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Transportation and Telecommunications Committee  
November 12, 2013

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[LR267 LR276]

The Committee on Transportation and Telecommunications met at 10:00 a.m. on Tuesday, November 12, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR267. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch. Senators absent: Galen Hadley; Charlie Janssen; Beau McCoy; and Dan Watermeier.

SENATOR DUBAS: I think for most of the senators who...it doesn't look like we're going to have a full slate of senators this morning so we will, in the interest of everybody's time, go ahead and get started. I want to welcome you this morning to the Transportation and Telecommunications Committee, the interim study LR267 to review the One-call Notification System Act. This was introduced by Senator Smith, and we'll give him a chance to introduce this just in a little bit. I'll make some quick introductions of the senators that are here, and that's not going to take very long. We have Senator Jim Smith from Papillion, he's the Vice Chair of the committee. Next, to my immediate right is Joselyn Luedtke, she 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 make sure we get an accurate accounting of what transpires today. The interim studies I think most of you are pretty familiar with the way this all goes, but it's a little less formal than the actual legislative hearings we have during the session. This is just an opportunity for senators to gather information and get some expert testimony, so to speak. Today's hearing will just be invited testifiers only, and we do have the list posted up there on the wall. But I'll also read through it so you'll know in what order you will be coming forward. After you present...when you come forward, ask that you fill out a green sheet, please, and have that ready to hand in to our page. We do have a page serving us this morning, Nate Funk from Norfolk. He is an accounting major at UNL. So, as always, we appreciate the pages and the work that they do to help us do our work better. So thank you, Nate, for being with us this morning. So when you come forward, fill out your green sheet and hand it to Nate and he'll make sure that it gets to Anne. I don't know that...oh, I do ask

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that you please silence your cell phones or any other electronic devices you may have, again, just to prevent interference with the recording equipment and to help Anne out. You also, I know, it's just natural to want to try to adjust the microphone. These mikes are more for recording rather than amplifying. So anytime you're moving them around it makes it a little more difficult for the transcriber to hear what's going on. So if you could resist that urge to adjust the mike, we'd really appreciate that. The testifiers that we have lined up in the order that you'll be coming forward, we have Val Snyder who is the chair of the One-Call board of directors. And we have Susan Lynch who is with Nebraska 811, Mike Loeffler who is with Northern Natural Gas, Eric Carstenson with Nebraska Telecommunications Association, Bob Andersen with the Nebraska Cooperative Council, Brian Monke with Nebraska Agri-Business Association. And then we have on the phone...he'll be joining us, he will be listening throughout the course of this morning but will be joining us via phone, we have Tyler Nesheim. And I hope I haven't mispronounced that, Tyler. He is the general manager for One Call Concepts, so he'll kind of be able to fill in the blanks or maybe answer any questions that have arisen through the course of testimony this morning. So with that, we'll let Senator Smith introduce the resolution and move forward from there. Good morning, Senator Smith.

[LR267]

SENATOR SMITH: Good morning, Senator Dubas, and I don't have to address the other members of the committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h. I represent the 14th Legislative District in Sarpy County, and I'm here today to introduce LR267. I will be very brief, as I know there are people that have been invited to testify and who have a lot of information on this topic to share. I want to make certain that the committee members have ample time to ask questions of those that may arrive later. LR267 deals with Nebraska's One-Call Notification System Act. First, I want to thank Senator Dubas for agreeing to hold this informational session. As the committee knows, a bill was introduced last year specifically dealing with the one-call agricultural exemption. Senator Dubas and I discussed the goal of LR267 and agreed it is not to revisit the agricultural exemption. And I would ask those that are invited to testify to

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respect the committee's time by not rehashing that particular topic. However, with that said, I do not want to stifle constructive questions and discussions that may touch on the fringes of the agricultural component of law. So I just want to have that said up-front. I brought LR267 because there is much more to the One-Call Notification System. I thought it would be helpful for this committee to hear firsthand how the system actually works, as much has changed since the act was first adopted in 1994. I have served, myself, on the One-Call board. And I can tell you from experience, there is some ambiguity in the current law that make successful implementation and enforcement a challenge. In addition, huge advances in technology over the past 20 years have had a significant impact. In order to adequately address these issues, this committee needs to understand how the system works, the role technology plays in its application, and the challenges and responsibilities of those groups that fall under the law. Keep in mind that the One-Call law is in place first and foremost to ensure the safety of the public and the safety of workers. However, the law also establishes or should establish best practices for protecting the assets of facility owners and seeks to balance that goal with the cost of compliance. Specific testifiers have been invited to give an overview of the different aspects of the One-Call Notification System, and the goal of the hearing is to be informative. I encourage the committee members to ask questions, and I hope that you come away from this hearing with a comprehensive understanding of the One-Call System. Thank you. [LR267]

SENATOR DUBAS: Thank you, Senator Smith. And I would like to point out that Senator Lydia Brasch from Bancroft has joined us, so welcome. Lydia, do you have any questions? We don't have very many committee members here this morning, so. [LR267]

SENATOR BRASCH: Not at this time. [LR267]

SENATOR DUBAS: We will open it up for testimony then. Thank you, Senator Smith. Okay, first person on our list this morning is Val Snyder. Just go ahead and have a seat

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and leave that lay on the table, and we'll get that picked up. We appreciate you coming forward today, Mr. Snyder. If I could have you spell...state and spell your name for the record, and then go ahead and give us your information. [LR267]

