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Transportation and Telecommunications Committee
February 10, 2009

[LB183 LB272 LB330 LB652]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 10, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB272, LB330, LB183, and LB652. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Galen Hadley; Charlie Janssen; Scott Lautenbaugh; and LeRoy Loudon. Senators absent: None. [LB272]

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. I'm Deb Fischer. I am Chair of the committee. I represent the 43rd District here in the Nebraska Unicameral. At this time I would like introduce to you the other Senators that are on the committee. On my far right is Senator Kathy Campbell, Senator Campbell is from Lincoln, Nebraska; next we have Senator Arnie Stuthman from Platte Center, Nebraska, he is the Vice Chair. I was going to say co-chair, but I don't want to give him that gavel yet because he'll use it against me, so I will introduce him with his proper title. He is the Vice Chair of the committee. Next I have my committee counsel, Mr. Dustin Vaughan; on my immediate left is our committee clerk, Ms. Laurie Vollertsen; next we have Senator Galen Hadley from Kearney; and on the end we have Senator LeRoy Loudon who is from Ellsworth, Nebraska. I do have a couple pages here who serve us here in the committee. We have Justin Escamilla from Scottsbluff and Rhianna Needham from Bellevue, Nebraska. I see we've been joined by Senator Tim Gay who is from Papillion. I have some housekeeping details I need to go over with you. 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. I would ask that you complete the yellow sign-in sheet at the on-deck table so it's ready to hand in when you testify. We use a computerized transcription program so it's very important that you follow those directions that are on the sign-in sheet and you will need to hand that sheet to our committee clerk before you testify, please. For the record, at the beginning of your testimony I would ask that you spell your last name and also your first name if it can be spelled in a number of different ways. And I would also ask that you please keep your testimony concise and try not to repeat what someone else has covered. If you don't want to testify but you want to voice your support or opposition to a bill, you can indicate so at that on-deck table. There is a sheet provided there. This will be part of the official record of the hearing. However, if you want to be listed on our committee statement as a testifier at this hearing, you have to complete the yellow sign-in sheet and actually testify, even if you just state your name and your position on the bill. If you do not choose to testify, you may submit written comments and those will be read into the official record. I ask that you turn off your cell phones and we don't allow cell phones on in this committee and that means no texting, please. At this time I would like to note that we have been joined on my far right by Senator Charlie Janssen, who is from Fremont, and also on my left by Senator Scott

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Lautenbaugh, who is from Omaha. With that our entire committee is present. I will open the hearing on LB272 and I see that Senator Friend is here for his opening. Welcome, Senator Friend. []

SENATOR FRIEND: (Exhibit 1) Thank you, Madam Chair and members of the Telecommunications, Transportation Committee. I am Mike Friend, last name is spelled F-r-i-e-n-d. I represent northwest Omaha, District 10 in the Nebraska Legislature. This bill proposes to amend a portion of the One-Call Notification System Act and it would remove the limited responsibility of the Sanitary Improvement District, an SID, to provide notice to excavators of the presence of sanitary sewer lines and storm sewer lines owned by the SID and located within the public right-of-way or in an easement owned by the SID. The purpose of the One-Call Act is to establish a way for excavators to provide notice to the operators of underground facilities and the intent to excavate in a specified area so that the operators have the opportunity to identify and locate the underground facilities prior to excavation. This enables the excavators to take proper precautions while digging to safeguard the underground facilities from any damage. However, SIDs as such are ill-suited to organizationally, anyway, to serve as operators. They almost never have a permanent staff or employees. They have no central office or headquarters and they're intended by law to serve as financing entities, not general governmental bodies. When they need to act or perform some duty, they must contract for those particular services on a case-by-case basis. A One Call notification for them generally involves hiring of an engineering company to mark the location of underground facilities. This involves disproportionately large cost to the SID to conform with existing law. Additionally, in most circumstances, most cases, sanitary and storm sewers are generally deeper, buried deeper than...they're generally deeply buried type of facilities, I should say, and pose what many would consider a smaller risk of problems than it would buried phone lines or cable lines, for example. Finally, the bill limits the exemption only to sewer lines located within the public right-of-way or an easement owned by the SID itself, those facts serving to provide a form of automatic notice to the excavator. The bill represents a modest request, we felt, to relieve these subdivisions of another financial burden without unduly impacting on public health or safety. Members of the committee, this bill already has raised a lot of attention and I understand that. We weren't really sure. I suppose part of the reason I'm carrying this bill is we weren't really sure where this bill would end up. My committee which happens to be meeting now on annexation, I'm a little bit...got that on my mind too, but I'll get rid of it, Senator Fischer. It seems logical. I understand a little bit of this subject matter and I think I understand the problem. I got a chance to sit down with the representative of the SIDs a few months ago and was described, that person described some of the issues that they're confronting as I noted in the intro. All I can ask is that maybe the committee understand, you know, after all the testimony comes through, that the problem probably isn't perceived. I think it's real. And I probably wouldn't be carrying the bill if there wasn't a real problem. Now, is the solution here in this green copy or the...or as it so happens, the white copy that I printed off? I don't know. I think we have a solution here. Whether

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it's the right one, I'm not really sure. I'll leave it to the committee who has dealt with these, you know, type of issues, and Senator Fischer, who has dealt with these type issues the last couple of years, I know, because I've seen it. I'll leave it to your discretion to decide, you know, whether we have the appropriate answer to the problems that we've confronted. That's all I had at the moment, so. And I probably will close because I don't think I'm going to be able to get this annexed. I won't close because I don't think I'm going to be able to get this annexation off my mind, but... [LB272]

SENATOR FISCHER: Thank you, Senator Friend. We don't want you to get that annexation off your mind either. I do thank you for coming today to open on the bill because I know that your committee has some big issues before it right now too, so I appreciate that. [LB272]

SENATOR FRIEND: Thank you. [LB272]

SENATOR FISCHER: Are there any questions for Senator Friend? Senator Louden. [LB272]

SENATOR LOUDEN: Yeah. Thank you, Senator Fischer. Thank you, Senator Friend, for coming here to open on this bill as Senator Fischer said. When you say these SIDs usually don't have any...are you saying they don't have any staff? They don't have any people or don't they have a map of where their systems are? Somebody must know something or how do charge the fees? [LB272]

SENATOR FRIEND: Yeah, well those are two, those are good questions. Those are two different questions I should say, two different questions. For the most part, no. I mean, some of us have lived in SIDs. You know, we know the makeup and there are staffing issues. I mean, that's what's been communicated to me and based on my experience, sure, there are staffing issues. The maps, a different subject matter. I think that they do, but you're also talking about people who can actually understand what those maps say, right? I mean that's my understanding of one of the problems that we've incurred here. Like I said, one of the things that the discussions that came up when I was vetting this bill is, was exactly that. I mean, you're talking about hiring out the type of work that a lot of SIDs are just going to pass on to their, the folks in that particular area, so. The answer, I guess the answer to your question is, there are problems on both fronts the way I understand it. But again, do we have it here. I'd be real anxious to find out, you know, by the end of this whole thing whether we do or not. [LB272]

SENATOR LOUDEN: Okay. Thank you. [LB272]

SENATOR FRIEND: Sure. [LB272]

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SENATOR FISCHER: Senator Lautenbaugh. [LB272]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. Thank you, Senator Friend. I served on my SID board before we were annexed and my wife was on the board and my three neighbors in the houses around me were the rest of the board. [LB272]

SENATOR FRIEND: Then you know more, way more about it than I do, so I'm anxious to hear what your thoughts. [LB272]

SENATOR LAUTENBAUGH: Well, and I know we didn't have any staff but we did have an engineering firm and a law firm that represented the SID. [LB272]

SENATOR FRIEND: On contract, probably. [LB272]

SENATOR LAUTENBAUGH: I don't know for sure. I don't...I know, I don't think it was contract at all. I think it was just an ongoing relationship. Is that what we're talking about here is SIDs not having to have these engineers for this purpose? [LB272]

SENATOR FRIEND: I believe, well, they're probably still in need of them, right? But... [LB272]

SENATOR LAUTENBAUGH: For other things, certainly. [LB272]

SENATOR FRIEND: Right. But...so I would...I know that, I just talked to Bob Doyle a little earlier and I think that he could speak as to how that, how this would change that relationship, Senator Lautenbaugh. I don't know for sure. [LB272]

SENATOR LAUTENBAUGH: Is Mr. Doyle here? [LB272]

SENATOR FRIEND: He was. (Laughter) [LB272]

SENATOR LAUTENBAUGH: Oh, okay. Thank you, Senator. [LB272]

SENATOR FRIEND: And the only reason I brought him up, I didn't mean to put him on the spot, I think he was planning on testifying. [LB272]

SENATOR LAUTENBAUGH: I know he knows the area exceptionally well, so I will ask him. Thank you. [LB272]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Other questions? I see none. Thank you very much. [LB272]

SENATOR FRIEND: Thank you very much. [LB272]

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SENATOR FISCHER: And you will waive closing? Is that my understanding? [LB272]

SENATOR FRIEND: I'd like to stick around. I'm a little worried about this bill, but... [LB272]

SENATOR FISCHER: Does that mean you're going to waive closing? [LB272]

SENATOR FRIEND: I will waive closing. (Laughter) [LB272]

SENATOR FISCHER: Thank you. Thank you for clarifying that. [LB272]

SENATOR FRIEND: Let me sit here. We can debate that. [LB272]

SENATOR FISCHER: We always know where you are on your statements. Thank you, Senator Friend. Could I ask how many people are here to speak on this bill. How many proponents? Two. How many in opposition? Two, four, five, six. And how many neutral? Okay, I don't think we will have to limit time officially, so hopefully you will move your testimony along. And with that, I will ask for the first proponent, please. Good afternoon. [LB272]

ROBERT DOYLE: Madam Chair, members of the committee, my name is Bob Doyle, that's D-o-y-l-e, and I'm here as a proponent of this bill. I'm an attorney in Omaha. I represent, and in fact my practice is pretty much limited to representing developers and sanitary and improvement districts. Presently in my office we have over 140, probably closer to 150 or 160 sanitary improvement districts. We represent them. But you know what, we also represent all the taxpayers in those districts and those taxpayers are in the thousands and thousands and thousands. I think it's been estimated that probably in the sanitary and improvement districts around the Omaha area there's probably 100,000 people that are in, that live in sanitary and improvement districts, and they all, and they all pay taxes. Recently, about a year ago, the sanitary and improvement district started receiving what I would call undue pressure to join, to join One-Call. Never before had we ever marked sanitary sewers or storm sewers. And in fact, I believe if you check with cities in the metropolitan area, that most of those cities probably do not mark storm or sanitary sewers either. And I'll get into some of the reasons for that a little bit later. But this pressure was not without good reason. One-Call is a pretty significant business in the metropolitan area. However...and it's extremely lucrative for them. However, it provides the sanitary and improvement districts with no benefit, none. And what it does is, it causes thousands and thousands and thousands of dollars of unnecessary taxes. Now sanitary and improvement districts maintain the operational control over sanitary sewers and over storm sewers. The balance of the transmission lines within the sanitary and improvement districts, the water, the electrical, and the gas, those are all maintained by OPPD or MUD. Now there are a couple of districts, particularly in the

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Papillion area where Senator Gay is from, that Papillion has their own water system and they insist that those water systems or water lines are not theirs like they are with MUD but actually belong to the districts. So in that case, yeah, we do have some water lines and we probably ought to be a part of One-Call. And in fact, we are a part of One-Call in Papillion because the city of Papillion requires that we be a part of One-Call so they will come out and mark the water lines. But never, and we go through One-Call, have I seen the city of Papillion come out and mark the sanitary sewer lines or mark, or mark the storm sewer lines. Now, one of the reasons for this is, sanitary sewer lines are generally at a depth of 12-plus feet and they're also underneath 8 to 9 inches of concrete. Okay. And anybody that wants to know where those sanitary sewer lines are, all they have to do is go into the street, look to the left, look to the right. If there's a manhole there and a manhole there, there's a sewer line. If they want to see how deep it is, just take the manhole cover off and take a look, but it's about 12 feet down there. With the storm sewers, the storm sewers are always adjacent to the streets and are approximately within about 18 to 36 inches, a foot and a half to 3 feet. And all of them have inlets and they're concrete. And if you look up down the street and down the street and you see an inlet here and you see an inlet there, you know there's a storm sewer there. Now, I've been in this business for almost 35 years and we have represented for that time numerous, more than 150 SIDs because a number of them have been annexed by the city of Omaha, the city of Papillion, city of Bellevue, and whatever. I cannot remember in those 35 years where we have ever had an incident where a digger has hit a storm sewer or has hit a sanitary sewer line. These thousands and thousands and thousands of dollars that we would spend on One-Call to try and locate sanitary sewer and storm sewer is wasted money. What we're doing is we're asking, we're asking the taxpayers in these districts to subsidize a business and to provide a service to us which we do not need. In fact, we would go so far as to say that if anybody does hit one of our storm sewers or sanitary sewer lines and hurts their equipment, if they were not negligent, we'd be happy to pay them for it. We'd be happy to pay them for it. But I don't see how somebody could come out and dig in the public right-of-way in the sanitary and improvement district within the confines of a district and run into a storm sewer or run into a sanitary sewer line without being negligent. As I said, all they have to do is look up the street one way, look up the street the other way. Now, if there's no manholes, there's no sewer line there. As I said, we've just...we've never seen that happen and I think what we're asking and what One-Call does here is, it just puts an unreasonable tax on the backs of the sanitary and improvement districts and the people in their districts for a service that is neither wanted nor is needed. With that, I'll take any questions.
[LB272]

SENATOR FISCHER: Thank you, Mr. Doyle. Are there questions? Senator Gay.
[LB272]

SENATOR GAY: Thank you, Senator Fischer. You said hundreds of thousands of dollars, do you have a...have you kept track of this over the last couple of years or when

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did this start, all last year? [LB272]

ROBERT DOYLE: Well, no, because we, because we haven't been doing it, Senator. (Laugh) [LB272]

SENATOR GAY: Just last year did this start? [LB272]

ROBERT DOYLE: In fact, you know, I'm sure the city of Papillion doesn't do it. We certainly believe that the...we've never seen the city of Omaha mark sanitary or storm sewer lines. We don't believe they do it. I kind of think that the SIDs in all of this mix were kind of easy targets, and quite frankly, there was pressure. The pressure went through the Attorney General's Office. The Attorney General's Office threatened us with fines and so forth. But once we went down and explained it to them, they kind of went, uh, this doesn't seem all that bad, so why don't you guys go and see if you can't try and get the law changed. [LB272]

SENATOR GAY: So would you say, potential to be? Hundreds, thousands, if this would be the case. [LB272]

ROBERT DOYLE: Well, the ones that are in Papillion where we're already signed up, what I've done is I've extrapolated, okay. And so what Papillion charges us and put it to, and put it to the rest of the districts in the metropolitan area, and yeah, then you have hundreds and hundreds of thousands of dollars. It becomes a very, very expensive proposition. To each individual district is it, you know, all that expensive? Well, maybe \$3,000, \$5,000, \$7,000. But as you know, when districts are coming under a lot of pressure from a lot of different areas, we have the EPA saying we have to have more and more erosion control and things like this, this is just an additional expense which is not needed. And, you know, I tried to say to some of the cities, you know, if these aren't exempted here, cities, you're next, One-Call will be looking at you. We just see no need for it. [LB272]

SENATOR FISCHER: Other questions? Senator Louden. [LB272]

SENATOR LOUDEN: Yes, thank you Senator Fischer. I guess when you say it's not that hard to tell where they're at, you just look and see if there's a manhole cover, you know, you look one way and look the other and your storm sewers would have an opening on the street. Why would that cost you so much money to have somebody do that? You could get any high school kid after school to come out and do that couldn't you, I mean, if that's all there is to it. Why would you have to have an engineer? [LB272]

ROBERT DOYLE: No, I don't think so. We'd have to hire our engineering company. Our engineering company is at least \$50 or \$60 an hour. They got to take the time to go out to the district. They have to spend the time marking it and they have to come back. It

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appears to me that generally one of those calls is, oh, I don't know, anywhere from \$50 to \$100 depending on what it is. [LB272]

SENATOR LOUDEN: Well, your phone companies and stuff don't hire an engineer to come out and do that. I've had them come out and I know it was a part-time young guy came out and marked off the phone lines. [LB272]

ROBERT DOYLE: Senator, we... [LB272]

SENATOR LOUDEN: I mean, I guess I don't understand why you'd have to have a professional engineer come to do that. [LB272]

ROBERT DOYLE: You have to understand the makeup of the sanitary and improvement district and I think Senator Lautenbaugh kind of hit on it. It's...a sanitary and improvement district has five trustees, okay. They're not paid. The clerk can get paid up to \$600 a year but typically it's a volunteer type job and they don't do it. A sanitary and improvement district has absolutely no staff so if they to have something done, they either have to go through their lawyer or they go through their attorney or in some cases you may have a chairman of the board that is really, you know, enjoys doing that type of stuff and maybe they'll go get the person themselves. We don't have anybody on staff. What I would have to do for one of my districts...we use E&A Consulting a lot. We would have to go to E&A Consulting and we would have to hire them to go out and do this because we have no other place, we have no other place to go. Could E&A then sub it out to some teenager? I guess, but, you know, I don't think I'd want to do that. [LB272]

SENATOR LOUDEN: How then, if you have to make repairs, how do you, how does that work down through your people then if you have to do some repair work? [LB272]

ROBERT DOYLE: If we have repair work, then we hire the engineers to go get the repair work done. [LB272]

SENATOR LOUDEN: Then you, in order to have any staff person there the ones or the committee person goes and hires the people or I guess, what's your process for...because I suppose you're funded by taxation on everybody. [LB272]

ROBERT DOYLE: The district engineer, Senator, is...pardon me? [LB272]

SENATOR LOUDEN: Your funding must come from taxation from the residents. [LB272]

ROBERT DOYLE: From all the residents. But you're asking them, Senator, or what this or what One-Call asks them to do is to provide a service which the SID feels and make

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it...and to make them civilly and maybe even criminally in contempt if they don't, to accept a service which they say is for public safety, which has no public safety benefit in the sanitary and improvement district and for us to pay for it. [LB272]

