass as senators in this Legislature, I learned my first week, can be challenged by an attorney in court. So I'm just wondering, has that ever been challenged, when I say, is that the way it is or is that what you think? [LB815]

ALAN PETERSON: You know, I don't know whether the Attorney General has given opinions on that. The language which is statute passed by this Legislature is in sub (3) of that statute. And it says, this is stuff that's not public, "...may be withheld from the public by the lawful custodian...trade secrets, academic and scientific research...which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose..." Sounds like it hits it on the head to me. [LB815]

SENATOR FISCHER: I thought it just sounded like it hit my bill on the head (laughter). [LB815]

ALAN PETERSON: I think it suggests maybe your bill is not necessary as to that angle. The reason for the bill is more to share the cost in the right places. [LB815]

SENATOR FISCHER: So are you saying the Public Service Commission then wouldn't have to release this information? [LB815]

ALAN PETERSON: Those portions of it which are proprietary... [LB815]

SENATOR FISCHER: Or give a competitor advantage. [LB815]

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ALAN PETERSON: ...and give a competitor advantage and serve no public purpose. That's already an exception. [LB815]

SENATOR FISCHER: Okay. Thank you. [LB815]

ALAN PETERSON: Thank you, Senator. [LB815]

SENATOR FISCHER: Are there questions? Senator Lautenbaugh. [LB815]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. [LB815]

SENATOR FISCHER: This is your maiden question; make it good. [LB815]

SENATOR LAUTENBAUGH: Actually it's not; you weren't in the room, so. (Laughter) [LB815]

SENATOR FISCHER: Oh, I'm sorry. (Laughs) [LB815]

SENATOR LAUTENBAUGH: It wasn't that great, though, so you didn't miss out (inaudible). [LB815]

SENATOR FISCHER: So you get a second chance now, okay. [LB815]

SENATOR LAUTENBAUGH: You may not know the answer to this, but I know I don't. Are there people that are otherwise in the business of providing this information so that...what I'm asking is, government is amassing this information, you're saying it must be released for very low cost. Will that drive other people out of this business that are otherwise providing the same information? [LB815]

ALAN PETERSON: You know, I'm really an amateur, Senator Lautenbaugh, on this. And I will straighten my tie since this is an early question of yours, but... [LB815]

SENATOR LAUTENBAUGH: Amateurness is all relative, believe me, so. [LB815]

ALAN PETERSON: I think it's only one word, and it's called Google Earth. It doesn't contain as much, but it contains enough...my wife, Glenda, and I have a little cabin out on the South Loup River, and with Google Earth, I can get down to where I can see the individual boards in the deck that sits out over the river and looks like it may fall in this spring. So that much is there, and certainly you can see the towers. And that's free. Well, it's free...you don't have to pay to get on Google Earth. They make a fortune, apparently, by selling those ads that run along the side. There may be others, but that's the main one I know of. Thank you very much. [LB815]

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SENATOR LAUTENBAUGH: Thank you. [LB815]

SENATOR FISCHER: Other questions? I see none. Thank you very much, Mr. Peterson. Are there other opponents to the bill? Is there anyone who wishes to testify in the neutral capacity? Please come forward. Welcome. [LB815]

FRANK DiRICO: Good afternoon. [LB815]

SENATOR FISCHER: Welcome to Nebraska. [LB815]

FRANK DiRICO: Thank you very much, Senator. My name is Frank DiRico, I'm the president of Viaero Wireless, with headquarters in Fort Morgan, Colorado, and Grand Island, Nebraska. We'd built the network in Nebraska about... [LB815]

SENATOR FISCHER: Sir, you need to spell your name for us, please. [LB815]

FRANK DiRICO: It's DiRico, D-i-R-i-c-o. [LB815]

SENATOR FISCHER: Thank you. [LB815]

FRANK DiRICO: We turned up a network in Nebraska about five years ago; we bought the former Nebraska Wireless Company. And since then, we've built about 200 towers, mostly through rural Nebraska, western Nebraska, Valentine and that area. I've found it very interesting in Jerry Vap's comment that some cell carriers put their names on their buildings and some don't; well, we have our names all over our buildings. So we're very proud to put service in a lot of these rural communities. Thank you very much, Jerry. We, you know, we have asked for access in the GIS database, and the reason we were asking for access is more for maintenance purposes. So if we get a call from a PSAP saying that, your system's not working, we have the ability to troubleshoot it. That really was our reasoning for looking at this database. There wasn't really a commercial interest at this point in time; it was just the ability to quickly respond to the PSAP's complaints and solve...problem solving. Regarding the privacy of the database, you know, we don't really advertise where all our towers are; it's on the FCC database. You can go in there and query their database and find out where every one of my towers is. I know where every one of my competitors' towers are; I probably know more about their systems than they do, and that's why we're in business, and that's our job to know what our competition is doing. It's not my intention to get into this database to eavesdrop on my competition and find out where their towers are, because it's readily available on the FCC database. So whatever you folks decide to do is fine with us. We would like to have access to this database for maintenance purposes. We can check when the data administrator puts towers in to make sure they're in the right locations. So I'm not going to get upset if this is open to the public or not open to the public; I'm very neutral on the

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whole situation. So I just wanted to make those few comments here. [LB815]

SENATOR FISCHER: Thank you. Are there any questions? Senator Louden. [LB815]

SENATOR LOUDEN: Yes. Yeah, we're on the receiving end of some of your work out there in western Nebraska. [LB815]

FRANK DiRICO: Thank you. [LB815]

SENATOR LOUDEN: Well, when they talk...what kind of information are we worried about here? I mean, is this information that, if we have a fire call or an accident call or something on the fire department, we can't access, find out where they're going, or what kind of information are we trying to exclude? [LB815]

FRANK DiRICO: Well, as Commissioner Vap mentioned, that some of the cell carriers are, I think, nervous about giving their tower locations out for competitive reasons. You know, my earlier comment was that I know where my competitors' towers are, and I'm sure they know where mine are. What I don't like to give out is our future build plans, that's confidential; I don't want to advertise where the next 50 or 100 towers are going here and have them beat me to the punch. But I mean, from Viaero's perspective I have no issue; whatever you folks decide to do. I don't see a reason to keep this thing locked down too tight, but, I mean, that's a decision you folks are going to have to make. [LB815]

SENATOR LOUDEN: Well, where you're going to build your next tower, that doesn't have anything to do with this, does it? [LB815]

FRANK DiRICO: No, because it's not on there at that point in time. So I mean, it doesn't affect us, whatever you folks decide to do, because the information that's going to be on there is already generally readily available on the FCC database. I won't send out my complete list of towers to my competitors because I'm not going to make it easy for them, and they're not going to make it easy for us. [LB815]

SENATOR LOUDEN: Well, it isn't hard to find out where the towers are; all you got to do is go out in the evening and look around... [LB815]

FRANK DiRICO: (Laughs) That's right. [LB815]

SENATOR LOUDEN: ...and count the lights that are blinking. Is there any way, on this type of system, that it could be accessed such as your police scanner with police calls or something like that? Can that be done on your telephone system? [LB815]

FRANK DiRICO: I don't believe so. I think...you know, and I don't know that much about

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the system and I'd have to really defer to an expert...but what I do understand is it's a web-based system, you could go in there, maybe put an address in and it would show you where that exact address is. Similar to what you would do in a lot of these other map info programs that's readily available on computers. [LB815]

SENATOR LOUDEN: Now, if this information was available, could some outfit go in there and, like there's one of these cell phone outfits that you'll get a phone call and it's some jerk trying to sell you something. Now, can that...if you had that database out there, would that be what...could they do that on your outfit if you didn't want them to? [LB815]

FRANK DiRICO: I don't think so. I think that the difference between this database and the databases that are probably out in the public domain currently, is this database would probably be a little more up to date and much more accurate. So I don't see, I couldn't see where it would be. [LB815]

SENATOR LOUDEN: Now, with your system out there, is it set up out there in western Nebraska so if you call a 911, they'll be able to locate where your phone is? [LB815]

FRANK DiRICO: The current system we have now is Phase I, 911. And what it does when they call a Public Safety Answering Point, which may be a police department or might be an area answering point that might answer the calls for a large geographic area, we currently report the name of the customer, the phone number, we allow them to hang on so the customer can't hang up or the ability to call back. And we give them a pretty good idea where that phone is; we can tell them what sector, off of what tower, and they can get a pretty good idea where that customer is today. [LB815]

