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Transportation and Telecommunications Committee  
October 29, 2013

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[LR343]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, October 29, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR343. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Charlie Janssen; and Dan Watermeier. Senators absent: Galen Hadley; Beau McCoy; and Scott Price.

SENATOR DUBAS: Good afternoon. I think we'll get started in the interest and respect of everybody's time. So my name is Senator Annette Dubas. I'm the Chair of the Transportation and Telecommunications Committee, and I welcome you all this afternoon for the LR343. At this point I'll take the opportunity to introduce the committee members who are here. We may be joined throughout the afternoon with other members; lots of things going on during the interim, so I appreciate the senators who took the time to be with us here today. So to my right is Senator Jim Smith from Papillion, he is the Vice Chair of the committee. We have Joselyn Luedtke who is the legal counsel for the committee. To my immediate left is Anne Hajek. She is the committee clerk, and it's her job to keep track of everything that is said and done here today, so I'll be giving you some further instructions to help assist her in her job a little bit later. And then to my far left is Senator Lydia Brasch from Bancroft. So, again, thank you, Senators. We are fortunate to have with us today a page, Mr. Colton Wolinski; so thank you for being here today. And his job will be just to assist the hearing, keeping it moving forward smoothly. If you have things to hand out, you can hand them to him. I'll explain the green sheet to you here in a little bit; he'll be able to collect those from you as well. So if you are planning on testifying today, right there on the small table, we have green sheets...thank you, we have green sheets, if you would fill those out and then bring them with you when you come forward to testify. That helps Anne with her recordkeeping. If you don't want to testify but you want it in the record that you were here and any comments about the legislative resolution, you can sign in on the pink sheet. Again, that will be a part of the official record. When you fill out the sheet, if you

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would print it and fill it out, again, to help with the recordkeeping. And then when you come forward to the table, if you would state and then spell your name for the record, even if it's a really simple name; again, that just helps with the recordkeeping. And if there are any questions, we'll be able to get back in touch with you to clear those things up. The microphone is not for amplification, it's more for recording. And so we ask that you...I know it's just human nature to want to adjust or play with the microphone and we ask that you not do that because, again, it makes it difficult with the transcribing and it picks up a lot of extra noises that don't help her. Legislative resolution hearings are different than typical bill hearings that we have during the regular session. There's a lot less formality here. Typically, with a bill hearing, you'll have the proponents and then the opponents and then the neutral testifiers come forward. Well, today this is just kind of a first come, first serve with testifiers coming forward, although we do have some invited testifiers who I'll be calling forward to testify first today. And then after they're finished with their presentation, then we'll open it up to other people...the rest of you who would like to come forward and share your views with us today. The lights are here, but I don't anticipate using them. As I said, we have some invited testifiers; once we get past them, if you would keep your comments to around five minutes knowing that the committee is very likely to have questions for you after you're done, in case you don't feel you're able to hit on everything that you want to make sure has been said. But we'll give you ample opportunity. We've just been joined by Senator Dan Watermeier; so thank you for joining us, Senator Watermeier. Last thing I would ask that you silence your cell phones or any other electronic equipment you may have with you. Again, in light of the recording, we don't want anything to interfere or trans...cause problems with that. And if you do need to use your phone, we ask that you please step out into the hallway. I think that's taken care of most of our housekeeping duties for the afternoon. I will read...just for the record, we've had two letters sent to us: one from Robert and Bev Neel from Wayne. And then we have another one from Amy Prenda with the Nebraska Cable Communications Association. Those letters will be entered into the record for the hearing. With that...I don't think I've forgotten anything else. We will begin the hearing. And as I said, we have some invited testifiers. So if we could have Mr. Balhoff and Mr.

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Roth and Ms. Parrino come forward, and we'll just kind of let you begin your presentation, and then we'll take questions from the committee after you're finished. First of all, welcome to Nebraska and then welcome to the Nebraska Legislature, and finally welcome to the Telecommunications and Transportation Committee. We're very happy to have you here with us today.

MICHAEL BALHOFF: (Exhibit 3) Thank you very much. I'm Michael Balhoff, M-i-c-h-a-e-l B-a-l-h-o-f-f. And I am the senior partner at Charlesmead Advisors and managing partner at Balhoff and Williams. I provided a slide deck and I will go through that. But first of all I'd like to say that I'm very honored to be here to provide this briefing to this august committee; and also to be in this fine state. It's extraordinary for me to be with people that I have revered for a long period of time, senate, that the Commissioner Furchtgott-Roth who was, obviously, very important in the telecom reform process post the 1996 reform; as well as Cheryl Parrino, who has done extraordinary work both at the state commission and also for the Universal Service Administrative Company. I'm coming from a very different perspective from them; although I understand a lot of regulatory and policy issues because of the fact that for 16 years I headed the telecom and technology equity research group at Legg Mason, and I've done mergers and acquisition work which is involved policy and regulation. I'm primarily a financial person. And so I'm going to offer you insights from the point of view of a financial individual. As I indicate on slide two; and I'm going to go very quickly through the slides, I have pretty extensive financial background--24 years of experience. And, in particular, I've focused on rural issues related, among other things, to state universal service and to testify and relate to universal service issues. As I indicate on slide 3, there are a number of themes that I'm going to touch on. Fundamentally, I'm going to tell you that there's been a significant shift from the federal jurisdiction to the state jurisdiction as far as the responsibilities for universal service goes. I understand the number that has been bandied about is about 4 percent of the areas unserved. I'm going to tell you that the number is worse than that because the revenue pressures that are on the local exchange carriers, that is the fundamental telecom infrastructure is going to create a

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greater amount of pressure on the companies that serve high-cost areas. And we're going through a very, very significant change in the industry related to broadband, which most of you understand. The federal reforms have sharply reduced universal service funding that is out there; particularly related to access charges. I contend that access charges have been and continue to be fundamentally a support mechanism. Your state reformed access previously and they created universal service fund. Missouri did that; Texas did that; a number of different states have done that because you fundamentally understood that. Under Commissioner Furchtgott-Roth, when the federal funds were reformed, they also took out what they said were implicit subsidies. I'm going to make a stronger statement. The avoided costs in access...when all access charges for long distance goes away, you're going to find that there are very few costs that can be eliminated. Fundamentally, access charges are, in my judgment, a support mechanism. And the revenue pressures that are to be created through the year 2020 are going to be very significant. So effectively, you've got sharp reductions and support. Investment is already demonstratively going down in rural areas and ideal with most companies, and I can see that that is absolutely the case. And for the most part, people do not really understand the pressures that are coming to bear. If you go to slide 4, I lay out something that will be no test on this particular slide; but, basically, I'm indicating that there were price-cap reforms that is for carriers that really are price capped. And, generally, those are larger carriers. In addition, there are carriers that are rate of return; there are about 726 of those in the country. And there are wireless carriers; and every one of them experience reform in the November, 2011, reforms that were promulgated by the FCC. And I provide a summary here. And what I wish to point out that is extremely important is that while even price-cap carriers are ostensibly receiving more funding, as far as we can tell, the shortfall in that funding to meet the high-cost areas that they serve is about \$4 billion. And we'll show you that the rate of return carriers are also under pressure. If you go over to slide 5, you will see what is our estimate is about to happen, at least graphically. Based upon information from the National Exchange Carrier Association, the bars in this graphic indicate that by the year 2020, rate-of-return carriers will lose about \$1 billion effectively in revenue monies that previously were

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dedicated to investment in rural areas. And I have a pie chart at the bottom in which I indicate that the margin for these companies will go from about mid-30s (percent) down to around 12 percent on average. But we're already beginning to experience with the number of rural carriers that the margins are actually collapsing to the point that a number of these carriers could experience bankruptcies over this time. So small carriers are very significantly at risk and that risk will grow through the year 2020. And I think that high-cost areas are going to experience lesser and lesser support unless there is appropriate state funding that is put in place. Even for the price-cap carriers like CenturyLink or Windstream or Verizon or AT&T, and the landline operations, there's going to be a shortfall. And so I provide a graphic on here that there are high-cost areas that with competitors where there will be no subsidies or no universal service monies that are offered. And in that particular case, I think that that's problematic because, by and large, you will find areas that are very, very high costs that the competitors actually do not serve even in those regions. In the green area which is high cost with no competitors, it appears as if the amount of universal service monies that will be made available will increase and then outside of those areas, probably the 4 percent that you've been talking about, there will really be insufficient funding. You've had a chance to look through on slide 6 what it is that I provide, as far as the common confusion surrounding the universal service debate. And this is based upon testimony that I've had the opportunity to give in various other jurisdictions. I will point out the second point that the wireless is generally perceived to be a sufficient solution. It's totally incorrect. First of all, there's not the kind of pervasive wireless opportunity, and the broadband solutions that are out there are not rate efficient. So if you were to take the common usage right now of a home or a business in most rural areas, or most urban areas, you're going to be paying over \$200 a month for that type of service. That is not rate comparability that stands the test of Section 254 of the act. I believe it's going to get worse going forward so that what you have is really effectively, if you eliminate the wire line support system that exists out there, you are not going to get...in spite of the fact it's technological capable, you will not get sufficient wireless services. There are various other presentations of arguments here. But, ultimately, I believe it's important for you to study

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and understand the importance of the federal reforms and what is the likely import of those reforms. You need to quantify the high costs in the areas here in Nebraska and understand the regions that will be affected. Because, ultimately, without sufficient support there's no question in my mind that you will have an economic wasteland in certain of those areas. And, ultimately, you have to determine whether or not you feel it is appropriate to supplement funding or alternatively relieve carriers of the obligations that are uneconomic if insufficient funding is available. Thank you very much for your time and I will pass it over to one of my colleagues. [LR343]

SENATOR DUBAS: Thank you. [LR343]

CHERYL PARRINO: (Exhibit 4) Ready? Good afternoon, Madam Chairwoman and members of the committee. It's a real pleasure to be here in Nebraska today to testify before you. My name is Cheryl Parrino, C-h-e-r-y-l, last name Parrino, P-a-r-r-i-n-o. And I'm the president of Parrino Strategic Consulting, and I have been involved in universal service issues at the state and federal level for over 35 years; at the state level and the former Chairman of the Wisconsin Public Service Commission. At the federal level, during the implementation of the 1996 telecom act, I was honored to serve as the president of the state regulators national association. And later, I became the first CEO of the company that administered the federal fund on behalf of the Federal Communications Commission. In those roles, I've had an opportunity to understand how important universal services to this country and to rural places of this country, such as many of the places that you serve. Without that support, many places would not have access to voice telecommunications or today's important broadband services. I have more detailed written testimony which I have supplied to the committee, so that will supplement what I'm talking about today. I am testifying on behalf of the Nebraska Rural Independent Companies. And I have three purposes for testifying today. The first is to explain why universal services is important today, as it has been historically. Second, to explain why state universal service funding is necessary for the deployment in rural states like Nebraska. And last, to discuss the Nebraska Universal Service Fund in the

