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Appropriations Committee
March 21, 2013

[AGENCY 14]

ANNE BOYLE: (Exhibits 9 and 10) Good afternoon, Chairman Mello and members of the committee. Thank you for allowing us to come here and explain our request before your committee. I'm Commissioner Anne Boyle and I am the current chair of the Public Service Commission. And Chairman Mello, I don't know if you require people to spell their names for the record. [AGENCY 14]

SENATOR MELLO: We would appreciate that. [AGENCY 14]

ANNE BOYLE: All right. My name is Anne, A-n-n-e, last name is Boyle, B-o-y-l-e. The commission is a unique state agency due to its blended constitutional and statutory authority and its varied regulatory scope and funding sources. We regulate telecommunications companies, jurisdictional natural gas utilities, rates for private water companies, intrastate transportation of household goods and passengers, grain buyers and sellers, grain warehouses, and the manufacture and sale of manufactured homes, modular housing units, and recreational vehicles. Additionally, the commission administers the Nebraska Relay System, the Nebraska Internet Enhancement Fund, the Nebraska Competitive Telephone Marketplace Fund, the Nebraska Universal Service Fund, and the Wireless E911 Fund. The commission is responsible for the testing of grain moisture meters, the evaluation of the location of electric transmission lines for safety, the siting of major oil pipelines, the inspection of railcars and railroad tracks, and the investigation of railroad accidents. An information sheet I think has been provided to you that has further detail regarding the specific responsibilities of each department. As I begin, on behalf of the commission, thank you very much for reinstating the rail inspector position. Nebraska benefits greatly from this program. The position ensures the commission's ability to properly meet its statutory and constitutional obligations regarding rail safety in Nebraska. And I would say, most importantly, track inspections are particularly needed for short-line railroads, because they are...we have many of them and they are the ones that don't have other track inspectors; so it's important for

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us to have that track inspector, for that alone. Our testimony today relates to our requests for spending authority for natural gas regulation and the Nebraska Universal Service Fund and a General Fund request related to the completion of the federal broadband mapping project. First, broadband mapping. In its budget request, the commission sought \$102,103 of General Fund appropriation to complete its obligation under a federal broadband mapping and planning grant. Since General Funds are allowed to be carried over to the next fiscal year, our original request for additional funds for this item has been alleviated, and therefore it can be struck from our request. This project is nearly three-quarters finished and could not have been done without the federal program that provided over \$5 million to the commission. Following my testimony and any questions you may have, we will provide the committee with a brief mapping presentation that we believe you will find very interesting. Natural gas regulation is...the committee reduced spending authority for contract services in natural gas regulation, Program 790, by \$26,000 each fiscal year. The natural gas regulation program is entirely cash-funded through assessments to the jurisdictional utilities. Funds for contractual services cover costs associated with the work of the public advocate and the commission's consultants when a filing or application is received. The funds are expended only if a filing is made by the utilities or the public advocate. Although we do not always expend the full spending authority granted for a given period, we must have sufficient spending authority in the event we receive multiple filings during the fiscal year. For example, we have previously received a general rate filing and an acquisition filing within the same fiscal year for the same jurisdictional utility. The commission has no authority to tell utilities or the public advocate if or when they may file the applications. Depending upon the type of filings, we may be required to resolve applications within a short period of time. If we lack sufficient spending authority to cover the costs of contractual services, it would impair the commission's ability to carry out its statutory obligations. We respectfully ask the committee to reinstate the full amount of the spending authority request for Program 790. The committee requested additional funding regarding the commission's decision to outsource the public advocate position rather than hire in-house staff. In 2010, the Legislative Performance Audit