SENATOR LOUDEN: Okay. You can just tell what tower it's coming off of? [LB815]

FRANK DiRICO: Yes, and the direction from the tower. The Phase II, which we will probably have in in about three or four months, will give people pinpoint accuracy. I can tell you exactly where you are, I can tell you where you are in a building, I can't tell you what floor you are, but I can give you pretty good accuracy. I can, you know, the customer's name and the ability to call that person back. And I also can track you; for instance, if you were in the trunk of a car, a moving vehicle, we can track you as you move. [LB815]

SENATOR LOUDEN: Now, is that the kind of database we're talking about then here? [LB815]

FRANK DiRICO: Well... [LB815]

SENATOR LOUDEN: So that if you were in a, if I made my phone call from down here

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in one of these stores, that somebody could track that, and while I was at it I could get this stupid call to tell me to run down to the next counter because they had a sale on? [LB815]

FRANK DiRICO: The 911 data...we transmit to the 911 folks...the positioning data, will just get overlaid on that database. So the public safety officer can look at a screen and an image of where that person is calling from will be on that screen, okay. People that have access to that database, you would have to be in the police department to see that. So I don't believe they would have access to that, no. [LB815]

SENATOR LOUDEN: We're not getting ready to use it as a wholesale means of advertisement then yet? [LB815]

FRANK DiRICO: No. [LB815]

SENATOR LOUDEN: Okay, thank you. [LB815]

FRANK DiRICO: All right. Thank you. [LB815]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB815]

SENATOR AGUILAR: Thank you, Senator Fischer. Thank you for being here today and your testimony. [LB815]

FRANK DiRICO: Thank you. [LB815]

SENATOR AGUILAR: I appreciate the fact that you put your name on your towers. I think that's important. Do you in any way allow for any other entity, not necessarily competitor, but any other entity to share your towers? [LB815]

FRANK DiRICO: Oh, absolutely. We just did a deal with Christian Broadcasting, and they're in Nebraska someplace, but they have a station in Alliance, and they wanted to reach downtown Sidney, Nebraska, and downtown Chadron, Nebraska, where they are kind of in holes and their signal didn't go down there. And we gave them basically free space on our tower for a repeater FM antenna. I think they give us like three plugs a day or something like that, you know, it's "being brought to you by Viaero Wireless," or something like that. It's nice, it doesn't set the world on fire, but it's a way for us to help them. We were just...been approached by some of the John Deere dealerships where they want to do these GPS correction transmitters for their farm tractors. These farm tractors, and you probably know more about this than I do, but they can do, they'll do a whole field within millimeter accuracy from a GPS. Now, the GPS signal that comes off the satellites has an error of about 15 feet in the row. And what this does, this corrects, this transmits a signal to the GPS receiver that corrects that signal down to millimeter

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accuracy. And we've talked to some folks in Alliance and I think they're going to collocate probably in about seven or eight of our towers. But we have almost 200 towers in Nebraska, and there's a huge interest on that. We have Alltel on some of our towers, we have Sprint Nextel, we rent space to them. We're building a lot of our own towers in the rural areas because there's no options, there is just, you know, you go to, you go to, you know outside of Alliance, you go out to Hyannis, Nebraska, I mean, there's not a lot of towers out there. There's not a lot of people. But, you know, that's...we've built all these rural areas, and we've got... [LB815]

SENATOR FISCHER: But those people that are there are absolutely wonderful. [LB815]

FRANK DiRICO: They're great customers, and...(laughs). [LB815]

SENATOR FISCHER: Right, Senator Louden? (Laughter) [LB815]

SENATOR AGUILAR: Thank you very much. [LB815]

SENATOR FISCHER: Thank you, Senator Aguilar. Other questions? I see none. Thank you very much. [LB815]

FRANK DiRICO: Thank you. [LB815]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. With that, I will close the hearing on LB815 and open the hearing on LB829. Hello, Mr. Vaughan. [LB815]

DUSTIN VAUGHAN: Hello, Senator Fischer. Members of the Transportation and Telecommunications Committee, for the record again my name is Dustin Vaughan, spelled V-a-u-g-h-a-n, and I am the legal counsel for the committee. LB829 is being introduced again on behalf of the Public Service Commission. The bill expands the authority of the commission over the rates for supported services provided for the telehealth, E-911, and Wireless E-911 programs. It allows the commission to determine if the rates being charged are fair and reasonable and to ensure that the rates do not exceed the telecommunications company's actual cost of providing such services. And with that, I will turn it over to the commission to explain why this is needed again. [LB829]

SENATOR FISCHER: Thank you, Mr. Vaughan. Any questions? Thank you. First proponent, please. Welcome. [LB829]

JERRY VAP: (Exhibit 1) Thank you. Good afternoon, Madam Chairperson and members of the Transportation and Telecommunications Committee. My name is Jerry Vap and I'm the commissioner representing the 5th District of the Nebraska Public

Service Commission. I'm here today in support of LB829. We would like to thank Senator Fischer for introducing this bill on behalf of the commission. LB829 grants the commission authority to ensure that rates charged for telehealth and the provision of 911 services are fair and reasonable, and are based upon the cost of providing the service. Telehealth: Telehealth means the use of telecommunications technology by a healthcare practitioner to deliver healthcare services within his or her scope of practice at a site other than the site where the patient is located. The network is intended to ensure the same quality of healthcare for both rural and urban patients. The telehealth network is funded in part by the Nebraska Universal Service Fund. Currently, the commission has allocated \$900,000 per year for funding this program. The money pays telecommunications service providers for the T-1 connections between the hospitals throughout the state, allowing videoconferencing and data connections between rural hospitals and their urban counterparts. Additionally, NUSF provides funding for routers directing video and data traffic over the network and firewalls to protect the security of the network and the confidential information carried over it. NUSF funding is supplemental and secondary to federal funding provided by the Universal Service Administrative Company, or USAC, and any other grants or funding received by the hospitals. USAC funding is granted only to rural hospitals; therefore NUSF funds 100 percent of the hub hospitals in Omaha and Lincoln, without which the system would not function. Other hub sites in Kearney and Grand Island may soon lose their designation as rural hospitals due to a possible change in USAC definitions, and may therefore require additional funding in the future. USAC requires that carriers competitively bid to provide service for individual hospitals. USAC does not review or otherwise have any oversight of the rates offered, nor choose a list of approved vendors. In spite of the competitive bidding requirement, there are areas of the state in which there is no meaningful competition, and therefore the hospital has only one provider to choose from. Although another provider could bid for some of those more rural areas, that provider would have to resell on the original provider's network and would still be subject to that original provider's rates. Also, no competitive bidding requirements exists for routers and firewalls, which are necessary components of the network. A simple example is illustrative. Certain hospitals recently went through a series of renegotiations of their contracts with a particular telecommunications service provider over a two-year period. Rates charged to those hospitals prior to May 2007 were significantly higher than the new contract rates, at times two, three, or four times higher. For example, one hospital was paying \$7,476.53 per month for a T-1 connection until July 2006 when the rate was then reduced to \$2,677 per month. Finally, on May 1, 2007, as a result of the most recent negotiation, the rate was reduced further to \$1,785, an approximate 75 percent decrease from the original rate two years earlier. The ability to go down that far on the rates for the exact same service may indicate that hospitals may have been severely overcharged prior to May of 2007. At a minimum, the commission should be able to look at a dramatic shift in rates or in large variances between various contracts to ensure that the rates are appropriate. The individual hospitals have no means to ensure that they are being treated fairly. It may be that the rates are entirely