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context of broader universal service policy. As I mentioned, I believe that universal services is critical ensure that your customers and constituents have access, not only to telecommunications, but also to broadband services at prices and at qualities that are comparable to those enjoyed by consumers in urban areas. It's critical because without universal service in many very high-cost areas of business case cannot be made to deliver those services. Revenues from customers are simply not enough to cover the cost of deploying, investing, and maintaining those operating services. Therefore, additional funding is necessary to ensure that rural businesses, individual residential consumers have access. Just as you all well know, since you're the Transportation Committee, you know that the state's highway infrastructure must be maintained; potholes must be filled; the roads must be plowed; worn-out roads and bridges must be replaced. So is it with the communications infrastructure. In fact, the broadband network requires new investment just to keep pace with customers' higher and higher expectations for faster speeds and more bandwidth. And require this funding is...needs to be continued to meet those new investments, to cover debt service payments for investments that have already been made, to cover maintenance and operating expenses. As a former state regulator, I understand and believe that universal service is both a state and federal responsibility and the federal law supports that as well for both voice and broadband. The federal funds supports only a portion of the cost of providing service to customers in high-cost rural areas. I believe a state role is no longer a responsibility, but I believe it's a necessity for rural states that want to maintain and modernize their telecommunications network and keep their economy vibrant and vital. The FCC's recent actions to reform universal service, and as importantly to eliminate intercarrier compensation. Mr. Balhoff called that "access charges." That's the method by which telephone companies compensate each other for using each other's network. Prior to this recent commissioned decision, companies would compensate each other for using their infrastructure. The FCC essentially eliminated that and are bringing those rates to zero over a seven-year period. So a serious...a significant funding source for these companies will be eliminated in seven years, which means that in a lot of states companies have already ceased to invest because they're very concerned about what

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the loss of these revenues mean to their ability to continue to provide service. I believe that, absent the Nebraska State Fund, you would be seeing that same sort of halt of broadband deployment. Fortunately, the Nebraska Legislature had the foresight to recognize the need for a state universal service fund given your demographics and your geography. The Legislature also recognized the critical role of telecommunications in the state's economy, in the health and welfare of your citizens, and in your...in its security. Because of the uncertainty and limited funds at the federal level, I believe Nebraska's fund is more important today than when it was created. The commission has implemented the statute with care and has established a fund that is a model for the nation. Even though many states have high-cost funds, Nebraska's fund is a model for the country. It was thoughtfully developed, it's customer focused, and it has very strong standards of accountability for those companies that receive funding out of that state fund. I have a more complete list in my testimony again, but a few of the key features of that fund, first and foremost, funding goes only to the very high-cost, remote areas of the state. Those states where a business case absent that funding could not be made. Rural customers are required to pay rates for voice service above those rates paid by urban customers. In that regard, they, too, are paying their fair share to bring these services to their areas. The earnings of the companies that get funds, those earnings are limited. Again, they're held accountable. They only get money if the money is necessary to deploy the services. And the last item I'd like to highlight is the expenses of those companies that are covered are also capped. So there's a limit on the amount of expenses that they can incur and expect the state fund to cover. I look at this list of requirements and it's apparent to me that the Nebraska Commission has focused on accountability and sound public policy. As someone who has worked on universal service for many years, I commend the Nebraska Legislature and the Nebraska Commission for its leadership in implementing a fund that benefits your consumers while holding those that get the money accountable for results. I'd like to thank you for giving me the opportunity to testify today, and I'd be happy to answer any questions that you might have. [LR343]

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SENATOR DUBAS: I think we'll wait for questions after the final presentation and then open it up for the committee. So thank you so much. [LR343]

HAROLD FURCHTGOTT-ROTH: (Exhibit 5) Good afternoon, Madam Chairwoman and members of the committee. My name is Harold Furchtgott-Roth; that's spelled H-a-r-o-l-d, and the last name is obviously trivial and simple, it's F-u-r-c-h-t-g-o-t-t, hyphen, R-o-t-h. It's a great honor for me to be here in Nebraska. And it's a greater honor for me to appear before this committee today about the Nebraska Universal Service Fund. I'm president of Furchtgott-Roth Economic Enterprises and I am a senior fellow at the Hudson Institute where I founded the Center for the Economics of the Internet. I was a commissioner of the Federal Communications Commission from 1997 to 2001. I served on the Federal-State Joint Board on Universal Service. From 1995 to 1997, I was chief economist of the House Committee on Commerce, and I was one of the principal staff members working on legislation that became the Telecommunications Act of 1996. It's a great honor for me to be on this panel with Mike Balhoff and Cheryl Parrino. Mike has written about the industry for many years for the financial community. His writings have been both prescient and are widely read and widely recognized in the industry. And so when he talks about the coming problems for telephone companies both large and small, I think everyone is going to take notice of that. Cheryl Parrino, as she mentioned, was the Chair of NARUC during the passage of the '96 act. What she didn't mention is that she came repeatedly to Washington to be sure that the legislation looked after the interest of states and to make sure that the state prerogatives were not going to be adversely affected by the legislation. She also became the first head of USAC at a time when the agency had every likelihood of absolutely failing. So she is...you know, frankly, she is almost personally responsible for the success of that agency in its infancy when it could easily have died away. I've submitted a more detailed written version of my statement for the record. I am testifying on behalf of the Nebraska Rural Independent Companies to assist this committee in any way as you consider the Nebraska USF. My message is simple: look to yourselves and the good people of Nebraska, not the federal government to solve many of the detailed problems

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of universal service here in Nebraska. I'm sure you've been hearing a lot about this as this committee holds these hearings. You've heard about it from my colleagues on the committee. I'm not here to tell you about the detailed problems of Nebraska. I'm here to tell you that the federal government is not a likely source of solutions to those problems. Yes, the federal government has a federal universal service program; it is in transition. It is plagued with chaos and uncertainty. Do not look to the federal high-cost universal service program for additional funds or to solve the specific problems in Nebraska. The Nebraska Universal Service Fund is yours and it belongs to the people of Nebraska. The FCC cannot take it away. And I trust that you will continue to use it wisely. I'm going to speak today about five simple issues. First, federal law assigns to states, such as Nebraska, a substantial responsibility with respect to universal service which is being met through the Nebraska Universal Service Fund. Universal service is not exclusively a federal responsibility and Nebraska is shouldering its responsibilities. Second, the federal High Cost Universal Service Fund is important to Nebraska; it complements the Nebraska USF. The federal high-cost USF fund disbursed \$86 million to Nebraska in 2012 and is on track to disburse less than \$80 million in 2013. Over the past decade, about 52 different Nebraska telephone companies have received funds from the federal high-cost program. In my written testimony...so that's the first point...or the second point...the third point is despite its large geographic area and low population density, Nebraska does not receive a large share of federal high-cost universal service support. In my written testimony, I examine the relative distribution of high-cost USF among the states. I'm sad to tell you that Nebraska ranks only 25th among the states in the federal High Cost Universal Service Fund program. That is surprisingly low given the large geography of the state and the low population density and substantial rural areas. I have no views about how much each state should receive in the federal high-cost program, but it's very difficult for me, and I think for anyone, looking through the comparisons state by state to think that Nebraska should be 25th. Next point is that the decline of access charges, which my colleagues have talked about today, has placed additional strain on both state and universal service programs. Access charges nationwide accounted for \$17 billion in 2000. And in 2009, they accounted for \$9 billion.

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Now not all this money was for rural areas; not all of it was for small telephone companies; but some of it was. And in 2011, the FCC Report and Order phases out terminating access charges over the next several years. The FCC's efforts to regulate prices for access are unnecessary and counterproductive. This is a form of regulation where the FCC sets the price, not the market. And the FCC sets the price at zero. This places even more pressure on universal service funds both at the federal and state levels. Next, recent events at the FCC have decreased USF disbursements for Nebraska and increased uncertainty about the direction of the High-Cost Program. As I noted earlier, in 2013, USF disbursements to Nebraska are going to be less than the year before. And I have a table in my presentation that shows the change of fund disbursements to Nebraska over the past few years. They're on a downward trajectory. A lot of this is caused by...or part of the FCC's 2011 Report and Order. It not only price-regulated exchange access services, but it also reinvented the FCC's High Cost Universal Service Fund program. The old program was unnecessarily complicated and arguably diverted large sums of USF support away from truly rural areas. It needed reform. But the new program is even more complicated and it diverts even more funds away from the truly needy areas. The net result is that Nebraska is receiving a declining sum of federal high-cost USF support, and the declining rate shows no signs of evading. Moreover, incredibly the FCC asserts that the federal government, not Nebraska or any state, has jurisdiction over intrastate access charges within its borders. This is a very strange reading of the law. In fact, the entire FCC 2011 Report and Order is a very strange reading of the law. And as a result, state regulators from around the country, and many other interested parties, are challenging the FCC order of the Tenth Circuit Court and arguments are coming up on that very soon. Why did the FCC do this? The FCC Report and Order is filled with statements about how wonderful broadband is. Broadband is really wonderful. There's not one part of that Report and Order that explains why anything that the FCC proposes to do will actually increase broadband in America, particularly to rural areas. Two years after the adoption of this Report and Order, the FCC has yet to issue any evidence, any report, that demonstrates that the rule changes that they adopted have changed the deployment of broadband in America;

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either positive or negative. In conclusion, ultimately the health and vitality of telecommunications markets in Nebraska are a reflection of the businesses and consumers of Nebraska, not of the federal government. Federal high-cost USF programs are received and those that remain are clouded with legal and regulatory uncertainty. Individuals who are waiting for the federal government to allocate more high-cost USF money to Nebraska and to clarify the corresponding federal rules they have a long wait. Consequently, state programs such as the Nebraska USF are more, not less, important than before. Thank you very much. [LR343]

SENATOR DUBAS: Thank you very much. And I would like to make notice that Senator Janssen has joined us from Fremont, so thank you for being here, Senator Janssen. And I think at this time we'll take the opportunity to open up to the committee questions for the panel. Senator Janssen. [LR343]

SENATOR JANSSEN: Thank you, Chairwoman. Since you introduced me I should say something. Actually I had a question, and whichever one of you on the panel would like to take...I'm sorry, I missed the first...Mr. Balhoff, I missed the first one, but...you have, obviously, quite a bit of experience nationwide and federally with this, how would you say...I'm a businessman, so how would you say the SWOT analysis would go with Nebraska's fund, strength, weaknesses, opportunities, threats, for our fund in Nebraska as it would stack up to other states? [LR343]

MICHAEL BALHOFF: I guess I'll go ahead and take the first crack. We were kidding about this ahead of time. We were going to say: that's a really good question and really complicated and Cheryl will take it. (Laughter) I don't know totally how to do a SWOT, but I will try to be simple about what I think is the financial issue, because I'm a financial person. The issue is that there are less revenues and significantly less revenues going forward for a local telephone company; bills out the infrastructure and has responsibility to serve people. Both because of universal service monies, there's some competitive pressures, but universal service monies and the loss of intercarrier connection revenues