SENATOR LOUDEN: Okay, my last question would be. Do you have, do these districts have maps of where their pipelines are? [LB272]

ROBERT DOYLE: Certainly. [LB272]

SENATOR LOUDEN: Aren't those sufficient for someone to...for your One-Call either someone of your board or somebody to produce the maps of where it's at? [LB272]

ROBERT DOYLE: Senator, there's a lot of times I can't even find five people to serve on a board much less have one of them go out and mark something. [LB272]

SENATOR LOUDEN: Well, he didn't have to mark. You just produce the maps to the person that wants to dig. [LB272]

ROBERT DOYLE: I don't think that's what One-Call calls for. It says that we have to go out, that we have to go out and mark it. And what we're saying is, that for storm sewer and sanitary sewer that is within the confines of a sanitary and improvement district, which is a housing subdivision, that there is no reason to have it. In other words, it is an added expense. It is an added expense which goes in somebody's pocket at the expense of the taxpayer. Now, every taxpayer is yelling at every governing body saying, we want our taxes reduced. [LB272]

SENATOR LOUDEN: Well, yeah, thank you. I understand. We hear that. Thank you. [LB272]

SENATOR FISCHER: Senator Hadley. [LB272]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Doyle, as I get older, my hearing gets bad. I just want to be sure I understand that if I give you an example that you had an SID that was annexed by city A, Lincoln, Omaha, or whatever, and it does not have mapping of their storm sewers and such as that, the city of Lincoln would not go out and map those to comply with them. [LB272]

ROBERT DOYLE: I do not know what the city of Lincoln would do. [LB272]

SENATOR HADLEY: Or any city. I guess, I... [LB272]

ROBERT DOYLE: I'm not saying that. [LB272]

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SENATOR HADLEY: Okay. I just want to be sure that that...I guess that was my question is that if they're annexed into a city, do we go out and actually do this after we annex them in? [LB272]

ROBERT DOYLE: To my knowledge, to my knowledge there are cities out there that do not mark their sanitary and storm sewer in response to One-Call. Okay. We know that there is work being done out there. We've looked at it. We know that in many instances, and probably in most instances, it does not get marked. A city is a little tougher entity to take on than a sanitary and improvement district. [LB272]

SENATOR HADLEY: So we could see them come out of our chairs if we amend that that all cities and townships have to mark. [LB272]

ROBERT DOYLE: Pardon me? [LB272]

SENATOR HADLEY: We could see them come out of our chairs, their chairs if we amend this to make sure all cities and townships have... [LB272]

ROBERT DOYLE: Well, I'm really surprised that the city of Omaha or the city of Papillion and some of those entities is not down here asking that it be, that it just be said that, you know, sanitary and storm sewer are not a part of One-Call. [LB272]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Lautenbaugh. [LB272]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. Thank you, Mr. Doyle. So the revenue that comes in on an SID where does that come from? [LB272]

ROBERT DOYLE: Taxes. [LB272]

SENATOR LAUTENBAUGH: Property taxes, is that correct? [LB272]

ROBERT DOYLE: Property taxes. [LB272]

SENATOR LAUTENBAUGH: And we're talking about residential developments normally, right? [LB272]

ROBERT DOYLE: Normally, residential. We do have some commercial but sometimes there's even a mix of commercial and residential, but primarily residential. [LB272]

SENATOR LAUTENBAUGH: And so it would be the normal case that you would have five people from the neighborhood on the board in time. [LB272]

ROBERT DOYLE: That is correct. [LB272]

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SENATOR LAUTENBAUGH: As the SID reaches a certain age and there's no guarantee any of them would have any of expertise. [LB272]

ROBERT DOYLE: That is correct. [LB272]

SENATOR LAUTENBAUGH: That was certainly my experience. There's no money for any staffing. [LB272]

ROBERT DOYLE: That is also correct. [LB272]

SENATOR LAUTENBAUGH: Who does the SID normally rely upon to really do anything? [LB272]

ROBERT DOYLE: Usually they rely upon...number one in line is the attorney, and second in line is the engineer for the district. We do the administrative but they do the maintenance. [LB272]

SENATOR LAUTENBAUGH: And neither the attorney nor the engineer works for free. [LB272]

ROBERT DOYLE: That is correct. [LB272]

SENATOR LAUTENBAUGH: And if the SID tried to freelance, could they be subject to liability if they tried to hire nonprofessionals to do this stuff? [LB272]

ROBERT DOYLE: As the attorney for the district, I would advise them against that. [LB272]

SENATOR LAUTENBAUGH: So that's a yes, then? [LB272]

ROBERT DOYLE: Yes. [LB272]

SENATOR LAUTENBAUGH: Okay. [LB272]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Other questions? I just have a couple here. What would you say the purpose of the One-Call Notification Act is? [LB272]

ROBERT DOYLE: Well, the purpose of the... [LB272]

SENATOR FISCHER: What is the intent of the Act? [LB272]

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ROBERT DOYLE: The intent of it is very good. It is to provide to somebody that is going to go out and dig in a neighborhood to make sure, and I think primarily it's supposed to be for public safety that they're not going to dig into a gas line and have an explosion, or dig into a water line and, you know, maybe interrupt the water service, or to dig into an electrical line and electrocute themselves. But we're not talking about that here. We're talking about two items that are well defined and really not susceptible to, you know, this...certainly not to a public safety issue. However, I guess, and they'll probably come up with an example that says, hey, well, you know what, I ran into a storm sewer line out here somewhere and you know without going into the individual specifics of it, I could...I would certainly say, well, it was probably, there probably was somebody that was negligent, number one. Or number two, it's nothing like the circumstances that I'm giving to you. But overall, we have no problem with One-Call. [LB272]

SENATOR FISCHER: So you don't see any safety concerns if an excavator would hit a storm sewer line? What happens if you hit a storm sewer line? [LB272]

ROBERT DOYLE: Well, if he's digging down in there and he hits a storm sewer line, it's concrete. The...probably the worst thing that's going to happen is he could possibly break his piece of equipment. [LB272]

SENATOR FISCHER: He's not going to do any damage to the line or there's no public safety issue that you see there? [LB272]

ROBERT DOYLE: Not going to do any damage to the...no, ma'am. No. None that I see. He's not going to hurt the storm sewer. [LB272]

SENATOR FISCHER: So this bill is amending the statute saying that, you know, it doesn't have to include that sanitary sewer line or the storm sewer line, correct? [LB272]

ROBERT DOYLE: That is correct. [LB272]

SENATOR FISCHER: You made mention that nobody is doing this anyway. Nobody is marking this anyway. [LB272]

ROBERT DOYLE: Not to our knowledge. [LB272]

SENATOR FISCHER: I would hope you're advising your clients to mark it though, because if they don't aren't they violating the law? [LB272]

ROBERT DOYLE: Well, we have a little bit of a legal issue on that and it has to do with... [LB272]

SENATOR FISCHER: Maybe a little bit of a legal issue? [LB272]

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ROBERT DOYLE: No, no, no, no, no. We have a legal issue. There is language that says if it is on property owned by you and is...our easements and so forth are they tantamount to that. Also, we have been down and with the Attorney General's Office and we...they are delaying any type of enforcement until we have a chance to basically get through here and see if we can't get it changed. [LB272]

SENATOR FISCHER: You also mentioned that cities aren't following the law and you specifically said, Papillion. Is that true? [LB272]

ROBERT DOYLE: We've never seen them, we've never seen them marked in Papillion. We don't see them marked in Omaha. Whether it is oversight, whether it is...but for whatever purpose, I think most people just say, hey, storm and sanitary sewer. Jeez. You know, to our way of thinking, it's already marked. It's already marked. They can't miss it. [LB272]

SENATOR FISCHER: But according to current law, it is supposed to be marked and whether it's a city or a SID, they would be in violation if they are not marking them, is that correct? [LB272]

ROBERT DOYLE: I'm not going to admit to that, because I think there is an argument that the way the law is written that it says if it is in lands owned by the operator, okay, that it is exempt. And I will take that to mean, when you have an easement or dedicated or dedication, that the public entity I say has an ownership interest in that, that the easement and/or the dedication is tantamount to ownership. That's a legal argument. I don't want to get into a legal argument. What I want to do is see about having the right thing done, which is to not tax Nebraska taxpayers for services that are neither needed nor wanted, that is to the benefit of some entity. [LB272]

SENATOR FISCHER: And which entity would be benefiting from this? [LB272]

ROBERT DOYLE: One-Call. [LB272]

SENATOR FISCHER: Okay. Thank you very much. Other questions? Senator Lautenbaugh. [LB272]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. So what does One-Call get out of this then if it's obvious where these things are? [LB272]

ROBERT DOYLE: Fees. We have to pay a, we have to pay a fee. [LB272]

SENATOR LAUTENBAUGH: Who pays the fee? [LB272]

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ROBERT DOYLE: The district. [LB272]

SENATOR LAUTENBAUGH: To One-Call? [LB272]

ROBERT DOYLE: There's a fee paid to One-Call. There's also a fee then that is paid to whoever goes out and marks the area. The bigger fee is to the entity that marks the area. That's typically an engineering company. Now, right behind me is going to be Mark Westergard who is the chief executive officer of E&A Consulting, which is one of the larger engineering companies in the metropolitan area and I think he can enlighten you, you know, some on that. [LB272]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB272]

ROBERT DOYLE: Thank you. [LB272]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB272]

MARK WESTERGARD: Good afternoon, Chairman and members of the committee. My name is Mark Westergard, W-e-s-t-e-r-g-a-r-d. I'm with E&A Consulting Group out of Omaha and we've been in the engineering business highly related to the sanitary and improvement district business for about 40 years. So hopefully, and I'm going to not go over some of the things that Mr. Doyle and Mr. Friend talked about, but just maybe lend some engineering expertise and technical issues to the item. I am a proponent of the bill and I guess I'd like to be even stronger than Senator Friend and Mr. Doyle. The sanitary sewers and storm sewers are marked in the field and that's why it is really unnecessary that they get a paint mark put on the pavement to show where they're at. The, the...in the city of Omaha, at least, all sanitary sewers and all storm sewers run in a straight line between the structures, so there's no guesswork. There's not curves. If an inlet or a manhole is in place, it's a straight line to the other manhole. So they are de facto marked in the field already so that anybody can tell where they're at. To answer Senator Loudon and Senator Hadley's questions on plans, Senator, improvement districts are required to do a full set of as-built drawings that is to, that is submitted to the city of which their jurisdiction is part of. So those as-builts become of record, they're put in some master plans with the city that will eventually be eligible to annex the SID, and those records can be readily accessed by anyone actually. You know, the engineering company, we do a lot of work for the SIDs. We could certainly go out and take a half hour, go to the site, mark a sanitary line on it, mark a storm sewer line on it, it's just totally unnecessary. If I put my business hat on, I would love to do that. That would be great to be able to charge that but it's just not necessary for a sanitary and improvement district to do that. They're clearly evident in the field. And I guess I'll echo the fact that there really, there is not a public safety issue either. We're transporting a wastewater and storm water in these pipes. Usually sanitary sewers are made out of a plastic material, a PVC, and the storm sewers are concrete. And if there is some damage done

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to them, they are readily repairable, and the environment or personal safety of an operator is not an issue with these lines as it would be in a gas line or a power line if you hit that, so. And I would also say, to my knowledge, in all the municipalities that I deal with, I do not know of any of them that mark their sanitary and storm sewer lines. I think that was alluded to by, you know, Mr. Doyle and Senator Friend, but I would confirm that, that that is not done. I think that concludes my testimony. If I can answer any questions, I would be happy to. [LB272]

SENATOR FISCHER: Thank you, Mr. Westergard. Are there questions? You made the comment that it was not necessary for an SID to mark lines. Do you believe then it's not necessary for a city to mark them either? [LB272]

MARK WESTERGARD: That's correct. [LB272]

SENATOR FISCHER: Okay. Other questions? Thank you. [LB272]

MARK WESTERGARD: You're welcome. [LB272]

SENATOR FISCHER: Other proponents? Any other proponents for the bill? I see none. First opponent, please. Good afternoon. [LB272]

TIM PROKSEL: (Exhibit 2) Good afternoon. Tim Proksel, P-r-o-k-s-e-l. Good afternoon. Hello, I'm here today. I want first of all the Chairman Fischer and the committee members for their time they commit to public service. Thank you. I'm here today to represent statewide One-Call board of directors in opposition to LB272. The state One-Call board of directors is comprised of 22 members and various stakeholders. The stakeholders consist of two local telecommunication companies, two long-distance telecommunication companies, three members representing municipality owned utilities, two members representing public power districts with more than \$40 million in gross revenue, two members representing public power districts of electric cooperatives with less than \$40 million in gross revenue, two members representing cable television companies, two members representing natural gas distribution companies, two members representing transmission pipeline companies, one member representing rural water districts, one member representing governmental utility providers, one member representing private excavation contractors, and one member representing the Nebraska Department of Roads, and one more member representing the county governments. All board members are appointed by the Nebraska State Fire Marshal. I'll just give a little history on the background information. In 1994 the Nebraska Legislature passed a new law called the One-Call Notification Systems Act. It is found in the Revised Statutes of Nebraska forms...from Section 76-2301 to 76-2330. It said that everyone who excavates or otherwise disturbs the surface must first call the state One-Call Notification Center, Digger's Hotline. Digger's Hotline of Nebraska, the statewide One-Call Notification Center, which is set up under the new law is a link

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between people who want to excavate an underground facility, owner-operators. What is an operator? How is it defined? Operator shall mean a person who manages or controls the function of underground facility, but shall not include a person who is an owner of, a tenant of real property where underground facilities are located if underground facilities are used exclusively to furnish service or commodities to the real property. And that's in the that, the red One-Call book that you have here. An underground facility shall mean any term of personal property buried or placed below ground or used in connection with the storage or conveyance of water, sewage, electronic communication, telephonic communication, telegraphic communication, cable television, electronic energy, oil, gas, hazardous liquids, or other substances including pipes, trunk lines, fiberoptic cables, sewers, conduits, cable, valves, lines, wires, metals, and attachment to such personal property. The purpose of the act is to salvage means by which an excavator may notify the One-Call Center. I believe we went over that and I won't go over it again. But we all know it's here to...for, so they want to call in for public safety. The board of directors of the One-Call Center is opposed to LB272. LB272 seeks to exempt certain underground facilities owned by sanitary and improvement districts from compliance with requirements of the act. These requirements include becoming a member and participate in the One-Call Center. SID would avoid paying their fair share of the cost to the One-Call Center, thereby frustrating the statutory obligations of the board of directors. Exemption of the SIDs would place excavators at undue risk since they would be denied opportunity to observe proper precautions to safeguard a sanitary sewer and storm sewer lines from damage. Such an exemption would also defeat the legislative purpose of the act which is to aid the public by preventing injury to persons and damage to property, an interruption of utility services that resulting in accidents caused by damage to the underground facilities. By the way, I'm in this other packet, I'm sorry about that. Often excavators frequently are called upon to excavate a public right-of-way or an easement area owned by SID because the residential development taking place within the SID. The bill would create confusion because not all underground facilities owned by SIDs would be exempt from the requirements of the act. If this bill were to pass, this places the excavator in an untenable position. For all the reasons given, the above board of directors of the One-Call Center is opposed to LB272. Thank you. Any questions? [LB272]

SENATOR FISCHER: Thank you, Mr. Proksel. Are there questions? Senator Gay. [LB272]

SENATOR GAY: Thank you, Senator Fischer. If...wouldn't storm and sanitary sewer be placed first and in this article you gave, they're going right through there? [LB272]

TIM PROKSEL: That is true. [LB272]

SENATOR GAY: So why would the...wouldn't the people going through their pipes be liable for all these? Why would the taxpayers be paying for someone else's mistake,

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because it looks to me like they drilled right through the storm sewer? And this is a Sioux Falls example you gave us. Why would it be the guy on the, that lives in the SID or on the board? Why do I have to pay for someone else's negligence to go right through? [LB272]

TIM PROKSEL: Well, for example, if it was not marked and the person was not aware that that utility was there, you know, the excavator would not know that. [LB272]

SENATOR GAY: Yeah, but at some point why wouldn't you spread your fees out amongst the people who created the problem? I mean, the...we're in the marking thing but you handed out an example I think that's...I see where you're getting at but for the taxpayer ultimately who is going to pay this bill on the SID, if you could shift the...the marking issue is a different thing but I guess the question is, these problems occur after-the-fact. They shouldn't be doing that anyway and we're already checking for, if they were doing it the right way. We're checking for those with the One-Call, the gas and all those things. [LB272]

TIM PROKSEL: Sure. [LB272]

SENATOR GAY: So, I mean, before you... [LB272]

TIM PROKSEL: For example, if the gas is hit, and we put it in the ground and we marked it, and the excavator hits a gas line, you know, that within the limitations of the law the excavator would repair for that repair. You know, if it's mismarked, then that would be the company's, you know, out of their pocket to repair that. I mean, they didn't mark it according to how the law requires. So if the utility is marked properly and an excavator hits it, the excavator will pay for that. I mean, does that answer your question. [LB272]

SENATOR GAY: I'll rethink my question, I guess, and get back again. [LB272]

SENATOR FISCHER: Senator Stuthman. [LB272]

SENATOR STUTHMAN: Thank you, Senator Fischer. How often is this One-Call or Digger's Hotline utilized? How many calls do you get a year on that? Have you any idea? [LB272]

TIM PROKSEL: Yeah, I mean, in our company we get, I don't know what, 47,000, I want to say. I don't know the exact number. I don't know the answer to that at this time. I can get that answer for you though. [LB272]

SENATOR STUTHMAN: 47,000. Is there any difference between underground utilities in an area throughout the community or town as would be in an SID? I mean they're

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both going to be underground and they both should be checked out, don't you feel that?
[LB272]

TIM PROKSEL: Absolutely. And most utilities are underground nowadays. I mean, directional bore, plow-in, yes. [LB272]

SENATOR STUTHMAN: And no matter where a contractor is going to do underground service, I feel, you know, they should notify the Digger's Hotline and get it identified.
[LB272]

TIM PROKSEL: Absolutely. [LB272]

SENATOR STUTHMAN: Okay. Thank you. [LB272]

SENATOR FISCHER: Other questions? Senator Hadley. [LB272]