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appropriate, but without any ability to examine the basis for the rates, how can we really know? Enhanced Landline 911: Costs associated with the implementation, maintenance, and operation of enhanced 911 services is paid for through local funds, supplemented by a surcharge imposed and collected by local governments. The surcharge is intended to be used for the purchase, installation, maintenance and operation of telecommunications equipment and telecommunications-related services required for 911 service. Local governments have experienced a decline in surcharge revenues as more people move from landline to wireless service. Local governments, especially those in more rural areas, are experiencing a shrinking tax base and struggle to pay the cost of providing reliable 911 service. The telecommunications services related to the provision of 911 service include dedicated 911 trunks from the Public Safety Answering Point, or a PSAP, to the selective router and the transportation of 911 traffic. Additionally, there are expenses related to databases used to properly route the calls. The commission has asked that counties be fully selectively routed in order for the data accompanying a Phase II wireless call to be properly transferred to the appropriate PSAP should it need to be rerouted. Those costs are borne by the individual local governments operating PSAPs. Several PSAPs have found the cost of complying with selective routing prohibitively expensive. The provision of this service is not an option for local governments; they cannot choose not to provide 911 service simply because the cost is too high. In essence, local governments are captive customers. PSAPs are faced with paying whatever they are charged by local exchange providers. The commission could work with local exchange providers to ensure that the costs of providing the service are fair and reasonable. Enhanced Wireless 911: The commission currently administers the Enhanced Wireless 911 Fund, which receives revenue from a surcharge paid by users of wireless services. Pursuant to LB1222 in 2006, the commission has been working to develop a permanent funding mechanism for the implementation, maintenance, and operation of the statewide Enhanced Wireless 911 network. In doing so, the commission has attempted to determine the cost of providing all of the elements necessary for the provision of 911 service so as to properly model the project costs for the wireless fund. In the calendar year 2007, the commission has paid \$108,952 in one-time costs to wireless carriers for implementation of Phase I throughout the state, and \$297,314 to local exchange carriers for the implementation of Phase I and Phase II. Additionally, the fund pays approximately \$178,442 in monthly recurring costs to local exchange carriers for the transportation of wireless traffic. Also, the commission has incurred expenses for intertandem trucking between selective routers throughout the state, mapping, and equipment for PSAPs. The provision of 911 is a critical public safety service. The commission and local governments are tasked with ensuring that the system is available to all of Nebraska with limited funding and almost no ability to review the basis for the cost of implementation and operation of the system. Unlike a customer in the marketplace, the commission cannot simply choose not to purchase the telecommunications services because the cost seems too high. We have an obligation to provide the service. We recognize that the rates currently charged may very well be appropriate; however, we must be given the tools we need to be good

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stewards of the public funds we are given to implement 911 and telehealth systems. Without these tools, we are faced with the choice of not providing support to some areas or for some services. I ask your support of LB829 and would be happy to answer any questions you may have. [LB829]

SENATOR FISCHER: Thank you, Mr. Vap. Are there questions? Senator Aguilar. [LB829]

SENATOR AGUILAR: Thank you, Jerry. You got my attention when you said, cities of Kearney and Grand Island could lose their funding simply because of a change in definition of "rural." Is that what you were insinuating? [LB829]

JERRY VAP: Yes, they would be classified as... [LB829]

SENATOR AGUILAR: Could you give me an example of what they're talking about there? [LB829]

JERRY VAP: They would be classified as a hospital similar to the Lincoln hospitals or Omaha. And the Universal Service Fund Administration Company has talked about changing those definitions depending on the size of that community and the area they serve. And they could say, you're big enough to carry this on your own, we're not going to pay for it anymore. And in that case, I suspect the telehealth system would return to the commission and say, is there a way you could increase these funds above the \$900,000 you're already putting into the system? [LB829]

SENATOR AGUILAR: Oh, could you back up just... [LB829]

JERRY VAP: We would like to know if the cost of providing these services is correct and appropriate. Right now, we can't get that information. [LB829]

SENATOR AGUILAR: Here's what I don't understand: You said because we're getting bigger, because we're going to get big enough we could lose that. However, Lincoln and Omaha are bigger than we are and they will still get it. [LB829]

JERRY VAP: No, they don't get anything from the federal fund. [LB829]

SENATOR AGUILAR: Oh, they don't get anything. Okay. [LB829]

JERRY VAP: They...Lincoln and Omaha get nothing from the federal fund and the commission pays for all of those services. [LB829]

SENATOR AGUILAR: Okay, I misunderstood what you said. [LB829]

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JERRY VAP: Kearney and Grand Island currently are getting money from the federal fund, but that could go away in the near future. [LB829]

SENATOR AGUILAR: Thank you. [LB829]

JERRY VAP: Um-hum. [LB829]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Commissioner. [LB829]

JERRY VAP: Thank you. [LB829]

SENATOR FISCHER: Anyone else wishing to speak in support of the bill? Good afternoon. [LB829]

BRUCE RIEKER: (Exhibit 2) Good afternoon. Senator Fischer, members of the Transportation and Telecommunications Committee, my name is Bruce Rieker, that's R-i-e-k-e-r, and I'm the vice president of advocacy for the Nebraska Hospital Association. And on behalf of the 85 hospitals that we represent and the 39,000 people they employ, we wish to support LB829 for all of the reasons that Commissioner Vap laid out. We are in total agreement with the case that he presented to you. I have a short testimony that I'd like to read into the record and then answer any questions if I may. Each day brings new and expanded uses of telecommunications services to healthcare. From electronic health records to telemedicine, the utilization of such services by Nebraska's nonprofit hospitals increases each day. Simultaneously, rarely a day goes by that does not include a discussion about the cost of healthcare. Obviously many things, including telecommunications services, contribute to those costs. One would like to think that competition in the marketplace would lead to those services being provided at the lowest cost; however, that is not always the case. In a sparsely populated state like Nebraska, there is no telecommunications competition in many communities our hospitals serve. Add in the fact that many telehealth and 911 services are paid for with taxpayer funds or monies, and the case becomes even more compelling for the state to do what it can to keep the charges for such services fair and reasonable. LB829 is a step in the right direction. It authorizes the Public Service Commission to determine whether those rates for supported services provided for telehealth, 911 services, and enhanced wireless 911 services are fair and reasonable. Granting this authority to the Public Service Commission is necessary to ensure the costs of providing quality healthcare are no more than they need to be. Thank you for the opportunity to comment on this matter, and we encourage you and urge you to support and advance LB829. [LB829]

SENATOR FISCHER: Thank you, Mr. Rieker. Are there questions? I have a question for you. [LB829]

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BRUCE RIEKER: Sure. [LB829]

SENATOR FISCHER: Commissioner Vap gave an example of the costs going down at one hospital; do you have other examples? You don't have to give them to us, but do you know of many other examples where either costs have gone down or gone up with maybe an explanation that didn't sound reasonable? [LB829]

BRUCE RIEKER: Well, we are aware...I can't tell you exactly which situation Commissioner Vap was referring to. However, we do have documentation from some of our member hospitals that this, in fact, does happen, that they were paying a certain level and then when some element of competition came into the arena, their cost for paying for these sorts of services went down dramatically. I'm not aware of them going up anywhere, I mean, it's a... [LB829]

SENATOR FISCHER: In certain areas where there's not competition, about how many of your members would that impact, where there's not any competition? How many hospitals would you say that would impact? [LB829]

BRUCE RIEKER: Wow, I would have to defer to the telecommunications experts in the back of the room, but... [LB829]

SENATOR FISCHER: I may ask them that, then. [LB829]

BRUCE RIEKER: Yeah. But we have, the Nebraska Hospital Association, out of the 85 hospitals we have, 19 of them are either Level 1 or Level 2 hospitals, which would be Omaha and the referral hospitals, such as Grand Island, Scottsbluff, and the like. Sixty-five of them are critical access hospitals; we have one hospital that doesn't...Columbus doesn't fall in any of those categories. But I would imagine, I can't tell you an exact number, but I would imagine a great deal of our critical access hospitals would be those captive customers. [LB829]

SENATOR FISCHER: How important do you believe telehealth is to the state of Nebraska and the people here? [LB829]

BRUCE RIEKER: Well, on a scale of one to ten, with ten being the most important, we would say a ten because of the demographics of our state, sparse populations. The ability to provide the healthcare that many or almost all of our residents have come to expect is dependent upon telehealth, whether it's reading radiology films, whether it's providing behavioral health services in real time fashion, providing electronic health records. Our industry, just like most of the world, has followed the telecommunications boom, and to provide the services that we need to be able to provide is 100 percent dependent upon telecommunications services. [LB829]

SENATOR FISCHER: How many of your 85 hospitals participate in telehealth? [LB829]

BRUCE RIEKER: Well, depending on how you would define it... [LB829]

SENATOR FISCHER: Either sending or receiving. [LB829]

BRUCE RIEKER: One hundred percent. [LB829]