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which are very, very significant and overlooked. As a businessperson you understand, if you lose revenues and there are no avoided costs; and there are no avoided costs for universal service, and there are no avoided costs to speak of for intercarrier compensation, it falls straight to your earnings before interest, taxes, depreciation, and amortization line. So it goes straight down to cash flows. So the loss up at that level which might be 10 percent actually translates to about 30 percent for a typical telephone company at its cash flow line. The loss of those cash flows affect...directly affects not only the quality of services, but importantly, infrastructure commitments. The issue that the FCC, that Commissioner Furchtgott-Roth was referring to, the FCC is talking about more broadband commitment going forward. There was an article in The Wall Street Journal yesterday that coined the term "impossibility theorem." I wish I were clever enough to have dreamed it up. This is the impossibility theorem: lose a lot of revenues, lose more cash flow, and invest more. That's an impossibility theorem. There is going to be no more broadband investment going forward. And we're already beginning to see that. So since the time of the 2011 promulgation of the order, what we've begun to see in...last year is for the first time the rural utility service was only able to place 12 percent of its available funds for investment going forward. They've always been able to place all of their...their 100 percent of their investment for that. So we're finding that telephone companies are very frightened to invest. In addition, we're finding at CoBank, the largest lender...private lender that is out there, it's actually a cooperative from Denver, that they placed no infrastructure loans in 2012 or 2013. So this doesn't pass the "smell test." So we're finding a reform that is pro broadband is actually not pro broadband because investment is not occurring because the logical business thing to do in the strengths, weaknesses, opportunities, and threats analysis is that you pull in your horns until you can figure out in the midst of this uncertainty and in a sharply declining cash-flow environment what you're going to do. I mentioned before about the 4 percent...the 4 percent is not the correct number, I don't know what the correct number is; but more of rural America is at risk by virtue of those reforms. And if the Nebraska Legislature and commission does not get a grip on what those numbers and issues are, you are going to have very, very challenging situation going forward. So the impossibility is that

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investment is going to occur going forward. And, as a result, the economic base in rural America will be increasingly at risk. [LR343]

SENATOR JANSSEN: Thank you for answering that question. The last thing I expected to hear today was EBITDA, which you've brought up very...in your comments. In your opinion, or the panel's opinion, this will be my last question for you guys, but what do you think the best...we saw it going across the state, and we've seen it going across the state, what do you think the best use of the fund is for versus...and we deal with, much like Wisconsin, urban and rural, and how do you see that working out as far as...I don't need a percentage, but, you know, what do you think the best use of the fund is, as it was intended? [LR343]

CHERYL PARRINO: Well, and I...in response to that, I think your earlier question also asked for some comparison from state to state and there isn't any good research that actually documents what every state program does. The Nebraska commission provided you with a report and in that report they cited a study from several years ago about the National Regulatory Research Institute that looked at what various state commissions did, but that's old and it was a survey so it's not scientific. But what I would say in general is that the Nebraska commission has done a very good job. If you had unlimited resources and unlimited budget, I mean this would be an easy problem to solve, right? You just throw a lot of money out there and you put in the infrastructure, but nobody has unlimited budget. So the Nebraska commission took the limited...a limited fund and they identified and prioritized where to put that money. They said where money needs to go...if you can make a business case, and you can do that in urban areas, because you have enough density, you get enough revenue from that density, so they've really said, let's focus the money and prioritize the money to the highest cost areas of the state because we want to see broadband deployed there. And I think that is a good way to prioritize funding. So to your second question, urban versus rural, I think rural needs more money because it's more costly to serve. And if you think infrastructure is important to the economic vitality of Nebraska and your ranchers and

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the farmers and the entrepreneurs that you've heard about throughout the state in order to conduct business in rural Nebraska, they need the infrastructure just like they do in the urban parts of your state. So I would say that the commission has done a good job of prioritizing the funding. [LR343]

SENATOR JANSSEN: Thank you. Thank you, Chairman. [LR343]

SENATOR DUBAS: Other questions? Senator Smith. [LR343]

SENATOR SMITH: Thank you, Madam Chair. And I'm going to start with Mr. Furchtgott-Roth. When you mentioned the federal USF funds, relatively speaking, we're seeing less of that going to Nebraska than really should be if you look at the amount of, you know, rural geography that we have in Nebraska and the need for the services. It would imply then that the federal USF funds are going to more densely populated areas in the United States. How is that happening? [LR343]

HAROLD FURCHTGOTT-ROTH: Well, that's a very good question, Senator Smith. And look, I'm not here to suggest that some states are getting too much. And I'm also not here to suggest that the rules for universal service are not being complied with. As far as I know, the rules are being complied with for the distribution. But what I am here to tell you is that when you step back and you look at the broader picture and you were to take some person like me from Washington and ask them where do you think Nebraska would rank in terms of distribution of high-cost USF, and I'd say probably not too far off from where people in Nebraska think the Nebraska football team ought to rank in the poll which is pretty high up. (Laughter) It's certainly not 25th. And I've looked at these numbers a lot and I'm puzzled by them. I don't have a simple...I don't have a real simple answer for you. But I think it's something that this committee might want to pass forward to your congressional delegation and say: you know, maybe you ought to take a look at this; maybe this is an issue for the congressional delegation to say...ask the FCC: Why is it that Nebraska ranks 25th? [LR343]

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SENATOR SMITH: So I think that gets at the point of your discussion and your testimony and that is the, perhaps, ineffectiveness of the federal government; we don't need to be looking to the federal government, we need to be looking within and finding solutions within Nebraska. [LR343]

HAROLD FURCHTGOTT-ROTH: Yes. And I would also say, don't expect a quick answer from the FCC on that question. [LR343]

SENATOR SMITH: All right. A bit of a broader question, and to Mr. Balhoff, you had a...you said that access charges are support mechanisms. Can you elaborate a little bit on that? And I didn't quite follow what you were meaning by support mechanisms. [LR343]

MICHAEL BALHOFF: Well, first of all, I want you to know that Mr. Balhoff says that and the FCC would not say that. [LR343]

SENATOR SMITH: Okay. [LR343]

MICHAEL BALHOFF: And by that I mean that we've...typically when Commissioner Furchtgott-Roth was at the FCC and they did the reforms that occurred for price-cap carriers and rate-of-return carriers, they lowered access charges, intercarrier compensation, and they made certain adjustments to consumer rates and to the Universal Service Fund to raise those so that it was, effectively, a revenue-neutral change. I don't know, historically, exactly what occurred in Nebraska, but I do know when you lowered access charges you effectively created more universal service monies that were available to the carriers that were out here. For the most part, built into the system of what long-distance companies paid to local companies, they were, apparently, paying for the service of finishing a call or originating a call. But the reality was that the regulators felt that it was important to take certain monies from the industry

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and reallocate it to the local exchange companies that were making significant investments. There were not huge costs associated with completing or starting a telephone call. The reality, however, was that they put what they called "subsidies," I would not call it that, "support monies" in access charges. In the 2011 reforms, the first two-thirds of that report talks about capping the fund and fiscal responsibility and we're setting the budget at \$4.5 billion. And then after they set the principle out, then in the second half of it, they eliminated access charges. That was the first time that I remember any federal reform in which there was not an offsetting universal service for intercarrier reductions. But they effectively spent the first two-thirds of it talking about that. So there was a vaporization of what I would contend is support. But going back to the original question from Senator Janssen, the reality is: you're losing revenues; there are very few avoided costs; we're vaporizing cash flows. And the net result of that is going to be extremely clear. I would contend that there is something that this body needs to understand, where I would answer the question a little bit different than Commissioner Furchtgott-Roth. I think you need to understand what the costs are for rural service and figure out if there really is a risk to customers out there. Your job is not to assume that the federal government, which is what he said, is going to solve the problem, because I don't believe that they're going to do that either. I think you need to understand the crisis that is coming to bear on yourself. And if you do not understand it, you're going to drive down the street with your hands over your eyes; and you're heading for an economic disaster in rural areas. Because without the necessary monies to invest in broadband services, there's no way that somebody is going to want to raise their family or locate a business in these higher-cost areas. So the reality is, the loss of support: intercarrier revenues, or universal service monies, is effectively going to affect the infrastructure in those areas. And this is not a subsidy. I would recast the terminology. I would say...what you are doing is you are buying a service which relates to policy...that is the state body is buying a service, in conjunction with a private carrier and you're saying: I want to direct your activity to high-cost areas. But you know what? If I don't buy it, that is if you don't buy it, the service is not going to be there because those companies cannot do that which is uneconomic. So the reality is that this is not a

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question of do we help the companies. It's whether or not you are going to be buying a service in high-cost areas. And if you don't do that, the result is predictable. I appreciate Commissioner Furchtgott-Roth calling me "prescient." I think any third grader can figure this one out though. The reality is if the money is not there to invest, it will not be invested and there will be repercussions that will affect customers about whom you care. [LR343]

SENATOR DUBAS: Other questions? Senator Brasch. [LR343]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you all three for coming here; I have written your names down, but for the sake of time here...I have two questions here. When we look at broadband service and the USF, all of the funding is...when we look at purpose of broadband communication, you know, I think when we set up the landline infrastructure years ago for the purpose of communication, it was communication and for the sake of personal safety, security; whether it's in your home, in your state or nationally, okay, and then also for economic development twofold. Would you agree or is there something I'm overseeing or missing out here that that purpose has not changed significantly, or has it sifted over the years of...is one need higher than the other? [LR343]

CHERYL PARRINO: I don't think so. I think you see it exactly right. The technology has changed as broadband has become more important and new technologies are available. The companies in your state are rolling out that new technology. So it's still communications; it's still connecting people. It's the method by which people can make a living in rural areas; telehealth and some of the work you've done in that area, it's healthcare delivery. It's education. At lunch Commissioner Boyle was talking about how difficult it is to have an expert in each school district on this subject or that, so it's distance education, so that children throughout your state can compete and get good jobs. And it is about the economy and growing the economy and allowing your ranchers and your farmers to be able to conduct business on a national and a global level. So it's

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all those things; and it's as important as it used to be and in some ways a lot more important than it used to be. [LR343]

SENATOR BRASCH: Very good. Thank you. My next question from that is that we're looking at public funding, public dollars versus private enterprise, the two schools of thought. The one is the fact that in agriculture, for example, in our commodities we have universities developing products every day: seeds, hybrids, and we also have our commercial providers. They're constantly in competition for producing that kernel of corn that grows in any weather without water and emerging technologies have driven prices, it seems like higher than lower. But are we seeing that any emerging technologies from all the service providers we have, not even seated in this room, that do you see any future for going past fiber optics? That's what I am learning is a barrier to our rural communities. Is that...there are not funds anywhere for miles and miles, hundreds of miles to deliver. Or do you believe that can be delivered and what vehicle would that be? That's a long question, but I'm just...is there a short or long solution? Is it long term or is there a quick fix that we're being blindsided by? [LR343]

HAROLD FURCHTGOTT-ROTH: I'll take a stab. Senator, those are great questions and a lot of people...a lot of engineers who understand the area far better than I do with work in this area. Let me make one general observation which is that, at least as I understand it, the USF program and...the federal USF program for that matter, are not predictive of what technologies will be in the future. And if you look back, the FCC, the view of what was a sufficient technology 10 years ago has changed a lot over that period of time. Both new technologies and the demand for new technologies with broadband are just changing all the time. And so it is true to the point you make that there are particularly acute problems in rural America. It's very easy to get...not easy, but it's possible, it's been demonstrated to get gigabyte networks in urban areas of America and a lot of people use those gigabyte networks in urban areas. It's a lot harder to do that in rural America. And one of the challenges is to figure out ways of using the USF Program, whether at the federal or the state level, in a wise way that preserves

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levels of service and doesn't foreclose opportunities for new services in the future and also not becoming entirely predictive about what future technologies will hold. [LR343]