VAL SNYDER: (Exhibits 1, 2, 3) My name is Val Snyder, V-a-l, last name being S-n-y-d-e-r. Good morning, Madam Chairman and honorable members of the committee. In 2004, a pipeline incident occurred in Nebraska. An excavator narrowly escaped with his life. And then in 2006, an excavator lost his life in our neighboring state of Colorado, both of which I assisted with the investigation. A short time later, I found myself asking what I could do to keep incidents like this from occurring. I then proceeded to work toward becoming a member of the Nebraska One-Call Notification Center board of directors, and in 2008 I became a member. And today, I, Val Snyder, have the honor and privilege of serving as the board chairman for the last three years of the Nebraska Statewide One-Call Notification Center board of directors. In the packet that I have provided to you is a list of our current board members. It should be a white copy, looks like this. As far as the board responsibilities, we function in the jurisdiction of the State Fire Marshal's office, Pipeline Safety Division. We oversee the vendor as they operate the one-call center to ensure they are meeting the rules and regulations set forth in Section 76-2301 to include 76-2330 which shall be known and be cited as the One-Call Notification System Act. The board of directors shall also establish operating procedures and technologies needed for the center pursuant to rules and regulations adopted and promulgated by the State Fire Marshal. Some common tools that we use at the board is this green manual here, the Common Ground Alliance Best Practices Manual. When we're looking at things, we quite often refer to this manual. Best practices: The CGA best practice is a nationwide best practice by the many stakeholders involved. And before they were published, they were field tested and approved. The DIRT Report is another tool that we use, the Damage Investigation Reporting Tool is what DIRT stands for. The first flagged page that you have there is a summary...executive summary. In the second paragraph: The two previous DIRT Reports--2010 and 2011--demonstrated that notifying a one-call center prior to

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excavating is the simplest and most effective means to reduce and eliminate underground utility damages. The 2012 report, again, shows that when a locate request precedes an excavation, damage is avoided 99 percent of the time. It is encouraging to see the evidence of the power of a message materializing. For example, the percentage of known events submitted to DIRT with the damage root cause Notification NOT Made has declined every year since 2010, which was the first year this particular analysis was done. In addition, a survey of Call Before You Dig awareness conducted by Common Ground Alliance reveals that as awareness increases, the percentage of events attributed to damage root cause Notification NOT Made decreases. Given the effectiveness of that locate request made prior to an excavation on damage prevention, why then would it not be promulgated or required every time? The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 passed by Congress on December 13, 2011, requires that the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, better known as PHMSA, to conduct analysis on exemptions to one-call notification requirements in each state and potential adverse effects that may be present in relation to excavation damages. This evidence suggests that as the number of notice exemptions increases, the damage rate for 1,000 tickets increases significantly. The average damage rate per 1,000 tickets is 108 percent greater for states that have five or more notice exemptions than these states with less than five. I would ask you to...the next flag is a graph comparing the root...damage root cause just for information for you folks. The third flag is events segmented by facility operation and the types of facilities affected...excludes others...unknown and others. As you can see in this graph, natural gas and telecommunications have repeatedly had a higher amount of damages. The fourth flag is a recommendation based on analysis. And I go to point number 2: Continue to promote "Call Before You Dig" in accordance with Best Practice 5-1: One Call Facility Locate Request. This includes encouraging locate requests even when notification exemptions exist. Efforts should be focused on stakeholder groups that are less likely to have a locate request such as homeowner, farmer, small landscaping/irrigation contractors, and markets where notification is less frequent, states with many notification exemptions. When possible, make it a

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requirement, incorporating the one-call ticket into existing permit and contract processes. And the last flag that I have there should be...it reads: The CGA's purpose is to reduce underground facility damage which threatens the public's safety and costs billions of dollars each year. In order to better understand where, how, and why these damages are occurring, we require accurate and comprehensive data for all stakeholders. The data will be analyzed and our findings will be issued via comprehensive reports. The data will not be used for enforcement purposes or try to determine damage liability. The individual identities of parties involved with records submitted will be kept confidential. The DIRT Report is...you can see, is a 41- or 40-plus-page report that is published yearly. We refer to it quite often, using it to mark areas where we need to focus our education with the different stakeholder groups. We financially support the education of the different stakeholder groups in damage prevention. Over the course of the past year, over 1,300 individuals have been trained to utilize the available technologies. We've attended over 100 outreach events across Nebraska to provide education and resources regarding Nebraska 811 and safe digging. Some examples of these events include but are not limited to: Excavators: We conduct excavator breakfasts, excavator dinners, published education material, and excavator training. Underground operators: a membership 101 meeting. Affected public, which is the safety of the public: mailings, industry agendas, media advertising, farm safety days, and something that was pioneered here in Nebraska, the 811 Pirate Adventure. Kids ages from 8-11 in 800-plus schools across Nebraska participate in this or we offer the participation to them every year. Needed updates to the current law based on stakeholder feedback: new, emerging technologies in excavation and established best practices currently in use. Interpretation of the law: As Senator Smith alluded to in his opening statement, there is a lot of interpretations and it's hard to clearly define some of the areas that is currently written, when it was written back in 1994. We were working toward defining ticket life: This is a request coming from the excavating community. Emergency response time of two hours: currently we just have a best practice. Technical advantages and practices: Twenty years ago, the only thing I recall being able to rip the soil at 30-plus inches deep was construction equipment,

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large-tracked equipment. Today I understand we have ag equipment that can do that. Enforcement: Penalties need to have a stronger impact on those that violate the law. So if you ask me does the current One-Call Notification Act need to be rewritten? Our answer is, no. However, it needs some minor updates with no one getting a free pass that would place an underground facility or the safety of the public in danger. I often refer to an excavator with no...by not placing a one-call to the drunk driver. You only get lucky so many times before something bad occurs. When something bad does occur, it is the innocent that are hurt or worse, they lose their life. In closing, the board of directors of the Nebraska Statewide One-Call Notification Center is committed to the safety of excavators, underground facilities, and most of all, the general public, which are all some common ground with the CGA's DIRT Report. On behalf of the Nebraska Statewide One-Call Notification Center board of directors, I would like to take this time to thank each and every one of you for allowing us to explain our responsibilities of the board to keep the underground facilities and the public safe in the great state of Nebraska. [LR267]