SENATOR FISCHER: What do you think would...if the smaller hospitals couldn't afford to do this, if they would have to make that decision, I know a number of hospitals in rural areas are struggling with challenges, if those hospitals couldn't afford telehealth and they made that decision, what would happen to those hospitals? [LB829]

BRUCE RIEKER: Well, I would say that part of what my speculation on behalf of those hospitals would be that...some of them would cease to exist, and that the ability to access healthcare in those areas would become much more difficult. I'm not to say that there would be a wholesale closure; however, it's somewhat market driven, and if people are not able to get the healthcare that they desire, more than likely they're going to move to someplace where they can get that healthcare. The more and more difficult, it's one of the key components that we've learned that's critical to living anywhere is the accessibility of quality healthcare. And so, I think that it would probably begin a spiraling effect that would cause people to look elsewhere to live or seek their healthcare services, and it would cause the hospitals that do currently exist probably some severe financial difficulty, and some would close. [LB829]

SENATOR FISCHER: You...one last question. You mentioned cost and healthcare costs; do you have any idea on maybe the savings that are there by using telehealth, in comparison to, you know, sending the x-rays out or having to wait until the specialists come in on the specialty clinics that a lot of rural hospitals have, or...do you have any idea on costs on that? [LB829]

BRUCE RIEKER: Well, depending on where some of those services are provided, there are substantial costs. In this day and age, some of our radiology films are read halfway around the world. When our radiologists are not on duty on an 8-to-5 basis or something like that, they may be read somewhere in Europe or something like that at a, I'm not going to say an incredible cost savings compared to what a U.S. health worker would provide those, but the fact that it can be provided in the middle of the night is an incredible savings. It may be the difference. And likewise, we have radiologists that are providing those services around the world, too, when others around the world are off the clock. So that there are some revenues that probably can be generated from that, but also some cost savings. To try and take one segment of the healthcare arena and see if I can carve out an example, I would say it would be in the mental health arena or the

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behavioral health. We could probably also go down the telepharmacy routes, which there's incredible savings available to our critical access hospitals who cannot afford to have a pharmacist on staff 24/7. So we're able to utilize pharmaceutical services or pharmacy services from our larger hospitals...the 19 that I referred to usually have people on staff that can help our 65 critical access hospitals do that...so there's an incredible cost savings having that available. In the mental health arena, it's estimated that this is a national figure, but the Surgeon General estimates that only one out of every two people that needs mental health services is able to get it. We do not have a, well we have one psychiatrist in Nebraska that is west of Kearney. Excuse me, we have one in North Platte and we have a couple in Scottsbluff, but the availability of such a service without telemedicine would not exist. Now, for those 50 percent, let's take the 50 percent of the Nebraskans that are not getting the cost of...that are getting that healthcare, if there's a way to estimate how many people that is...I don't know, but the Surgeon General estimates for a nation, we lose \$80 billion a year in productivity because of mental health illness alone that is untreated. Telemedicine helps us greatly deliver those services. [LB829]

SENATOR FISCHER: Thank you. Other questions? Senator Louden. [LB829]

SENATOR LOUDEN: Yes. If I understood your testimony correct, then you support this bill because you figure you can get better rates for your hospital, is that what... [LB829]

BRUCE RIEKER: Absolutely. [LB829]

SENATOR LOUDEN: Okay, and you're talking about sending x-rays over the phone lines and doing whatever you do with phone lines and that sort of thing, right? [LB829]

BRUCE RIEKER: Um-hum. [LB829]

SENATOR LOUDEN: Now, where does that say that in that bill? Because what I understand, it was just a provision of 911 service to be fair and reasonable. Am I missing something here? Does it say anything in this bill about helping with your regular phone bill on your hospital? That's a separate bill, isn't it? [LB829]

BRUCE RIEKER: Well, I think that comes under the telehealth component. It refers to telehealth, 911 services as well as enhanced wireless 911 services. And, Senator Louden, if I may, there will be some hospitals who will not save money under this. There will be hospitals that will find out, and the Public Service Commission, if this is put in place...I would imagine they would find out that their services are being provided in a fair and reasonable manner. However, I'm not going to say that that's the case for 100 percent of our hospitals. [LB829]

SENATOR LOUDEN: Well, I was just curious that I...I didn't notice where that went that

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far in this bill to take care of all of your... [LB829]

BRUCE RIEKER: Um-hum. [LB829]

SENATOR LOUDEN: ...your telephone bills, and that's what I was...was my question, I guess. [LB829]

BRUCE RIEKER: Well, it's not going to take care of all of our telephone bills. [LB829]

SENATOR LOUDEN: And... [LB829]

BRUCE RIEKER: But it will take care of the services or the utilization of the telehealth network, and the rates that we pay for those T-1 lines. But it's not going to take care of all of our telephone bills. [LB829]

SENATOR LOUDEN: Okay, thank you. [LB829]

BRUCE RIEKER: That would be nice if they would do that, too. [LB829]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Rieker. [LB829]

BRUCE RIEKER: You're welcome. [LB829]

SENATOR FISCHER: Other proponents for the bill, please. Good afternoon. [LB829]

LARRY DIX: (Exhibit 3) Good afternoon, Senator Fischer and members of the committee. My name is Larry Dix, spelled D-i-x, and I am here as the executive director of the Nebraska Association for County Officials. I have asked the page to hand out a letter of support for LB829 from Rock County; if you would enter that into the record for me, I would appreciate it. And you can read that; that pretty much indicates a situation that's going on in one of our smaller counties that I believe is addressed in this bill. Certainly the NACO board has taken a position to support this. As you all know, the goal for our counties is to make sure that we have E-911, that service provided across the state of Nebraska. During the last summer, I know, I spent a little bit of time visiting with some of the remaining counties that were not quite up to speed yet. We had a few gaps in the coverage that we're working with them to try to provide that E-911 coverage. And certainly this bill, as we look at rural areas, and those are some of the areas that are struggling with funding and some of those issues, and certainly when we look at this bill, we know we have to work out a relationship with those telecommunications, with those local companies. And this bill is not asking for any of those telecommunication companies to provide a break to the county or a decrease in their rates or anything like that. The only thing that this bill, in our belief, and we're only responding to the 911 portion of the bill, the only thing that we believe is that it gives an opportunity for

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someone to look and to see if what we are being charged by those telecommunication companies is fair and reasonable. And it very well may be; we're not questioning that. But we certainly believe it gives us an avenue, in some of these rural counties where there is no competition, that an outside organization such as the Public Service Commission have an opportunity to hold a public hearing and to discuss this. And so, we believe that is a good step, that is why we are here in support of this bill. I think it's pretty straightforward. I'd be happy to answer any questions that you may have. [LB829]

SENATOR FISCHER: Thank you, Mr. Dix. Are there any questions? I appreciate you bringing forward the letter from Rock County, one of my counties. [LB829]

LARRY DIX: Yep. [LB829]

SENATOR FISCHER: Do you know if there's other counties in the state of Nebraska that are facing similar situations as the situation faced in Rock County? [LB829]

LARRY DIX: Yeah, I think the Rock County lays out a situation...I can't specifically say if there are other counties. I've heard incidentally from counties that they're concerned about the cost because, as you know, this is something that now, in today's world, our citizens expect E-911 service. That falls on the back of county government. We've got to do everything we can to get funding because we're already charging the citizens a fee on their phones. If we turn around and we can't reduce some of these costs, we as counties got to turn around and increase their property tax to cover that shortfall. And certainly the citizens of Nebraska deserve and expect E-911 coverage. [LB829]

SENATOR FISCHER: Do you know...in this letter, it talks about E-911 and that the county is charging \$1 per phone line. Is that average what other counties are paying? [LB829]

LARRY DIX: I think when you look across the statement, I think the Public Service Commission has that information. I think there's a map of what each county is charging, but I think that's pretty common. [LB829]

SENATOR FISCHER: Probably not too many other counties only have 880 landlines, and so they're making \$880 on that surcharge per month, and the telephone line charge is \$910.76. [LB829]

LARRY DIX: Right. You're going to find in some of the rural counties that we're talking about, in some of those areas, you know, the cell phone coverage isn't all that great, so you have landline coverage for most of the people. But as you look at the demographics of those counties over the years, that number is taking a nosedive, because more and more areas...and I think earlier we heard a gentleman from a company saying, we're building more and more towers, we're building more and more towers. And certainly