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Committee conducted an extensive examination of the commission's decision to outsource the public advocate position rather than hiring an in-house public advocate. In its April 2010 report, the Audit Committee found that the commission's decision to outsource the position complied with the State Natural Gas Regulation Act and is more efficient and effective than hiring in-house. The outsourcing of the public advocate to a contract position allows for the flexibility necessary due to the fluctuating nature of the regulatory workload in the natural gas department, thereby reducing the costs of the program that would have otherwise been born by ratepayers. And for your information, when this first came up we were very willing to hire a public advocate. And the commissioners have no access to the public advocate. The public advocate is hired by the executive director, and anything that they would see would be directly...be responsible for, would come directly from the executive director. It was, as we examined it, we...it didn't make sense, and the reason is this. When the public advocate was hired, it was only for gas regulation, not for anything else. And given that, we could not go to...or the executive director could not go to that public advocate and say we need some help over here so why don't you do something here. But the problem is we can't do anything, so therefore when we don't have a rate case in front of us, they're idle; I don't know what they would be doing. And so that's why that made much more sense by the Legislature and us that...to have somebody sitting around for maybe several months with nothing to do was not a good use of public dollars. On the Nebraska Universal Service Fund, the committee recommended a downward adjustment to the spending authority in the USF fund by \$4 million. The aid requested for fiscal years 2013-2014 and 2014-2015 includes spending authority for a program which provides grants for broadband projects. The total amount allocated for this program is \$4 million annually. The commission is considering combining this program with the wireless program that provides grants to wireless providers. This could increase the total amount of broadband grants awarded annually to \$9 million. And one of the reasons that we are thinking about combining that is this: We have a wireless fund today and the wireless carriers come in and they want to build towers and whatever. Many of them now want to also provide broadband. So it does not make sense for us to have two different funds

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that are going to ultimately be trying to fund the broadband, which is, as everybody has heard, is the wave of the future and we must get ready for it. The broadband providers may not receive funds from the commission until they have completed installation of required infrastructure upgrades. They have two years to complete their projects. Our request for aid takes into account the fact that all providers could request funding in the first year; however, practically speaking, the funding requests will be received over one to two years as infrastructure upgrades are completed. This process can complicate the cash flow and use of the funds. The commission staff continually monitors both the surcharge and the expenditure levels to ensure that the maximum amount of aid can be provided while still maintaining an appropriate balance. And with that, the commission now respectfully requests that the committee consider the unique nature of the commission's budgetary challenges in making its recommendations. We ask that you consider restoring the requested spending authority for the natural gas and Nebraska Universal Service Fund programs. And I thank you very much for your time, and if you have questions I will take them now. [AGENCY 14]

SENATOR MELLO: Thank you, Commissioner Boyle. Are there any questions from the committee? Senator Larson. [AGENCY 14]

SENATOR LARSON: Thank you, Mrs. Boyle. And early in your opening, you commented on the constitutional obligations regarding the rail safety in Nebraska. What are those constitutional obligations? [AGENCY 14]

ANNE BOYLE: I would have to have one of our staff attorneys be here. And by the way, I regret that I did not introduce my staff that's with me today. And so you know, the executive director, Steve Meradith is with me; John Burvainis, who is the deputy director; Shanicee Knutson who is the general counsel to the commission; and Don Gray is a telecommunications analyst for the committee. [AGENCY 14]

SENATOR LARSON: So you don't... [AGENCY 14]

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ANNE BOYLE: So if I could have... [AGENCY 14]

SENATOR LARSON: Yeah, that would be great, because, I mean, I...I'm...and maybe...I was just wondering if rail safety is in the constitution and what those exact obligations are when it comes to constitutional...and if we've been neglecting those constitutional obligations or not without having that rail inspector and if adding it really does...because it is my understanding that the federal government does do rail inspection currently. Correct? [AGENCY 14]

ANNE BOYLE: They do. [AGENCY 14]

SENATOR LARSON: And second of all...and I noticed that was the highest of your priorities is a new railroad track inspector. On the low priorities...and I was just looking in terms of your budget modifications one of the lowest of your priorities in terms of what you...what I would understand you care the least about, one is eliminating...or providing an administrative assistant in the communications department. I am guessing that would be cutting an administrative assistant to the communications department. But the other one, motor transportation inspector, can you tell me exactly what the motor transportation inspectors do? [AGENCY 14]