SENATOR DUBAS: Thank you very much, Mr. Snyder. Are there questions from the committee? Senator Brasch. [LR267]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Mr. Snyder, for your excellent and detailed testimony here this morning. And I see you are with Tallgrass Energy, is that correct? [LR267]

VAL SNYDER: Yes, ma'am. [LR267]

SENATOR BRASCH: And is that a utility company or... [LR267]

VAL SNYDER: That is a transmission pipeline company. [LR267]

SENATOR BRASCH: Transmission pipeline. And the frequency of calls you have or

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incidents, is there a ratio of... [LR267]

VAL SNYDER: If you're referring to... [LR267]

SENATOR BRASCH: Are you having an increase in incidents? [LR267]

VAL SNYDER: I have seen an uptick... [LR267]

SENATOR BRASCH: An uptick? [LR267]

VAL SNYDER: ...in excavations being done without a notification. [LR267]

SENATOR BRASCH: And the incidents have declined? Was that part of your testimony, the incidents "theirselves" have declined since this group has...? [LR267]

VAL SNYDER: We've had some strikes--and then when I refer to a strike, we've had a facility hit. Fortunately, it didn't...it wasn't a severe enough hit to create what I would call is news breaking or breaking news. We work very hard to patrol our pipeline to ensure the safety of that pipeline as well as the public safety. So we've had minor hits, nothing major. [LR267]

SENATOR BRASCH: Thank you. And do the incidents that have occurred, the hits, is it the...because of unawareness, was it awareness, neglect? What do you believe is the major factor that... [LR267]

VAL SNYDER: Well, part of it I attribute to the second and third generation of excavators. Even though we've very strongly beefed up our education process, it seems to be that those that have...that are involved in the incidents are never the ones that are showing up for the excavator breakfast or the excavator dinner. [LR267]

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SENATOR BRASCH: So lack of information, then? You believe being unaware...when you're saying it's two or three generations out that are not being compliant? Is that correct? Is that what I... [LR267]

VAL SNYDER: Well... [LR267]

SENATOR BRASCH: And when it's excavated... [LR267]

VAL SNYDER: Well, it may be attributing part, however, my dad did it this way or my uncle did it this way so that's the way I'm going to do it. I don't care. There is that mentality out there. [LR267]

SENATOR BRASCH: Okay, all right. And the other is, when you're talking about excavators, is that related to--you had mentioned agriculture--is that commercial agriculture? Is one sector more guilty than the other? Is there someplace we can focus? [LR267]

VAL SNYDER: Well... [LR267]

SENATOR BRASCH: The reason I ask is many of our calls are centered around believing there's too many regulations. [LR267]

VAL SNYDER: I understand that. [LR267]

SENATOR BRASCH: And so if it's focusing on one group, if we can make things better by addressing one industry rather than just dropping balloons from an airplane or something like that...I mean, is there a focus that would be more beneficial than others or a partnership that could be encouraged? [LR267]

VAL SNYDER: I would say it would be a partnership to where...I mean, just a general

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understanding that...because in the CGA manual, it defines an excavator as anybody that breaks the soil. [LR267]

SENATOR BRASCH: I see. So it could be a garden tiller... [LR267]

VAL SNYDER: Sure, absolutely. [LR267]

SENATOR BRASCH: ...or someone, so is it... [LR267]

VAL SNYDER: It could be widespread. [LR267]

SENATOR BRASCH: Okay, interesting. And is, again, back to are you finding this more in incidents in commercial, agriculture, residential? Just...and I'm looking at your diagram and it's a little hard to understand on...because I see some areas...and this is the one on page 11. So it looks like cable TV. Can you explain this to me what the...those are how many events, and over which years? [LR267]

VAL SNYDER: Over the last...in the year 2012. [LR267]

SENATOR BRASCH: This is from 2012. [LR267]

VAL SNYDER: Those were the number of hits that... [LR267]

SENATOR BRASCH: And the ones that...those are the people that are the violators with the highest poles there, that's... [LR267]

VAL SNYDER: Those are just strictly numbers of what the total number of hits each with that particular facility had. [LR267]

SENATOR BRASCH: Or phone calls? Okay. And so as far as water lines, not...there

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were zero calls or zero hits in the year 2012? Or with sewer or with liquid pipeline. Is that how I'm understanding this chart? [LR267]

VAL SNYDER: As far as the data that was collected, yes, I would have to say I would have to agree with that. [LR267]

SENATOR BRASCH: And the worst has been natural gas lines, correct? [LR267]

VAL SNYDER: Right. Correct. [LR267]

SENATOR BRASCH: Okay, very good. Interesting statistics. And I appreciate your coming from Kearney today, and... [LR267]

VAL SNYDER: Yes. Thank you. [LR267]

SENATOR BRASCH: ...is it any warmer out there than... [LR267]

VAL SNYDER: No. [LR267]

SENATOR BRASCH: I just drove 100 miles from the north. It's pretty cold up there, so. [LR267]

VAL SNYDER: I noticed there was ice on the pond, on a lot of the interstate ponds, so. [LR267]

SENATOR BRASCH: Yeah. Thank you, again, sir. [LR267]

SENATOR DUBAS: Senator Smith. [LR267]

SENATOR SMITH: All right. Thank you, Madam Chair. Val, it's great to see you, and

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thank you for your work on the One-Call board and all the other members of the One-Call board. Just a little history. So as the board meets and you identify gaps and you see needs for updates in the law, as you're saying, no rewriting of the law but, certainly updates of the law, historically, has there...have you and your board felt comfortable bringing forward changes to the law? And can you explain that mechanism that you would use, that process that you would use on the board to identify what the needs are and propose the recommendations and how you would bring it back to the committee if changes were needed in law? And if you do not see changes that are needed in law because it really is just a policy that needs to be changed and a practice that needs to be changed, can you explain that a little bit, how you would address the needs? [LR267]