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when that happens, we're having fewer and fewer landlines. And so, those patterns when you put those on a graph, they don't look very impressive from the county's standpoint to provide this service. [LB829]

SENATOR FISCHER: Thank you, Mr. Dix. Other questions? Thank you. Any other proponents for the bill? Are there opponents to the bill? [LB829]

REX FISHER: Senator Fischer, other members... [LB829]

SENATOR FISCHER: Good afternoon. [LB829]

REX FISHER: Good afternoon...other members of the committee. I'm... [LB829]

SENATOR FISCHER: Didn't you think I was going to say "good afternoon" to you? [LB829]

REX FISHER: You did. I said "good afternoon" back (laughter). I'm Rex Fisher, that's R-e-x F-i-s-h-e-r, no "c." I'm president of Qwest Communications in Nebraska. Qwest opposes LB829 with the current language. The first issue is the impact of going to a cost-only pricing model. Stable catalogue rates have existed for over a decade from Qwest, and a cost-only model has the potential for price increases and decreases that have impacts that are unknown at this time. Second, on 911, as the largest provider, I believe we have a track record of cooperation; and I can assure you we will do the same thing going forward, if these are issues, and provide what we can to help resolve any issues that are out there. On telehealth, while we are not the primary provider, we do supply T-1s for connectivity, and these monthly rates have also been stable for over a decade, and actually in most cases have declined and our T-1s are typically the lowest priced in the state. At Qwest, we look forward to working with the Public Service Commission to continue to keep Nebraska's 911 and telehealth network successful and vibrant for the citizens of this state. That's it. [LB829]

SENATOR FISCHER: Thank you, Mr. Fisher. Are there questions? Senator Louden, we can't let you off this easy. [LB829]

SENATOR LOUDEN: Yeah, we can't. Had you heard the other testimony, there in Rock County they were getting charged \$880 a month. That was all the money they had and they were getting charged over \$900. What do you charge for these phones that are on your system like that, that...these 911 phones? [LB829]

REX FISHER: Well, we have different rates for 911. There's some catalogue rates; I didn't bring those catalogue rates with me today, but as I stated earlier, most of those catalogue rates have been in place for a long time. Typically, our catalogue rates, along with the T-1 rates for telehealth on both sides are typically consistent regardless of what

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community we're in. And I don't think this example is a Qwest town, so our rates are the same whether there's competition or not competition, whether it's Atlanta, Nebraska, or Omaha, Nebraska, unless there's some excess costs incurred to bring service that doesn't exist today. So we'd have to look at those rates, but they're pretty consistent across the board. I didn't bring all those with me today. But our T-1 rates...typically the connectivity, \$400, \$500 a month typically for a T-1. [LB829]

SENATOR LOUDEN: For T-1. [LB829]

REX FISHER: But they vary for all companies; that's just Qwest. I can't speak for any other companies, I can't speak to the examples. [LB829]

SENATOR LOUDEN: That's all I was asking about was Qwest. [LB829]

REX FISHER: Yeah. Yep, exactly. [LB829]

SENATOR LOUDEN: Okay, thank you. [LB829]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB829]

SENATOR STUTHMAN: Thank you, Senator Fischer. It just occurred to me now when you talked about the rates...those are the rates that you charge for that service, and then don't the counties or the municipalities set the rates that they charge their consumer? [LB829]

REX FISHER: Yeah, we have a charge for the service for 911... [LB829]

SENATOR STUTHMAN: Um-hum. [LB829]

REX FISHER: ...or E-911 connectivity, and then the counties have surcharge and they have their rates, I think that's how that works. On telehealth, as I said, we're not the primary provider so we're just providing one piece of the connectivity that other competitors use to provide those telehealth connections. So in telehealth and 911, in a lot of these instances...in telehealth there's two or three different companies that may be in the business of doing that. There's some companies doing it in places that we used to do it in; it depends on which competitor wins the business. [LB829]

SENATOR STUTHMAN: Thank you. [LB829]

REX FISHER: You bet. [LB829]

SENATOR FISCHER: Other questions? I have a couple. You said that their rates are the same unless excess costs are incurred. [LB829]

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REX FISHER: Yeah. [LB829]

SENATOR FISCHER: What are some of those excess costs? [LB829]

REX FISHER: Well, the only excess cost I was talking about there is if you needed service where it doesn't exist, there are examples where there might be costs... [LB829]

SENATOR FISCHER: That's like my district, Mr. Fisher. [LB829]

REX FISHER: Right, right. Where there are costs to possibly establish service that doesn't exist today if you had to build it out. [LB829]

SENATOR FISCHER: You bring up an interesting point when you say "build out." Do you consider the copper lines that are currently in much of rural Nebraska...should those lines be replaced? Do you need to "build out" with fiber optics? [LB829]

REX FISHER: Well, it depends. Sometimes we will just continue to maintain facilities we have; sometimes we will replace facilities with fiber. Typically, it's not that you have to have fiber to provide some different service; it may make sense to put fiber in, it may not make sense. For example, most high-speed internet service today over DSL for broadband, that's provided over copper. And those speeds have continued to go up and up and up; and the price has gone down, by the way, as the speeds increased over the last few years. And that's done over copper. It's done very effectively over copper. There are some times we might have facilities where we bring a lot of lines in and we will put copper in those examples. But it depends on what makes sense because there's a lot of different ways to provide a service, a lot of different types of facilities you can provide it over. [LB829]

SENATOR FISCHER: Okay. We'll talk. What problems do you...let me rephrase this. Do you think that there are problems out there that this bill would take care of? You've told us that, you know, your company, your rates are the same or similar, whether it's Omaha or Valentine. Are there some problems out there, though, that should be addressed by this legislation? [LB829]

REX FISHER: You know, at this time, based on what I know about the legislation, I don't have examples of problems for Qwest. But again, as I stated before, we stand ready, willing and able to work with the commission and anybody else that has issues or instances, and try to work to resolve that if there are issues or problems. And we're willing to do that, and we'd like to do that. [LB829]

SENATOR FISCHER: Has the commission talked to you about any problems on this, previous to me introducing this legislation? [LB829]

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REX FISHER: There have been different discussions over time around telehealth; primarily for us, it's been with some billing issues. There have been some limited conversations on 911, but I'm not aware of any unresolved issues or anything that we couldn't provide to the satisfaction of any of the requests. Certainly, sometimes there's a limit to what you can provide on cost, but I think we've been willing to work on that. I don't know that there's any issue that I know of that's unresolved that we haven't been able to get back to. [LB829]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much. [LB829]

REX FISHER: Thank you. [LB829]

SENATOR FISCHER: Other opponents to the bill? Welcome. [LB829]

ERIC CARSTENSON: Thank you. Good afternoon. [LB829]

SENATOR FISCHER: Good afternoon. [LB829]

ERIC CARSTENSON: Senator Fischer and members of the Transportation and Telecommunications Committee, my name is Eric Carstenson. I'm the president of the Nebraska Telecommunications Association. [LB829]

SENATOR FISCHER: Could you spell your last name, please. [LB829]

ERIC CARSTENSON: I can. It's C-a-r-s-t-e-n-s-o-n. [LB829]

SENATOR FISCHER: Thank you. [LB829]

ERIC CARSTENSON: We're a trade association that represents the majority of landline customers in the state of Nebraska. I'm also here today to testify in opposition to LB829 as drafted. We find merit in many of the points that you just heard from Qwest Communications, and in behalf of the members of the NTA, we'll pledge the cooperation of the association and the resources of the association to work out any kinds of problems that may exist. With that, I'll conclude my testimony and be ready to answer any questions. [LB829]

SENATOR FISCHER: Thank you, Mr. Carstenson. Are there any questions? When you say you're going to pledge your cooperation, does that mean even though you maybe don't recognize a problem now, that you're willing to sit down and discuss situations with the Public Service Commission? [LB829]

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ERIC CARSTENSON: Sure. A lot of the issues that we have heard about today, or recently, were news to members of the association, and so what we could do is to take a year and sit down and work out these problems and bring you solutions that don't require LB829. [LB829]

SENATOR FISCHER: Would working out the problems include, I guess, offering the Public Service Commission or members of this committee examples of fees that your members charge for these services now without being required to do so? [LB829]