SENATOR HADLEY: Senator Fischer. Thank you, Mr. Proksel. In your comments here, it says that there are 50 of the 200 SIDs are members. Why would they be members? I mean, do they map their storm sewer and such as that or... [LB272]

TIM PROKSEL: I can't speak for all of them. I mean, I know some have hire, you know, their party people to come in and do the locating. You know, that the manner, I don't know how they do it or they don't do it but I know some cities do them. They contract with the city maybe in other areas to do the work for them. [LB272]

SENATOR HADLEY: Second question. What is the legal mechanism? Who goes out and determines that a city or whoever is not doing the right marking and letting One-Call know, informing One-Call that they're doing work that they should inform One-Call?
[LB272]

TIM PROKSEL: I mean as far as, as far as...normally if somebody is not doing work as a utility you want to observe and that can be turned over and normally the utility would stop by if they had seen somebody excavating without a One-Call ticket. You know, we need to prevent damage. [LB272]

SENATOR HADLEY: Okay. I was thinking more of, of kind of the idea of who...what's the penalty if I don't let One-Call know that I put utility lines or a storm sewer or something down? Is it voluntary, or... [LB272]

TIM PROKSEL: The penalty is that we...this law was not enacted to enforce the penalty on a person or company. It was to educate, you know, about underground construction, public safety, and right now what the penalty is, the Attorney General, we submit contractors, utilities, anybody excavating has an opportunity to submit a complaint to the

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Attorney General if they choose to do. And the Attorney General will review the case and decide what the...you know, if there's any punishment at all. I mean, in several cases it could be just a letter sent that says, hey, you know, here's the law and review it please. [LB272]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Lautenbaugh. [LB272]

SENATOR LAUTENBAUGH: Thank you, Senator Fischer. Thank you, sir, for coming today. This apparently is arising now because there's been a complaint to the Attorney General's Office that the SIDs were not marking their sewers, is that correct? [LB272]

TIM PROKSEL: It's rising now...I don't know the real reason why it's rising. What we're trying to do as a board is educate our communities, cities, and villages, you know, it's a law here that we need to follow the law, you know. As more people start doing more digging, directional boring, you know, damages occur, you know, lives get lost and property gets damaged so, you know, basically we are trying to educate our communities throughout Nebraska and we spend money, that's where, you know, our dollars are spent to educate and advertise. [LB272]

SENATOR LAUTENBAUGH: Understood. So did your board contact the Attorney General's Office and complain about the SIDs? [LB272]

TIM PROKSEL: We never complained about the SID. A letter was sent to...probably from the One-Call Center that we manage and they, you know, and they may not have responded so maybe the Attorney General wrote them a letter or sent them a letter to say, hey, just as long as you get their attention to saying, you probably should check into this or, you know, sign up to be a member. [LB272]

SENATOR LAUTENBAUGH: So was the letter then a request that they start marking these sewers and drains? [LB272]

TIM PROKSEL: The request was to sign, to be part of the One-Call Notification System. [LB272]

SENATOR LAUTENBAUGH: Have there been any incidents to date with the sewers and drains to your knowledge being unmarked and causing damage? [LB272]

TIM PROKSEL: I mean, to date or (inaudible) I personally have been on, you know, pipelines and sewers where they were either hurt, you know, damaged from storms. You can see from the package there are some pictures of pipelines within the storm sewers and they get damaged, you know, in a heavy storm. Depends on what type of pipeline is in there. [LB272]

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SENATOR LAUTENBAUGH: I just mean within these SIDs around Omaha and Lincoln. [LB272]

TIM PROKSEL: I'm not aware of, I mean. [LB272]

SENATOR FISCHER: Thank you. Other questions? Senator Hadley. [LB272]

SENATOR HADLEY: If cities and townships are not following this now, why should we expect the SIDs to do it? [LB272]

TIM PROKSEL: I believe every city except for some small villages with, maybe without underground facilities are following it. I believe Omaha, Lincoln, they're all members of the One-Call Center. You got... [LB272]

SENATOR HADLEY: No, I understand they're members of the One-Call Center. I guess I'm asking if they're not marking storm sewers and such as that now, Papillion, Omaha, whoever it might be, why would we expect SIDs to do it if we're not enforcing the law against? [LB272]

TIM PROKSEL: I believe they are marking the sewer, I mean... [LB272]

SENATOR HADLEY: Okay. [LB272]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here today. [LB272]

TIM PROKSEL: Thank you very much. [LB272]

SENATOR FISCHER: Next opponent, please. Please step forward. Good afternoon. [LB272]

ANDY HARTMANN: Good morning, or good afternoon. (Laughter) My name is Andy Hartmann, H-a-r-t-m-a-n-n, and I'm here not representing anybody except contractors. I sat in this room in 1993 and testified for the One-Call System and the next year it became law. At that time I testified for a One-Call System, not a One-Call...or a One-Call almost system. Everybody ought to belong to this system. It seems to me as I sit here and listen, it's all about money. That's all I hear, money, money, money. I haven't heard one body, anybody up here talk about the safety of a contractor's employees. Digging a sewer line that someone said is not, no danger. I've been in a sewer line or we cut into a sewer line once at a six foot depth, not twelve, and I and my employee were glad and awful glad we got of there because at the time we got out the ladder, it was up to our necks. And I'll tell you what, you sit in a bunch of sewer, sewer water with everything imaginable going by you, trying to keep your head above that

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sewer water, you know what danger is. So you dang right, it ought to be...everybody ought to belong. And like I said earlier, there's a lot of lines out there that are not 12 foot deep. You may have a main out there in the street that's 12 foot deep, but what they don't tell you is that the line coming from the house or the business may only be 4 feet, it may be 6 foot at the curb. And they get out to the main, then it drops into a deeper one. So you don't assume anything. I think the people that built the Titanic assumed it wasn't going to sink either, and it did if you know history. There was an incident here in South Dakota which I think someone gave you a brochure on. It doesn't look so bad. Just a bunch of lines going through a storm sewer. Trouble is, some of those were gas lines, if I remember right. Let's just say there's a heavy storm and let's say, you know, there's a lot of water pressure if you know anything about hydraulics and water going through that storm sewer. You get a rock rolling down there, a piece of concrete hits that gas line, it ruptures it. And don't tell me it can't happen because the Titanic sank, remember that. That gas line it springs a little leak here, let's say two weeks down the road, that, you know, the time the gas lines leaking, this little piece, you know, a little gas coming out that line. Some guy decides to throw a cigarette down that inlet, half the city blows up. Somebody going to say, oh, that's no big deal, there's no danger involved in that. There's a lot of danger out there. One of the things I testified when I was...in 1993 was a lot of the small towns in my area. Most of...some of you people that are a little older we remember that the small towns never did have water nor did they have sewer. Everything was a little outhouse or a well. Well, the small towns they decided to have this water, and water systems and sewer systems. Boy, it was a great thing. Oh, they had some maps, sort of, kind of put together randomly. And there was always that one guy that was around when that was installed. Usually his name was Ray, most of the time. (Laughter) He knew where everything was. He knew where that water shutoff was over there by the school or where the church was. But you know, them old Rays, they died off, and they were no longer available to go find that water shutoff. And that's the same way with the SIDs around the area where I live. A couple of them put in, there was always this guy Jim, was his name. (Laughter) He was able to go out and say, yeah, I think we put it about in this area here, maybe over there. He didn't really know. But he was pretty sure that was about where it was, so they went and did it. You know, we all kind of worked together. It was no big deal. But you've got to remember a lot of them guys are dying off. They're not around anymore. Their mind goes or it all wanders as we get older. So then we have to rely on an engineering service sometimes to come out and tell us, yes, there is a line there. And a sewer line, yeah, they're supposed to be in a straight line but I know dang well, they're not all in a straight line, kind of, but not quite. But when you're sitting on...you're an excavator digging a trench and that so-called straight line, you're off about six or seven inches or maybe two foot, all of a sudden you nick a sewer line. Well, if they didn't mark it, or it was marked wrong, then the excavator, they're free. I mean...but if the contractor goes in there and digs it up anyway without it being marked, not calling a One-Call Center, then he's at fault, he must pay. And I agree with that. That's what this law was built for. So I believe that...I know that I've kind of rambled a little bit, but some of the things that was said they kind

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of took me aback. And I think the contractor, as a contractor and the public at large, we should be able to call one number, which it is right now, and know where the utilities are marked. Not, well, I made the call to the One-Call Center, now I wonder who else I have to call. That's not what this law is intended for. So I guess right now that's kind of the end of my somewhat comments. [LB272]

SENATOR FISCHER: Thank you, Mr. Hartmann. I just have a couple questions. Do you know how much it costs to mark? [LB272]

ANDY HARTMANN: No, I do not. All I know is it costs a lot, lots of money if it isn't marked. [LB272]

SENATOR FISCHER: Can you as a contractor when you're doing excavating work, can you stand there and look to one side and look to another and know where it is? [LB272]

ANDY HARTMANN: No, I cannot. [LB272]

SENATOR FISCHER: Other questions? Senator Gay. [LB272]

SENATOR GAY: Thank you, Senator Fischer. On these pictures that were handed out to us and you get, where they went through a storm sewer or other things, that's obviously you're, I assume, you're not supposed to be doing that. I mean, is that fairly common do you think in your business. [LB272]

ANDY HARTMANN: I'm not in the boring business. I am surprised they just kept going but again that, if the line was...if that storm sewer was marked and the boring contractor went through it, knowingly he went through it, then I would say he's, you know, liable. That's just the way...what I think, but... [LB272]

SENATOR GAY: You would think. [LB272]

ANDY HARTMANN: Go ahead. [LB272]

SENATOR GAY: Well, this is a Sioux Falls example... [LB272]

ANDY HARTMANN: Yes, I know, I think I know which one you're talking about. [LB272]

SENATOR GAY: ...that the guy's handed out so I assume that's for just for conversation and we're trying to prevent something from happening. [LB272]

ANDY HARTMANN: Sure. [LB272]

SENATOR GAY: But I guess is there a penalty or anything that you know of? Or if you

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don't know that's fine. But I mean, is there a penalty for a gas line to go through a storm? I mean there should be. [LB272]

ANDY HARTMANN: Oh, yeah, if you knowingly go...or if you hit anything you don't tell nobody, sure. [LB272]

SENATOR GAY: Yeah, if you knowingly go through it. So they discovered 250 cases where this is going on. So is this kind of, oh shoot, but go through it? [LB272]

ANDY HARTMANN: Oh, I think some people want to cover it up. I think we've had...if I have hit something that was marked and sometimes that happens because you always got that, I'll take one more bite or one more dig, you know, that's usually what gets you in trouble. When you assume that's deep enough. But if we hit something, then we usually try to get ahold of utility and tell them, hey, we just hit this, we nicked it. And normally, if it isn't too major, they'll just come out and fix and say, thanks for letting us know, but be careful, so, you know. Yes, if you do some major damage and try to cover up, well, you've had it. I don't even know if your insurance will cover you if you try to cover it up, so. [LB272]

SENATOR FISCHER: Senator Hadley. [LB272]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Hartmann, you're obviously in the construction excavating business. Have you ever made a call to the One-Call Center and had them tell you that there are storm sewers and such as that in the area? [LB272]

ANDY HARTMANN: Yes, I have. [LB272]

SENATOR FISCHER: Other questions? I see none. Thank you for being here today. [LB272]

ANDY HARTMANN: Thank you. [LB272]

SENATOR FISCHER: Next opponent, please. Any other opponents? Please step forward. And I don't want to rush people, but if you would be concise and offer some new information that would be good. We do have four bills up today. Good afternoon. [LB272]

CRAIG CHRISTIANS: (Exhibit 3) Hi. I'm Craig Christians. I'm the manager of the city of Omaha's Sewer Maintenance Division. Christians, C-h-r-i-s-t-i-a-n-s. I've been with the Sewer Maintenance Division with the city of Omaha for approximately 20 years. I'm a opponent of this bill, and most of my points have already been expressed by folks with the One-Call System and the contractor here, but I just want to elaborate on a couple of things that have been said previously. The city of Omaha does in fact mark its sewer

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lines. We are a member of One-Call. We do receive all the calls for requests, so I said that, just want to clear that that we do participate and we do mark our sewer lines. Secondly, there's been some statements made about, you know, just standing and looking side to side and just eyeballing a straight line between sewers. You can do that a lot of the times, I will agree, but there are cases where manholes are either buried, you're in a field, contractors leave them under pavement when they pave. Also the fact is that manholes are typically 300 feet apart. It's not like you can have one right here on my left and right and just kind of eyeball between it. That's a fairly long line of sight. There are on rare occasions when the sewer is on a curve and I would agree with what was stated earlier that that's fairly rare. They're usually on a straight line, but again the manholes are 300 or more feet apart, which makes eyeballing difficult for a contractor. We have...our example, or our personal experience with the city of Omaha is, we do suffer hits from contractors. I would say on the average eight to ten times per year we have a sewer that is hit by a contractor. It seems to be more and more of the boring contractors lately. A comment was made about the sewers being very, you know, deeper than most of the utilities. I would agree with that statement also, but it seems like the boring contractors, for whatever reason, you know, control their machines or whatever the reason, we have had some hits. And I'll just...usually, you know, those can be repaired. But I can state specifically, one instance where an electrical utility bore through our sewer line, was never reported. We're out there doing some cleaning, you know, six months or a year later and we have a piece of equipment, we have what is called a jet saw. It's a rotating saw and a nozzle. It hit that line that was buried. We had a small explosion. No one was hurt. Obviously, we found the defect and went in and repaired it. So you know it does happen. Gas lines get bored through sewers, electrical conduits get bored through sewers, and yet that's...the contractor alluded to, you know, the safety of his employees and I guess that's what, you know, concerns me also, is that there's something like that waiting for us to find with a piece of equipment when we're out doing maintenance. That...pretty much everything else has been stated before. I just wanted to clear up some of those points, so that pretty much concludes what I have to add. [LB272]

SENATOR FISCHER: Thank you, Mr. Christians. Are there questions? Senator Stuthman. [LB272]

SENATOR STUTHMAN: Thank you, Senator Fischer. Craig, what is the charge to be a member of this One-Call or what...it's a service but there needs to be, there's a charge somewhere. [LB272]

CRAIG CHRISTIANS: Right. There's a couple of costs to us, well, there's...the cost of our employees out there in the field and doing the locates, that's probably the most significant cost. We contract with a web based kind of ticket clearinghouse that kind of manages all the requests that come into us. And I believe we paid somewhere in the \$15,000 to \$20,000 annually for this service, but that's just to manage the enormous

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number of tickets that are coming in. And then finally, and I don't want to misspeak here, but there's a charge per ticket from the One-Call System and quite frankly, I can't tell you what that is right off the top of my head. [LB272]

SENATOR STUTHMAN: But if a contractor would call in and say I'm going to be doing some underground work in this area, does that individual that makes that request pay a fee? [LB272]

CRAIG CHRISTIANS: I don't believe so, but again not knowing the interworkings of the One-Call System... [LB272]

SENATOR STUTHMAN: That was the way I understood it. It's more of a protection, you know, for that individual if he calls that he's...and it's identified. If he doesn't call and it's not identified, then I think there's some real liability factors there. Okay, thank you. [LB272]

SENATOR FISCHER: Senator Campbell. [LB272]

SENATOR CAMPBELL: Thank you, Senator Fischer. In the letter that you've given to us you indicate that the city maintains a geographic information system. Do you think most cities are now using that to map every, or... [LB272]

CRAIG CHRISTIANS: I'm aware of, you know, the larger systems. Lincoln's got it, Grand Island's got it. Omaha's got it. It's quite an expensive undertaking for a smaller community so I would bet that some of the smaller ones do not. [LB272]

SENATOR CAMPBELL: Do not. Okay. [LB272]

SENATOR FISCHER: Other questions? Senator Hadley. [LB272]

SENATOR HADLEY: Senator Fischer. Mr. Christians, have you ever been involved with Omaha annexing an SID or an SID community in Omaha? [LB272]

CRAIG CHRISTIANS: Yes. Annually, yes. [LB272]

SENATOR HADLEY: Annually. Do you...if they have not mapped their sewer system and such as that, do you go out and map the sewer system then to make it a part of your One-Call base? [LB272]

CRAIG CHRISTIANS: Typically, the engineer that has worked for the engineer, that has worked for the SID was the engineer that designed the SID originally and has been retained by the SID to take care of problems as they arise. They have a set of plans which...you know, they pass on to us. Most of these SIDs are within the zoning

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jurisdiction of the city of Omaha so when they go and make requests for, you know, to approve the original platting, we get the sewer map at that time. Now, you know, that doesn't necessarily mean that we incorporate that into our system, you know. But when we under...when we take an SID into the city as an annexed part of the city, you know, we will check that, those plans that we have received from the engineer against what's out in the field. Typically, those plans are very good and reflect accurately what's in the field. But there are occasions when, you know, through the course of going out and maintaining the system for the first time as the property of the city, we find that it's not as it says it is. Did that answer your question? [LB272]

SENATOR HADLEY: But then it does become a part eventually of your GIS System? [LB272]

CRAIG CHRISTIANS: Yes. [LB272]

SENATOR HADLEY: And so that if somebody is going to dig out there... [LB272]

CRAIG CHRISTIANS: Yes, and this... [LB272]

SENATOR HADLEY: ...when it's a part of Omaha, you've incorporated that into your system, so. [LB272]

CRAIG CHRISTIANS: Right. And I'll say in this kind of the age of, you know, digital or electronic, we get, you know, that plans in that format which makes it pretty easy to bring into our GIS system. [LB272]

SENATOR FISCHER: Other questions? I see none. Thank you. [LB272]

CRAIG CHRISTIANS: Thank you. [LB272]

SENATOR FISCHER: Next opponent, please. Do we have other opponents? Good afternoon. [LB272]

DEONNE BRUNING: Good afternoon, Senator Fischer and members of the committee, my name is Deonne Bruning. That is spelled D-e-o-n-n-e, Bruning is B-r-u-n-i-n-g. I am appearing today as an outside lobbyist on behalf of Northern Natural Gas Company. Northern operates 1,671 miles of pipeline in the state of Nebraska. And for the many of the reasons that were reiterated earlier by the testifiers about public safety, Northern is very concerned about any exemptions that occur to the One-Call legislation, and does oppose this bill and encourages you to kill it. And I'd be happy to answer any questions you may have. [LB272]

SENATOR FISCHER: Thank you, Ms. Bruning. Any questions? Senator Gay. [LB272]

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SENATOR GAY: Thank you, Senator Fischer. The question is, they showed pictures where gas is going right through a storm sewer. Do you...your policy is not to do that I'm sure, but is there a penalty if, is there a law or some penalty if you do that? I mean, I just can't imagine that this is a common practice to do that. [LB272]

DEONNE BRUNING: And I'm only just vaguely familiar with the pictures that were circulated about, it being somewhere in South Dakota, but I believe they were unaware that that was a sewer pipeline. And when they're boring, and this would go for any company, I believe that you can hit tree roots, you could hit things down below. [LB272]

SENATOR GAY: Oh, so you can go right through, okay. [LB272]

DEONNE BRUNING: So it does not necessarily mean that they hit something and then just kept going thinking, oh, well. They may have actually thought there was something below ground but it not being a sewer line, but perhaps a very large tree root, even large thick rocks. [LB272]

SENATOR GAY: So they could go right through it and not even know they're going through that? So it would be unintentional? [LB272]

DEONNE BRUNING: I would presume. I would hope. I would presume it would not be the practice of intentionally... [LB272]

SENATOR GAY: Yeah, but it's not the practice. Yeah, I would think. I mean I'm just not familiar with the thing. [LB272]

DEONNE BRUNING: But I think when you do go underground there is some resistance that you're going to face and with it not being marked, you do not know what that would be, if it be a tree root, heavy, thick, dense rock or a sewer line. [LB272]

SENATOR GAY: Thanks. [LB272]

SENATOR FISCHER: Other questions? Senator Louden. [LB272]

SENATOR LOUDEN: Yeah, thanks, Senator Fischer. Well, I presume your gas company bores all over the state of Nebraska and in some of your other towns, well, say for instance in Sidney or some place like that, do they mark off the sewer line when you want to bore in that areas or what do other towns do? [LB272]

DEONNE BRUNING: You know, I personally am not aware, Senator Louden, but I would be happy to answer that question of giving you Northern's experience because they do travel through the state and would have a, probably a variety of experiences.