MICHAEL BALHOFF: Let me take a crack at providing a response of...first of all, I've been in telecom for a long time, as both Cheryl and Harold have too. And we've seen a lot of changes where you could not predict, which is what Commissioner Furchtgott-Roth is saying. We're not smart enough to figure out the technologies of the future. And in fact, nobody is. So I will tell you...I followed the long-distance industry when people thought it was going to be a slow-growth industry and the fax machine was developed. And suddenly industry volumes grew for a sustainable period, it must have been five, six years, at 13 percent rate. And we couldn't have foreseen that. Nobody foresaw what the Internet was going to do. Nobody foresaw what broadband was going to do. It's a bad thing when regulators try to bet on particular technologies. It's a lot better to bet on the kinds of services that are comparable and necessary and so on. And one of the happy things about the Universal Service Program up to this point in time, in my judgment, is that it's a partnership between people that are buying a service, that's the policymakers, and people whose job it is to run telecom networks and assume a heck of a lot of capital or risk. So it's a wonderful public/private partnership. I wrote a study a number of years ago on municipal broadband efforts where there have been huge problems, and we don't have time to go into all of that, but tremendous risk associated with the government taking over the operation of networks. There's capital risk and there's technology risk and there's competitive risk issues and a lot of different things. But the thing that is going on in this particular area is services need to be provided and the companies that are expert in that area have agreed to assume the vast majority of the capital risk to do that. And that's the beauty of what universal service has been up to this point in time. I don't think in the foreseeable future that wireless is going to be a satisfactory answer for the ranches and the farms because it's too expensive. It's not too expensive to build, but it's very expensive to continue to operate for a variety of rate-related reasons. Maybe it will be. We just don't know. Fiber-optic do appear to be the technology of the future because it appears to have a certain unlimited

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potential if you change out the electronics over a period of time. But we don't know. But it's better that policymakers not assume that risk. Leave that risk for the companies with whom you partner going forward. And that's the beauty of this program. [LR343]

SENATOR BRASCH: Okay. I have no other questions. Thank you very much. [LR343]

SENATOR DUBAS: Any other questions? I would have a couple for you. Just in light of what is happening at the federal level and you're very clear in your point about don't depend on the federal government. How do you see our state universal service fund being able to be sustainable and continue to do the important work that it needs to do? [LR343]

HAROLD FURCHTGOTT-ROTH: Madam Chair, I'm not here to tell you the details of how Nebraska can or ought to manage the fund. It would be presumptuous of me to do that. My message primarily is don't rely on the federal government to substitute for a state fund or to bail you out from the details of it. In terms of...I think maybe I should defer to my colleagues or people who probably have more insight knowledge about the finances of the Nebraska fund. Do either of you want to take a shot at that? [LR343]

CHERYL PARRINO: I think your fund is on excellent footing. Again, my understanding is that the commission has capped the assessment rate. And again, so they've set a budget for themselves. These services are being rolled out today. Again, if you had unlimited funds you could certainly deliver them a lot faster, but none of us have unlimited funds or unlimited budgets. So I think you're on really good footing for a sustainable state fund. You've got all the key piece parts in place. You look at the most efficient way to spend the money; you hold the people that get the money accountable. You hold the ratepayers or the consumers that are getting support from other citizens in the state; they have to pay their fair share by paying reasonable rates. So I think you've got all...I mean, I think the fund right now is set up in a very, very strong sustainable way. And I think you just continue to monitor to make sure that companies are delivering

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as they have in the past and that they're using that money wisely. [LR343]

SENATOR DUBAS: I guess that's what I was looking for. Just again in light of how it seems that the Universal Service Fund, Connect America Fund, those changes at the federal level, just making sure that at the state level we're going to be able to continue to do the type of work that needs to be done. And you're feeling that the way we have the fund set up now and the way it's being administered, we're on pretty solid footing. [LR343]

CHERYL PARRINO: Yes, yes I do. And I think, as I said in my prepared testimony, I think your fund is critically more important today because the federal system is in such chaos and uncertainty and there's dwindling compensation coming from carriers compensating each other. Your fund is currently filling that void and that is the only reason, I believe, you are still continuing to see broadband deployment in your state. Absent your fund, I think your companies would be as hesitant to spend money on infrastructure as other companies are. [LR343]

MICHAEL BALHOFF: I guess I'd like to add a couple of things. As an analyst, one of the things that we always try to pay attention to with companies is...is the environment changing somehow; the competitive environment, the technology, and so on, something is changing here. We've talked about the fact that the federal jurisdiction has changed. And the reality is, it necessarily is going to affect the ecosystem, that is investment in rural America. It's going to. And you need to understand that. If you do not examine that carefully, you will not be prepared to deal with the changes, because it is going to affect investment going forward. There's an issue that I didn't refer to from a financial point of view; I'm the bearer of a lot of bad news, and so this is bad news too, but the lending environment is horrible for rural telephone companies right now. You know why it's horrible? Because every lender is sitting out there saying: Do I dare risk capital in these companies where we're seeing a much more constrain of federal regulatory environment where we're seeing terrible uncertainty, where previously there was so

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much stability? So the lending environment is horrible. And if the lending environment is horrible, what do you think the equity environment is like out there? It is worse. So people are very, very, frightened right now. So as a matter of fact, we do mergers and acquisitions; we do divestitures of nonstrategic assets. We're dealing with a number of companies right now that are on the brink of bankruptcy. And the reason they're on the brink of bankruptcy is, in part, they can't get capital. And they are terribly uncertain about what is about to happen. So it is important. While Commissioner Parrino is absolutely correct that you've done a lot of really good things; you may need to do more good things in order to figure this out. And I as an analyst have to tell you, understanding is the beginning of doing good things. You have to talk to the companies to realize the pressures that are coming to bear on them. (Cell phone ring) Ask for additional information. Wireless is, obviously, not always a great thing. (Laughter) Just kidding. But you need to understand those things because if not, you're going to fail them. And I will tell you right now, the capital environment is as negative about this space as I've seen it in my entire history of following this industry. [LR343]

HAROLD FURCHTOTT-ROTH: If I could just add to what Mike has said along those lines. Many of the companies that are on the verge of bankruptcy are not on the verge of bankruptcy because they didn't follow the principles that Senator Janssen was speaking about. It's not because they did anything wrong. It's because they did everything that the government asked them to do. And that sort of predicament that a lot of these companies find themselves in because they relied upon the government saying these programs are going to be here and then the government pulls the rug out from under them, and it's put them in a very precarious situation. And I hope there aren't too many companies like that in Nebraska, but I worry that there might be some. [LR343]

SENATOR DUBAS: Do you think that what is happening, again at the federal level, and it sounds like Nebraska is very well positioned, so that's very reassuring to hear. Do we need to be worried about 9-1-1 services and how we'll be able to address 9-1-1? Is that an issue that you've had any experience with? [LR343]

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CHERYL PARRINO: I'm not an expert in 9-1-1. I mean, I understand from being at the commission, we worried about those things, too, and we collected the assessment. But there's all kinds of dynamics that go on with the delivery of 9-1-1 service with the PSAPs and the local politics and the...I mean, I do understand the technology is changing significantly and that people are looking at and studying enhanced 9-1-1 and Internet 9-1-1 and things that certainly need to be...continue to be looked at. But I'm not an expert in that field at all. [LR343]

SENATOR DUBAS: And we are conducting a study looking at 9-1-1 right now, the committee is. But I guess in light of what universal service funds do to help provide that infrastructure. And again, going into those more remote areas, those high-cost areas, you know, and just...I think that's something that we're probably going to need to maybe marry what's going on with this particular study and the 9-1-1 study that we're doing as well. [LR343]

CHERYL PARRINO: I was going to...this isn't really responsive to your question, but it made me think of another issue that is being talked about at the federal level. And they do have this concept of remote areas and are there places in the country that are too expensive to serve and what do we do about those areas? And there's some discussion about, well, we'll just leave that to satellite. And I think satellite plays an important role in kind of bringing services to consumers that don't have access to other services. But if you think about satellite in the context of 9-1-1 and customers having to rely on that type of service; when satellite isn't really good, when there's a big thunderstorm going on or you have a tornado and when do people need 9-1-1 is when there's a tornado and satellite is not necessarily good for voice service. So I think there are issues connected to universal service that seriously could have an impact on emergency access. So not directly responsive to your question, but, again, something that is being considered by the federal government that I think this committee and Nebraska ought to be very concerned about. [LR343]

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MICHAEL BALHOFF: The least expert person on 9-1-1 is just speaking now, so...but, obviously, there's infrastructure that is provided by the local exchange company that supports the wireless carriers that are out there. Wireless technologies are developing such you can triangulate on where there are problems. But ultimately, the historical discussion of 9-1-1 and Lifeline and all the other things that people have tended to talk to that are sort of base level questions don't really get to what I think is really the issue which is the economic support of rural America. Because without sufficient broadband-types of services, there will not be good farming and there's not going to be sufficient social development and economic development in those areas. So 9-1-1, if you will, is sort of a base service that you can say that at least they're living. But ultimately, you're not going to have an economic base out there unless you have something that is more robust. But 9-1-1 could even conceivably be at risk. Because as the telecom companies have said over and over again, is absolutely true, the wireless infrastructure is made possible by the landline network that serves all of those towers. So, obviously, even for wireless 9-1-1 becomes more problematic short of the satellite that Ms. Parrino mentioned. [LR343]

SENATOR DUBAS: Thank you so much. Are there other questions for the panel? I just want to thank you again. I think you have helped us raise the elevation of importance about why we need to have this discussion and have brought some issues to our attention, maybe that we weren't aware of before. And appreciate all of the information that you've given us and your offer as well to be a resource in the future, which I think we may be calling upon. So thank you again for taking the time to come. [LR343]

CHERYL PARRINO: Thank you. [LR343]

MICHAEL BALHOFF: We appreciate it. [LR343]

SENATOR DUBAS: Next I'd like to invite Dr. Constantine to come forward. Thank you

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so much for coming. [LR343]

DR. MANDI CONSTANTINE: Thank you. [LR343]

SENATOR DUBAS: Go ahead. [LR343]

DR. MANDI CONSTANTINE: (Exhibit 6) Madam Chair and members of the committee, thank you for the time today to talk to you about what's near and dear to my heart which is telemedicine. My name is Dr. Mandi Constantine, M-a-n-d-i C-o-n-s-t-a-n-t-i-n-e, and I'm the Executive Director of Telehealth at the Nebraska Medical Center in Omaha. We know that the U.S. spends more than 17 percent of the GDP on healthcare. But we know that despite this, it's not delivering the expected benefits in both quality and patient access to care. However, through use of telecommunication technology to deliver healthcare services, we can significantly impact lowering the amount of money that we spend on healthcare and improving quality and access to care. Cost savings through telehealth are significant. The FCC recently released data confirming that remote patient monitoring and e-care devices can save the healthcare industry over \$700 billion in the next 15 to 25 years. The VA, which implemented telemedicine 10 years ago, reported last year they connected 460,000 veterans via telemedicine and recorded 1.3 million consults and that by the end of this fiscal year, they expected to connect 825,000 veterans. Using remote-patient monitoring, outcomes for approximately 75,000 veterans suffering from one or more chronic conditions resulted in a 19 percent reduction in hospital admissions and a 25 percent reduction in "bed days" for patients that were admitted. At \$1,600 per veteran annually, remote patient monitoring costs far less than the VA home-based primary care service, which is a little over \$13,000 a year, and annual nursing home care rates at about \$78,000 a year. The use of telehealth is exploding, not only nationwide, but globally due to advances in technology that allows us to move beyond large room-based systems to tablets and smart phones which make availability of patient data easier to share and access and devices and software more affordable. And the shift here to keep populations healthier