VAL SNYDER: I have formed a policy committee. And from things such as the DIRT Report, especially collecting data that is reported--all damages to an underground facility are supposed to be reported to the one-call center so that the appropriate facility that's hit has a chance to respond--collecting that data and using that data, we have started to prioritize some things that we need to drive forward to change, whether it's a change in language, policy, whatever, that we're currently working on. [LR267]

SENATOR SMITH: So what would you see as the practice you followed then if you and the board identify some needs? And, again, the board is made up of primarily member operators, fairly diverse, so you guys understand what the needs are. You're seeing where the damages are occurring, you're understanding who is causing those damages, and you guys are probably the most knowledgeable to determine or to recommend how it needs to change. So what would that process be to gain those changes in law, if you needed to? [LR267]

VAL SNYDER: I guess it would come down to, if we felt like it was a change in law, we needed to put our facts and figures together and bring it back to...find a senator that would help carry that torch forward to this committee. [LR267]

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SENATOR SMITH: Okay. And I hope that you would feel comfortable doing that, and whoever follows you on the board, because you're doing a great job. But if there are needs out there that need to be...the law needs to be tweaked, I hope you feel comfortable bringing that forward and at least having the discussion. Also, for the knowledge of the board, understanding of the board, can you explain CGA and its relationship to one-call? [LR267]

VAL SNYDER: Common Ground Alliance is a nationwide group of stakeholders from the underground operator to engineering. I mean, I think there are 22 stakeholders in that group. And they sit down, they address a particular issue, they write what is sometimes formulated, and do a best practice. They'll go out and they'll test it, providing all the feedback back to all stakeholders involved. And then once a year at the CGA Conference or Colorado Alliance yearly conference, it's discussed and then decided whether that's going to be a nationwide best practice. How it relates to the one-call, because it's been field tested and proven all across the United States, it saves us as a one-call board a lot of headache of trying to try this, try that. It's an established policy which worked well. [LR267]

SENATOR SMITH: So CGA is a nationwide industry group that is a resource to one-call centers across the country. It's a resource. [LR267]

VAL SNYDER: That is correct. [LR267]

SENATOR SMITH: Okay. Thank you. [LR267]

VAL SNYDER: Thank you. [LR267]

SENATOR DUBAS: Any other questions? Well, thank you very much for coming forward today. [LR267]

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VAL SNYDER: Thank you. [LR267]

SENATOR DUBAS: We appreciate your information in this packet, it's going to be very helpful. Thank you. [LR267]

VAL SNYDER: You bet. Thank you. [LR267]

SENATOR DUBAS: Next we have Susan Lynch. Welcome. [LR267]

SUSAN LYNCH: Good morning. Good morning, Madam Chair, and members of the committee. My name is Susan Lynch, S-u-s-a-n L-y-n-c-h, and I was invited here today to kind of give you an overview of what the actual one-call system is. So I will make it as exciting as I possibly can. I've been in the one-call industry since 2006, and from 2006 to 2012, I directed the operations of the one-call center in the state of Nebraska. Currently as an employee of One Call Concepts, I am under direction of the One Call board of directors. I'm responsible for providing the training and education to all stakeholders that are involved in excavation and underground damage prevention in the state of Nebraska. So what I want to do today is give you kind of an overview of the process of the one-call system and then end it with some key metrics from the actual one-call center over the past year. And then, obviously, would like to open it up for any questions. So for an explanation or a history lesson, if you will, of the one-call system, in 1994 the Nebraska Legislature passed the law called the One-Call Notification System Act. In summary, what it states is that everyone who excavates...and actually, in answer to your question, Senator Brasch, anyone who excavates or otherwise disturbs the surface of the ground is considered an excavator in the state of Nebraska. They are required to first contact the One-Call Notification Center at least two business days, but not more than ten days, before that excavation is to commence. I want to clarify, in Nebraska the one-call center historically has been known as Diggers Hotline of Nebraska. Just as of November 1 of this year--so we're just about two weeks into it--the

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center adopted a new logo and a name, and we are currently in the process of rebranding our name to Nebraska 811. So for the remainder of this testimony and possibly going forward with others that testify, any reference to Nebraska 811 is to be understood as the center historically known as Diggers Hotline of Nebraska; they are one in the same. So this excavator upon contacting Nebraska 811, the following process takes place...and please note that this following process from where I begin now until when I end, is a free service to the excavator. And this service is funded by the member utilities of the One-Call Notification Act. So the excavator will contact the one-call center either by phone, fax, or Internet. And they will provide the call center with specific details regarding the contact information of the excavator, the location, and the specific scope of work of the upcoming excavation. The call center takes that information, processes it, and records it. And then that information will determine what member utility companies have registered their facilities in that proposed area of excavation. So the information is provided by the excavator, the member utility has registered their lines in that area. The call center, therefore, can determine these are the member utilities we need to tell, hey, so-and-so is going to be digging. So what will happen is, once the call center identifies we've got these utilities in this proposed excavation area, they will then tell the excavator these utilities will be responding to you regarding your request and are going to respond to let you know whether they have lines there or where the lines are. Once the excavator is getting that list of utilities for that excavation area, simultaneously, the call center is also sending this information to those member utilities, telling them, you now have two business days to respond to this excavator who is going to be out here digging. And that response being either going out and physically marking the marks or providing an all-clear in some manner or requesting further information about the excavation. So based on that brief overview, there's clearly three main parties that are involved in this process. And this process is cyclical, and everybody depends on the other person to make this a successful process. So as Senator Smith had alluded to earlier, everyone in this process--the excavator, the call center, and the utility--all have specific responsibilities to ensure that the cyclical process continues. And if one of these stakeholder groups does not fulfill that