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My own personal guess would be it would vary. It's probably being marked in some places and not being marked in others, but that would be my...I would want that subject to check and if Senator Fischer does not mind, I'll be happy to provide that as a response back to the committee. [LB272]

SENATOR LOUDEN: Well, because I'm wondering right now the way this bill is written, it's, the most of the testimony has been directed on what's going on in Omaha and, of course, there's other areas in the state that you're drilling lines various times anyway. And that's what I was wondering how you treat the rest of the state if you have to find or you do a One-Call when you're out there or what. [LB272]

DEONNE BRUNING: I would expect that that response would be mixed in that they do see marking done in some places and other places it's being ignored. [LB272]

SENATOR LOUDEN: Okay. Appreciate that information. [LB272]

DEONNE BRUNING: I will be happy to follow that up with a letter to Senator Fischer with to all the committee members as well. [LB272]

SENATOR FISCHER: Thank you for doing that. Thank you for testifying. [LB272]

DEONNE BRUNING: Thank you. [LB272]

SENATOR FISCHER: Next opponent, please. And how many more opponents do we have? This is our last one? All right. Good afternoon. [LB272]

SUSAN LYNCH: Good afternoon, and I want to thank you for your time. My name is Susan Lynch, L-y-n-c-h, and I am the director of the One-Call in Nebraska. And I am going to answer some questions that were asked that there wasn't real clarity on the final answer, and then open it up for any further questions you may have regarding the One-Call in Nebraska. First of all, the question was asked on how many locate requests that we receive per year. In 2008 we had over 274,000 requests to have an area marked because they would be excavating in the state of Nebraska. There was a question as to how much it cost to have a facility marked. If you were using...I'm going to...what I'm going to do is quote the price with the industry is in Nebraska for private locate companies, understanding many of our utilities hire internal employees to do that marking. But if you do not have anyone on staff to do the marking, a private locate typically will run \$50 an hour and that's just the going rate in Nebraska to have private facilities marked. There was a question asked on how much a member pays to become...or to be a member of the One-Call. There is no fee to be a member. You are charged on notifications only. So you only pay the One-Call when you receive a notification that somebody will be digging in the area in which your facility is located. That fee is typically a \$1.04, \$1.04 up to approximately \$1.50, depending on how they

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wish to receive the notification. If they ask us to send the notification via e-mail, it will be the \$1.04. If they ask for us to call them every single time, that price goes up and that's...I would be happy to provide the pricing structure to the committee prior to this. One of the things that was referenced with the city of Omaha, he mentioned his ticket management system which was in the thousands of dollars. I just wanted to reemphasize that that is not affiliated with the One-Call itself and those fees are not paid to the One-Call. That's an internal management system purchased by the city to manage their ticket load and is outside of the fees that would be associated with the One-Call. And another issue that I wanted to address was the question about the rural areas in the state of Nebraska. One-Call applies across the state of Nebraska, across the United States, and in many of the provinces in Canada. And a One-Call anywhere in the state of Nebraska according to the state statutes, if you are disturbing the soil anywhere in the state of Nebraska, whether you're a professional contractor, a homeowner, you are required to make that One-Call, that free One-Call. I do want to emphasize that when the caller calls, it is at no cost to the caller to just ensure the area in which you will be excavating is free of any utilities that can either harm the person excavating or the property associated with that. And with that, I'd be happy to answer any other questions that you have. [LB272]

SENATOR FISCHER: Are there any questions? Senator Stuthman. [LB272]

SENATOR STUTHMAN: Thank you, Senator Fischer. Susan, it is my understanding that any, any operation done in a county right-of-way or in the right-of-way under the jurisdiction of a community or a city, you know, must get the permission from that government agency to allow something to go in that right-of-way, correct? [LB272]

SUSAN LYNCH: Correct. I'm going to use the example...I'm sorry. [LB272]

SENATOR STUTHMAN: And that would, and that would be identified then through the records of the, you know, county establishment, the municipality, the village, or anything like that, that there is utility or sewer line going in a certain area of a right-of-way. [LB272]

SUSAN LYNCH: There's going to be certain permitting systems that when anybody would install underground facility, I mean, there's other things besides the One-Call that they're going to have to register with. If that... [LB272]

SENATOR STUTHMAN: Yes, that answers. Is there ever an occasion when it goes through private property, a utility line or fiberoptic line or anything like that, do they go through private property or do they mainly stay in road right-of-ways? [LB272]

SUSAN LYNCH: For clarity, and because I can't say 100 percent of the time, they mainly stay in right-of-ways. That's the preferred method, but Nebraska is a big state

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and there could be some private property and one thing I want to emphasize in that, is we've got a lot of farm ground in the state of Nebraska that would be considered private property that would go through some of those areas. [LB272]

SENATOR STUTHMAN: But most generally if that does happen, there usually is a marking, you know, that there is an underground service at, you know, going down the road, just like a fiberoptic line or telephone line or a gas line. [LB272]

SUSAN LYNCH: Absolutely. Right. And what we call those, we call those pipeline or, you know, telecom markers, which just let's the excavator know that there is a facility within that area. But they are by no means, whatsoever, a line of sight marking, simply because a pipeline...maybe installing a pipeline and there's already a fiber line in there, well, they can't put that marker right on top of the fiber line so they may have to have it off a couple feet. But it's just a reference point to let them know there is a pipeline within that. [LB272]

SENATOR STUTHMAN: In the area? [LB272]

SUSAN LYNCH: Absolutely. [LB272]

SENATOR STUTHMAN: Okay. Thank you. [LB272]

SUSAN LYNCH: You're welcome. [LB272]

SENATOR FISCHER: What do other states do? Do they have laws similar to Nebraska's? [LB272]

SUSAN LYNCH: Yes. [LB272]

SENATOR FISCHER: Do they have SIDs in other states? And if so, are they covered under this? [LB272]

SUSAN LYNCH: It varies from state to state. Every legislation is different. Every state's legislation changes on an annual basis. So you would have to go out on a state by state basis but the over...the overwhelming majority of legislation is going towards all of them to have their facilities registered and be members and recognize that. [LB272]

SENATOR FISCHER: Thank you. Appreciate you being here today. [LB272]

SUSAN LYNCH: Thank you. [LB272]

SENATOR FISCHER: Any other opponents to the bill? Anyone wishing to testify in the neutral capacity? Good afternoon. [LB272]

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm the utility section director for the League of Nebraska Municipalities. And we are, we are neutral on this bill. We don't have a position, but I would like to clarify some things that I've heard. By and large cities and villages do locate water or wastewater and storm water facilities. Since the early '90s...I'm the staff member that primarily works with the city public works and utilities departments. We've incorporated into all of our of training events, you know, on a semi-regular basis, location techniques, including techniques for harder to find facilities such as wastewater and storm water facilities. You know I can't speak to the specific examples but this is something we've sent out numerous publications over the years particularly in the mid '90s when this issue was first coming up advising cities to, to utilize this system, and for city, the big hammer in this system is not necessarily the threat of fines. The big hammer is that the system changes how damages are allocated. And instead of putting it in a court system, it just says you don't locate, you're responsible, you're sans negligence, these sort of things. And it's cheap insurance for even the smallest village to go locate their facilities to avoid having the burden of damages shifted over to them. So I'd be somewhat surprised to find...and I've been on location where cities have, have located wastewater facilities. So I do know the practice is that they do this. There probably are examples which not happened but that is...at this point is not my knowledge. Senator Campbell, you had a question on GIS. GIS is not yet heavily utilized in this state below, you know, cities of 5,000 or less. It's an expensive mechanism and quite often, the old paper maps are often more accurate than the GIS system. You know, the world...computers have gone quite a ways but sometimes the old 1919 map is a little more accurate. But it's, you know, and techniques do vary for each type of utility and public works operation how they find those underground facilities. They might rely on vibration or it might just rely on, as someone over here suggested, going like this and drawing a...there's different colors for each line. I think it's a white line for wastewater. I'm not entirely sure, but it may be that simple in some cases. But it is, it is a practice that cities do engage in, so. Does anybody have any questions? [LB272]

SENATOR FISCHER: Thank you, Mr. Chaffin. Are there questions? Senator Louden. [LB272]

SENATOR LOUDEN: Yeah, well I asked the testifier before, you know, what was going on in other states, or in other towns across Nebraska and so you maintain that other towns and smaller towns in other parts of the state go ahead and do the One-Call even for their sewer lines and their wastewater lines? [LB272]

LASH CHAFFIN: I believe they do. Yeah, we've never surveyed on this issue directly. It's never really been brought up to us but just my intuition and being in the field with cities and villages tells me that it's fairly common practice to locate these facilities. [LB272]

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SENATOR LOUDEN: And the hammer you talk about is, yes, if you hit the line, then you pay for it if you haven't called first, it's as simple as that. [LB272]

LASH CHAFFIN: That's a big hammer. [LB272]

SENATOR LOUDEN: Yes, and we even on the ranch where we have telephone lines that cross that ranch if we think we're close, we call anyway because I don't want to have to pay to have them come out and patch the thing up, so. It's usually a simple process. [LB272]

LASH CHAFFIN: That's exactly the philosophy that most public works directors take. It's better to stop, do it, and just...it's cheap insurance at that point. [LB272]

SENATOR LOUDEN: Okay. Thank you. [LB272]

SENATOR FISCHER: Thank you very much, Mr. Chaffin. Any other ones...any other people who like to come forward in the neutral capacity? I do have a letter from the State Fire Marshal providing us with information on this. And with that, Senator Friend has waived closing and I will close the hearing on LB272. I will open the hearing on LB330. We have two hours to get through three more bills. I reserve the right to limit testimony so I suggest you be concise, and my apologies for having an hour and a half on the first bill. We'll start lights, I believe, next week. Welcome, Mr. Vaughan. [LB272]

DUSTY VAUGHAN: Thank you Senator Fischer and members of the Transportation Committee. [LB330]

SENATOR FISCHER: Concise now, Mr. Vaughan. (Laughter) [LB330]

DUSTY VAUGHAN: This will be as concise as it gets, Senator Fischer. (Laughter) And members of the Transportation and Telecommunication Committee, for the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB330 was introduced by the committee on behalf of the Public Service commission. The bill is considered nonsubstantive and makes technical changes to the telecommunications regulations statutes so that it is clear what rates are subject to commission approval. The bill adds a definition to, of a reseller to the Enhanced Wireless 911 Services Act. The bill also changes reporting requirements for wireless carriers so that they do not have to report to the commission by county. And I'm done with my testimony, Senator Fischer. [LB330]

SENATOR FISCHER: Thank you very much. I see no questions. (Laughter) [LB330]

SENATOR HADLEY: I don't think you looked over this way. (Laughter) [LB330]

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SENATOR FISCHER: Could I ask how many people are here to speak to this bill, proponents? One. Opponents? None. Welcome, Mr. Vap. [LB330]

JERRY VAP: (Exhibit 4) Good afternoon, Madam Chairperson and members of the Transportation and Telecommunications Committee. I'm Commissioner Jerry Vap. I'm the vice-chair of the Public Service Commission. I represent the 5th District which is 51 counties west of Grand Island. [LB330]

SENATOR FISCHER: Could you spell your last name, please? [LB330]

JERRY VAP: Last name is Vap, spelled V as in Victor, a-p. Thank you. [LB330]

SENATOR FISCHER: Thank you. [LB330]

JERRY VAP: I'm here today to testify in support of LB330 and to outline certain amendments we wish to propose. LB330 is intended to be a cleanup bill modifying the effective date of commission orders, clarifying limitations on the commission's rate regulation, adding a definition of reseller, and eliminating a requirement regarding submission of quarterly reports by wireless carriers. We would like to propose some amendments however. The commission would propose that certain changes to be the bill be made. First, we would propose that Section 2, which adds certain language throughout Section 86-141 regarding rate regulation, be removed. Certain parties have raised concerns regarding the impact of the proposed changes. The commission intended this bill to present only nonsubstantive changes, therefore, we would suggest that the section be removed until the issues can be resolved. In order to assist in resolving these issues, it would be helpful for those who are concerned about the language to testify on the record. Secondly, the commission would suggest that Sections 5 and 6 also be removed. Although the commission believes that this is a commonly used and well understood term throughout the telecommunication industry, it has been confused by one carrier with the concept of a general retailer. Such confusion has led to protracted litigation and appeal and unnecessary cost. That carrier has indicated that it will oppose the bill. Therefore, in order to avoid any controversy, the commission would suggest that the two sections be deleted pending resolution of the carrier's appeal. Currently, the commission orders become effective ten days after the date of the mailing of a copy of the order to the parties of record unless a later date is prescribed. Within its Enhanced Wireless 911 program, the commission evaluates funding requests from carriers, public safety answering points. Due to the time lag inherent in the submission and review of these requests, approved payments may require immediate approval or approval based on an earlier effective date. LB330 would allow the commission additional flexibility to tailor its orders to the varied situations that arise within the commission's jurisdiction. Finally, LB330 eliminates the requirement that all information sought in quarterly reports filed by wireless carriers be provided on a

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county by county basis. Some wireless carriers providing prepaid services are unable to provide telephone numbers on a county by county basis. Deleting the word "county" will enable the commission to fashion quarterly reporting requirements that are appropriate to the varied circumstances of wireless carriers providing different types of services. I ask for your support of LB330 and the proposed changes. I'm available for any questions. [LB330]

SENATOR FISCHER: Thank you, Commissioner. Are there questions? I see none. Thank you very much. [LB330]

JERRY VAP: Thank you. [LB330]

SENATOR FISCHER: Any other proponents? Any opponents to the bill? We will waive closing and I will close the hearing on LB330. I will open the hearing on LB183. [LB330]

DUSTY VAUGHAN: Thank you, Senator Fischer. Is it okay if I slow down this time? [LB183]

SENATOR FISCHER: You can slow just a tad. [LB183]

DUSTY VAUGHAN: Okay. For the record my name is Dustin Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB183 requires the approval of the Public Service Commission for the sale of the telecommunications exchange. The purpose of the bill is to protect the interest of all consumers in Nebraska. The bill requires the telecommunications company that proposes to sell any exchange to submit an application to the commission for approval of the sale. The commission shall publish notice of the sale in the newspapers of the counties that are provided local exchange service by the company. In approving or rejecting the application, the commission will consider the public interest with several factors outlined in statute, including adequacy of service, reasonableness of rates, 911 service, and the adequate qualifications of the telecommunications company. The commission may include conditions in the approval that it feels are necessary to ensure protection of the public interest. The bill provides definitions of an exchange and a sale to narrow the scope of transactions that will fall under the commission's jurisdiction. With that, I will end my testimony. [LB183]

SENATOR FISCHER: Thank you, Mr. Vaughan. Questions? I see none. Could I ask how many proponents we have on the bill? One. Could I ask how many opponents we have on the bill? None. Welcome again, Commissioner. [LB183]

JERRY VAP: (Exhibit 5) Thank you, Madam Chairperson. Good afternoon, members of the Transportation and Telecommunications. Again, my name is Jerry Vap, I'm a Commissioner, Public Service Commission. Last name is spelled V, as in Victor, a-p. As you have heard, LB183 would establish an approval process to provide specific

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inquiries by the commission into the condition of any exchange being purchased in Nebraska. We believe it is sound public policy, especially in the more rural exchanges of Nebraska, for such inquiry and oversight to exist. Large amounts of money from the Nebraska Universal Service Fund, collected from all telephone users in the state, are invested in exchanges throughout Nebraska. NUSF has specifically been targeted to the more high cost, usually rural, exchanges. LB183 simply outlines a formal process to protect ratepayers by ensuring that public money has been properly invested in plant and facilities in any exchange prior to that exchange being sold. Further, with Congress considering a broadband stimulus package that would potentially entail major investments of public funds, it's especially important that there be some regulatory oversight during the sale of an exchange to protect ratepayers and customers. LB183 provides a clear statutory framework for how that regulatory oversight is to occur, what factors are to be considered, what evidence provided, and the objective standard for a decision making process. I urge your support for LB183 and would be happy to answer any questions. [LB183]