ANNE BOYLE: The motor...we have a transportation department and that is one that oversees taxicabs, limousines, household movers. And we often have complaints not only from the consumers but also from people who are in the business and are aware of some parties who are not up to doing what they're supposed to be doing. [AGENCY 14]

SENATOR LARSON: How many inspectors do you currently have? [AGENCY 14]

ANNE BOYLE: I think...is it...John Burvainis is with me and it would be...? [AGENCY 14]

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JOHN BURVAINIS: Two. [AGENCY 14]

ANNE BOYLE: Two. [AGENCY 14]

SENATOR LARSON: Okay. [AGENCY 14]

ANNE BOYLE: And they cover the whole state. They do a very efficient job, but it is important because we also require all of those carriers to have insurance. And the taxicab services and travel...other modes of transportation, they all have to have insurance but they also are inspected all the time to make sure that they are in compliance with safety so that the public is safe. [AGENCY 14]

SENATOR LARSON: And you probably...you might not know this but maybe somebody behind--so they can prepare. Do you have any idea how many complaints they receive a year that these two inspectors have to deal with? [AGENCY 14]

ANNE BOYLE: Well, I don't know...I don't know we...the transportation director is not here so I will have them do that. [AGENCY 14]

SENATOR LARSON: They're indicating that they might know behind you, so thank you. [AGENCY 14]

ANNE BOYLE: But I can tell you they tell...we get information about some of the more controversial ones,... [AGENCY 14]

SENATOR LARSON: I'm sure. [AGENCY 14]

ANNE BOYLE: ...and so they are out working all the time. Thank you, Senator. []

SENATOR MELLO: Senator Kintner. [AGENCY 14]

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SENATOR KINTNER: Hi and welcome. [AGENCY 14]

ANNE BOYLE: Thank you, Senator. It's nice to see you. [AGENCY 14]

SENATOR KINTNER: Boy, you all do a lot of regulating. [AGENCY 14]

ANNE BOYLE: Because you make us do that. (Laugh) [AGENCY 14]

SENATOR KINTNER: The public advocate...so you're contracting the public advocate out. [AGENCY 14]

ANNE BOYLE: Um-hum. [AGENCY 14]

SENATOR KINTNER: Now you're going to bring it in-house now? [AGENCY 14]

ANNE BOYLE: No. [AGENCY 14]

SENATOR KINTNER: No. Okay, you're going to... [AGENCY 14]

ANNE BOYLE: The way the bill was originally written, it appeared that it meant that we had to hire somebody in-house. [AGENCY 14]

SENATOR KINTNER: Right. [AGENCY 14]

ANNE BOYLE: But as it was studied by not only us but the Legislature, they determined that since there was no obligation for that public advocate to do anything except gas, and gas cases don't come to us every week. They come to us maybe a couple times a year or sometimes more than that, sometimes less. So they would be sitting having nothing to do in our office, idle, when it is down time. So it just did not make common

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sense to have the office space and all of the other expenses and all the work with somebody who really had nothing to do during periods of time in our offices. [AGENCY 14]

SENATOR KINTNER: And because of the...it was, like, the nature of the way it was set up, when he is not advocating you can't have him regulating in his spare time. You got to...he's kind of separate, right? [AGENCY 14]

ANNE BOYLE: Yeah. We must be separate. We are the regulators and they are the person who represents the public. And so when we had hearings, the utility will come in and they will ask, for example, for a rate increase. And then they are the two parties that are in front of us. So the public advocate will look at everything that they ask for and then they will come back. And we also have a contract with a consultant, because it is very, I guess, difficult work. And they will look at everything they ask for. And I frankly, to tell you the truth, I was very surprised at the detail at which we have to get into for those hearings. But the public advocate represents the consumer. The utilities have their own legal counsel. And it is not... []