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responsibility, obviously, the system is going to fail in that situation. So what I want to do now is, I want to go through the utility and the excavator and the Nebraska 811 Center and kind of...and identify what their specific responsibilities are for the One-Call Notification System. So as a member utility, utilities are required to become members of and participate in the statewide One-Call Notification Center. They are responsible to register and manage the facility registrations with the one-call center, Nebraska 811. They must respond to all notices of excavation processed by the call center by either marking, providing an all-clear, or requesting additional information. And they are to ensure that all damages are reported directly to the one-call center, Nebraska 811. In regard to the excavator, their responsibilities are to file a locate request with the call center at least two business days prior to beginning any excavation project. They must provide accurate and complete information regarding the proposed excavation area and the scope of the work. They must ensure that all utilities that were notified of the excavation have responded by either marking or clearing the dig site. An excavator must file a nonresponse or an incorrect locate request when applicable. They need to report all damages directly to Nebraska 811 call center, and they must manage all refreshes. And then the responsibilities of the Nebraska 811 call center: They are required to maintain adequate records documenting compliance with the requirements of the One-Call Notification System Act, provide the notification service during normal working hours, and provide procedures for emergency notification for calls received at other than normal working hours. Those are the responsibilities that are laid out for the utilities, the excavator, and the one-call center. At this time, I want to put more focus on the one-call center and specifically regarding the new vendor and the associated metrics of the past year. A year ago, November 1, 2002, a new vendor assumed responsibilities of running the operations of the one-call center in Nebraska, that vendor being called One Call Concepts of whom I am an employee of. With the new vendor came a new software, but the system remains the same and, you know, in regard to, obviously, the statutes and the One-Call System Notification Act. One Call Concepts, call before you dig, 811 safe digging is a nationwide mandate. So every state is required to provide for one-call center operations to represent a state. One Call Concepts has 11

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one-call centers nationwide, so they operate various one-call centers nationwide, 11 of those physical facilities, so they're nationwide volume. So One Call Concepts receives approximately over 7 million locate requests a year, so 7 million notifications that somebody will be digging in the United States a year across those 11 one-call centers. And the beauty of it is, with the overflow with that being, you know, if the phones are busy, who's going to answer it when you're processing those locate requests? And that's what we have deemed the overflow. So the technology allows, over these 11 centers, for the phone system to look ahead. And based upon the current call times and the incoming volume, this allows the phone system to identify, in real time, centers that have an available CSR, customer service representative. Then those calls will be routed to the first available customer service representative anywhere in this nationwide network that OCC operates in and with that network, like I said, consisting of 11 different call centers nationwide. So that's the big nationwide picture of One Call Concepts. Now we go to the statewide. And from November 2012 to the end of the month last year--so from November to the end of October of this year--we received 309,728 incoming requests to get lines marked in the state of Nebraska. So a little over 300,000 people contacted the call center to say they were going to be digging, and they requested that the lines be marked. As I mentioned earlier, the excavating community can process or file these locate requests with the one-call center either by the phone or by the fax or by the Internet. And so I wanted to provide you some of the metrics in regard to those technologies. Through the phone, the average time for an operator to answer over the past year was 23 seconds. From the time that the phone rang to answer, it was 23 seconds to pick up the phone and start processing this ticket. The average time to process that ticket over the phone was 235 seconds or 3.92 minutes on average, understanding that many times an excavator will call in and will, you know, request more than one locate request during that call. So they may have ten multiple...ten spots that they would like that, so they're processing ten tickets. But the average over the whole was 3.92 minutes. The Internet is the other version that we have. And it's the on-line version where an excavator can log in and process a locate request called our on-line system ITIC. Everything is an acronym in this industry, we just

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want to be consistent, so ITIC. The incoming volume in the state of Nebraska via this Internet technology over the past year is 58.67 percent of our excavators elected to file their locate request on-line using the Internet. There's two versions of that. There's a beefed-up mapping version where the person can see a satellite map exactly of the field or the road or the house where they're going to be excavating and they can outline that area themselves, or there's the text-only version where they just type in the text information and then that gets processed by the call center. As mentioned, in Val's earlier testimony, training statewide over the past year, we've been able to reach out to 1,300...over 1,300 excavators to work them through this new technology and continue doing so. Another nice thing about the ITIC is it does allow for historical on-line ticket data. So if I placed a locate request today either via the phone or via the Internet, five years from now I could go back and pull up that ticket and either refresh it or send it back out live again and not have to re-create the wheel. At this time, you know, I would like to answer any questions. I also want to remind the committee that we do have Tyler, the general manager of the one-call center, also on the phone for any operational questions at the end. [LR267]

SENATOR DUBAS: Thank you, Susan. Are there questions from the committee?  
Senator Brasch. [LR267]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Susan, as well, for your testimony. Where is your headquarters located? [LR267]

SUSAN LYNCH: We have...the call center operations are currently in Jefferson City, Missouri... [LR267]

SENATOR BRASCH: Oh, in Missouri? [LR267]

SUSAN LYNCH: ...where they handle the Nebraska calls. However, we have employees, myself and Jill Geyer, who work the state of Nebraska doing the education

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and training and... [LR267]

SENATOR BRASCH: And all from Missouri remote? Is it all remote? You do it remote from Missouri? [LR267]

SUSAN LYNCH: The call center or the... [LR267]

SENATOR BRASCH: The call center, the... [LR267]

SUSAN LYNCH: The in-state operations, we live in Nebraska and we do those here in-state. But the actual call center, those calls are handled via the Missouri site. [LR267]

SENATOR BRASCH: Okay. And the reason that's done in Missouri is...? [LR267]

SUSAN LYNCH: When the One Call board of directors elected to go with a new vendor... [LR267]