SENATOR FISCHER: Thank you, Commissioner. Are there questions? Senator Gay. [LB183]

SENATOR GAY: Thank you, Senator Fischer. So at current, you have no say at all over these sales? [LB183]

JERRY VAP: We do somewhat, but we don't have anything in statute like this. [LB183]

SENATOR GAY: When you say, somewhat, I mean, if I wanted to sell something to someone else, what... [LB183]

JERRY VAP: Well, for example, this morning I conducted a hearing on the sale of Embark in Nebraska which serves the Scottsbluff area and down toward Lewellen and Kimball. And basically, that was a hearing that was conducted as a formality, but they do draw money from the Nebraska Universal Service Fund and I've made it a policy that unless there is absolutely no protestation whatsoever or no question, I'm still going to hold a hearing so that we have something on the record about the exchange and the fact that they do draw from that fund. There's oftentimes that some of these things are handled on what we call a modified procedure whereby they simply apply and it's looked at and it's granted without ever holding a hearing. We don't have to hold a hearing. I think we should. And I'd like it in statute to do that. [LB183]

SENATOR GAY: Maybe I can ask another question. So often does this happen? [LB183]

JERRY VAP: It's happened probably in the last four years, three or four times now. And some of these entities are strictly investment companies that are...they're not really

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telephone operating companies. They're outside investors that are buying exchanges. We don't know what their intentions are sometimes. We don't know if they will continue to provide advanced services or build out advanced services to the rural community and we'd like to find those things out. [LB183]

SENATOR GAY: One more. [LB183]

SENATOR FISCHER: Sure. [LB183]

SENATOR GAY: Okay. So, so, so you're just going to have the hearing on it no matter what. There doesn't have...and it says there's a 45-day period you have to publicize this. But does the public have to come and...you're just going to have a hearing on every sale that goes on. The public doesn't have to come and say, hey, we're not going to have service in this area. Ideally, they wouldn't know what's going on, probably, would they? I mean, they don't. [LB183]

JERRY VAP: No, but when you...yeah, normally in these cases when it's a small exchange, we will require that they go out and hold public meetings in those exchanges. We did this in Elsie and Dalton here, I believe about three years ago, two or three years ago. And there was quite a bit of community interest in the sale of those exchanges. And they were assured at that time that nothing would change, but you don't always know that. And it gives us some oversight over that. [LB183]

SENATOR GAY: Thank you. [LB183]

SENATOR FISCHER: Other questions? Senator Louden. [LB183]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Mr. Vap, on the sale of these exchanges, I guess, after they're sold then, then how much authority do you have? I mean, you know, if the sale goes down and it doesn't go down like everybody thought it was supposed to, do you have enough oversight that you can, you know, I guess, put some pressure on these purchasers of these exchanges to do a better job or anything like that? [LB183]

JERRY VAP: Well, yeah, we do. The majority of these, the rural exchanges, the small ones, are recipients of Nebraska Universal Service Fund money. They also are eligible telecommunication carriers for drawing from the Federal Universal Service Fund. We grant that authority to them. We can rescind that. So we do have some power over them once we...they're in operation. [LB183]

SENATOR LOUDEN: You could make these exchanges after they've been repurchased, you could make them give part of that money back if they don't? [LB183]

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JERRY VAP: We can rescind their authority to draw that money, which is a huge...it's worse than making them pay it back because they don't get it anymore. But generally, we find that they do a very good job of providing extended services, advanced services, and we just want to ensure that if there are some future sales of maybe even some bigger companies, that we have some oversight and this would allow it. [LB183]

SENATOR LOUDEN: Well, I was more concerned about the quality of the phone service, you know, because some of them come in, buy them up, and take all the...I guess, the money for a matter of years and don't put anything back in repairs. The first thing you know, why, you don't have much left and then they're ready to go sell out and I was wondering... [LB183]

JERRY VAP: If they draw from the Nebraska Universal Service Fund, we have oversight. They have to tell what they do us with that money, and have to certify that it's been spent in that manner. [LB183]

SENATOR LOUDEN: Okay. Thank you. [LB183]

SENATOR FISCHER: Senator Hadley. [LB183]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Vap, just...I always want to say one quick question but I guess... [LB183]

SENATOR FISCHER: Senator Hadley's going to have just a brief question. (Laughter) [LB183]

SENATOR HADLEY: A brief question. Did I hear you correctly that you don't have to have a public hearing on this or not? [LB183]

JERRY VAP: Not necessarily. [LB183]

SENATOR HADLEY: Would it not be a...you know, I guess we work from, I think as being a member of the Legislature now where we no matter how mundane or how ridiculous a bill is, we allow a public hearing that allows the public to come in and speak on the issue. Wouldn't it make good policy to have a public hearing on this so that you could at least have input from the individuals? [LB183]

JERRY VAP: Whenever a company comes in wanting eligible telecommunication carrier status, which is a federal delegation that we grant, even if there is no protest, I require, I demand that we hold a hearing. I have for some time. In the past there have been quite a few of these things granted on what they call a modified procedure, which no protestants means nobody cares, give it to them. I say, I want it on the record if they're drawing money from public funds, I want it on the record that we held a hearing and

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they told us what they were going to do with it. [LB183]

SENATOR HADLEY: When you say I, does that mean in your district or... [LB183]

JERRY VAP: The other commissioners are doing the same, but I will always... [LB183]

SENATOR HADLEY: Okay. But it's not in regulation that you have to have it? [LB183]

JERRY VAP: No. No, we could handle it by modified procedure if we wanted to. [LB183]

SENATOR HADLEY: Modified procedure, which means that I could find out my telephone exchange was sold and I didn't really know about it until I got a bill from somebody else. [LB183]

JERRY VAP: Until they came in and said, here's your new bill. [LB183]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Campbell. [LB183]

SENATOR CAMPBELL: Thank you, Senator Fischer. Are they required by anyone to provide written notification to each customer that they are selling their company? [LB183]

JERRY VAP: We require them to notify their customers of rate changes. And if they are going to be bought out, generally they don't necessarily have to tell those individuals but they usually find it very prudent to do that so that they can assure them because a lot of these exchanges, for example, the embark exchange, that's quite a bit of competition. And I'm sure they're going to inform their customers that they're being bought out and that their service is going to improve, if that's what their plans are. [LB183]

SENATOR CAMPBELL: Thank you. [LB183]

SENATOR FISCHER: Other questions? Commissioner, would you view this as kind of a customer protection bill? [LB183]

JERRY VAP: It could be down the road to ensure that the company that is buying, for example, say if Qwest sold the Valentine exchange, that there could be some assurance that a quality of service is going to be maintained and it would protect that service for them. [LB183]

SENATOR FISCHER: Okay. Senator Gay. [LB183]

SENATOR GAY: Thank you, Senator Fischer. So just a business transaction though,

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you're selling one to another you still have oversight on that service delivered, correct?
[LB183]

JERRY VAP: We do have quality of service on wire line companies, yes. [LB183]

SENATOR GAY: So I guess on the...this isn't any interference on a private sale of one company to another possibly and then you still have your oversight on, you don't see it as interference like that? [LB183]

JERRY VAP: No, the FCC is probably going to okay that purchase anyway. [LB183]

SENATOR GAY: Oh, so that's checking the...so it goes through that process first before... [LB183]

JERRY VAP: Yeah. It will go through that too. [LB183]

SENATOR GAY: Okay, that's where I'm kind of getting confused here. [LB183]

JERRY VAP: But we do have...we can comment on it, definitely. [LB183]

SENATOR GAY: All right. That's right. Thank you. [LB183]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB183]

JERRY VAP: Thank you. [LB183]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Are there opponents to the bill? I see none. Anyone wishing to testify in the neutral capacity? I see none. Closing is waived on LB183, and so we will close the hearing. We are ready to begin and I will open the hearing on LB652 and Senator Christensen is here. I do appreciate the speed with which we went through the last two bills and hopefully, we will keep that up. Welcome, Senator Christensen. [LB183]

SENATOR CHRISTENSEN: Thank you, Chairman Fischer. [LB652]

SENATOR FISCHER: Always a pleasure to have you. [LB652]

SENATOR CHRISTENSEN: (Exhibit 6) Thank you, Chairman Fischer and members of Transportation and Telecommunications Committee. My name is Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB652. LB652 amends the Enhanced Wireless 911 Service Act in order to provide direction to the Public Service Commission in its statutory duty to establish a mechanism for determining the percentage of the Enhanced Wireless 911 Fund to be

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allocated to the wireless carriers and the public service answering points for recovery for eligible costs of implementing and maintaining enhanced wireless E-911 service. LB652 accomplishes these objectives as follows: clarifies language establishing the duties of the Public Service Commission in determining how the money in E-911 fund will be allocated and used; two, requires PSC to allocate at least 50 percent of the E-911 fund for the recovery of eligible costs incurred by wireless carriers to implement and maintain enhanced wireless E-911 service, unless request for funding are less than 50 percent of E-911 fund; requires such mechanism to be technical and competitively neutral; requires the PSC to credit against eligible costs sought for recovery from the E-911 fund revenues obtained from other sources for payment of eligible costs, i.e., occupation tax, other tax, or other surcharges on wireless carrier, subscribers of wireless carriers; five, defines the terms of the Phase I E-911 services and Phase II E-911 services so that PSC is required to allocate funds to both phases of enhanced service, wireless 911 service; defines Tier I, II, and III, wireless carriers so that it...that the different interests of such carriers can be represented on the Enhanced Wireless 911 Service Advisory Board; expands the representation of wireless carriers for advisory board to two representatives, one of whom must be represented by Tier III wireless carrier; requires a member of the advisory board to have actual professional expertise in delivery of enhanced 911 wireless service; requires the local exchange carrier...representatives on the advisory board to represent a company which actually provides E-911 services through a selective router; requires at least one municipal official or employee to be represent a city of the first or second class; and removes from the duties of the advisory board the task of making recommendations to the PSC concerning the allocation of funds from E-911 fund. I believe LB652 is needed to provide a clear, balanced approach for funding the continued development of the Enhanced Wireless 911 Services to the whole state of Nebraska. It follows the spirit of the original intent of the act which was to get Nebraska's enhanced wireless 911 capacities implemented for the safety of the public in a fair and prudent way. Several testifiers will follow me that have the expertise in enhanced wireless 911 service and the history of the act, but I will try to answer any questions that you have. And thank you for your consideration of LB652. [LB652]

SENATOR FISCHER: Thank you, Senator Christensen. Are there questions? I see none. Thank you very much. Will you be staying for closing? [LB652]

SENATOR CHRISTENSEN: Yes. [LB652]

SENATOR FISCHER: Okay. Could I ask how many are here to speak in support of the bill? We have two. How many in opposition? Three. Anyone neutral? Okay. I would still request that you keep your comments concise. Good afternoon. [LB652]

KARA THIELEN: (Exhibit 7) Good afternoon. My name is Kara Thielen, and that's T-h-i-e-l-e-n. My business address is 1224 West Platte Avenue in Ft. Morgan, Colorado,

and I am the 911 director for Viaero Wireless. From the years of 2001 to 2006 I served as the director of the public service on 911 department located at the Public Service Commission where I was responsible for the deployment and management of the PSC's 911 program and implementation of and operation of a state 911 system. I'm delighted to have an opportunity to be here today in support of LB652. One of the most compelling reasons why people purchase mobile phones is safety, especially in emergencies. The number most Americans dial in emergency is 911. Since the 911 emergency number was first introduced in 1968, it has become almost ubiquitous. But unlike most wire line phones, which are connected to enhanced 911 services which automatically allow the dispatcher taking the call to see the caller's phone number and address in a display, when a 911 call is placed using a wireless handset, the dispatcher receiving the call does not know where the caller is, unless the sophisticated 911 system has been deployed. That can identify the caller's wireless phone number and the location of the caller's handset by the latitude and longitude. Of these three phases, basic Phase 0 is simply a call to the 911 center with the voice, Phase I identifies the telephone number of the caller as well as the address of the cell site receiving the call, and then Phase II provides all that in addition to the latitude and longitude where the person is calling. In recognition of the public safety issues, in the mid 1990's the FCC mandated that all wireless carriers must deploy 911 system which would eventually permit a wireless caller's location to be identified by longitude and latitude to within certain distance parameters. However, no federal funding source to pay for the cost of this nonrevenue producing public safety system was enacted. As a result, deployment of a Phase II enhanced 911 system mandated by the FCC became the classic unfunded federal mandate leaving wireless carriers and state and local governments with the task of finding their own ways of funding and deploying this important and sophisticated system. One of the most important public issues concerning the development and deployment of the reliable and seamless wireless 911 system in this state, and nationally, is how to best fund this important public safety system. What should we fund? Who should we fund? Who should pay for the system and who should collect and disburse the funds necessary to pay for the 911 system? Who are all the players involved in deploying the 911 system? The main players involved are the wireless carrier, the public safety answering point, and the local exchange carrier, or better known as the 911 provider. In 2001 the Nebraska Legislature adopted the Enhanced Wireless 911 Act which is the topic of LB652. The 911 act established the Enhanced Wireless Fund to be managed by the Nebraska Public Service Commission, which would be funded through monthly surcharges on all wireless telephone subscribers in the amount of up to \$0.70 a month in areas outside a corridor containing a city of the metropolitan class, and up to \$0.50 a month in counties containing a city of the metropolitan class. The PSC has been collecting these surcharges since 2001 and the 911 fund had over \$15 million as of the PSC's most recent annual report to the Legislature dated September 30, 2008. Under the act the monthly surcharges were to be deposited in the 911 fund and used to pay costs incurred by wireless carriers and PSAPs for the implementation of enhanced wireless 911 services in the state. While not

specifically mentioned, revenue from the 911 fund also has been used to pay for LECs for the costs of their trunking services from wireless carriers to the PSAPs. Over the years, the 911 fund has provided cost recovery to PSAPs and LECs and some wireless carriers for the deployment of Phase I infrastructure necessary to get to a point where the desired location based enhanced Phase II services would be deployed. Further, the fund has provided cost recovery for most PSAPs in the state to actually deploy Phase II 911 through the state. However, to date no wireless carrier has received any cost recovery, not a dollar, for implementing Phase II 911 services in the state. Which in a nutshell, brings us to the objectives of LB652. Viaero was fundamentally a rural wireless telecommunication carrier and has built a robust network of 211 towers in Nebraska from west to east rather than the other way around. Unlike most large wireless carriers, Viaero focuses its interest in rural areas rather than in just big cities and along highways. Since expanding into the state of Nebraska in 2003, Viaero's mission has been to deploy network coverage in Nebraska superior to all other carriers, and it is well on its way to that objective. Within this packet you will have some Viaero coverage maps showing our coverage from the growth since 2003. That's attached to this testimony. Last year Viaero submitted a request to the PSC for reimbursement of its costs for Phase II deployment in Nebraska and that request was denied in its entirety. It was further stated that no wireless carrier would be eligible to receive funding for Phase II until the PSC further contemplated whether Phase II cost recovery for wireless carriers should be permitted. The PSC's order effectively cuts off one essential leg of the three-legged stool needed to deploy this vital public safety network mandated by the federal government, and is thereby inconsistent with the Legislature's original intent in adopting the 911 act and with the manner in which the state's wireless 911 program was originally designed and implemented. In considering the impact that reimbursing wireless carriers would have on the 911 fund, it is critical to note that over the past several years, the fund has continued to grow despite a high level of investment in Phase II infrastructure by PSAPs. Today, much of the state is already Phase II capable, and the fund remains extremely healthy. Providing reimbursement to wireless carriers would not threaten the viability of the fund, and would have numerous public safety and economic benefits. First, it would carry out the original public policy intent of the Legislature to reimburse all carriers for their costs of deploying 911 services, and second, it would allow carriers to redirect capital investment toward building a more robust network, enhancing the public safety benefits of 911. It is the province of the Legislature to establish the public policy direction for the use of the 911 fund. Viaero believes that LB652 provides important direction to the PSC to reestablish a balance in the 911 fund allocation process, which is vitally important to the successful implementation of a viable 911 system in all areas of the state, not just in the urban areas and along highways. Viaero urges the Committee to advance LB652 so that the deployment of the state's wireless 911 system can be fully implemented at the earliest possible date. I'm available for any of your questions. [LB652]

SENATOR FISCHER: Thank you, Ms. Thielen. Are there questions? Senator Loudon.