SENATOR KINTNER: Only on gas. This is for gas. [AGENCY 14]

ANNE BOYLE: We only have a public advocate for that, not anything else. [AGENCY 14]

SENATOR KINTNER: And you couldn't tell the public advocate, hey, go over in the regulation of telephone crap when you're not working. [AGENCY 14]

ANNE BOYLE: No, we cannot. [AGENCY 14]

SENATOR KINTNER: Can't tell them...okay, I just was wondering. Last quick, just a housekeeping...you're chairman of the commission. Now, how do you become chairman

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of the commission? [AGENCY 14]

ANNE BOYLE: We are elected. We rotate... [AGENCY 14]

SENATOR KINTNER: So you rotate among you like the... [AGENCY 14]

ANNE BOYLE: Among the commissioners. [AGENCY 14]

SENATOR KINTNER: Okay, easy enough. Thank you. [AGENCY 14]

SENATOR MELLO: Thank you, Senator Kintner. Are there any further questions from the committee? Seeing none, thank you, Commissioner Boyle. [AGENCY 14]

ANNE BOYLE: Well, if that...if you will indulge us, we do have a brief presentation to show you what broadband mapping is. And I...we were here earlier and we set it up so that it will be...turn on those televisions. And I think you will find it...I found it very interesting to find out how much information is there. But it's going to tell you how many communication services are available across the state of Nebraska today and to continually update it every six months. And you can put your address in and it will tell you how many are where you live. So Don Gray is our telecommunications analyst...and he is where? Right behind me. [AGENCY 14]

DON GRAY: (Exhibits 11 and 12) Thank you, Commissioner. Thank you, Jacob. My name is Don Gray, G-r-a-y, and I'm the telecommunications analyst for the Public Service Commission. And as Jacob is passing out the documents there, let me see if I can do what Mike taught me to do. Instead of bringing up a live demonstration of the map, I thought it would be easier to work through a PowerPoint. I do have some cards if Jacob could pass those out to you also that have the two Web site addresses for what we're doing in broadband. The broadband planning group is another arm of what we're doing for the federal government, and our Web site address for the map is right

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underneath that; so I would encourage you to go there at any time. The document I've given you has got two pages for each page. There wasn't an easy way to give you a map that you could look at and get any detail off of and also have some notes on it. So that's what we've done is had a page that has the map in full size and a following page that has some notes so that you can refresh what you have heard today. On the broadband map itself, over here on the side is what's called a dashboard. And through that dashboard a user can come in here and determine how he wants to locate the geographic region that he's interested in looking at. They can put in a complete street address. They can use what we call a push pin and drag it over and put it anywhere on the map and see what they get. Or they can come down and select a specific geographic type of identification, whether it's a county, a municipality, or one of the economic development regions here in the state. So that's what the dashboard on this side does. On this one here, you'll see that I've turned on the county outlines to give us a reference point as we talk about other things. And over here on this side of it you can see that here we can control the kind of coverage. We can control the type of broadband services available and we can control both what we call the wireline--in other words, cable; fiber optic, DSL over the phone lines, or we can also cover the fixed and mobile wireless coverages so that you can see each as an individual layer. And then you can control what we call the transparency, how much of it bleeds through into the next one. On this particular one here, I've turned on what's called the unserved areas. Unserved areas are those areas of the state that cannot receive any type of broadband coverage. They can't get wireless, they cannot get wireline coverage. And you'll see that most of it is out in areas in which we have a very low density of the population and there is no demand, in most cases. The other thing that causes some of this area out here that you see when we go to the next couple slides later and get closer in, is geographical features that may block it. This particular slide here shows all the layers of availability that a consumer could have, ranging from wireless to the wireline capability. And we refer to it as the fishhook because it follows the population density and the major roads. Red indicates there's five or more providers, and the single dark green indicates there's only one provider in that area, or obviously the white areas here where