ERIC CARSTENSON: I think we can get...since I've got a number of different companies, I can tell you I'm pretty darn sure that I can get that kind of information. [LB829]

SENATOR FISCHER: Okay. Thank you. We'll possibly look forward to that. Other questions? Senator Louden. [LB829]

SENATOR LOUDEN: Yes. Thanks, Eric, for coming. We enjoyed your tour last summer. Do you think that it's a bad idea for to have this...the commission to have the authority to, you know, to have a hearing and notice of a hearing and that sort of thing, to work out some of this, rather than try to get everybody together? I mean, if it was in statute that they had to have a hearing, then everybody would have to come together. Do you have a problem with that part? [LB829]

ERIC CARSTENSON: Well, what I'm offering is as we look at this...I think the members of the NTA are more than willing to sit down and figure out ways to share the costs that are associated with this. But what I'd be afraid of is making sure that we don't have any kind of an element of an unintended consequence by doing this sort of a thing. A lot of what these companies do is they will average their rates across a number of different services and things like that. In other words, we might find out that in one instance in a very rural area, where maybe there is limited or no competition, that the actual costs there are significantly higher than that company is charging. So I think as we go forward, we have to be careful that we don't have some unintended consequences, too. [LB829]

SENATOR LOUDEN: Well, that would be my next question, because there are, such as this Rock County deal here, nobody else is there and HunTel out of Omaha or Blair was the ones that were furnishing the service, so they had no recourse, but I guess either pay it or shut it off. And this is where the problem arises. [LB829]

ERIC CARSTENSON: See, these are the kinds of things that we just start to hear about. I don't know where this example happened, but maybe it was something like the Rock County instance, where the people that called the company were quoted a tariffed rate. Tariffed rates are based upon a cost, but the company didn't know who was

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calling. And maybe they can do something differently, but they quoted a tariffed rate that is available to the general public, and it came right off a simple rate card. Well, in the instance I heard about, when they found out... [LB829]

SENATOR LOUDEN: Well, they must know who they call, and they surely had caller ID, didn't they? [LB829]

ERIC CARSTENSON: I think it came... [LB829]

SENATOR FISCHER: Not if they lived on my ranch. [LB829]

ERIC CARSTENSON: I think it came from a consultant. Oftentimes when a PSAP is assembling this information, they will use a consultant, so the company probably didn't have any way of reasonably knowing who it was. [LB829]

SENATOR LOUDEN: Okay. Well, I would just...this was my concern is that, especially where we live out there, that we only have one service, and I think...Mr. Fisher when he testified from Qwest about running your DSL over copper, well, our copper isn't that good yet because nothing can be done about it. So I mean, you know, and we don't have any recourse to go find another telephone company unless we use the Viaero Wireless. So that's the competition, but whereas when you have a chance to have a notice and have a hearing and you determine the rates, I would have thought maybe that would improve the situation in these areas where there isn't that much competition. [LB829]

ERIC CARSTENSON: That's why I think it's reasonable to sit down and visit about it. And I think there are ways that we can come to accord without using LB829. [LB829]

SENATOR LOUDEN: Okay. Thank you. [LB829]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Carstenson. Other opponents? Good afternoon. [LB829]

JUSTIN BRADY: Good afternoon. Senator Fischer and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as a registered lobbyist of Alltel and Windstream Communications. And they would echo the comments that have been made before by Mr. Carstenson and Mr. Fisher, and they, too, would pledge to work with the PSC to get them information about cost if they had questions. And where this bill goes, to some of your questions, Senator Louden, goes beyond that of just requesting for cost. They feel that it would give the PSC the ability to set a rate; in essence, get back into the rate regulation business. That is not something the industry obviously is supportive of, but is more than willing to sit down with the PSC and this committee to come up with a solution, whether that's an informal process set up with the

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PSC, or whether or not some language that can be amenable to all sides can be reached. That's something we'd work with this committee on, and I pledge theirs and my help on that. With that, I'd try to answer any questions. [LB829]

SENATOR FISCHER: Thank you, Mr. Brady. Are there any questions? Senator Louden. [LB829]

SENATOR LOUDEN: Yeah, Justin, I didn't know you were a telephone man. You don't look like you've crawled very many poles. [LB829]

JUSTIN BRADY: You're right. (Laughter) I try to keep my feet no higher than a barstool, Senator. [LB829]

SENATOR LOUDEN: Well, it shows. (Laughter) Anyway, getting back... [LB829]

SENATOR FISCHER: Senator Louden, did you have a question? (Laughs) [LB829]

SENATOR LOUDEN: Well, back the business at hand here. In the bill here, they said: The commission may require documentation to demonstrate that the rates for the service do not exceed the actual cost of providing such services. Now, in other words, you're not going to make a dime; is that right? [LB829]

JUSTIN BRADY: The way this bill is written, correct. It would be, in essence, a for-cost service and no profit would be made in it. [LB829]

SENATOR LOUDEN: Now, should that be read to say that, should not exceed the certain percentage of actual cost, or something like that, or that would be... [LB829]

JUSTIN BRADY: That was one of the aspects of this bill, that we did have conversations both with Mr. Vaughan and with the Public Service Commission, that there is nothing for rate of return or reasonable profit. But also goes into...even if you put that in there, it would still allow the PSC to come in and say, the rate for this service is \$5,000. Now, they may get there in a circular way by saying, we, after looking at everybody's cost, therefore will approve a rate of X. So that's one of the many aspects of the bill that, yes, is not comfortable with the industry, or at least with Alltel and Windstream, is that... [LB829]

SENATOR LOUDEN: Well, as I would understand this thing like Rock County here, if that cost is higher then, it may come in higher than what... [LB829]

JUSTIN BRADY: Correct. It's... [LB829]

SENATOR LOUDEN: ...than what they did, because it's up to the Public Service

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Commission to have the hearing to determine what the rates of service are, and...anyway, I'm wondering if it needs a little bit of tweaking, or you'd just rather junk the whole thing. [LB829]

JUSTIN BRADY: Well I...one, I understand that there are some issues out there that the Public Service Commission needs the ability to look into. I would say at this moment, since it's been brought to the industry's attention, we would feel that could be done with an informal process now of just working with the PSC and the companies directly. Obviously, if they come back to you in a year or two and say, we asked for information and these guys thumbed their nose at us, I'd be sitting here saying, well, we didn't do our job. So yes, I think that there's a way to do it without this bill. [LB829]

SENATOR LOUDEN: Okay, thank you. [LB829]

SENATOR FISCHER: Other questions? I just have a couple. Do you know how many wireless companies serve Nebraska? [LB829]

JUSTIN BRADY: I don't, Senator, but I can find that out for you. [LB829]

SENATOR FISCHER: You know two of them, though. [LB829]

JUSTIN BRADY: (Laughs) Yeah, I can name a couple. [LB829]

SENATOR FISCHER: Do you know what the number of landline users would be compared to cell phone users by county? Is that information available someplace? [LB829]

JUSTIN BRADY: Could I turn around and look? [LB829]

SENATOR FISCHER: If you would happen to know that... [LB829]

JUSTIN BRADY: If that information is available, I'll get that to you, yes. [LB829]

SENATOR FISCHER: ...that would be interesting to learn. [LB829]

JUSTIN BRADY: Um-hum. [LB829]

SENATOR FISCHER: Okay. [LB829]

JUSTIN BRADY: Okay. [LB829]

SENATOR FISCHER: Other questions? I see none. Thank you very much, Mr. Brady. [LB829]

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JUSTIN BRADY: Thanks. [LB829]

SENATOR FISCHER: Other opponents? Welcome. [LB829]

LARRY RUTH: Thank you. Senator Fischer and members of the committee, my name is Larry Ruth, R-u-t-h, and I'm appearing on behalf of AT&T in opposition. I have rather limited testimony provided by the client, he could not attend. So I just want to leave you with this thought, that AT&T opposes the provisions of LB829. It would regulate 911 and telehealth services, which have previously been competitive and deregulated. These services are highly competitive, with several providers bidding for the services, and I think that AT&T does not provide services in this area. It's AT&T's belief that competition brings with it innovation, increasing quality of service, and ultimately better products. I would just echo again what other folks have said about being willing to sit together and...come, let us reason together, I think is the phrase that I've heard some of the time...and look at the specifics that you have and see if we can get together on it. Thank you. [LB829]