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[LB652]

SENATOR LOUDEN: Yeah, now at the present time Viaero can do Phase I, or you showed this map in Nebraska, you can do Phase I in all those areas? [LB652]

KARA THIELEN: Yes, we can do Phase I in all the areas that we service as well as Phase II where we have, where we have coverage. [LB652]

SENATOR LOUDEN: Okay. But at the present time you can't receive any funding to put in the Phase II? [LB652]

KARA THIELEN: Correct. We have applied and have been denied receiving any financial reimbursement. [LB652]

SENATOR LOUDEN: Do you have the equipment available if you do get funding to put it in? I mean, how long would it take you to get that put in if the funding was available? Is this something you can do... [LB652]

KARA THIELEN: We...I'm sorry. [LB652]

SENATOR LOUDEN: ...the whole state, or do you have to do it tower by tower? [LB652]

KARA THIELEN: Well, we have actually implemented 30 counties to date. If you look at some of the maps that are also attached, it outlines the counties that we have implemented Phase II, as well as we have 17 counties that are currently pending. They have requested Phase II and we are currently implementing those 17. So we have been implementing this. We are just seeking cost recovery for the expenses that we have incurred so far. [LB652]

SENATOR LOUDEN: Okay. Thank you. [LB652]

KARA THIELEN: You're welcome. [LB652]

SENATOR FISCHER: Other questions? Senator Hadley. [LB652]

SENATOR HADLEY: Senator Fischer, Ms. Thielen. I have two or three questions. The first, other wireless carriers have basically paid for this by themselves, is that correct? [LB652]

KARA THIELEN: They have in the event of establishing and putting an additional surcharge on their subscriber, nationwide subscriber base. So they have recouped their Phase II costs through an additional means on their bill every month from their subscribers. [LB652]

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SENATOR HADLEY: And this is a surcharge you do not have? [LB652]

KARA THIELEN: This is a surcharge we have not implemented to date. We are a Tier III carrier versus a Tier I carrier where we do not have a nationwide customer base to assess a fee or a surcharge to recoup our costs. We have looked into that but it would take 20 years to recoup that cost. [LB652]

SENATOR HADLEY: Okay. Secondly, is your technology different from the technology that is used by other wireless carriers, and is that something that interacts with the 911 process? [LB652]

KARA THIELEN: Well, there's two different modes of going, going the route of delivering Phase II. One is basically a network base which we basically have network infrastructure and software that would deliver the latitude and longitude. Other carriers which you're going to be seeing less and less of is using the handheld...where the handset itself delivers that, so. Yes, we have a different technology that we have chosen but it's, at this point it's the wave of where the world is going from a GSM network. [LB652]

SENATOR HADLEY: Okay. The third question I have is that...in a different life I was involved with a city implementing a \$0.50 occupation tax on wireless users, cell phone users, with the occupation tax going to the General Fund of the city, the same way that landline occupation tax, TV occupation tax and such as that. My understanding is that under this bill now, the city will be required to use that occupation tax to offset part of the loss of funding in the 911 funds, is that correct? [LB652]

KARA THIELEN: Well, basically the approach is the same with the wireless carriers. If the wireless carriers have an additional surcharge on their subscribers to recoup their cost to implement Phase II, that they would not be able to necessarily go to the fund to double-dip, so to speak. So the same idea is in effect with the county and cities where, if they are also basically using the occupation tax, that then they could only come to the fund for the remaining expense that the occupation and 911 surcharge would not cover. [LB652]

SENATOR HADLEY: So you would be telling the city, it's the city of Kearney that basically \$50,000 or \$100,000, I can't remember what the number is, that they're now using for General Funds would have to be prorated back toward the piece that I'm funding, which would mean that their General Fund would be short the \$50,000 to \$100,000. [LB652]

KARA THIELEN: No, if they choose to use additional funding from other areas to cover, recover their costs to basically run their 911 deployment, if they needed additional

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funding they would not be able to recoup everything that they've already previously paid for with their 911 surcharge and the city occupation tax. It would basically be the remaining difference of the two. [LB652]

SENATOR HADLEY: But they would come back, wouldn't they. I mean, to run it, they would be coming back and asking for additional funds, so effectively the first... [LB652]

KARA THIELEN: So it's basically...so if it's \$100,000 and what they've collected is only \$75,000, they would be able to go to the fund for the remaining \$25,000 to recover their 911 costs. Just as though wireless carriers should not be able to come to the fund that has put on an additional surcharge of \$1.50 and then say, well, 911 wireless fund, we would like reimbursement for our \$2 million when they've already recouped that cost. If that makes sense. [LB652]

SENATOR FISCHER: Other questions? Senator Campbell. [LB652]

SENATOR CAMPBELL: Thank you, Senator Fischer. At one point, if I was listening on the testimony, at one point you're company made the assumption that you would be able to access those funds, is that accurate? [LB652]

KARA THIELEN: Yes, when I was actually the director of the department it was basically a fund that would provide cost recovery for both wireless carriers, 911 providers, and PSAPs for the cost of...to reimburse the cost of the Phase II and Phase I infrastructure. [LB652]

SENATOR CAMPBELL: And now that policy has changed, I'm assuming. [LB652]

KARA THIELEN: Yes, correct. [LB652]

SENATOR CAMPBELL: At any point did you, did you look at putting a surcharge on for your customers just to begin building a fund? [LB652]

KARA THIELEN: Well, that thought was, that thought was there but there's also always been in...when I was there was an unwritten where if a carrier is getting that, if they put that on their bill, then they come to the fund, that essentially double-dipping. And so that would eliminate them from coming to the fund and receiving any cost reimbursements. [LB652]

SENATOR FISCHER: Other questions? Maybe I didn't hear you and you already said this, but you just made mention in your answer to Senator Campbell, you said when I was director of the department. [LB652]

KARA THIELEN: Yes, back from, in 2001 when the law was first taken into place I was

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the 911 director for the Public Service Commission implementing the wireless 911 throughout the state of Nebraska. [LB652]

SENATOR FISCHER: And how long were you with the PSC? [LB652]

KARA THIELEN: I was there for about four and a half years. [LB652]

SENATOR FISCHER: Okay. And when did you leave? [LB652]

KARA THIELEN: Left in 2006 and I worked for a cable company in Denver prior to joining Viaero Wireless. [LB652]

SENATOR FISCHER: Okay. Well, welcome back to Nebraska. [LB652]

KARA THIELEN: Well, thank you. [LB652]

SENATOR FISCHER: Thank you very much. [LB652]

KARA THIELEN: Thank you. [LB652]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB652]

LOEL BROOKS: Good afternoon, Madam Chair and members of the committee. My name is Loel Brooks and I am special regulatory counsel on behalf of, in the state of Nebraska on behalf of Viaero Wireless. My name is L-o-e-l B-r-o-o-k-s. My address is Suite 984, Wells Fargo Center, 1248 O Street in Lincoln, Nebraska, and I'm also pleased to be here to have this very brief opportunity to speak in favor of LB652. I want to briefly elaborate on Ms. Thielen's comment that LB652 will provide legislative direction to the Public Service Commission on the exercise of its statutory duty to establish a mechanism for allocating and distributing the available funding in the 911 fund. LB652 contains two primary directives concerning the allocation and use of money in the E-911 fund, both found in Section 11 of the bill. First, the PSC is directed to allocate at least 50 percent of the available funds in the 911 fund to wireless carriers to recover their eligible costs of implementing and maintaining enhanced wireless 911 service, unless requests from the wireless carriers for such funding are less than 50 percent of those available sources or funds, in which case the PSC would have discretion to use the balance of those funds as they saw appropriate in accordance with the act. This provision recognizes that wireless carriers play an essential role in the provision of E-911 services and should be allocated a portion of the available E-911 funds for the deployment of E-911 infrastructure throughout the state. While the PSC would retain adequate discretion to develop a competitively and technologically neutral mechanism for determining the level of funding available for each requesting carrier, this bill would mandate the allocation of a threshold level of available funding from the

911 fund for wireless carriers from which to make its discretionary determinations. Second, LB652 codifies various concepts advanced by the PSC itself over the years, but which never actually were integrated into PSC orders, rules or regulations. And those concepts require an offset, which we've just previously spoken about briefly, both by PSAPs and wireless carriers from other sources which have been used to pay for eligible costs of implementing E-911 services. As previously mentioned in one of the questions, many of the large carriers in the early part of, or of 2003 indicated that they would self-recover Phase II costs through the exercise of assessing surcharges to their customer base, and therefore, did not have any intention of accessing Phase II cost reimbursement from the fund. As early as 2003, some large carriers indicated that that surcharge would range from \$1.00 to \$1.75 per month. And due to the large subscriber base, these funds were adequate in most cases or at least so testified to cover the implementation of Phase II costs. The large carriers noted that they had no guarantee that they would receive any money or at least enough money to pay for the deployment of Phase II, so they decided to implement a subscriber surcharge. From this testimony, the commission concluded that the use of additional surcharges "should be taken into account" when evaluating a wireless carrier's request for Phase II costs in the future. Therefore, LB652 embraces that concept in an effort to assure all parties that the 911 fund cannot be used to double recover for Phase II costs. And likewise, PSAPs would be required to offset their requests for money from the fund either that they received either directly or indirectly from taxes, from some other source. A similar concept was identified in 2006 in a PSC docket but was never actually implemented in either code or regulation or ordinance. LB652 embraces that concept as well. As noted earlier, Viaero also supports the provisions of LB652 which are intended to modify the makeup and authority of the Enhanced Wireless 911 Advisory Board. Part of the purpose of those changes was to provide more expertise of a technical nature on the board, to establish a balance of wireless carrier representation requiring at least one representative to be a small carrier from a...and one from a large carrier so they're differing interests could be recognized and heard. And also to create a broader balance of public representation on the board, for example, requiring at least one member of the municipal representation to be from a first or second-class city because it is, after all, important that the rural representation and voice be heard at the advisory board as well. Viaero is aware that some wireless carriers believe that the language in LB652 is broad enough that existing Phase I payments to wireless carriers from the fund might be negatively impacted, and some fine tuning might be necessary to offset that language in Section 11. We're also aware that the Public Service Commission, as they will indicate later, has some concerns about some of the language in terms of enforcement and perhaps other areas, and we wanted to indicate that we're very prepared and anxious to speak to both of those issues in terms of fine tuning the bill as may be necessary to make this workable and to eliminate unintended consequences. In summary, Viaero believes that LB652 is necessary to assure the rapid deployment of Phase II E-911 in all parts of the state rather than just the urban areas and along highways. As indicated by Ms. Thielen, Viaero is, in fact, a rural carrier. It's business is deployment of rural services throughout

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the state and it has done so, I think, rather remarkably since 2003. This legislation recognizes the authority of the Legislature to direct how important E-911 funds should be used to assure the prompt and proper development of the state's critical wireless public safety emergency 911 system. Thank you very much. We urge your support of LB652. I would be happy to address questions. [LB652]

SENATOR FISCHER: Thank you, Mr. Brooks. Are there questions? Senator Campbell. [LB652]

SENATOR CAMPBELL: Mr. Brooks...thank you, Senator Fischer. Mr. Brooks, how much money is in the fund? [LB652]

LOEL BROOKS: At the end of...in September of 2008, the fund had over \$15 million of principal in the fund and that's recorded through the report to the Legislature by the PSC. [LB652]

SENATOR CAMPBELL: How much would it require to finish what you're asking of the Legislature? [LB652]

LOEL BROOKS: Well, it's a little difficult to evaluate depending upon the advances in technology. We requested about \$1.5 million from the PSC to reimburse costs that had been implemented to date. Our original estimates, based upon technology available at the time, indicated that the total costs would be somewhere in the \$14 million range. Certainly as the company is able to identify other technology that would be effective in delivering this service, we would hope to find cost-effective means of adopting that. But someplace between the \$1.5 million and to \$1.9 million we've already spent and the \$14 million range depending upon how efficiently we can get this system put together. [LB652]

SENATOR FISCHER: Other questions? Senator Hadley. [LB652]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Brooks, thank you. So effectively following up on Senator Campbell's question, Viaero would basically get half of, it would be asking for half of \$30 million? [LB652]

LOEL BROOKS: Well, I think it would certainly be feeling that it had an opportunity to access at least half of what was in the fund on any...at any given quarter. We've never thought that the commission had a statutory obligation to write us a check for the entirety of the fund because we obviously understand that they have to maintain and manage a complex system. But we would feel that the fund itself, whatever is available as it may grow and as funds may be available, that that half ought to be allocated to at least address legitimate and eligible requests from wireless carriers. [LB652]

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SENATOR HADLEY: Would, would...to your knowledge would any other wireless carrier in Nebraska be eligible to access funds from this? [LB652]

LOEL BROOKS: The way the statute is written, any wireless carrier is eligible to apply for funds and has been since 2001. To the extent that wireless carriers are required to certify or offset, perhaps, funds that they receive from other sources, that whatever funding would come from wireless carriers would be the difference between what has been spent on eligible Phase II costs from other sources so that we don't have a double recovery situation. So other carriers could come if they have not recovered all their costs from other sources. [LB652]

SENATOR HADLEY: My last question. My earlier question about the city of Kearney having an occupancy tax right now. [LB652]

LOEL BROOKS: Yes. [LB652]

SENATOR HADLEY: Would this cause any problems on a city like Kearney on the occupancy tax they would have for cable, internet, landlines or anything else that's going into the General Fund now if you're able to specifically say that that has to be used for a specific purpose? [LB652]

LOEL BROOKS: Well, I want to clarify that the bill does not mandate for direct occupation taxes to be used for payment of eligible wireless communications costs. We have seen that in some cities the wireless occupation tax has been used and directed by statute to be used to support the costs of the PSAPs. And we feel to the extent that money is in fact used to pay for eligible costs, that that money should be part of what is offset against what could be later applied for by the PSAP against the fund. So it doesn't mandate a city to do that. It just says, if you do, if it comes from a PSAP or from an occupation tax that those are fair game for the commission to evaluate in determining how much to allocate to the PSAP. [LB652]

SENATOR FISCHER: Other questions? Mr. Brooks, first I'd like to thank you for Viaero's commitment to rural areas in the state of Nebraska. I've witnessed that in my own district. You brought up in your comments about the makeup of the advisory board. [LB652]

LOEL BROOKS: Yes. [LB652]

SENATOR FISCHER: And we see that on page 3 of the bill. I just have a few questions on that. You take out the sheriff, I notice first. That's...you take out the sheriff and the next point on it then says two county officials, one of whom is the sheriff. So basically, you've cut the representation by county officials to two instead of three. [LB652]

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LOEL BROOKS: That's correct. [LB652]

SENATOR FISCHER: Why? [LB652]

LOEL BROOKS: We feel that to date the advisory board has not been balanced in terms of the representation of the issues regarding allocation of funds. As you can see from the makeup, in recent years the advisory board has had only a single representative from the wireless industry. That representative recently has been ably filled by Alltel, which is a very large carrier, and we feel like that the interest of balance bringing balance to the decision making in advisory capacity of the board would be enhanced by having more wireless representation, perhaps less county representation because we feel like sometimes that may be duplicatus, and that brings a better balance of comments and interests into the advisory board's deliberations. [LB652]

SENATOR FISCHER: In your comments you mentioned the changes to the advisory board. You were seeking those so you would have more expertise on the board and... [LB652]

LOEL BROOKS: That's correct. [LB652]

SENATOR FISCHER: ...I certainly can understand that when we're dealing with wireless here in telecommunications and all of your different towers, which I'll get to in a minute, but all of the different towers that we see around the state. You've taken off the public representative, one member of the public. Do you see that's a problem? You put on that it would, instead of the public member, we'd have a representative from a vendor that provides E-911 related services. I take it that that...well, why don't you tell me why we took off the public member and who the vendors would be. [LB652]

LOEL BROOKS: Sure. I think the public, the public member I don't have a necessarily or we don't have a great objection to, but we felt like that the municipal and county representatives generally represented the interests of the public. And therefore, their involvement in 911 would suffice for that purpose. We thought it was more important in evaluating E-911 deployment to have an expert, a technical expert, on the board to provide advice both to the board and potentially to the commission with regard to all the challenges that are being faced technologically in deployment. And that may...that will include voice and text messaging and a whole host of technologies that are emerging today. The capable representation from all other parties on the board generally do not mandate, and in many cases do not suggest that they have technical expertise, practical expertise certainly. But they're not professionals in the delivery of E-911 and we thought that would be a very useful addition to the advisory capacity. [LB652]

SENATOR FISCHER: So the vendor could be a wireless carrier? [LB652]

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LOEL BROOKS: The vendor would be someone like TruePosition, for example. TruePosition is one of the two or three vendors in the United States who provide that the transmission capability from a wireless carrier to process the data that ultimately goes to the PSAP to do the location identification. So someone like a...someone from Andrews would be another, excuse me, another one, vendor, but TruePosition is the largest. So we think by virtue of their ubiquitous presence in this industry that someone would be willing to give us some advice on the current status of technological developments and needs in the 911 arena. [LB652]

SENATOR FISCHER: Okay. On the one before that, you have that the representative, we're not going to have a local exchange telecommunications representative anymore. We're going to have a provider of basic local exchange service. [LB652]

LOEL BROOKS: It would be... [LB652]

SENATOR FISHER: What's the difference there? [LB652]

LOEL BROOKS: Sure. It would be a LEC. It would be a local exchange carrier but it would be one of the carriers that actually provides the switched service that's necessary to complete these calls rather than a company that resells or relies on an actual carrier to provide that. We felt that that requirement also increased the level of expertise and experience that the committee or that the commission or the board would have access to if it was a true actual carrier in the field on a daily basis experiencing the hookup and testing criteria and the technical criteria that we're facing in the deployment of the process. [LB652]

SENATOR FISCHER: Aren't you glad you brought up that advisory board? [LB652]

LOEL BROOKS: I am. [LB652]

SENATOR FISCHER: I have another question. If we go to where you renumber it, so we're at number (c) here, two representatives from the wireless industry and you mention that, one from a Tier I or a Tier II and one from a Tier III. How many Tier I and Tier II wireless carriers are in the state of Nebraska? [LB652]

LOEL BROOKS: All the wireless carriers in Nebraska except Viaero and perhaps two other, or three other small wireless carriers are Tier III carriers. All the other carriers, for example, Alltel, Verizon, AT&T, Sprint, Nextel, Singular, which is now part of AT&T, U.S. Cellular, all of those are either Tier I or Tier II carriers in terms of the size of their subscribed base. [LB652]

SENATOR FISCHER: Either I didn't hear you correctly or you misspoke, and it's probably the first. [LB652]

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LOEL BROOKS: It may have been the latter. [LB652]

SENATOR FISCHER: Tier...Viaero is a Tier III carrier. [LB652]

LOEL BROOKS: Three. That's correct. The smallest of the carriers. [LB652]

SENATOR FISCHER: And who are other examples of a Tier III? [LB652]

LOEL BROOKS: Pinpoint Wireless might be an example. Long Lines Wireless, which has just been granted a status or is seeking status in the state of Nebraska, would be another. Indigo Wireless would be another example. Small carriers who are serving a relatively small subscriber base, typically in rural areas. The other carriers would be Tier I, Tier II carriers, the larger carriers with larger subscriber base. [LB652]

SENATOR FISCHER: Okay. A follow-up to Senator Hadley's question, how many carriers, either Tier I, Tier II or Tier III, have applied for reimbursement here in the state of Nebraska? [LB652]

LOEL BROOKS: Viaero is the only one to apply for Phase II reimbursement. Other carriers have applied for Phase I reimbursement and are... [LB652]

SENATOR FISCHER: Did any receive Phase I reimbursement? [LB652]

LOEL BROOKS: Yes, including Viaero. [LB652]

SENATOR FISCHER: Including Viaero. [LB652]

LOEL BROOKS: Yes. [LB652]

SENATOR FISCHER: What percentage did Viaero receive out of all the reimbursement that was sent out, do you know that? [LB652]

LOEL BROOKS: I don't know, but I could find out or try. I'm not sure. [LB652]

SENATOR FISCHER: Do you think it...well, this is a subjective question. Do you think it was fair? Did you get your fair share on that? [LB652]