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and out of hospitals. Revenue in the apps market alone is projected to reach \$6.6 billion this year and \$20 billion in five years, and the top five North America telehealth markets have generated more than \$1.9 billion in revenue. Today the two major categories of telehealth: Synchronous applications which are live, such as behavioral health counseling and tele-emergency room services; and Asynchronous applications where information is gathered, reviewed, and sent to providers such as teledermatology and wound care and remote patient monitoring are now being used in tandem. So you have neurologists who are viewing images for stroke patients at a different location, while at the same time videoconferencing with a primary care provider or an emergency room provider in a remote location, as well as an elderly person on a farm who has either a remote patient monitoring device hooked into their landline or a smart phone with a blood pressure cuff and a Glucometer and a Bluetooth scale where she can upload her information and a RN case manager at a hospital can look at that information and do a video call with her to talk about why she had a four pound, overnight weight gain that same day. ROI and patient outcomes are well documented. But in order to achieve these outcomes and these cost savings in Nebraska, we have to identify barriers that restrict the delivery of care via telehealth. Legislative statistics tell us at the national level that 39 states have 133 pending telehealth legislation or bills. Forty-four states have telehealth reimbursement in their state budgets. Twenty-one have telemedicine parity laws requiring insurance companies to pay the same for a telehealth visit as an in-person visit. Twelve states reimburse for remote patient monitoring; seven reimburse for store and forward telemedicine; and three states reimburse for live video, store and forward, and remote patient monitoring, including South Dakota, our neighbor. Access to healthcare in our environment today depends on continued funding for broadband access and legislation that encourages healthcare providers to participate in telehealth. Even though our legislation in this state is 13 years old, the first line states: Access to healthcare facilities and healthcare practitioners is critically important to citizens in the state of Nebraska. In summation, I know that changes in healthcare are focusing on population health and keeping patients out of hospitals. I'd like to leave you with two areas where you can have the greatest impact on telehealth in Nebraska. Please

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continue funding for broadband access. And please give us updated legislation to make us a regional and national leader in telehealth. Thank you for your time. [LR343]

SENATOR DUBAS: Thank you, Doctor. Are there questions? I think you've given us a great snapshot of what telehealth does for Nebraskans wherever they live and some good ideas of some of the things that other states are looking at. If you could pick one or two of the top things that you believe Nebraska should be looking at, as far as updating our laws, what would you...where you go with that? [LR343]

DR. MANDI CONSTANTINE: Parity. Parity costs you nothing. To be able to say the insurance companies have to reimburse the same for telehealth as an in-person visit; and remote patient monitoring. For us that's critical because if we have to keep patients in the home and out of the hospital, being able to get reimbursed for remote patient monitoring in the home allows us to do that for Nebraskans regardless of where they live in the state. [LR343]

SENATOR DUBAS: And we're not there with either one of those issues right now. [LR343]

DR. MANDI CONSTANTINE: We're not there yet. [LR343]

SENATOR DUBAS: Okay. All right. [LR343]

DR. MANDI CONSTANTINE: It's an opportunity, not a challenge. [LR343]

SENATOR DUBAS: There we go. That's a good way of looking at it. The response from service providers, as well as patients across the state to having telehealth available to them, what do you hear and see? [LR343]

DR. MANDI CONSTANTINE: You know, people are tired of traveling for healthcare. I

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actually sat next to a Shriner on my way back from Boston the other day who said: Oh, give me your business card, because we travel patients, not only throughout Nebraska, but throughout the country to see specialists and different medical centers and we want to support telehealth. Tell us where we can help you with funding, with ideas, because we want to be able to keep our sick patients in their homes. So I think that people are very supportive of it. This is...I moved here from Alaska in January where telehealth was a way of life for us. Eighty-five percent of the patients that we saw at the Alaska Native Medical Center were off-the-road system and had to fly in for healthcare if they wanted to see a specialist. So I understand the importance of broadband for healthcare. But it's...this is the wave of the future. I mean it's here and now and it's only going to extend further and further and further. And it's not just wireless devices, it's landline devices for people who can't get wireless. I grew up on a farm in southern Illinois. If I want to use my cell phone there, I have to go out and stand next to the pond. So my dad would tell me, if you're going to stand out there and make a phone call, feed the fish. (Laughter) But, you know, my mom to do remote patient monitoring would have to have a remote patient monitoring device that would work with her landline. [LR343]

SENATOR DUBAS: Thank you so much. Any other questions? Thank you so much for bringing your expertise to us today; I really appreciate it. [LR343]

DR. MANDI CONSTANTINE: Thank you very much. Thank you for your time. [LR343]

SENATOR DUBAS: We have one more invited testifier, and then we'll open it up to the rest of the room, so Commissioner Boyle. Good afternoon. [LR343]

ANNE BOYLE: Good afternoon. Madam Chair, nice to be with you today. [LR343]

SENATOR DUBAS: Welcome. We're glad to have you with us as well. [LR343]

ANNE BOYLE: And thank you; it's been a pleasure working with you during the time

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that you have been the Chair of this committee. [LR343]

SENATOR DUBAS: Thank you. [LR343]

ANNE BOYLE: (Exhibit 7) To you and to the members of the committee, I'm Commissioner Anne Boyle, A-n-n-e, Boyle, B-o-y-l-e, and I am the current Chair of the Nebraska Public Service Commission. With me today is Steve Meradith, who is executive director of the commission; Shana Knutson who is general counsel to the commission; and Sue Vanicek who is a director of the State Universal Service Fund. Since you are already familiar with many of the universal service programs administered by the commission, my testimony will provide you with an update on current proceedings, as well as respond to some of the issues raised in the interim study, three hearings held this past week. Over time the commission has established five universal service programs: the broadband pilot fund; the telehealth program; the dedicated wireless fund program; the telephone assistance program; and the high-cost program. First I'm going to visit with you about the Nebraska Broadband Pilot Program. In 2011, the commission established an Internet program, also known as the Broadband Pilot Program. And as an aside, I'm concerned that many people in this country don't realize when we talk about broadband, we're talking about getting Internet services to everyone. According to a 2012 National Regulatory Research Institute report, the Nebraska Commission is one of only four state commissions that provides explicit universal support for broadband. The other states include California, Maine, and West Virginia. In Nebraska, any provider of broadband service, including mobile, fixed wireless, and wire line service is eligible to apply for broadband grant funds. As an aside, at the Scottsbluff hearing, one witness stated that fixed wireless Internet service providers are not eligible to receive universal service funding for broadband. And that is true on the federal level, but it is not in Nebraska. Our commission expressly provided that broadband support was to be technology neutral. There is no requirement here for the provider to be designated as an eligible telecommunication carrier to receive state broadband support which is required by the federal fund. In 2012, the commission

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awarded \$4 million from 19 capital-improvement broadband projects located throughout Nebraska. Some of the projects were fiber builds, some were wireless projects, and some were equipment updates to boost existing infrastructure. We are currently in the second year of the program. This year the commission received 16 grant applications containing over 60 broadband projects and covering more than 145,000 possible subscribers. On August 28, the commission staff filed a recommendation for the allocation of the grant support. The applicants and other interested parties have had an opportunity to comment on the staff's recommendations at a hearing on the 2013 grant applications...I'm sorry, a hearing will be held in Lincoln next week on November 5. Along with my written testimony, I have a handout which is...I think attached to the handouts that you have and it is the staff recommendation in 2013. The staff recommendation and the projects displayed on the handout for 2013 may be changed by the commission after live testimony is presented at the hearing. Beginning in 2014, the commission plans to allocate \$9 million to the Broadband Grant Program. The application window for the 2014 grant awards will be by the end of the year. Grant awards are prioritized based on the number of unserved and underserved areas, speed, rate, cost, and the potential number of households benefitting from the broadband service. Minimum speeds of 4 megabytes down and 1 megabyte up must be provided. This minimum speed requirement matches a federal definition of broadband. However, many of the funded programs will provide broadband service to consumers well above these minimum speeds. The commission has committed to reviewing the minimum speed requirements every few years. The commission also has an opening proceeding to consider whether to establish certain caps on the annual amount of broadband support, e-company is eligible to receive the broadband fund. Comments have been received and the hearing date is set for October 30. And, frankly, I believe myself...speaking for myself, that the reason that we may have to put a cap on that is because we are getting many applications; and in order to serve as many as possible, we will have to say that the set figure of that will be available to everyone. Regarding the statewide telehealth network, for almost a decade the commission has supported a statewide telehealth network which connects 68 rural and critical hospitals across the

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state to hub hospitals located in Grand Island, Kearney, Scottsbluff, Norfolk, North Platte, Lincoln, and Omaha. On October 1, 2013, the commission approved a request by the Nebraska statewide telehealth network to increase the funding to approximately \$1.5 million for the current fiscal year. The increased funding is for new equipment-bridges, higher bandwidth, and increased redundancy. The funding mechanism is technologically neutral which permits the telehealth network to utilize the latest technology available. Attached to my testimony is a handout that shows the telehealth connections across Nebraska. And I will also tell you this as an aside that the telehealth people who come into our offices, at one point we were authorized to give them a million dollars. They are among the few who have said, we did not use it all. And so it was an easy decision, while they had waited and they need now to update their programs to say that now we are going to have an allocation of \$1.5 million to make sure that that network continues to work. And as a previous testifier said, it is saving a lot of money and a lot of...and is very helpful to all the people who use that. Next I'm going to visit about the wireless fund. The dedicated wireless fund targets universal service support to wireless carriers for the construction of cell towers or the placement of cellular equipment in out-of-town and sparsely populated areas that would not otherwise have wireless service. Over \$20 million has been awarded and over 60 towers have been approved for funding. The commission will award an additional \$5 million this year for this program. A hearing on the current year's applications is scheduled on November 4, this coming week. To qualify, wireless carriers must demonstrate that they are capable of and do provide wireless broadband service with the support awarded for the approved tower sites. They are obligated to allow other carriers, public safety entities to use their towers upon reasonable request. Along with my written testimony, I have a handout which shows the towers funded through this program along with the towers proposed to be funded at this point. Reimbursement is not provided until after the commission receives documentation of costs. On September 14, last month, 2013, the commission issued an order on merging the dedicated wireless fund into the broadband grant program to increase broadband deployment. Wireless providers can continue to seek support for building cell towers in the