SENATOR FISCHER: Thank you, Mr. Ruth. Are there questions? Thank you very much. [LB829]

LARRY RUTH: Thank you. [LB829]

SENATOR FISCHER: Other opponents? Good afternoon. [LB829]

NICHOLAS WHITE: Good afternoon, Senator Fischer, members of the committee. My name is Nicholas White, N-i-c-h-o-l-a-s. I'm general counsel for Viaero Wireless. You heard Mr. DiRico speak before about our company. We currently serve rural populations in Colorado and Nebraska, and exclusively serve rural populations in those two states. We oppose those provisions of LB829 that deal with wireless E-911 surcharges. We occupy a fairly unique perspective with regard to these funds, primarily because in a general sense we have more towers than most carriers in Nebraska and fewer subscribers than most. We have to operate this way in order to provide quality wireless telecommunications services to rural communities in Nebraska. We also occupy a fairly unique position in that we currently don't charge a fee for E-911 services that's carrier generated; we charge the fees that are imposed by the state, but we do not charge a separate E-911 surcharge to our customers. To give an example of why this creates a unique situation for Viaero is that we probably could not create and charge a fee that would adequately pay for the upgrades required to provide Phase II services and have it be economically feasible and meet a definition possibly of what is fair and reasonable. I'll give you an example of Buffalo County, Nebraska, which is one area in which we provide service: There we will be, in the next few months, as Mr. DiRico previously indicated, be providing Phase II services to that county at a cost to us from our vendors

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of \$1.2 million. We have 700 customers in Buffalo County that we have to...if we were to impose an E-911 surcharge upon those customers, we would have to spread that across them. Obviously, that would be cost-prohibited and would push us right out of competition in the marketplace to acquire and keep those customers on our network. So the issue of what is fair and reasonable certainly is a question for Viaero; if it is defined as simply the cost that we have to pay in order to provide services, that would be fine, but I certainly don't see that language as being linked to what "fair and reasonable" means. More importantly, we believe that the Public Service Commission already has the authority, ability, and duty right now to greatly reduce or eliminate carrier-generated 911 fees, and that would be by establishing an accessible policies to allow carriers to apply for and receive funds from the currently existing Enhanced Wireless 911 Fund. Viaero Wireless has spent a great deal of time, effort, and money to explore with the PSC how that can possibly be done, and unfortunately have been unable to reach a solution that benefits our consumers and also the counties that we serve in rural Nebraska. Now we heard some testimony from other carriers, Qwest, Alltel and Windstream, about a willingness to work with the PSC in regards to providing cost information. We've already come to the PSC and we've provided that cost information. We've opened up our folder, so to speak, to let them know what it costs us to provide these services, and we've asked for some kind of guidance and some kind of assistance in order to be able to receive cost recovery for our 911 services from the fund, and to date have not been able to do so. I believe that fund was established in 2002. Finally, I think there's a possibility that we have a concern that...in regards to wireless carriers anyways, LB829 would not do what the PSC wants it to do in that it does not necessarily grant the PSC authority to approve or disprove of these fees, just necessarily say whether or not they're reasonable or unreasonable. There's nothing that would prevent a carrier from perhaps disguising the fee as something else or just incorporating it into their permanent rates, which we think would be detrimental to the consumer, again something that we don't do, but we could see that happening in the instance of other carriers. Again, I'd just like to state Viaero Wireless' opposition to LB829 and answer any questions that you might have. [LB829]

SENATOR FISCHER: Thank you, Mr. White. Are there questions? Senator Stuthman. [LB829]

SENATOR STUTHMAN: Thank you, Senator Fischer. Nicholas, you stated that you have the service in other states and you don't charge the customer for the service. Who is the one that pays the bill, then? [LB829]

NICHOLAS WHITE: Who's the one that pays the bill for... [LB829]

SENATOR STUTHMAN: To you, for your service. [LB829]

NICHOLAS WHITE: Are you referring to other states or in Nebraska? [LB829]

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SENATOR STUTHMAN: Other states, I'm using that as an example to start with what they're doing. [LB829]

NICHOLAS WHITE: In..sure. Well, in other states...in Colorado is the only example I can speak to, and as of this time there is no cost recovery mechanism in place for Colorado. There used to be until very recently, and that's actually a very complicated explanation that involves...statutorily Colorado still requires that E-911 cost recovery be in place for wireless carriers. However, due to what I can best describe as a administrative and policy breakdown at the PUC in that state, it looks like we will probably be going forward in that state with the rule-making to reestablish a wireless cost recovery. We provide Phase II E-911 services in two counties in Colorado right now, and we had been receiving cost recovery up until January of 2007 in Colorado. [LB829]

SENATOR STUTHMAN: So it's a loss to your company, then, to provide that service? [LB829]

NICHOLAS WHITE: For the last year it has been, yes. [LB829]

SENATOR STUTHMAN: So you want to come to Nebraska and try to pick up that loss? (Laughter) [LB829]

NICHOLAS WHITE: No, absolutely not. The only cost that we would be recovering in the state of Nebraska would be for services that we're providing in the state of Nebraska. [LB829]

SENATOR STUTHMAN: Thank you. [LB829]

NICHOLAS WHITE: You're welcome. [LB829]

SENATOR FISCHER: Other questions? Senator Louden. [LB829]

SENATOR LOUDEN: Thank you. We've talked about you guys giving out trade secrets or something; if the commission would require documentation or something like that, would that be some of your trade secrets that would be put out because you would be telling competition how much you can actually do that job for? [LB829]

NICHOLAS WHITE: Well, I don't think it would be, necessarily. Actually, it would not be because 90 percent of the services that are provided through Phase II E-911 we actually purchase from a third-party vendor. So it's not as though the network additions that we're adding to our network in order to provide location services required by Phase II E-911 regulations would be proprietary in that it's something that we've created. The

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quote that I mentioned to you earlier about \$1.2 million in order to serve Buffalo County, that's a vendor-provided number. We've gone out and asked them for a quote, how much will it cost to deploy these services in Buffalo County, and that's the number that they gave us. [LB829]

SENATOR LOUDEN: Oh, you're subcontracting that out then, I guess, huh? [LB829]

NICHOLAS WHITE: Yes. Currently there's, my understanding is that there are two vendors out there that provide the location technology that works with GSM services, GSM technology, which is what Viaero has deployed and the service that we've selected, that's the quote they've given us. [LB829]

SENATOR LOUDEN: What about on out in western Nebraska, oh, like Box Butte, Sheridan County or Grant County or someplace like that, do you provide that 911 service there? [LB829]

NICHOLAS WHITE: The regulations require that when we receive a valid request from a PSAP to deploy E-911 Phase II services from the PSAP, we comply with our network being able to fulfill that request within six months. Currently, we have not received any requests from those counties, so we have not deployed that service yet, and even if we did, the PSAP would not be able to receive that data, would not be able to make use of it. [LB829]

SENATOR LOUDEN: In other words, then, our cell phones don't track the 911 stuff out there in the western end of the state? [LB829]

NICHOLAS WHITE: They do with Phase I technology, which Mr. DiRico described earlier, and I can go over again for the record. Phase I technology allows for our network to provide the PSAP with location information based on the location of the tower and the sector from which the call is being placed. [LB829]

SENATOR LOUDEN: And you're doing that, or are you contracting it? [LB829]

NICHOLAS WHITE: We're doing that statewide. The Phase II network implementation, I'm not sure if we use the same vendor. I'd have to check on that. [LB829]

SENATOR LOUDEN: Okay, thank you. [LB829]

NICHOLAS WHITE: You're welcome. [LB829]

SENATOR FISCHER: Thank you. Other questions? I see none. Thank you, Mr. White. [LB829]

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NICHOLAS WHITE: Thank you, Senator Fischer and committee. [LB829]

SENATOR FISCHER: Are there other opponents? Good afternoon, Mr. Bromm. [LB829]

CURT BROMM: Good afternoon, Senator Fischer and members of the committee. My name is Curt Bromm; for the record, B-r-o-m-m. And I'm here as a lobbyist for Verizon Communications. And Verizon basically wanted to express some concerns, they're willing to work on this problem like you've heard from some of the other testifiers that came before me to the extent there's a problem we want to help solve it. The words that caught their attention, I believe, are the rate language, the...since the deregulation began and occurred more than ten years ago, the industry has felt that services have, the public has really benefited overall from that. And anything that begins to smack of the rate regulation or contrary to the federal deregulation act raises concerns. But having said that, I think that some of the issues and problems that have been brought up today need to be addressed, and to the extent that Verizon can be helpful to the commission or participate with the committee, we're very willing to do that. And with that, I'll be very brief, Senator Fischer. Thank you. [LB829]