LOEL BROOKS: Yes, I believe that our allocation of Phase I reimbursement has been fair and reasonable and I think, quite frankly, that I can't challenge any of the other reimbursements necessarily that have been made. It's a very complex process. It's been going on for years. But we think there's been a sudden departure from what we think is a fair and reasonable evaluation of allocation of money when it relates to Phase

II which is the final phase, which is the really important phase that gets the location. [LB652]

SENATOR FISCHER: How many carriers do you anticipate would apply if this was opened up? [LB652]

LOEL BROOKS: I don't know. I think certainly Viaero would. I have heard one of the other larger carriers who does...that has not assessed a Phase II surcharge on their customers may be interested. I think it really depends upon whether or not the carriers feel that it's important or necessary to do that. The larger carriers have felt historically that they have a large enough subscriber base that they don't need to go through that process. It's difficult to tell. Certainly, the small carriers with small population or small subscriber bases who are trying to do rural deployment, are facing some really stiff challenges trying to allocate the significant cost over a small base. And they're primarily doing so in rural areas where they have tremendous geographic areas to cover. But it would be difficult to know with precision. [LB652]

SENATOR FISCHER: In the bill, for example on page 7, you probably don't have a copy. [LB652]

LOEL BROOKS: I do, I do have a copy of the bill. [LB652]

SENATOR FISCHER: But page 7, it's also on page 8 where you've added the word or the words "and maintain." That the costs incurred or to be incurred by wireless carriers to implement and maintain enhanced wireless. So would it be a fair statement on my part to say that you're looking to recover costs not just to implement Phase II, but also down the road in order to maintain any...well, maintenance costs. You're going to face those in the future. [LB652]

LOEL BROOKS: Well, we'll face maintenance costs. One of the big recurring costs for maintaining the system are the continuing license fees that all carriers have to pay to the, to those parties, those third parties who provide services. For example... [LB652]

SENATOR FISCHER: So, okay, if I can interrupt. So are you looking to...would that be covered under the words "and maintain" that you're looking to recover costs for licensing fees? [LB652]

LOEL BROOKS: Yes. Those are fees... [LB652]

SENATOR FISCHER: I guess, I'm thinking "and maintain" would be you maintain the equipment. [LB652]

LOEL BROOKS: Certainly that's part of it, but the system... [LB652]

SENATOR FISCHER: But you're thinking even licensing fees? [LB652]

LOEL BROOKS: Well, the system can't work unless we...unless any wireless carrier hires a third party, for example, the ones that I mentioned earlier to actually do the translation of the information into a system that goes to the PSAP. That's not handled by any wireless carrier. Those are all submitted out to third-party providers who have expertise to do the kinds of translation they have expertise to do this around the country. And so those providers are essential components. There's no way that we...that any of us could provide these kind of services without the relationship with these outside parties and they have...they charge you on the basis of a continuing license fee on annual basis that everyone has to pay. And those are just cost recovery issues as well. And that's the representative of one of those parties would be on the advisory board because they provide this expertise in terms of translating the data and information. [LB652]

SENATOR FISCHER: How do PSAPs get their money? [LB652]

LOEL BROOKS: Well, from a couple of sources. PSAPs have a separate statutory organization for collecting surcharges from customers for their landline operations, and that is under a separate statute not administered by the Public Service Commission. They may get access to occupation taxes in some cities. I wouldn't say that that is always the case. Then they have access from the Public Service Commission, which has generally provided through the E-911 fund implementation funds for the development of their technology, their equipment, the GIS data base, and they're recurring costs. Much of what goes out of the fund on a yearly basis are these recurring costs associated with maintaining licenses and relationships that are necessary for the PSAP to function. So there are implementation costs capital, and then there are recurring costs that happen every month and every month and every month, and all carriers and parties incur those costs. [LB652]

SENATOR FISCHER: The public, we see towers all over, we have our cell phones, technology is great and we, we...well, we don't even flip open a cell phone anymore for the most part but we have our cell phone out there. We dial a number and by magic we're connected. We need the landlines to make that connection, correct? [LB652]

LOEL BROOKS: That's correct. [LB652]

SENATOR FISCHER: Do you see, I guess, a conflict maybe that you're already benefiting from Universal Service Fund money because you are using those landlines to connect calls? [LB652]

LOEL BROOKS: Well, I think the systems do connect. Obviously, we need a landline to

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connect our tower and the information that we receive to a PSAP. Interestingly, those LEC costs, those trunking costs to a PSAP, are part of what's paid for out of the 911 fund. So the local exchange carrier is being paid for the cost of transporting that traffic one by the other. Universal Service Funds are generally in this state and nationally focused on building infrastructure in rural and high-cost areas. So, yes, we all benefit from the utilization of those federal funds to locate towers in communication systems including wire line systems throughout the state. And I think that's part of the public safety network that we're trying to construct here. The public safety network for wire lines has been ongoing since the '60s and so we've had some kind of 911 on the wire line side for many, many years. But now we're trying to move to have ubiquitous wireless coverage to enhance the public safety component of our state and that is a mission that has been mandated by the federal government to be ubiquitous. And particularly in rural areas where the incidents of accidents, traffic accidents, etcetera, is dramatically higher than it is in urban areas. And of course, the problem is, it's the rural areas that see the advancements in these technology last, because they're so sparsely populated, because that's not the popular place to go. If we didn't have a fund to direct money... [LB652]

SENATOR FISCHER: No, now wait a minute, we think it's the popular place to go. [LB652]

LOEL BROOKS: Well, from a wireless carrier's...from a carrier's standpoint. I love to go to Valentine. (Laughter) The incentive... [LB652]

SENATOR FISCHER: I'm sorry. (Laugh) [LB652]

LOEL BROOKS: ...the financial incentive, is the popular place to go. And that's what USF is for. It's to move out the incentives to build wire line and wireless infrastructure across the state so that everybody has the benefits of advanced technology. That's what this fund is about in our opinion. It's a funding mechanism to ensure that not people just in Omaha and Lincoln and along the interstate have access to a public safety network, that everybody does everywhere they drive. Because if you're in Omaha you may want to visit Valentine and you need to have a signal if you get in a wreck in Valentine or in the Niobrara area or wherever you may be. It's not just that area that benefits, it's the state. And that's why this, in our opinion, is a public policy issue that has statewide importance. It's there for the purpose of directing and ensuring the deployment of this system statewide, not just where it's "popular" or financially popular to build a tower. [LB652]

SENATOR FISCHER: And I do appreciate that. One last question. I apologize to the committee. I've... obviously I love this stuff. Wireless companies receive dollars from the Federal Universal Service Fund, is that correct? [LB652]

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LOEL BROOKS: At least some do. [LB652]

SENATOR FISCHER: Has Viaero received...we're focusing on you because this is your bill. [LB652]

LOEL BROOKS: Yes. That's right. We have. [LB652]

SENATOR FISCHER: So do you receive money from the federal? [LB652]

LOEL BROOKS: We are a state...we are a ETC designated by the Public Service Commission. [LB652]

SENATOR FISCHER: ETC? [LB652]

LOEL BROOKS: Eligible Telecommunications Carrier. That designation was made in 2005 by the Nebraska Public Service Commission under the authority of the Federal Communications Commission. That allows us to apply for Federal Universal Service Funds to assist us in deploying towers in rural and high-cost areas. There are, to my knowledge, two other wireless ETCs in the state, Alltel is one and I believe U.S. Cellular, correct me if I'm wrong, is the third. [LB652]

SENATOR FISCHER: Nobody is yelling. [LB652]

LOEL BROOKS: Nobody is yelling. [LB652]

SENATOR FISCHER: I see one nod. [LB652]

LOEL BROOKS: But only three. Early on, Western Wireless got, received an ETC designation, but it was for a fixed mobile service, kind of sounds like an oxymoron, but only three. [LB652]

SENATOR FISCHER: But so the federal money, excuse me, the federal money, oh, I said one more. Just a brief question, Senator Campbell. (Laughter) So the federal money, will that help with Phase II? [LB652]

LOEL BROOKS: It will help with powered...it helps with tower deployment but it's not a fund that's used directly for 911 purposes. It's for tower infrastructure and deployment. [LB652]

SENATOR FISCHER: Okay. Thank you. One brief question, Senator Hadley. [LB652]

SENATOR HADLEY: Thank you, Senator Fischer. One brief question. Obviously, I've heard of Viaero because you operate in Buffalo County. [LB652]

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LOEL BROOKS: Yes, sir. [LB652]

SENATOR HADLEY: There are also other wireless companies that operate in Buffalo County. [LB652]

LOEL BROOKS: Certainly. [LB652]

SENATOR HADLEY: Are they charging a surcharge on the bill that they give to their customers to help with E-911 enhanced services and you're not? [LB652]

LOEL BROOKS: I believe some are. I don't...and we are not. And may I respond, just elaborate just a minute on why we are not. The reason that we are not, partly, is reliant on my legal opinion given to Viaero some years ago that suggested that because of the Public Service Commission's comments about, well, we don't want double-dipping, we may have to look at these customer surcharges that other wireless companies are making. I did not want them to be precluded from coming to the fund to assist them in the process of deploying their system because we recognized that because of their low subscriber base, it was not going to be possible to put on a surcharge to recover those funds in any time frame that would be economically reasonable. So I advised them legally to keep their options open, await the decision of the Public Service Commission hoping that we would have access to some part of that, and try to clarify the process by which this was undertaken. And so, part of it is my legal advice that said, don't. Because we don't want to be taken...my fault...but we don't want to be precluded legally from applying for funds from the fund. [LB652]

SENATOR FISCHER: Any other questions? I see none. Thank you very much for being here. [LB652]

LOEL BROOKS: Thank you very much. We appreciate your consideration. [LB652]

SENATOR FISCHER: Thank you. Are there other proponents for the bill? Do I see a proponent coming forward? No, I do not. Are there opponents to the bill? Good afternoon. [LB652]

MARK CONREY: Good afternoon, Madam Chair and members of the committee. My name is Mark Conrey, C-o-n-r-e-y. I'm the Douglas County 911 director. I'm past president of the Nebraska Emergency Number Association; member of APCO, and I'm on the Public Service Wireless Advisory Council, have been...I was on once, I got off, I was reappointed, okay, so that's my history. [LB652]

SENATOR FISCHER: Did you misbehave or what? (Laughter) [LB652]

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MARK CONREY: That's my history. Well, we will, we'll go into that, but... (Laughter) [LB652]

SENATOR FISCHER: We don't have time. (Laughter) [LB652]

MARK CONREY: This bill causes great concern and there's a lot of misconceptions about a lot of things that I heard. I'll go back to 1996 when we had the Hornickel/Wamsley case. I'm sure everybody is familiar where the two teenagers died. Right after that, and it was in 2006, okay, even though that we were forbidden by the Public Service Commission to start implementing Phase II, I went ahead and requested Phase II from the first wireless carrier. There was a provision in the bill that I saw that made a tremendous amount of sense and that was that if the wireless carriers could generate income, they were not eligible for Phase II, they were not eligible for funding. And so, if the wireless carrier could possibly sell the location technology through GPS, through whatever is on there, then more power to them. They can generate revenue. They can do whatever, but they did not have to...they were not going to charge. At the time it was the PSAP because I was the one that just went ahead and said I want Phase II. And then from about the middle of 2006, we started implementing Phase II throughout Douglas County and we totally got it. And then the Public Service Commission started running and since that time the Public Service Commission through the whole committee has got almost 95 percent of the state covered with Phase II. That bothers me a little bit because of the fact that when I say...when I read the intent of this, clarifies the language established duties of the Public Service Commission in determining how the money in the E-911 fund will be allocated and used, that's the Legislature doing it, but I heard you also say well, this is your bill. And so my question is, does the Legislature feel that the Public Service Commission has been doing such a bad job because they were able to go from 1996 up until now to less than 95 percent, and they did all the hard water carrying and they've been very successful. Now I know Jerry Vap is about ready to fall out of his chair because I am giving him a compliment, but they have worked very, very hard in doing this. So the language of this or the purpose of this bill really causes some question. Is this the Legislature trying to direct the Public Service Commission in this or is this Viaero? Okay. When we... [LB652]

SENATOR FISCHER: If I can interrupt you on that, when I made mention that it was Viaero's bill, all of Senators introduce bills for different constituencies besides issues that we have feelings on and we introduce bills basically on our own on those, but we also introduce bills for different constituencies whether they're in our district as private citizens or the Public Service Commission or whoever. So I don't want you to, I don't want you to think that a group or a business came in here in any way and is pushing around and telling the Legislature what to do because that is not the case. [LB652]

MARK CONREY: I understand and... [LB652]

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SENATOR FISCHER: Okay. [LB652]

MARK CONREY: ,,I'm trying not to, trying not to imply that but you'll understand what my concern is because when Viaero did come to the Public Service Commission, when they did come and they were, they were...the fund is working to get the rest of the state up, okay, at 95 percent. Contrary to belief, the locals are only funded at 55 percent right now. I mean there's a percentage of the cost that are being funded and the Wireless Advisory Council and the Public Service Commission have worked very, very, very hard over the last three years to bring it up and it has not been just an open checkbook. Okay, I don't want to imply that. So when the other wireless carriers who have the opportunity to generate revenue, okay, decided that, you know, it would be probably in their best interest to generate the revenue, then that really kind of left Viaero in the situation to ask for the funds. We find it, and when I say we, a lot of people that I've talked to especially on the Advisory Council and everything else, is why if the Advisory Council is doing so bad is there such a need to change out the Wireless Advisory Council or restructure it because of what they've done and what they've been able to accomplish. We require mechanism to be technically and competitively neutral. I don't think anybody has directed a wireless carrier to use any kind of technology. They're open to use whatever kind of technology that they want to use. It's a business decision and it always has been treated as a business decision. Unfortunately, the type of technology that they're using is not the GPS chip that other people do. It's their business decision to use that. We had a case the other night, probably less than a month ago, where two people came into the county, had no idea where they were at, were in an accident, were turned upside down, and they were using a cell phone of the technology that they were doing, we couldn't find them. And they did have a Phase II phone. It took us 45 minutes of a lot of searching to try to find where these people were. The key point in all of this is that the technology does not make the public safety answering point. It's the people that do it. It's the people who try to find. The technology is a tool and it's a very important tool and it's one that, it's one that we appreciate but it is not the be all and end all. Ninety-five percent of the 911 calls that we take to people let us know where they're at. And in Phase I where we can get off a cell tower, we can limit, we can go in and hopefully find where they're at. Phase II is very important to 911 centers. But it's the people who facilitate the response. To take half of the fund when the PSAPs are only being funded at 55 percent, something's not right here. Something just doesn't match. And so obviously, all the 911 centers are going to be opposed to this bill because they've struggled over the last eight years to put themselves in a position to be able to handle Phase II wireless calls. And so we're not quite sure, you know, what this bill accomplishes in giving half the fund because when they say the fund is robust, that's robust because there's 55 percent of the people or 55 percent of the PSAP cost is what's being funded, not the entire thing. So we do object to a wireless carrier trying to recover 100 percent of their cost in this. Obviously, the contention that the occupation tax be used, I mean, you know, public safety, public safety is a local responsibility. I mean, no matter how we do it, the local government has got to spend, has got to

provide it. So when we say General Fund is used for 911, well, yes, it is, because the local government cannot run away from their responsibility to provide the first response to their citizens. And I know it's...we've tried very hard in this bill and in implementing E-911 through the state and even Douglas County, even though that over one-third of the cellular subscribers are in Douglas County, we know that it's important that the state be brought up in its entirety because if I go from the east to the west and I have an accident, I want to make sure that we're covered. The problem with this, if you go from west to east, you will not get advantage of Phase II because the technology is so specific that it does not roam. It does not roam. So if you get outside the coverage area of your carrier, you could have problems. That's one of the disadvantages of what they do. It's a very...you know, it's made to be a very accurate but if you get on somebody else's system, you're not going to have the Phase II capability. So, you know, it's unfortunate that we can, we can talk a lot. I'm sure that they will be coming back and saying what I said was untrue but I can assure you that it wasn't. I know when we requested Phase II for the first time. I know why we did it, and I know how we got away with the cellular companies providing it. It was their decision. If they, they had the capability to try to recover some costs, but let's face it, they are selling the service. They are selling the service and generating revenue. And if that becomes the case, then why would we take taxpayer money and provide it to a cellular company who could then in turn use that infrastructure to generate income. I mean, I know bailouts are the fad right now but this would not be anything that I would want to try to explain to the, to three hundred and some odd thousand ratepayers in Douglas County that yeah, we need to do that so that they can generate income. So I mean if that's the way the Legislature wants to go, you're going to possibly own the equipment. That would be fine. Or if there is any revenue generated, then you should be able to participate in the revenue if you're going to, if you're going to pay to put this infrastructure in. I mean, I do not object to them building out there their towers and have everybody have cellular coverage. That's very important. But if we're going to take a lot of money and put it into their infrastructure so they can generate revenue, then I would think that either the ratepayers or the state might want to share in some of that. Just a thought. But anyway, from my perspective, I'm very opposed to this approach because of the fact that it takes half of the fund and gives it to a single company that covers less than 1 percent of the people who use cellular phones. That's the thing that's hard. [LB652]

SENATOR FISCHER: Okay. Thank you very much. Questions? Senator Louden. [LB652]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. When you say, take the money from whatever, 95, and to only for 1 percent, are you talking about the rest of the people in Nebraska as the 1 percent, is that what you're talking about? [LB652]

MARK CONREY: There are some areas in Nebraska rural that have not been able to implement Phase II not because of the cellular companies, but because they were

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not...they're not prepared to receive this. So when you talk about the number of customers, the number of customers and whether or not the area is prepared to receive Phase II, whether they're a Viaero customer, whether they're an Alltel customer, you know, it doesn't... [LB652]

SENATOR LOUDEN: Okay. Then you're telling me that there's, that there's a whole batch of Nebraska that there isn't a receiving station, that these simple stations can't receive this Phase II on your cellular phone because the equipment isn't there, is that what you're saying? For instance, in the city of Alliance or Rushville or any of them, when the 911 comes in, that if it's a cellular phone, even if the equipment was on the tower, they don't have the capability to detect where that phone call came from? [LB652]