SENATOR BRASCH: Okay. [LR267]

SUSAN LYNCH: ...that was part of their contract. [LR267]

SENATOR BRASCH: A bid process or... [LR267]

SUSAN LYNCH: Yep. [LR267]

SENATOR BRASCH: And is the organization, is it a .gov or a .org or a .com, the one...is this a state...it's funded by utilities? [LR267]

SUSAN LYNCH: It's funded by utilities and if you read the statutes it's to operate as a nonprofit. So the One Call Notification Center which is basically the board of directors

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and the whole, for lack of a better way to explain it, process is a nonprofit... [LR267]

SENATOR BRASCH: Okay. [LR267]

SUSAN LYNCH: ...that is funded by the member utilities. [LR267]

SENATOR BRASCH: Okay. So it is a .org, it's not a .com. If I go to the Internet what's the... [LR267]

SUSAN LYNCH: It's going to be .com, ne1call.com will be the Internet. [LR267]

SENATOR BRASCH: Dot com. Okay. [LR267]

SUSAN LYNCH: Right. Now the vendor operates on a profit basis. [LR267]

SENATOR BRASCH: I see. [LR267]

SUSAN LYNCH: But they are operating the operations of the one-call center, specifically, to do the one-call center, and have contracted with the One Call board of directors to provide those call center operations. But the process itself is a nonprofit. The board does not make a profit off of the one-call system. That money is funneled back into the education and outreach efforts, and it's also funneled back to ensure that there's computers for the CSRs to process the tickets and there's lights turned on during the day for the operations of it through the vendor. [LR267]

SENATOR BRASCH: Okay. And it's...the other is, is there like a statewide mapping of where power lines, where all of these utilities exist? Is that private information? [LR267]

SUSAN LYNCH: It is. When the utilities register with us, they register their lines on our maps in a filter. We cannot provide the specific location that those utilities have

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registered on our maps for Homeland Security purposes for one reason. You know, they don't want the specific information of where those crucial data lines or pipelines are. So, yeah, they're available on our systems, but they are not for the general public to come in and see specifically where they are at. [LR267]

SENATOR BRASCH: But because they are mapped for your purposes or the utilities' purposes, are some of the requests just done virtually saying, you know, from our map and our records you are miles away from interfering with any type of digging? So are requests handled by a phone call saying from what we see, you are clear, you know, that kind of thing? [LR267]

SUSAN LYNCH: That would have to be at the call of the actual utility company. So when an excavator calls the one-call center and says, I'm going to be digging right here at the Capitol... [LR267]

SENATOR BRASCH: Okay, they'd call to Jefferson, then Jefferson will call to that utility company. [LR267]

SUSAN LYNCH: And notify the utility... [LR267]

SENATOR BRASCH: Okay. [LR267]

SUSAN LYNCH: ...that someone is calling, then the utility will follow up and say, Mr. Excavator, based on where the knowledge is of our lines, it looks like that you're going to be a quarter mile away or whatever, 200 feet, 500 feet. And they will either mark or clear based on their specific utility company policy on how they make those marks. [LR267]

SENATOR BRASCH: And all of that is in an electronic database at this point in time. It's... [LR267]

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SUSAN LYNCH: They'd have their lines registered... [LR267]

SENATOR BRASCH: Okay. All right. [LR267]

SUSAN LYNCH: ...and, if...yeah, if the dig site... [LR267]

SENATOR BRASCH: Okay. [LR267]

SUSAN LYNCH: ...falls on top of the utility registration, that utility will get notified that there's an upcoming dig. That utility then determines whether...how they're going to respond to that request. [LR267]

SENATOR BRASCH: Okay. Very interesting. I have no other questions, thank you. [LR267]

SUSAN LYNCH: Okay. You bet. Thank you. [LR267]

SENATOR DUBAS: Senator Smith. [LR267]

SENATOR SMITH: Thank you, Madam Chair. Susan, good to see you. [LR267]

SUSAN LYNCH: Thank you. [LR267]

SENATOR SMITH: And thanks again for your good work and I think it's a really good overview, comprehensive overview of the one-call process and the way you handle the calls. And just kind of clarification here, the one-call board is created under law and their responsibility is to have an RFP for the contract. The one-call services is part of that contract to fulfill that process of collecting those calls and processing the calls to the member utilities. The member utilities, many of them that sit on the board, they pay a

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membership fee that pays for the one-call services of collecting those calls and processing those calls. But those member utilities also pay for the locators. And some of those locators are employees of those companies and some of those locators are subcontractors or contractors that work for those companies that actually go out and physically mark the locations. So all the cost of that is on the member utilities. So from your perspective, where do you see the difficulty occurring with getting accurate locates? I'm...you know, I'm thinking on large-scale development projects where you have a large parcel of land, it's not like having a residential lot where a locator will come out and they...in a fairly short period of time, they can put all the markings on the ground, put the flags on the ground, and it's comprehensive. But when you're looking at a large-scale development or, you know, a length of boring that's going to take place or a number of power lines that are going to be put in, you have a large scale. How does that work, and is that an area of difficulty? [LR267]

SUSAN LYNCH: It's a very common area. Large-scale projects are obviously very common in the excavation world. And how that works is by providing every line of communication you possibly can to allow that excavator to communicate to that locator the best that he can to ensure that that entire dig site gets marked. There's a couple of ways in which that can be done. When the excavator goes in and knows this is going to be a big, extended project, first of all, they will look at the system satellite maps and be able to see the area, understand where the fixed landmarks are, understand how am I going to best explain this to the utility locator, use that knowledge. They're also on-site to use that knowledge to explain that area. They can premark the area using white flags, white paint, slabs, or stakes, that says, you know, my proposed area is going to be a mile this way and a mile this way, ten foot off the road. And they mark that area out and provide specific information in that regard. And then the next way in which they can communicate those large, extended projects is to request to meet the utility on-site that says, you know, I'd like to schedule a meet time where I'm going to be here. And you and I can walk through this process, and I can explain to you kind of the different levels of the project. Now what we encourage them to do is, if you have a long, extended