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there are no providers available. And certainly population density plays a role in that. To try and give you a better feel for some of the details that an individual could pull up, I selected Scotts Bluff County out here. And by rolling over on this side, if you were on the actual map, you could come down on the list of providers that comes up here, which for Scotts Bluff County there are 16 specific providers available there. And they provide all these different types of connectivity, ranging from mobile wireless to fixed wireless and the wireline-type services. And as they do that, there will be a window that will pop up over in this area that will show them exactly who that company is and how they can make contact with that company if they want to follow up and obtain service from them. This is still Scotts Bluff County but showing the unserved areas. And if you look closely here, you'll see there's some terrain down in this area that's for most of the wireless service is coming out of the population areas that down in here that is blocking the signal coming down into that area. I think it's Wildcat Hills and areas like that. And we go to the next one. This is an overlay of the wireless services. So the greens and the blues are the wireless, and the pinks you see showing up here because of how the colors stack up, the pinks here and the whites here, those are again unserved areas in which there is no service available to those consumers. And in this case we have the wireline coverage. So here the different colors represent the type of coverage they can get, whether it's cable, whether it's DSL--the cable is the yellow, DSL is the red. And in Scottsbluff itself the consumers in the immediate area of the city of Scottsbluff can obtain fiber to the home. They have that capability there. When you go to look at the map and you start zooming down here and to Wildcat Hills, you'll see running along the highway and along the reservoir there is DSL available to the folks that have properties down in that area. So overall, where there is population, there is coverage there. I also picked on the other side of the state, Sarpy County, as an example. There are 25 providers of broadband coverage in Sarpy County. And again, they provide the coverage for all of the different what we call modalities or the different types of service--so again, the cable, the broadband. And these areas right in here are the unserved areas. There are some gaps out here to the west of Springfield, and then of course down here along south of the Platte River there are areas that are not reached

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by any of the fixed types of providers, and they would have to get their service from a wireless-type provider, whether it's mobile or whether it's a fixed wireless provider. And finally, Lancaster County. Thirty-four providers, if they were to go down and count, are available in Lancaster County. And they provide a full spectrum of the service types that they could get. Here again, showing the distribution of them, these guys right here that look a little pink, those are, in fact, areas around Roca and other places that there is no DSL service available to them. That's primarily because those locations are too far from what we call the central office or the main office of the telephone company, and they don't have the capability of providing broadband services as far out as they would need to, to get their service. So they have to rely on again fixed or mobile wireless to get their signals. Finally, we get to the current status of our broadband data collection. This is one of the reports that we receive from our broadband partner, BroadMap LLC. And these are folks that we have teamed up with in executing the federal requirements for the broadband coverage. When it was first started, states had three different options. One, they could contract out entirely to an organization and basically take a total hands-off approach. There are some states that did that. I can tell you, quite frankly, there are some states that don't have a clue what their contractors are doing; they just know the reports get submitted and they're happy. The other extreme would be like California where they took on the total responsibility themselves and they do it all within their own commission. Many states did as Nebraska did where we partnered with a company that specializes in this type of work, and these folks are the primary contact with the 89 providers that we have in the state of Nebraska. They interface with them every six months and on an ongoing basis to collect the data, to process the data, to refine the data down into the information that gets displayed on the map. So this is showing the status of the data that's going in on April 15. And over here is the key dates and when things were going in, and over here is the list of the number of providers, 89 that we've identified, 87 that were presenting data with, and then goes on down to identify how many are going to be current in this particular one. Providers have the choice of either saying my data is the same as it has been, no change is needed, here's an update; or we don't hear from them because nothing has changed. So we have to