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broadband grant program as long as these towers provide broadband service. Then we have the low-income assistance: The Nebraska Telephone Assistance Program, otherwise referred to as Lifeline, provides telephone assistance to low-income consumers. In August, the commission opened an investigation to determine whether broadband should be added to the Telephone Assistance Program as a supported service. The commission proposed to make broadband service more affordable by similarly reducing the rate eligible consumers pay. We proposed to set aside \$5 million for the low-income broadband adoption program. Comments and reply comments by interested parties have been received. The commission plans to hold a hearing on the broadband assistance program by the end of the year. And I would like to underscore the fact that this is...at this point, this is a hearing, this is something we think is highly important. And that because of the change in our world that people will continue to use the Internet and we someday, maybe, I'm not sure when; I don't think anybody can forecast that, that we won't have the systems that we have today and that we depended on for many, many years. Therefore, we think it is important to note to at least open the door for discussion. It does not mean that we are going to spend \$5 million immediately; it just means that we have set a figure so that we can have a conversation and listen to the others who have comments about that and whether or not \$5 million is too much. However, to underscore something for you, we pay from our own fund \$3 a month to those people who are...for Lifeline for phone service...telephone service and that includes wireless service. Broadband is...nobody really knows what the final costs are going to be for broadband, but I believe that they're going to be higher than it is for using the telephone services. Therefore, we must be prepared if it's going to be assisted. And if we don't assist those people who are low income, then they will be left behind like so many other things in our country. Therefore, Nebraska has been a leader; we always have been a leader. The programs that we've developed are leadership, and I have been proud to be part of that. We have the high-cost program which is designed to ensure that quality access to telecommunications and advanced services is offered at reasonably comparable and affordable rates no matter where the customer lives. The commission's high-cost support program is based upon forward-looking cost modeling

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which estimates a relative cost of providing service in high-cost areas. Support is targeted to out-of-town areas where low population density makes the cost of providing service prohibitive unless support to providers is received. Since 2004, the commission's high-cost support mechanism has been designed to encourage carriers to invest in networks capable of providing both voice and broadband service. In the current fiscal year, \$40 million has been allocated to 31 telecommunication carriers. The commission's Web site is consistently maintained and depicts distributions from the fund. And finally, audits and carrier responsibilities, just so you understand it, this is not something that you just open the door and say, here's your money. We do have audits and we do make sure our funds are spent wisely. Along with the receipt of universal service support, corresponding obligations are also required. For recipients of ongoing support like high-cost support, the commission requires each carrier to undergo audits performed by an independent third party at the carrier's expense. Recipients of high-cost support must also file annual financial reports which must detail the use of universal service support in the previous year and how proposed universal service funds will be used. Carriers of last resort, the acronym is COLR, are also attached. These carriers must commit to serve all subscribers if they are going to be the only carrier left in a town to serve people. All subscribers must be served indiscriminately no matter where they live and does not allow them to deny service to a customer or to exit the market. Such carriers must file tariffs and are subject to rate benchmarks for voice service. Finally, these carriers must comply with service quality and consumer protection metrics established by the commission. With respect to the broadband grant recipients, these providers must commit to providing broadband service to every consumer in the grant area for a minimum of five years. They must first take the broadband investment and provide a 25 percent financial match. The commission releases broadband support after staff reviews invoices filed by the carrier. The carriers are subject to audit upon request by the commission. Grant recipients must also agree to comply with reporting requirements relative to the use of broadband support such as providing speed test information and providing data to the commission for public broadband mapping purposes. Overall, the commission has tried to strike an

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appropriate balance to encourage investment, but require also accountability. To ensure that affordable voice and broadband service is available to all Nebraska consumers requires an ongoing commitment by lawmakers, industry, and regulatory bodies. I thank the committee for their continued work and oversight of the communications needs of Nebraska consumers. And before I close, Senator Dubas, you mentioned something about 2-1-1. [LR343]

SENATOR DUBAS: 9-1-1. [LR343]

ANNE BOYLE: I'm sorry, yes. Oh, that's another...2-1-1 is another one I worked on. (Laughter) I bring this up because it is alarming that a day and a half ago in Omaha the 9-1-1 center was crashed for over an hour and a half. And the people at the 9-1-1 center got a hold of CenturyLink and after an hour CenturyLink was able to identify the problem and the problem occurred because AT&T had something go wrong with them on a national level and the 9-1-1 center in Omaha was receiving 200 calls a minute because a lot of calls from surrounding states were all coming in to the 9-1-1 center in Omaha and not getting taken care of anywhere else except there. It...the enormity of trying to catch that many calls in a minute crashed the system. And we are fortunate; it was only down for an hour and a half. We are fortunate that the people who are in law enforcement were on their toes; that they contacted others to make sure that they knew that the system was down that they...and in case there were...any things that could have happened. Just so you know, there are some people in the Douglas County jail right now who were in a very horrible situation of killing many, many people and there was concern of those people if they learned they would try to run on the jail and we would have problems. So it is alarming to think that that can happen. And it is critical that we ensure that we have security services for everybody in this state. And if it can happen in Omaha, the biggest city in this state, what happens if it happens in Benkelman? It would be horrible. So with that, I thank you for your willingness to let me testify. And if you have any questions, I'll be happy to answer them. [LR343]

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SENATOR DUBAS: Thank you very much, Commissioner Boyle. Senator Brasch.  
[LR343]

SENATOR BRASCH: Thank you, Madam Chairman. And excellent information and thank you for your service. And I do have a question here though; on...when you talked about the funding available for wireless and PSC dollars, grants, loans, what percentage of towers are purely privately owned or are...do some of them...you have funds that help set up new towers, right, correct? [LR343]

ANNE BOYLE: We do. [LR343]

SENATOR BRASCH: Okay. What percentage use public funds to operate their towers? All of them? Half of them? Or 10 percent? [LR343]

ANNE BOYLE: I'm not...I'm...I don't know of any that are privately operated. [LR343]

SENATOR BRASCH: None. Okay. [LR343]

ANNE BOYLE: And I will stand corrected and provide that information to you if that is not right. [LR343]

SENATOR BRASCH: And the reason I do ask that question, I believe it's something that...in...on my farm, okay, we have a rural service provider that is highly reliable. However, the weather is not highly reliable. And a few weeks ago there was a terrible storm, lightning struck; our tower was one of the ones that went down. However, two miles down the road they had different provider, their tower is standing, they're getting signal, the winds are high, I don't want somebody up there working on the...you know, life is very important. But if the state is paying for all these towers through public funds or...then surely there has to be some sort of a reciprocity agreement or interoperability that if one tower goes down...and these are not coming out of someone's private funds

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solely that...shouldn't there be some sort of a cooperative...share a tower or bounce my signal over there for two days? Is that even feasible? [LR343]

ANNE BOYLE: Well, first to...they don't all get funding for the entire system going up. They have to share costs. [LR343]

SENATOR BRASCH: Okay. [LR343]

ANNE BOYLE: But to answer your question, the technology...I don't know if that would allow that. They do that on the telephone side...or wireless side when people want to share towers. Of if, maybe, for example, Windstream has towers someplace and then another smaller carrier comes along and they negotiate a contract with them that they can share their tower in order to make things better. I don't know that any of those have a reciprocity with tower by tower by different companies. But it's a good question. [LR343]

SENATOR BRASCH: If they're publicly funded...that's where I'm saying...I totally respect someone's private investment, but if we are also paying in to these towers, you would think there would be some sort of a buddy system where...like a neighbor would help you out for a day with...but the businesses are more competitive than cooperative is what I'm... [LR343]

ANNE BOYLE: And I think it's something that we should explore. And as I said, our staff is here right...some of our staff is here right now. But I know they do it with wireless phone services. Therefore, perhaps that's something we need to look at and to see...because of what you're saying, your tower went down; how do you get service from there? [LR343]

SENATOR BRASCH: And we were down two days which...you know, I'm 10 miles from town, fortunately, only 10, so I can get in the car, get to a public facility, library, or where

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I can get other wireless. It's not...in our western part of the state, we could see that the distance is much greater, but you would imagine that if there are public funds that perhaps we should look at some way to provide temp services...or interim services between repairs. [LR343]

ANNE BOYLE: What I've learned in this business is: never say never. [LR343]

SENATOR BRASCH: Very good. Thank you. [LR343]

SENATOR SMITH: Thank you, Commissioner Boyle, appreciate your testimony. Are there any other questions? Seeing none, I see Senator Dubas has returned. [LR343]

SENATOR DUBAS: I don't have any questions either. Thank you, Commissioner. [LR343]

ANNE BOYLE: Thank you for the opportunity to be with you. [LR343]

SENATOR DUBAS: We'll open it up now to other testifiers. Just kind of...for point of clarification for the committee, how many people are planning on coming forward to testify? One? Two? Okay, very good, thank you. Please come forward. Welcome. [LR343]

DR. ERIC THOMPSON: (Exhibit 8) Thank you. My name is Dr. Eric Thompson, E-r-i-c T-h-o-m-p-s-o-n. I appreciate the opportunity to speak to the members of the committee today, thank you. I'm the director of the Bureau of Business Research and also an associate professor of economics at the University of Nebraska-Lincoln. I specialize in studying the growth of state and regional economies and have evaluated the issues before the committee today from that perspective. Testifying today on behalf of Nebraska Rural Independent Companies about a report that I coauthored with Jeff Pursley entitled The Economic Impact of Rural Telecommunication Firms. Our report

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looked at a variety of issues. And I want to summarize a few of those issues today, briefly, for your interest. One issue we looked at is the spill-over benefits from businesses that are located in very rural areas to businesses that are located in the more urban areas of the state. What I'm referring to is...there are substantial spillovers from production, wholesaling, and transportation businesses that are located in rural areas of Nebraska, or the very small communities and towns of Nebraska to processing, supplier, and finance businesses that are located in the urban areas of our state in terms of customer relationships, supplier relationships. Now what I meant by urban areas, let me just clarify: I'm including both the micropolitan areas of Nebraska; some examples of that might be Madison, York, or North Platte, as well as the major metropolitan areas of Omaha and Lincoln. So what did we find in our report? And I guess I'm referring now to Table II.4 on page 9. Well, we looked at the spillovers from \$18 billion worth of business activity in agriculture and related businesses, again, that was located in very rural areas of Nebraska or small towns in Nebraska. So we focused on this \$18 billion of business activity. And we did, indeed, find spillovers to these urban areas that I referred to. In particular, we found \$2.5 billion of business activity that spilled over to the adjacent micropolitan areas, again those are communities of the size of, for example, Madison, York, or North Platte. So about a sixth of the economic activity spilled over to these adjacent communities, as well as nearly \$1 billion spillover all the way over to Omaha and Lincoln. So that was some of the evidence we found of this spill-over effect. We also calculated that in terms of employment. You can see that on Table II.7 on page 10. We found a spill-over benefit of about 18,000 jobs into micropolitan Nebraska communities; and about 6,000 jobs in the Omaha and Lincoln areas supported by these activities of the rural businesses. So what I took away from that, or what both of us took away from that is that the economic benefits from key rural infrastructure, including, of course, telecommunication infrastructure, the area that receives benefits from that is not just the local areas but the entire state. Now in economics we have a particular way of looking at that situation. In particular, we believe that revenue sources should match the area that benefits from infrastructure; so that's a way to say that, you know, it's appropriate from an economic perspective that a portion