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project, obviously, we do, you know, that phone call needs to be placed for the entire project. But if you, as an excavator, know that you will only be working on this quarter section or this quarter mile part of the project, then you only really need to get the locators out there to locate that part of it during that active excavation. And then you can continue to put those locate requests ahead of your excavation in that extended project. Does that answer your question? [LR267]

SENATOR SMITH: Yes. Thank you. [LR267]

SUSAN LYNCH: Okay. Thank you. [LR267]

SENATOR DUBAS: How much flexibility do individual states have in overseeing or setting up or managing their one-call systems? [LR267]

SUSAN LYNCH: You know, every state is different. Some are vendor run, some are run in-house, some of them...the one thing that is consistent is the difference in the laws for every one of the states. And so much of that just depends on the law in that state and what they determine the rules need to be to run that one-call center. [LR267]

SENATOR DUBAS: So each state does have the ability to set it up...set their system up the way they feel it will best serve their state. [LR267]

SUSAN LYNCH: Best serve, yeah, best serve, you know, what their responsibilities are, as I alluded to the responsibilities in Nebraska. Best serve and meet the responsibilities as dictated by the law in their state. [LR267]

SENATOR DUBAS: Okay, very good. [LR267]

SUSAN LYNCH: But they're, you know, constantly researching and understanding the new and emerging technologies. Val gave an excellent example of that nationwide best

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practices. The beautiful thing about that document is it's...those best practices have been identified as being successful in the field. They were not created to be successful in the field, they were created, became successful, and then became recognized as a best practice. So those are probably a really good starting point and guideline to say, you know, this is working here, this is working there. Twenty years, guys, one call is still pretty darn young when you compare it to other industries, and it's always a learning factor. And so I think that best practices that is continually updated is a really good representation of that. [LR267]

SENATOR DUBAS: Very good. And I'm familiar with the liability issues if I, as an excavator, don't follow the procedures, don't call in, don't get the all-clear that I need. Is...are there any liability on the part of, you know, the utilities? Or, you know, if say, you know, they get called, a utility gets called and said, you know, there's going to be a dig in this area, and the utility just calls the excavator and says, you're okay, but they're not. [LR267]

SUSAN LYNCH: You know, that's an excellent question and one that I like to tiptoe around just based on the fact that I do the education and the training. And what my response to that would be is, the responsibilities that I pointed out in my testimony and the responsibilities of the member utility are pretty much straight from the statutes. And so, you know, it would be my understanding that if those responsibilities aren't upheld by either the member utility or the excavator, then I think that's where liability would be decided. [LR267]

SENATOR DUBAS: Well, I throw that question out there for anyone else that will be coming up shortly. [LR267]

SUSAN LYNCH: Okay. Thank you. [LR267]

SENATOR DUBAS: If they would like to offer that, that would be great, too, as well. Any

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other questions? [LR267]

SENATOR SMITH: One other question, Madam Chair. [LR267]

SENATOR DUBAS: Senator Smith. [LR267]

SENATOR SMITH: Senator Dubas touched on it. Relative to other states, cost of...cost per call, can you give us how we compare in the state in the cost direction compared to other states? [LR267]

SUSAN LYNCH: That's...you know what? I don't have that data in front of me. And I would not probably be well versed to stab at it. It might be something for Mr. Nesheim further on... [LR267]

SENATOR SMITH: Okay. [LR267]

SUSAN LYNCH: ...if he has that information. [LR267]

SENATOR SMITH: All right. Thank you. [LR267]

SUSAN LYNCH: You bet. Thank you. [LR267]

SENATOR DUBAS: All right. Thank you, again, for coming. We really appreciate it. [LR267]

SUSAN LYNCH: Thank you. [LR267]

SENATOR DUBAS: Next we have Michael Loeffler. Welcome. [LR267]

MICHAEL LOEFFLER: (Exhibit 4) Good morning. Thank you. First of all for the record,

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my name is Mike Loeffler. My last name is spelled L-o-e-f-f-l-e-r. I'm the senior director of certificates and external affairs for Northern Natural Gas Company out of Omaha, Nebraska. I see you all have a copy of the presentation. First, I want to thank Senator Smith, Senator Dubas, Senator Brasch. Thanks for being here. Thank you for the opportunity to have this hearing and for us to supply information on what we think is a very important topic. As was noted, we will not be discussing or going...talking about the agricultural exemption, but there are other facets of the law that we think that are important to address. And we appreciate the opportunity in this hearing to do so. If you turn to slide one, just a tiny little bit about my company. Northern Natural Gas Company is located in Omaha, Nebraska. We have approximately 850 employees; about 40 percent of those reside in the building at 103rd and Pacific in Omaha. Importantly, we operate about 1,660 miles of pipeline in the state, all of it underground, and two compressor stations, one at Palmyra, one at Beatrice. We're also engaged in a new expansion of a facility up in Woodbury County, Iowa, for which we will add two compressor stations, one in Fremont and one in Homer, Nebraska. The map that you see there on slide one shows you that basically our facilities are located in the eastern part of the state. Northern Natural Gas, since the beginning of the year, has been engaged in the multidiscipline initiative to identify ways to limit third-party damage. We have people in our operations, we have people in our facility planning, we have people in our records that are doing various things internally to try to limit third-party damage. For my discipline, that of state government, one of the things that we're looking at is the one-call statutes. And this multidisciplinary effort stretches across some of our sister platforms. Northern is owned by MidAmerican Energy Holdings Company, and they also own in addition to other companies and amongst Northern, they also own MidAmerican Energy Company and Kern River Gas Transmission. And if you look at that map that appears on slide 2, the middle blue represents the pipeline of Northern Natural Gas. You can see that we have approximately 14,900 miles of pipeline that extends up from Texas up into the upper Midwest. You'll also notice that as you get further north it kind of branches out. That's because that's our market area and that's where we deliver natural gas to communities and to large end users. If you look very carefully, you can