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deal with all of those conditions. And that primarily is what broadband is about. I would encourage you to go to the broadband map. And I won't try to tell you how to use it because there's so many different ways you can extract information from it. Every layer is available to you. Every geographical way you might want to look at it is there. There's a layer we call community anchor institutions, which is basically schools, hospitals, libraries. And all the address information is there, so someone...and we have had reports from people outside of the state that are considering moving here, that they went to our map, used that to determine what kind of broadband is there, and also to look and see what kind of libraries or other areas were available there. So it was a good, good return on that. So with that, if anyone has any questions, I'll be glad to answer them. [AGENCY 14]

SENATOR MELLO: Thank you for your testimony, Mr. Gray. Are there any questions from the committee? Senator Conrad. [AGENCY 14]

SENATOR CONRAD: Thank you, Mr. Gray. And I was just going to ask a quick follow-up question to your last comment there. If you know who the primary users at this point in time, if it's commercial interests, presidential, everyday citizens, academic, maybe a combination of folks, but. [AGENCY 14]

DON GRAY: It appears to be a full range. Another thing that our partner in this does for us is they've entered into a contract with Google Analytics, and so on a weekly basis we get a report of how many people, not the individual people because that gets too far down into the details and consumer privacy, but we can see on a weekly basis how many consumers or individuals are coming to our Web site, how many of them are new visitors and how many of them are repeat visitors, and then we can also see what servers they're coming in off of. So we get them from all across the United States. We even get some coming in from France. They're consistent. I'm not sure who is going through that but we do see good use, anywhere from 200 to 500 hits per week. And then when we send out new data that will increase up into 1,500 to 2,000 hits in that

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time period that we release new data. [AGENCY 14]

SENATOR CONRAD: Great. Thank you. [AGENCY 14]

DON GRAY: You're welcome. [AGENCY 14]

SENATOR MELLO: Senator Kintner. [AGENCY 14]

SENATOR KINTNER: Isn't there satellite coverage that you can get for Internet?
[AGENCY 14]

DON GRAY: There is, Senator. We don't show that specifically because satellite, by the National Telecommunications and Information Agency's definition, is what they call ubiquitous. You can get it anywhere in the United States, so they don't count that in the analysis they do, since supposedly you can get it anywhere. Now the cost factor is another issue when it comes to satellite. But there is satellite. There are a few places in Nebraska that we have found that if people live down in a canyon or have a large bluff or a hill that's shadowing them from where the particular satellite may be in the orbit, that they can't get it. But we consider it to be ubiquitous coverage. [AGENCY 14]

SENATOR KINTNER: And this whole coverage is part of a federal program? [AGENCY 14]

DON GRAY: It is. [AGENCY 14]

SENATOR KINTNER: And we're required to do this or we're participating in it or what's the deal? [AGENCY 14]

DON GRAY: At the present time, we're required to participate and gather the data, provide it back to the National Telecommunications and Information Agency, and also

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that information goes on to the FCC and it all is compiled into a national broadband map that's available for folks. But we're in a five-year program that we're required to participate. There's another year and a half of that program. [AGENCY 14]

SENATOR KINTNER: And at the end of the five years, what happens? [AGENCY 14]

DON GRAY: I'll have to defer to Commissioner Boyle and the commissioners of what we're going to do there. [AGENCY 14]

SENATOR KINTNER: Okay. Thank you. [AGENCY 14]

SENATOR MELLO: Are there any further questions from the committee? Seeing none, thank you for your presentation, Mr. Gray. Thank you. [AGENCY 14]

DON GRAY: Thank you. [AGENCY 14]

ANNE BOYLE: Mr. Chairman, if I could provide information regarding...the question was asked about how many complaints the transportation department for the commission receives in a year. It's between 300 and 500 a year. So it is something that we need to have the inspectors that we have. Secondly, regarding the broadband mapping...and Senator Kintner, the Telecommunications Act of 1996, which this body, the Transportation Committee at the time in '96 also took on the obligation from the federal government that we would have an act here as well. And when that happened, the Legislature told the Public Service Commission that we would be responsible for developing all of the programs, and that is really modeled after the Federal Communication Act. In that act that was passed, not only then but in 1934 when the act was first implemented, it says that all people are...should be able to have all services at comparable rates and comparable services regardless of where they live. And so the broadband maps that Don was showing you, yesterday or two days ago I went through the census data. I discovered in Scotts Bluff County there are 50 people per square mile