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of the revenue to support telecommunications infrastructure in rural Nebraska should come from urban areas such as Omaha and Lincoln because they're part of that benefit area. A second issue we looked at is the link between telecommunications infrastructure and community economic diversity and population characteristics in small Nebraska towns. In particular, we examined 159 small Nebraska towns. How did we define small? These were communities with between 155 and 893 households. In our analysis, we found strong correlations between broadband subscribership and also the speed of broadband service and several important community economic indicators. In particular what did our study find? It found that broadband usage and speed was correlated with the presence and business activity in nine major industry groups, again, within these small communities throughout rural Nebraska. So pretty much all of the economy, all the different sectors of the economy that were benefitting from that broadband access. Broadband speed was correlated with the presence of college and even postcollege graduate educated populations in these towns. And broadband speed was correlated with the presence of more 18- to 34-year-olds in these smaller rural communities. Again, hitting the high points of our report. The last point I'd make has to do...well, a number of people have testified today about the financial necessity of the NUSF for providing telecommunication services in rural Nebraska. We also found some evidence in support of that idea. In particular, we found that each dollar in annual revenue, including NUSF revenue, was associated with about \$4.50 in telecommunication capital stock, sometimes referred to technically as total plant in service, so there was a big spillover in terms of private sector activity from the support that was receiving. And we did see a relationship between the revenue and the infrastructure that was available to communities. So...excuse me, that was Table IV.1 on pages 19 and then some text on page 20. So, again, I promised to stay at the high points of our report. Those were the three main points. So thank you for your attention this afternoon. [LR343]

SENATOR DUBAS: Well, I appreciate the information. Thank you. Are there questions from the committee? I think one...it would appear to be very obvious, but maybe if you just wanted to expand on it a little bit, and I think you just did as you closed your

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comments about the availability of a higher-speed broadband service and broadband subscribership, there's that strong correlation between the income of the area and the access to these services. [LR343]

DR. ERIC THOMPSON: Yes. Yes, that was one of our findings. It was income and...and very broadly based, income from a variety of industries, all nine major industry groups, we found that correlation, yes. [LR343]

SENATOR DUBAS: Very good. It would seem to make sense, but, you know, sometimes to have it actually demonstrated. [LR343]

DR. ERIC THOMPSON: To actually go out and measure it and verify, I guess, confirm the hypothesis... [LR343]

SENATOR DUBAS: Yes. [LR343]

DR. ERIC THOMPSON: ...is what we do. [LR343]

SENATOR DUBAS: Any questions? Thank you, again, for the report and information. [LR343]

DR. ERIC THOMPSON: All right, you're welcome. [LR343]

SENATOR DUBAS: Next testifier. Welcome. [LR343]

LINDA AERNI: (Exhibit 9) Thank you. Good afternoon. My name is Linda Aerni, last name is spelled A-e-r-n-i. I gave you, for the record, a copy of my testimony. So in the interest of time I'll just kind of hit the high spots. In 1992-1993, I was employed...somewhere in that time frame, I was employed with Nebraska Public Power. And in my off hours I became intrigued with the technology called the Internet. And in

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order to get on the Internet, and I'm a programmer and have technology in my background, I had to dial to Atlanta, Georgia, and had some interesting developments from that research. And I convinced NPPD to bring the Internet to the main office. And we did. We installed a 56k connection which is, in today's standards, about 50 times less powerful than a normal DSL connection. And I clearly remember my management standing in front of me saying: Okay, Linda, you brought it here; now what in the devil are we going to do with it? So we've come a long way. At that same time, while I was playing around on the Internet, bringing it to NPPD, I wanted access for Nebraska; and quite frankly, could not find any. Went to several telcos, the cable company, they were interested; and quite honestly, they thought I was crazy. My husband also thought I was crazy because my phone bills to Atlanta, Georgia, kept going up and up and up and up. So being a woman, I decided if nobody is going to do it, I am. And I did. And I found an entrepreneurial company in Omaha, Nebraska, and several sources of funding in rural Nebraska; and I started an Internet dial-up company. Now remember, this is in 1993 and nobody even knew what the word "Internet" was. So we ended up installing probably in...the closest that I could find was about 400 telephone lines to serve rural Nebraska; and we served as far as Chappell, Ogallala, Kimball, Alma, and all of the smaller communities around the counties that I'm in: Platte, Boone, Colfax. And we still serve those areas, but we don't serve them with dial-up. It was an exciting time to be an entrepreneur; it was an exciting time to be on the Internet and share this technology. But more than that, for me it was exciting because I helped and encouraged local people, local rural Nebraska people to embrace this technology and become entrepreneurs themselves. We had people who created Web sites. We had people who created servers and maintained them for governments and libraries. We had people who created computer repair businesses. And it was a great time to be in Nebraska and to do the "can do" opportunities that were available. However, by the end of the '90s there was a force called the "eligible telecommunications carriers" and they came before this very committee with very heavily...well, the best lobbyists and they said: You know, nobody wants to do Internet in rural Nebraska; we need massive subsidies. And so the Legislature devised a mechanism which put into place the highest phone

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surcharge in the nation; over \$50 million per year, and we gave it to the eligible telecommunication industry. This had a devastating effect on my world and the world of the entrepreneurs out there because suddenly they had a state-subsidized competitor. For private competition to work, there's got to be a level playing field. And with universal service funding, there isn't. In 2005, they attempted to pass legislation to enforce the Dillon's Rule, and I'm sure you all understand the Dillon's Rule says that a public body can't do anything that the Legislature doesn't give it the authority to do. And despite having the best lobbyists, I had state senators, two of them, tell me that that was the heaviest lobby bill that they had ever encountered. It did not...it hit unexpected opposition from the public and from common sense. But out of that, LB645 was born and it was called "a broadband task force." And that task force was actually chaired by a member of the Legislature who was on...an executive on an eligible telecommunication carrier company. I knew that the deck was stacked. I figured that if the task force concluded that Nebraska had broadband access, there would be no need for involvement with any municipalities or utilities or public entities in this state. I served on that, as I said, and the majority report at the end of that task force concluded, and I quote on page 3: "Currently the task force found significant deployment of DSL, cable modem, and wireless broadband coverage in Nebraska. Additionally, two satellite broadband providers are available to every...virtually every resident in the state." I thought that was wrong. And I fired a minority report of which I gave a copy to the page. So forceful was that minority report that the Legislature heard no more about Dillon's Rule. However, we are now eight years and a half billion dollars of subsidy to the eligible telecommunications carriers. And that report, that minority report underscores the accuracy of what I said. There's one difference today, however. Today, having secured the monopolistic position in respect to rural Nebraska, having starved out most of the entrepreneurial competition and enjoyed the fruits of an unlevel playing field, the eligible telecommunications carriers argue now that there is not enough broadband in rural Nebraska and without massive subsidies nobody but them will provide it. As you know and have heard, there is six states that do not have any form of state funds to support telecommunications, both rural and urban states: Alabama, Delaware,

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Massachusetts, Montana, New Jersey, and Tennessee. Only four states have funds dedicated to broadband services: California, Maine, Nebraska, and West Virginia. The Tax Foundation issued a report after studying universal service dated January 2013, showing Nebraska ranked the highest in the whole United States for a combined federal/state and local charge on telecommunications. Were I in your shoes, I would look for revamping the playing field and designing a network consisting of resources of the major cellular services, the public entities, the utilities, the municipal networks, and reviving the interest in private capital and entrepreneurial spirit that we once had. Without a firm direction I think from the Legislature, Nebraska will continue to provide massive subsidies and have an unlevel playing field. I think I'm about out of time; I didn't time this, but if you have any questions, I'd be more than happy to answer. [LR343]

SENATOR DUBAS: Are there questions for Ms. Aerni? Senator Smith. [LR343]

SENATOR SMITH: Thank you, Madam Chair. Thank you for your testimony, appreciate it. Can you clarify...go into a little bit more detail, then you...and your concluding comment...I'm trying to see here..."If I were in your shoes, I would look at revamping the playing field and designing a network consisting of the resources of the major cellular carriers, public power and municipal networks." Can you elaborate on that; explain what you're talking about there. [LR343]

LINDA AERNI: Well, way back in 2005, if my memory serves me right on the year, I know that the municipality of Norfolk strung fiber throughout a lot of their community with the intention of allowing the public to access that fiber and they were shut down. I also know that NPPD, around that time, had some dark fiber that they wanted and allowed a community college to jump on for distance learning for students. That was also shut down. I serve on the Central Community College Board of Directors, and I will tell you that distance learning is going to be very important for rural Nebraska in the years to come. [LR343]

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SENATOR SMITH: Okay. And how do you reconcile it? Because in there you talk about the use of private investment. How do you reconcile that with the use of publicly funded facilities? [LR343]

LINDA AERNI: Well, first of all, we're very profitable. We have never taken any public funds from...and we're not eligible because I don't do voice, even though I am a CLEC. There is private capital all over, but they're not going to invest if they know that the state is giving \$50 million-plus a year in universal service funds to the competitor. Some of those telecommunications carriers are getting...and Anne can probably give you more accurate data on this, but they're getting like \$5,000, or more, a line per year. Well, my suggestion is that possibly we ought to go to the people and say: Do you want that landline phone or can we better serve you with a different type of technology? We've been deploying wireless for probably eight years and it's an excellent mechanism. There are cellular companies that are deploying hot spots that are excellent. None of that requires the copper wire of the telephone company. [LR343]

SENATOR SMITH: Thank you. [LR343]

SENATOR DUBAS: Other questions? Senator Brasch. [LR343]

SENATOR BRASCH: Thank you Madam Chairman, and interesting testimony this afternoon. And I do have a few questions here. You had talked...it starts that you was employed by NPPD. Are you... [LR343]

LINDA AERNI: No. [LR343]

SENATOR BRASCH: ...currently employed today? Are you in the technology business? [LR343]

LINDA AERNI: No, I worked for them for about 13 to 15 years. I left and started my own

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company and that was in about '93 or '94. [LR343]

SENATOR BRASCH: And are you still in a technology line of work? [LR343]

LINDA AERNI: Oh, yeah, still have the same companies. [LR343]

SENATOR BRASCH: And that company is? [LR343]

LINDA AERNI: Community Internet and Wire Free Nebraska. [LR343]

SENATOR BRASCH: Okay. Okay, very good. And when you were mentioning pioneering the industry, I also have a pioneering background in the sense that I was one of the first people at the Department of Revenue that had asked for assistance in taking computer classes, and I was turned down because they said the Internet had nothing to do with my department. And now...and so I personally paid for three programming classes; did well, and quickly...and that was in 1984. Then when you move to the '90s, hardware was coming out nationally from federal funds; that's when they started hard wiring schools with fiber optics. All the schools became publicly funded. There was hardware, but a lack of software. Moving to a farm now, we could not get Internet service, and this is in the '90s, this is probably even close to the year 2000, several of us...I'd say 10 to 15, we all paid...and we had our own Internet service provider, so there is entrepreneurship still available today and opportunities. We purchased it for education, for economic development, because you were saying that it...there seems to be a stronghold by private people...well, we had so many people in our area sign on, I think we are 300 people or more that started with 15 people, that we still wanted to be farmers. We don't want to be service providers. [LR343]

LINDA AERNI: Sure. [LR343]

SENATOR BRASCH: And so I think a lot of what we're seeing are acquisitions by

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companies who maybe have started small, outgrown their wishes to be where they want to be. So I am thinking there is still...your company is still in existence and are you seeing growth and... [LR343]

LINDA AERNI: Oh, yeah. [LR343]

SENATOR BRASCH: And...but you're... [LR343]

LINDA AERNI: Especially in the wireless area. [LR343]