SENATOR FISCHER: Thank you, Mr. Bromm. Are there questions? I have a question. Do you feel that this bill is contrary to the federal act? [LB829]

CURT BROMM: I am not certain. I am...lawyers that have looked at it that have e-mailed me seem to think that it is. I don't have...I certainly can procure some more research on that and visit with your counsel, because that's being strongly hinted at and I can't say that I know for certain the answer to that question. [LB829]

SENATOR FISCHER: I wouldn't want to upset the feds at all, so that... [LB829]

CURT BROMM: You wouldn't want to what? [LB829]

SENATOR FISCHER: I wouldn't want to upset the feds at all. [LB829]

CURT BROMM: Okay. (Laughs) [LB829]

SENATOR FISCHER: So that would be helpful, I would appreciate that. [LB829]

CURT BROMM: Sure, we'll work on that. [LB829]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Speaker. [LB829]

CURT BROMM: Thank you. [LB829]

SENATOR FISCHER: Are there other opponents? Has every phone company been up?

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(Laughter) We need to pause for just a moment. I thought you were coming up (laughs). Yes, we need a moment. Okay, are we good to go now? Okay. Any other opponents? Is there anyone wishing to testify in the neutral capacity? I see none. With that, I will close the hearing on LB829 and we will open the hearing on LB755. Good afternoon, Mr. Vaughan. [LB755]

DUSTIN VAUGHAN: Good afternoon again, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record once again, my name is Dustin Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. The last bill we are going to hear today is LB755, and this bill is being introduced by the committee. The bill accomplishes three goals: One being that it clarifies the Public Service Commissions's fining authority. In the recent past, an argument has been made that the commission may not fine for a violation of a rule or regulation, but must first enter an order finding a violation has occurred, and then impose a fine if the entity violates that order. Basically, the commission would have to allow the violation to occur twice before it could have any recourse. Section 3 of the bill amends the language to clarify that the commission can impose a fine for violation of a rule, regulation, order, or lawful requirement. I would like to note at this time that several representatives of the telecommunication industry expressed concern with some of the bill's language, and that it may indirectly open up the wireless industry to regulation by the commission, or broaden the commission's fining authority. In response, the commission has agreed to some language changes, including striking the term "lawful requirement" from the bill and changing the phrase, "regarding any subject" to "within the jurisdiction of the commission." I will be presenting this amendment to the committee, but I just wanted to note it on the record. LB755 also lowers the cap on the Competitive Marketplace Fund from \$100,000 to \$30,000. The money in this fund is used for auditing purposes. The commission has never used more than \$25,000 out of the fund and feels comfortable lowering the cap to \$30,000. All monies in excess of this cap will continue to be transferred over to the Nebraska Internet Enhancement Fund, or NIEF fund. This fund is used to promote broadband infrastructure and services in communities across the state, usually in rural areas. Lowering the cap on the Competitive Marketplace Fund will provide a larger revenue base from which the NIEF fund can operate from. Finally, LB755 updates landline and wireless 911 reporting requirements. It eliminates the requirement that local exchange carriers provide information regarding the existence of interlocal agreements for the provision of 911 services, as such information is not available to the carriers. The bill clarifies quarterly reporting requirements for wireless carriers by changing reporting of all telephone numbers to reporting just the quantity of telephone numbers. The commission doesn't want to know every single phone number, they just need to know how many phone numbers. Also, paging companies are granted an exemption from having to provide quarterly reports, as they do not collect and remit the Enhanced Wireless 911 surcharge. With that, I will close my testimony and answer any questions. [LB755]

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SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? Thank you very much. Are there proponents for the bill, please? Welcome once again. [LB755]

JERRY VAP: (Exhibit 1) Thank you. Good afternoon again, Madam Chairperson and members of the Transportation and Telecommunications Committee. My name is Commissioner Jerry Vap, that's spelled V-a-p. I represent the 5th District of the Nebraska Public Service Commission and I'm here today to testify regarding LB755. LB755 is essentially a clean-up bill that: Clarifies language regarding the commission's fining authority; eliminates an annual reporting requirement for local exchange carriers; exempts wireless carriers whose users have no access to 911 from certain quarterly reporting requirements; and makes other minor corrections. Annually, each local exchange provider is required on or before April 30 of each year to report to the commission information regarding the collection and remittance of the landline 911 surcharge to local government bodies. That information is then included in the commission's annual report to the Legislature. Part of the required information includes the location of Public Safety Answering Points and whether each governing body located within the local exchange carrier's area belongs to an interlocal agreement for the provision of 911 service. That information simply is not available to the local exchange carrier. As a result, the reports we receive are inaccurate and are not helpful to the commission or to the Legislature. We, therefore, propose that this reporting requirement be eliminated. Wireless carriers also submit quarterly reports to the commission, including: The number of telephone numbers or functional equivalents; tower location; and the amount of wireless surcharge collected. This bill would exempt from those reporting requirements any wireless carriers whose users do not have access to 911. This would primarily apply to paging companies who are already exempt from the collection and remittance of the surcharge, and therefore often have nothing to report. We would propose that because they do not collect and remit the wireless 911 surcharge, they be exempted from the reporting requirements. Finally, LB755 includes language to clarify language regarding the commission's fining authority and ensure that the language is consistent throughout all of the commission's departments. The argument was recently made that the commission lacked the power to assess a civil penalty for a violation of a commission rule and regulation on a telecommunication-related matter. The company contended that the commission would have to first enter an order, essentially requiring compliance with an already existing rule or regulation, and then could only assess a civil penalty if the violation occurred a second time. Although the commission continues to disagree with this reading of its authority to assess civil penalties, the language proposed in LB755 is intended to address this issue. The changes clarify that a civil penalty may be assessed for violation of a statute, rule and regulation, or commission order. The language is consistent with that used in granting the commission civil fining authority in all of its departments with the commission's current interpretation of its fining authority. The commission does not view this bill as an expansion of its fining authority, but instead sees it as a merely clarifying language one regulated entity found to be ambiguous. I ask for your support of

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LB755 and would answer any questions. [LB755]

SENATOR FISCHER: Thank you, Commissioner Vap. Are there questions? Mr. Vaughan mentioned an amendment, and said that the Public Service Commission was good with the proposed amendment that he will present as a committee amendment. [LB755]

JERRY VAP: That's correct. [LB755]

SENATOR FISCHER: Is that true? [LB755]

JERRY VAP: Yes. [LB755]

SENATOR FISCHER: Okay, also would you say this bill is trying to streamline government? [LB755]

JERRY VAP: It would help us a great deal in doing our job. [LB755]

SENATOR FISCHER: Okay. [LB755]

JERRY VAP: And a little more efficiently, we think. [LB755]

SENATOR FISCHER: Okay, thank you very much. Other questions? Thank you. [LB755]

JERRY VAP: Thank you. [LB755]

SENATOR FISCHER: Are there other supporters for the bill? Are there opponents to the bill? Anyone wishing to testify in the neutral capacity? Good afternoon. [LB755]

JUSTIN BRADY: Good afternoon. Senator Fischer and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist of Alltel and in a neutral capacity on LB755 because we were one of the carriers that Mr. Vaughan referenced that had worked with himself and the PSC on coming up with language that we were all amenable to. So I thank you for allowing us to work with you, your office, and the PSC to come to that conclusion, so. With that, I'd try to answer any questions. [LB755]

SENATOR FISCHER: Thank you, Mr. Brady. Are there questions? I see none. Thank you very much. [LB755]

JUSTIN BRADY: Thank you. [LB755]

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Transportation and Telecommunications Committee
January 22, 2008

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. With that, I will close the hearing on LB755 and adjourn the hearing for today. Thank you. [LB755]

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Transportation and Telecommunications Committee
January 22, 2008

Disposition of Bills:

LB823 - Advanced to General File, as amended.

LB815 - Held in committee.

LB829 - Held in committee.

LB755 - Advanced to General File, as amended.

Chairperson

Committee Clerk