MARK CONREY: In some cases, sir, that is the truth, and that's what the Public Service Commission has been working very diligently to try to do was outfit those PSAPs in western Nebraska so that they could receive those calls. [LB652]

SENATOR LOUDEN: Isn't some of that other funding available to do that with that, I mean, we pay a 911 charge on our phone bills all the time on our hard lines, not necessarily, and some of our, Alltel has them on their cellular lines also, so isn't that what that money is supposed to be used for, some of that? [LB652]

MARK CONREY: It's the...on your wire line bills it is designed to support your wire line, your wire line system, your 911. Okay. Then what we're trying to do with the wireless, with the wireless provision is to move it over and allow the PSAPs to be able to take a 911 call whether it be wireless or cellular. No, there is...it's not all equal out there. [LB652]

SENATOR LOUDEN: Then, but the money that's generated with the public on this, then the Public Service Commission can't use that money to set up this central so they can receive these cell line calls, is that what you're telling me? [LB652]

MARK CONREY: The cell phone, a cell phone call can be directed to any PSAP whether they have Phase II or I or not. You can route the call off of a tower to a specific, to a specific phone. But in order to have the technology available to handle it, the PSAP itself has to be an enhanced 911 center that has the capability to process the information that is sent. It doesn't mean I can't get the call, I'm just not going to get all the... [LB652]

SENATOR LOUDEN: Now the money that's generated off your hard lines, though, can that be used to enhance that PSAP, as you call it, then? [LB652]

MARK CONREY: That was the provision of the wireless. Wireless was supposed to

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be...the wireless bill, the intent of the wireless bill was to be able to provide the PSAPs to be able to take Phase II. They already had to be capable of handling wire line. [LB652]

SENATOR LOUDEN: Because we got Phase I over all the state if you have cell service, the service there. [LB652]

MARK CONREY: Yes, sir. [LB652]

SENATOR LOUDEN: Now, the other thing when you mentioned you had people down here, Omaha, that could...now was that because they were on a different system that would roam or like this Viaero down here, they work off of AT&T down here. Then if I called in on my Viaero, which is AT&T, I wouldn't be able to get this Phase II, is that what you're saying? [LB652]

MARK CONREY: That's one of the things that we've been working diligently to try to figure out as to how it has happened. There's nothing in the...there's nothing in the roamed carrier that can recognize where you're at. We got, you know, we got the tower information but we did not get the location information. [LB652]

SENATOR LOUDEN: Okay. Now what about Alltel then? [LB652]

MARK CONREY: If Alltel uses a different type of location identifier, they use a GPS chip in your phone. [LB652]

SENATOR LOUDEN: And would your system pick that up then if it was an Alltel? [LB652]

MARK CONREY: Yes, we have Alltel. [LB652]

SENATOR LOUDEN: Now, who did they have, did they have like a Sprint or who did they have or that you wasn't able to pick it up? What combination? [LB652]

MARK CONREY: They were a U.S. Cellular carrier company. [LB652]

SENATOR LOUDEN: U.S. Cellular. And who do they use for long distance or something in the area? I mean, they must use somebody in order to get on to those towers without, or else they're on a roaming. [LB652]

MARK CONREY: They have, they have eight towers in Omaha but they were unable to get to the tower. [LB652]

SENATOR LOUDEN: I see. They're a small outfit in there. Okay, thank you. [LB652]

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SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB652]

MARK CONREY: Thank you. [LB652]

SENATOR FISCHER: Next opponent to the bill, please. Good afternoon. [LB652]

LARRY DIX: Good afternoon, Senator Fischer and members of the committee. My name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials, appearing today in opposition to LB652. It certainly has been educational today. I've learned quite a little bit, more than I really wanted to know on some of these things, and certainly I'm not here to answer the technical questions. I sort of warn the committee up-front when we get to those kinds of questions. But when NACO took a look at this bill, a couple of things came to mind from somewhat of a policy perspective and maybe a little bit broader look at it. One that's certainly been brought up is the change in the elimination of a county position on the advisory board. That, I believe the folks that we have on that advisory board are qualified, I think. Many of them have a tremendous technical knowledge that sit on there. Prior to the bill being introduced no one had really talked to us about nor should they have talked to us about our participation on there, but I think from sitting through a number of the advisory board meetings at the Public Service Commission, I think the elected, the county officials have done a very, very nice job on that. I think it is evidenced by the fact that today this fund has \$15 million in it. I think somebody along the line was making some pretty good decisions and recommendations to the Public Service Commission, so I'm very concerned about the elimination of the county representation on there. Another component of the bill, and Senator Fischer, I think you touched on this. I can't remember what page it was on, maybe six or seven, about the "and maintain." This to me, from our perspective, looks like a never ending request for funding. And we see as that, request for the continual funding of this goes on and on and on. Certainly, there's probably never going to be a surplus left in that fund. The other point that this fund, I think, was very, very well managed by the fact that that surcharge I don't think has ever been increased. I think we've been able to maintain that at \$0.50, the 911 surcharge, and so from that point of view I think it's been very, very well managed. But if we open this door to "and maintain" I don't know that we're probably going to be able to sit here and say that. Our concern from NACO is once we open that door and as we read the bill, we don't see that there's anything that all the other carriers who have been, by way, tremendous partners with our PSAPs that have really stepped up to the plate and said, we're going to work with you on Phase II and we're not going to ask for that funding. We don't see anything that stops them from coming back and says, okay, now with the "and maintain", count us in, we're there, we're going to jump on board and we want the "and maintain" portion of it. As was mentioned in Mr. Conrey's testimony, the PSAPs aren't fully funded really through this process, so it's been a partnership and we think that partnership needs to continue. And for those, you know, those really components of it,

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we think, this may not be the way to go, specifically in this bill. We like the idea of the Public Service Commission's oversight in this. We like the idea of the advisory committee working with the Public Service Commission and we think that that is probably where this decision should stay is at the Public Service Commission rather than trying to negotiate this out statutorily. So with that, that's more of a broader policy type position but I'll end my testimony there. [LB652]

SENATOR FISCHER: Thank you, Mr. Dix. Are there questions? Senator Campbell. [LB652]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Dix, do you think that a company that's basically serving in a rural area of the state which is more...less populous and would not have the customer base, put the surcharge on them, you know, the first testifier said it would take 20 years, 19, 20 years for them to get to that point. Is that a factor that should come into play when we look statewide? [LB652]

LARRY DIX: Well, it's...when I look at that and I don't know that it's just the cellular company, I think there are other businesses that interact with the rural parts of the state that probably are working under the same set of requirements that the Alltels, and the Verizons, and the big players are. I don't know that we have, and maybe we do, but I don't know that we have too awful much legislation that has tried to develop it for those small rural people. Certainly in the county government phase of it, we have a number of people that work specifically with county governments in the rural areas but I don't see that we have incentives necessarily, specifically designed for them. [LB652]

SENATOR CAMPBELL: Thank you. [LB652]

SENATOR FISCHER: Other questions? Thank you, Mr. Dix. [LB652]

LARRY DIX: Thank you. [LB652]

SENATOR FISCHER: Next opponent, please. And I believe this is the last one. Welcome, Commissioner. [LB652]

JERRY VAP: (Exhibits 8, 9, 10, and 11) Thank you, again. I'm Commissioner Jerry Vap from the Public Service Commission. A couple of things I'd like to maybe correct a little bit. Senator Loudon, the legislation requires that this money be spent on the things that are generated by the wireless 911 program, and so the local county has to come up with some money to help buy equipment. It's been determined that about 55 percent of that at this point in time anyway is generated by the wireless side, so the fund pays 55 percent of the cost of equipment for the PSAP. Forty-five percent is paid for by the county itself. Now the dollar surcharge that the counties levy has to be spent on the operation of the PSAP. They can't buy road signs. They can't buy mapping or any of

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that. That has to come out of the General Fund. So to answer your question, 55 percent of that money does go for any wireless expenses that are generated. Now, Box Butte County in the next three months should be able to begin requesting that the wireless companies install Phase II equipment on their towers. They're just about ready to do that, so Alliance will have Phase II probably within the next six months with at least one carrier anyway. A little bit of history on...the original fund, or the original legislation said that all Phase II and Phase I costs could be recovered from the fund by wireless carriers and PSAPs. The commission and the advisory board started out as has been testified in implementing this. We got down the road a ways and began looking at the kind of money that was being generated and what the potential expenses on a monthly recurring basis were going to be besides the deployment costs, it was determined that there would never be enough money to pay for everybody's equipment and recurring costs. It just would be impossible. We went to the Legislature, I believe in 2006, with LB1222. LB1222 gave the commission the ability to raise the surcharge to \$0.70 a month on a cell phone in everywhere in the state except Douglas County. It was still held at \$0.50 in Douglas County. It also changed the language to say that the commission may pay for wireless Phase II reimbursements. It didn't say that it shall like the original legislation did. That changed everything entirely. While this legislation was being contemplated, the commission decided to just wait and see what was going to happen before we deployed any more money out. Since that time Phase II wireless 911 service has been developed across the state so that 75 of Nebraska's 93 counties now provide Phase II service with at least one carrier. And that really covers 94 percent of the state's population right now. Now, I've got a lengthy testimony but I'm going to try and summarize it rather than read that entire testimony in the interest of time as it is getting late. So we are, in the last two years, 18 months to 2 years, we've deployed a huge amount. We had about six states had Phase II at that time, or six counties. We now have 75 counties. That's very good. The advisory board has done a great job in my opinion and we've been able to move forward. And by the way, our staff for 911, E-911, consists of one person. We do have some legal help and accounting help but one person really directs that entire department. Okay. The remaining 18 counties are moving forward. Three of them will be ready to go with Phase II within the next three months. The others are all working, some cooperatively to buy equipment and get things so that they will be above the basic level probably in the next six to eight months and be heading toward Phase II capability within, we think, the next 12 months. The commission currently pays recurring costs of approximately \$305,000 a month to local exchange carriers and wireless service providers. The fund takes in \$617,000 a month right now. That's with only 75 counties. When we get the entire state covered with this system and more towers are added, that monthly recurring cost is going to approach a half a million dollars a month. The fund as created is paying, is taking in \$617,000. I'm not sure that there's a tremendous, a lot of growth left in the state of Nebraska. We have little over 1.1 million cell phone users in the state. We have 1.7 population, so 1.7 million population, so the rapid saturation level has been reached, I think. Now, if the reservation of a minimum of 50 percent of the available funds for wireless carriers set

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out by LB652 is completely arbitrary, we think. Nothing suggests that the costs borne by the PSAPs and the wireless carriers are in anyway equal and the testimony, the full testimony will explain a lot of these. Costs incurred by and paid on behalf of PSAPs includes equipment and software, the development and maintenance of the GIS mapping data used to plot the Phase II calls, and landline telecommunication costs for the transport of wireless 911 calls. The wireless fund pays for all of those ongoing costs. PSAPs would be allocated less than half of the available funds under this bill even before any of the offsets outlined in the bill are considered due to the fact that a small percentage is used to pay commission administrative costs. Wireless carriers receive marketing benefits from the availability of the wireless 911 program. They can advertise that you buy this phone, you have a problem, you can be found with our system. That's a marketing tool that they gain. That's valuable to them. The policies of the commission and the distribution of wireless 911 funds do not favor one wireless technology over another. The commission does not pay additional Phase II costs for any wireless carrier regardless of what technology they use. The commission has continued to pay 100 percent of wireless carriers Phase I costs totaling approximately \$137,000 a month for database upgrades, trunking infrastructure and testing; in addition the recurring costs for database management and operation and maintenance of the trunks and circuits. Viaero itself currently receives approximately \$23,000 per month in reimbursement for Phase I costs, which will increase to approximately \$56,000 per month once the all current Viaero sites that exist today are implemented with Phase I. This fund is not intended and should not be used to subsidize any wireless carrier serving rural areas. Such goals are met through universal service programs from the Commission State Wireless Fund and the Federal Universal Service Fund. Viaero was recently awarded slightly over \$2 million out of a \$3 million request that it made for the construction of towers in certain rural areas. In 2007, Viaero received approximately \$3.5 million in Nebraska alone, doesn't include their Colorado properties, in Federal USF funds, and will continue to receive similar support in the future. Some wireless carriers have chosen to self-recover and do not seek any funding at all, including Alltel, Verizon, AT&T, T-Mobile. Only Viaero has ever applied to the fund for Phase II costs as you've heard before. The commission denied Viaero's request for approximately \$1.6 million in nonrecurring costs and what appeared to be approximately \$79,000 in recurring costs for implementing Phase II wireless 911 service in three counties. Their application included cost for equipment, software at their Colorado switch, and each of their towers, administrative overhead and personnel costs. I don't think this fund ought to be paying people's salaries. It's for equipment and deployment of fund. It shouldn't be paying the salaries nor the administrative salaries of any company. The cost to the fund for Viaero's statewide implementation, if granted, is estimated to be between \$9 million, \$14 million, exceeding the available \$13 million balance that the fund has today. It did have \$15 million. We spent close to \$2 million for recurring costs and equipment for PSAPs here just recently. Setting a floor for funding for wireless carriers removes the ability of the commission to adapt to the changing needs of the system over time. LB652 imposes an offset for municipalities and counties based upon occupation and any other

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taxes paid by wireless subscribers and carriers. The offset is complicated, almost impossible to accurately calculate and it is vague. The offsets proposed by LB652 include all of the PSAPs general funding but do not include similar offsets for wireless carriers for this other state and federal funding. The bill as drafted would change the funding to merely a subsidy for small carriers like Viaero. The wireless E-911 advisory board makeup, LB652 adds to the board an additional wireless carrier representative and a vendor representative as a technical advisor, which would create some significant conflicts of interests for the vendor himself. Term limits and attempts to remove the ability of the commission to reimburse members for expenses will significantly impede the commissions' ability to find qualified individuals willing to serve and will undermine the effectiveness of the board. Board members have built relationships with PSAPs and local governing bodies that have been vital to resolving issues that implementation, costs, technical questions, and consolidations. In conclusion, the commission would ask the committee carefully consider the potential long-term effects of LB652 on the efficiency and viability of the enhanced 911 system. This concludes my testimony. I'd be happy to answer any questions. [LB652]

SENATOR FISCHER: Are there any questions? I see none. Thank you very much, Commissioner. [LB652]

JERRY VAP: Thank you. [LB652]

SENATOR FISCHER: Are there other opponents to the bill? I do have a letter from the city of Lincoln, the finance director, Don Herz, in opposition to LB652. We'll enter that into the record. Anyone wishing to testify in the neutral capacity? I see none. Senator Christensen, would you like to close? [LB652]

SENATOR CHRISTENSEN: Yes. Thank you, Senator Fischer and fellow Senators. I'd kind of like to address several comments you've heard here. In this bill of being in fairness, no one is asking if the PSAPs are being paid back at 55 percent, that we can't pay back wireless at 55 percent. I've seen the number of paybacks. It's been from Phase I, initial inputs and stuff was near 100 percent. I don't know what has changed to 55 but I'll dig further on that. But, you know, I don't think that it's an issue of paying back equally or trying to do 100 percent to wireless if the PSAPs are getting 55, but where's the equality in taking care of the situation of both sides. Both sides are paying into this, whether it be landline people for 911 service paying to their fund, wireless paying to this fund, I think there's a fairness here that we need to look at. You know, the argument that this is for one company is incorrect. It's written such a way that multiple companies can apply. You know, maybe if the commission would set up some rules saying that, you know, you put on a fee, you collect this much, then you can apply for the balance back, you would bring the rest of the companies to understand where they need to be. That they can collect some back and still have that fee in place. There's a number of things here that I think we're all learning that has made this a very worthwhile discussion. You

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know, I have to ask a question for you to think about. If we're trying to outfit the PSAPs to be Phase II ready, then I ask what is wrong? We're sitting on \$15 million or \$13 million now he says, why aren't these companies updating? They knew they needed to do it. They knew the towers were being built. Where is the problem here? I'm not saying it's the commission. I'm just saying, where's the problem here. We've got the mandate to get this done. Everybody knew the mandate was here. Why is the cellular companies ahead of the landline? I don't understand. Maybe somebody can get me the answer. But you know to have maintenance and continuation of, continuation of funds with technology ever changing, I think you're going to see that there's continually updates. It's not just initial costs. And I don't think anybody's arguing that it can't be. If you want to make everybody just initial costs and not maintenance, I don't think that's an issue personally. I still go back to the issue of fairness. You know, both sides have received federal funding. You know, I heard the comment here right at the end that wireless are receiving federal, well, there's federal on both sides too. Correct me if I'm wrong, but I believe that's correct. So, you know, I just want you to sit back and look at this. We've heard a lot of great testimony. I think there's things that can be improved. Heard one testifier here that upset me, saying that the committee had done a great job. We've made no mistakes. I'm sorry, I've never seen a perfect committee. I've never seen a perfect Legislature. I'll hit on myself. So, you know, if you've got an attitude, you'll never improve. So I'd just like to invite the committee to work with me. If there's adjustments we need to make, I think we need to bring the parties in, discuss it, because I believe there is improvements we can make. That's why we see bills updated all the time because things do improve. That's why we're now going to Phase II because Phase I wasn't good enough. Technology changes. Committees change. Everybody can improve. And I'd just like to take this to a positive experience, take the information we're learning and we've received, and let's make the state of Nebraska better off for it. Thank you. [LB652]

SENATOR FISCHER: Thank you, Senator Christensen. Any questions? Senator Hadley. [LB652]

SENATOR HADLEY: Senator Christensen, this is a Transportation and Telecommunication Committee that has been perfect for at least the last ten years. I just thought I'd let you know that. (Laughter) [LB652]

SENATOR CHRISTENSEN: Well, I'm glad to meet this perfect committee. [LB652]

SENATOR FISCHER: The last two, the last two. [LB652]

SENATOR HADLEY: Two years. I'm sorry, I stand corrected by the Chair, two years. (Laughter) [LB652]

SENATOR FISCHER: Thank you, Senator Hadley. Thank you, Senator Christensen.

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With that, I will close the hearing on LB652 and will close for the day. [LB652]

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Disposition of Bills:

LB183 - Placed on General File with amendments.

LB272 - Indefinitely postponed.

LB330 - Held in committee.

LB652 - Held in committee.

Chairperson

Committee Clerk