SENATOR BRASCH: Okay. I'm concerned on your concern is what... [LR343]

LINDA AERNI: Yeah, what I'm seeing is people are dropping their landlines a lot, a huge a lot. [LR343]

SENATOR BRASCH: Okay. [LR343]

LINDA AERNI: Because I am a CLEC, I can still provide DSL over the copper wire. But more and more, the next generation are going to cell phones and they're going to Internet and they need the broadband...I don't want to discount the economic development effort or the educational effort that broadband provides because it's critical. But what I'm seeing on my network is a lot of people downloading Netflix and Roku and Hulu, entertainment over the broadband spectrum more so than trying to set up a business. [LR343]

SENATOR BRASCH: And which community is that? Because in northeast Nebraska we're seeing very few entertainment, but more in the entrepreneurship and business growth, the markets, individual businesses, virtual businesses. And then when it comes to landline, I believe it still has significant strength. I think every day someone experiences "can you hear me now" on their cell phone. And so I...you know, I...you

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know, you're...so if we don't have the public...the Universal Service Fund, is that what you're proposing that...where are we going to have some assurance on reliability and who's in charge? [LR343]

LINDA AERNI: Your landline phone has never gone down? [LR343]

SENATOR BRASCH: Very, very, really, no, I would say no. And we live in a home that is over a hundred years old. [LR343]

LINDA AERNI: Okay, good for you. [LR343]

SENATOR BRASCH: We still have the outdoor facilities from...out the window; we don't use them, but we see them. [LR343]

LINDA AERNI: I'm just saying that universal service has created an unlevel playing field. Nobody is...at least the state ought to back out of it. The government has no business in it if private industry can do it. I mean, do you have paved roads to your home? [LR343]

SENATOR BRASCH: No, we're on a gravel road. [LR343]

LINDA AERNI: Well, why don't you ask the Legislature to pave those roads? [LR343]

SENATOR BRASCH: They serve the purpose as a gravel road at this...the amount of traffic we have. And it would be an expense that we would rather invest our money on other pieces of infrastructure. [LR343]

LINDA AERNI: Well...I... [LR343]

SENATOR BRASCH: So...I know, I appreciate your testimony. It's very important, but I'm curious if we...who will assure responsibility for communication if we turn it

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completely over to private enterprise and don't have a...? I believe strongly in private enterprise, but the Public Service Fund, I believe, gives it some regulatory...and you're not saying that at all. [LR343]

LINDA AERNI: I've been told that there are telecommunication carriers that receive 75 percent of their revenue from universal service fund. [LR343]

SENATOR BRASCH: So it's the deliverability? It's not the...or it's the concept what you totally believe it should be reworked, modernized? [LR343]

LINDA AERNI: Right now we have the highest USF in the nation. And where is it going to stop? When is the state going to say enough? Let private industry do it. [LR343]

SENATOR BRASCH: And I think when you look at the state of Nebraska; I had jotted it down about a month ago that our geography, our land versus our population density, and I think we're down like at number 37 or so, when it comes...and I'm not talking about our program, but when you look at how much land mass we have versus population, so when you have less people to pay for deliverable services, the costs, typically, are a little higher. Would you... [LR343]

LINDA AERNI: Montana, I would say, has equal rural areas; they have no telecommunication charges, period. [LR343]

SENATOR BRASCH: And they have, I believe, some natural resources and can produce (inaudible)... [LR343]

LINDA AERNI: Well... [LR343]

SENATOR BRASCH: No... [LR343]

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LINDA AERNI: I don't know about all of that. [LR343]

SENATOR BRASCH: No, you're just...okay. [LR343]

LINDA AERNI: I'm here just for the telecommunication. [LR343]

SENATOR BRASCH: For the one, okay. But it's costs and where the revenue comes from is what... [LR343]

LINDA AERNI: Well, and it always amazes me because in all of the reports and all of the literature you read it's the ILECs, the CLECs, they pay into the universal service funds. Well, actually, no it isn't. It's the consumer. I pay my mother's bill; she has no services on her phone bill at all. And yet, more than 50 percent of her phone bill is access charges, taxes, universal service funds, very high. [LR343]

SENATOR BRASCH: I truly believe your report, and your testimony is very important. And, you know, if we can find a solution where private business feels more comfortable or has assurances of delivering without... [LR343]

LINDA AERNI: Well, you aren't going to find private business invest in an opportunity when their competitor receives 75 percent or a lot of their revenue subsidized, given to them by the Legislature. [LR343]

SENATOR BRASCH: You've given me some... [LR343]

LINDA AERNI: So you just, you know... [LR343]

SENATOR BRASCH: ...some good points to consider. I want to thank you for coming forward and sharing that history. You took me down memory lane there for a few minutes and that's been a long time ago, so. Thank you, I have no other questions.

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[LR343]

LINDA AERNI: Thanks. [LR343]

SENATOR DUBAS: Senator Smith. [LR343]

SENATOR SMITH: Thank you, Madam Chair. And again, I just want to come...loop back around and the exchange you were having with Senator Brasch. You continue to mention entrepreneurship and private sector investment, private sector ownership, and I like that direction you're talking about and I know there needs to be something done here. But in the same vein in your testimony you're referring to public entry and use of public facilities. And I think the solution needs to go somewhere other than that. So there's a bit of a contradiction there talking about private sector investment, which can be large business and small business, private sector investment. And then in the same vein you're talking about public entry, use of public power districts and municipal facilities to compete with private sector. So I think we have to be careful there. [LR343]

LINDA AERNI: Well, I don't know if it would be a competition. I guess the bottom line is if we as a state are going to give away \$50,000 for infrastructure, shouldn't that be owned by a public entity where everybody can use that infrastructure? And if you get that infrastructure and combine it with other entities, municipalities...and yes, there are some utilities that are wanting to do wireless or whatever. Wouldn't that make more sense? To me it would. [LR343]

SENATOR SMITH: Unless... [LR343]

LINDA AERNI: We've already been down the road of public power getting into the telecommunications industry. And quite frankly, Senator Smith, that's not going to happen. Public power doesn't want to get into the telecommunications industry and the Legislature, clearly, doesn't want them in the industry. But they do have or can provide

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resources without being a direct player. [LR343]

SENATOR SMITH: And I think also, though, that in the private sector you're going to have certain efficiencies and effectiveness that takes place with those invested dollars that ongoing services, providing the reliability, being the provider of last resort, in often cases can be done so more effective, more efficient. So I think that's where we have to be careful when we start moving towards a...more of a hybrid model using public facilities combined with private, we have to be careful there, I think. I do think there's great efficiencies that can be gained in finding private sector solutions. [LR343]

LINDA AERNI: Well, again I use no public utilities and I use no public funding and I am successful. Anybody who can say they've been in business since 1993 and is continuing their growth and...that says something for private entrepreneurial business in the telecommunications industry. [LR343]

SENATOR SMITH: Yeah. I agree with you. But there's references in the testimony for access in using public facilities, so that's my concern. [LR343]

LINDA AERNI: Sure. [LR343]

SENATOR DUBAS: Other questions? Thank you. [LR343]

LINDA AERNI: Thank you. [LR343]

SENATOR DUBAS: Anyone else wanting to testify? Welcome. [LR343]

PAUL SCHUDEL: (Exhibit 10) Thank you, Madam Chairman, members of the committee. My name is Paul Schudel, P-a-u-l S-c-h-u-d-e-l. I'm appearing on behalf of the Nebraska Rural Independent Companies this afternoon, and I want to offer some very narrow and focused testimony in response to some statements made by Ms. Aerni

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concerning the rate of taxation on telecommunication services in this state. Let me first start by referencing you to the report the Legislature released last month by the Nebraska Public Service Commission which on pages 20 and 21 provides data with regard to the comparison between the Nebraska Universal Service Fund surcharge at 6.95 percent, the Alaska surcharge at 9.3 percent, the Oregon surcharge at 8.5 percent, and Kansas at 6.42 percent which is near Nebraska's. That's, in effect, maybe, an easiest comparison. A more complex comparison would, for example, involve the state of Wyoming where, for example, the basic local exchange rate is in excess of \$31 a month; whereas our urban rate is \$17.50 and rural rate is \$19.95. They have a much-reduced surcharge rate in Wyoming. But as you can see, their local rate is almost double. Moving then to, specifically, the so-called taxes and fees on telecommunication services in Nebraska. I prepared a one-page report which you have before you which is a comparison of a report done by a gentleman named Scott Mackey on behalf of the wireless industry which is oft-cited for the basis of Nebraska having the highest total taxes and fees on telecommunication services. The top box on this one-page report shows that Mr. Mackey calculated an 18.67 percent total wireless taxes and fees. If you start to analyze that number in this time when we're all very cognizant of taxes in the state of Nebraska, of course we do have a true tax number of 5.5 percent, which is the state sales tax. But if one looks behind the local tax number, as you're generally aware, the Legislature has granted authority to all incorporated municipalities, that's 530 entities, and to Nebraska counties, 93, to implement a local sales tax. Of those jurisdictions, the two that were selected by Mr. Mackey in his report were Lincoln and Omaha which have a percent and a half tax, local sales tax. The overwhelming number, as shown in footnote 1, of our municipalities and counties do not have any local tax. So you have a local sales tax that ranges between zero and 1.5 percent of revenues. Then if you look at city business and occupation tax, this is a number that can vary greatly. Again, using the Mackey report and the numbers he calculated, Omaha has a 6.25 percent occupation tax on telecommunication services and Lincoln has 6 percent. And from that he derives the 6.13 percent average. Again, if we look behind that, there are of these jurisdictions in Nebraska that...or have the authority to implement occupation

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taxes, 508 jurisdictions have none whatsoever on telecommunication services. And it's only the two large municipalities of Lincoln and Omaha that have the high percentage that was reported in calculating the total of 18.67 percent. Then we drop to three other classifications: first, what we've been talking about all afternoon, the Nebraska Universal Service Fund, and the 6.95 percent is...has been held by our Nebraska Supreme Court in a case decided in 2006 which is noted in Note 3 to be a regulatory surcharge. It is not in the nature of a tax. It is a replacement revenue source for the access charges that some of the prior witnesses have told you about that were reduced and eliminated to eliminate implicit subsidies in Nebraska and to implement the NUSF surcharge as an explicit subsidy. And the last two elements are the wireless 9-1-1 surcharge, as well as the telecommunication relay service which is the deaf and hard of hearing fund. Both of those are regulatory surcharges that the Legislature has by statute approved. So rather than the 18.67 percent total tax that is calculated as shown in the upper part of my single page, really the range of actual taxes in Nebraska and the overwhelming number of communities outside of our two metropolitan areas range from 5.5 percent to 13.5 percent. And that's a total of the regulatory surcharges and the taxes. Perhaps a narrow point, but, again, in this season where the Legislature has been focused on taxation, where we just heard from a witness who was less than accurate in her responses and report to you, I thought this might be a valuable clarification. So I thank you for your attention. [LR343]

SENATOR DUBAS: Thank you. Are there questions? [LR343]

PAUL SCHUDEL: Thank you very much. [LR343]

SENATOR DUBAS: Thank you very much for your testimony. Other testifiers? Well, thank you again, everyone for coming forward today, sharing your information with us. We conclude the hearing on LR343. Thank you so much. [LR343]