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but in Cherry County there's only 1 person per square mile. And, of course, that's based on territory. But in Douglas County there are 1,400 people per square mile according to the census data. And in our state, and I counted them, there are 47 counties...more than half of the counties in the state of Nebraska have 10 or fewer people per square mile. So we are very, very vast and the reason it costs money--it's a high-cost fund--is for providing the services to the phone companies. They are the ones who get the fees, not the consumers, but...and we do not use the city or the town to provide funding, because that is the cheapest place where you can provide funding...or provide service. But as people move out, if they live 5 miles out, 10 miles out, 15, and even in Cherry County somebody lives 60 miles away from the central office, that becomes terribly expensive. And so the money that we collect and is then provided to phone companies or to the wireless carriers, whoever are coming, that is spent in order to provide the difference between what the customer is paying, which is similar to what you pay in Omaha--and the commission did that years ago, and the difference between that and what the real cost of providing the services. We have an economist on staff who has determined all of these figures. It's been very complicated and it takes a long time, but it is considered to be one of the best models on the state level in the entire country. So I hope that gives you insight. We rarely get a chance to be with you and help you understand what we're doing, and this is only one program of the other five or six that we handle. So excuse me for taking more of your time but you're our captive audience right now. [AGENCY 14]

SENATOR KINTNER: Mr. Chairman, may I ask this question? [AGENCY 14]

SENATOR MELLO: Go ahead. [AGENCY 14]

SENATOR KINTNER: So the taxpayers are paying money so that somebody who lives in East Bumble-whatever pays the same rate as someone who lives in civilized Lincoln. [AGENCY 14]

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ANNE BOYLE: Well, that's true. But it's not the taxpayers. It's the ratepayers. If people don't have... [AGENCY 14]

SENATOR KINTNER: The ratepayers. [AGENCY 14]

ANNE BOYLE: If they don't have a phone then nobody...they don't pay anything. The fee is based (inaudible) phones. [AGENCY 14]

SENATOR KINTNER: Okay. That's one of the taxes on the phone? [AGENCY 14]

ANNE BOYLE: It's not a tax; it's a fee. And that was taken to the... [AGENCY 14]

SENATOR KINTNER: Oh, gee. I feel better about that. [AGENCY 14]

ANNE BOYLE: I'm so sorry but I qualify that and I tell you the difference, because it has been bandied about as a tax. But that was taken to the Nebraska Supreme Court in a lawsuit to determine whether or not it was a tax or a fee, or if the commission had the authority to assess that fee. And the Nebraska Supreme Court found that it is in lieu of access charges. Access charges, years ago, when our long distance rates were very, very high, they were coming from access charges is what the cost is for telephone companies to transmit a phone call from here to here to here to here. There was a slogan that was going on when there was a campaign against the fee, and it said: Why does it cost more to call York, Nebraska, than it does to call New York City from Omaha? And the reason is, is because the access charges that the small phone...or any phone company who had services across the rural areas, they were getting money from there and it was unaccounted for; and so therefore, when we were given the act by Senator Doug Kristensen, because he was Chair of the Transportation Committee at the time, he said, you have to do this and you have to do it right. And so what we did is we established a...we, first of all, we went in and we looked at all the local rates that phone companies were paying in the local rate. And one place was \$5 a month but it

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was \$20 someplace else. And so what we did is we rebalanced rates so everybody was going to pay something similar. And then we established the fund and then we did away with access charges so that...and that is the difference. The in lieu of was...the Universal Service Fund was in lieu of the access charges that were being charged, and it was to make things fairer. And so just like (inaudible) states with more population pay for federal funding for our highway system in this state, more populated areas pay for the information highway or the telephone highway, and...because it is what the Congress intended for us to do when they meant it to be fair. [AGENCY 14]

SENATOR KINTNER: Does it bother you that we have the highest cell phones fees in the country? [AGENCY 14]

ANNE BOYLE: Well, that's another misunderstanding, if I can say that. I and my work at the commission, I early on was one who looked at the cell phones to see what they were doing. And so just as an example, when you first bought a cell phone years and years ago when they came on the scene, you would walk out the door, and if that cell phone did not work when you got home, you couldn't take it back. You had a contract that was going to keep you going. And so from that time forward, which is early in the 2000s, I have been somebody...one of the consumer advocates who tries to bring fairness to that. The taxes are one thing; the fees are different. And the wireless company...or the wireless industry lobbyists chose Nebraska, and they took the occupation taxes of Omaha and Lincoln and then they added it to the other fees, the other taxes, which we don't tax...the commission does not tax. But there are sales taxes and all the other taxes that are on probably all businesses, but the occupation tax is what, you know, put us up. And I argued with them and I said, you are...this is not right because you've taken two cities. If you are going to average that out, you have to average the entire state. And if they had done that, we would not be there. But they want to have a state that they can hold up and say whatever they wanted; and they said, well, you know what, we don't care. And we don't regulate them and they are pretty well unregulated, so we couldn't do anything about it. So when you hear that, it

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actually is not true. If they had done what they should do, as a real analyst would do, it's not true. [AGENCY 14]

SENATOR KINTNER: Well, we're paying a crapload of something on there. I don't know if it's fees or taxes or something. Let me go for another tax. Let's just accept those as a "they're there." Why can't I get cell phone coverage in Cass County, which isn't exactly out in the wilderness? I mean, there's areas of...and near Weeping Water where you can't...if you don't have one carrier, you're not covered at all. I can imagine, get to Cherry County or some out...or is there any...if we're going to pay all this money, is there any...are we proving that for cell phones or something? [AGENCY 14]

ANNE BOYLE: That's what the broadband mapping is all about, because when we saw those areas where they didn't have any services, that's where...and it's called the underserved or unserved areas. That's what all this about, to identify that. And we are working with all carriers. And if we at some point, maybe hopefully in five years, that map is going to be filled. And if not, perhaps our work will still be undone or not finished. But in the meantime that's so we can show everybody. And, if for example, if you want to put in your address and pull this up, it's called broadband.nebraska.gov and you will find two places where you can look and there will be a place with the maps just like the ones you just saw. Put your address in there and you might find out what's available to you. You will find out what's available to you today, but that doesn't mean that that's the way it's going to stay. [AGENCY 14]

SENATOR KINTNER: Well, thank you for explaining it to me. You know, I'd rather not have all the fees and taxes or whatever you want to call them. But if we're going to have them, let's have something to show for it. So I hope that we get that ironed out. It looks like you're making some progress and I appreciate the answers. I finally can know what all that means now. [AGENCY 14]

ANNE BOYLE: You're welcome to call us again and to come over and visit with us,

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because it is complicated but it's something that when you explain it and at least they start to understand it. And they also understand how difficult it is to get it done.

[AGENCY 14]

SENATOR KINTNER: Okay. Thank you. [AGENCY 14]

ANNE BOYLE: Thank you. Any other questions? [AGENCY 14]

SENATOR MELLO: Are there any further questions from the committee? Seeing none, thank you, Commissioner Boyle. [AGENCY 14]

ANNE BOYLE: Thank you, Chairman Mello. [AGENCY 14]

SENATOR MELLO: Are there any other testifiers here today on behalf of Agency 14, the Nebraska Public Service Commission? Seeing none, that will end today's hearing on Agency 14 and take us to our last agency of the day, Agency 8, Office of the Lieutenant Governor. [AGENCY 14]