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see some shading in the state of Iowa. And what that represents is MidAmerican Energy Company, their service territories. And what they are is an electric and natural gas distribution company. And then finally, if you look out to the west through Utah, Nevada, and California, that red line is Kern River Gas Transmission Company. That's our sister company, and they operate approximately 1,680 miles of natural gas transmission lines similar to what Northern does. When I refer in my testimony today to our 15-state survey, I'm referring to a survey of states that...for which those businesses have their business footprint. So if you see the shaded states, those are states where either Northern or Kern River or MidAmerican Energy Company have facilities. So as part of this investigation and examination to limit third-party damage, what we did is we, as part of that, examined the one-call laws in those 15 states. So when you hear me make reference to that, those are the 15 states we're talking about. As you know, our primary concern is safety. We're not interested in fining people, we're not interested in collecting damages. What we're interested in is preventing these damages to begin with. A hit on a natural gas pipeline is, fortunately, very low incidence. It doesn't happen very often. Unfortunately, it's very high consequence. It can result in severe injury, large property loss and property damage, and potentially, even death. Third-party damage puts all of us at risk, not only the people who are excavating but also emergency responders, our repair people as they approach an event that could be potentially harmful. It disrupts important service and reliable service of natural gas to communities, to people who rely on it in the winter, and people who rely on it in the summer for things like industrial and electric generation. Also, I should note that third-party damage is the single-most source of pipeline failure for Northern Natural Gas. You see in that final bullet on slide 2 that we've experienced more than \$77,000 of damage just in the state of Nebraska since 2010 as a result of third-party damage. And across our whole system, that total reaches about \$800,000 since 2010. If you turn your presentation to slide 3, I'm going to talk about this incident because it illustrates what I talked about, about kind of the low incidence, high consequence. This is an incident that occurred in Hinton, Iowa. And what happened was there was a tiler that did not make a one-call locate request. And in case you're wondering how we could get these pictures, at the

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time Northern engages in aerial patrols in which we actually hire people to go and identify excavators near our pipeline. And then we call back to make sure that they've made a one-call locate request. If they have not, then our pilots actually fly over these excavators and drop down gloves that say, call 811. And underneath the wings of the airplane, it says call 811. This is just one of the many things that Northern employs to go out and try to prevent third-party damage and to support the 811 and one-call system. Well, it just so happens, on this day the pilot was out there flying and he noticed that there were some excavators out there. Before we could even determine whether they'd made a one-call locate request, there was an incident. They hit our pipeline. To give you some kind of perspective, when you look at the fireball on the right on the slide 3, estimates were that it went up to 300 feet in height. If you turn to slide 4, you can also see some of the consequences of that damage. Note particularly that the Caterpillar tractor at the right was found a quarter of a mile north of the impact site. That means that this particular piece of equipment was thrown a quarter of a mile. And I think that's kind of...what I'm trying to illustrate here is that when you have a line hit, it doesn't just present a risk to the people that are hitting the line. It also represents a lot of risk to other people and to the public. Northern is engaged in our 15 states. We're looking at a lot of different things. Some of it is visiting with enforcement agencies within the state. In some states, we're trying to enact legislation to enhance the one-call laws. In Nebraska, we've been working with a group of people who have underground utilities for the last couple of years. And what I'm going to give you is some of the consensus items from that group. One of the ones, if you look on slide 5, is to enhance the one-call statute by establishing a private cause of action within the statute. What that would do is it would allow utilities to have legal standing to bring an action for the imposition of civil penalties against one-call violators. A couple of things to note. This would be limited only when the information regarding the violation had been presented to the Attorney General, who is charged with enforcement in the state. And second, when the Attorney General had failed to act. I also want to underscore that we're not trying to indict the Attorney General. We have visited with them, and their office has been, I think, they listened to us carefully and they're very empathetic. But one of the things that you have to know is

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that they don't have a budget for the enforcement of these types of laws. The second thing is that you have to note is that we have, across the 15 states, there's a lot of states for which the attorneys general or the county attorneys are responsible for the enforcement of one-call and against violators of one-call statutes. In most cases, there's very little enforcement simply because they don't have a budget, and second, because it's not a high priority. They have a lot of other things that they have to enforce including criminal statutes and other civil responsibilities. So, again, I just want to underscore that this is not intended to be a swipe at Nebraska's Attorney General. But on the other hand, what this would do by enacting a private cause of action would allow companies such as Northern if there were...to use our resources to, in effect, enforce the law. A couple of questions that might come to mind is, where does the money go? The money...we would not touch the money if we got a court to impose a civil fine. As you know, the Nebraska Constitution requires that that money be deposited in the school fund. So we're not after any money here. And we're really not after taking people to court. But we're hoping for some sort of deterrence so that people will make a one-call to prevent the third-party damage to begin with. You will note that on the bottom of slide 5, that for the 15 states that we surveyed, provided specific statutory authority for an operator to bring a cause of action. So instituting something like this in Nebraska law would not be unique. I want to turn your attention to slide 6. This is a history of the violations that we brought to the Nebraska Attorney General since December 2, 2009, to the present. You'll see that the last one was just at the end of last month. And there is a pattern of nonaction. And, again, this is not anything against the Attorney General, but this is simply because they don't have the resources, they don't have the funding to do this. But you can see in the majority of the actions in which we brought, no action was taken. And in all but one other instance, there was a warning letter that was issued. I want to bring your attention to the incident on March 28. There was a consent degree. This was against a person who was a multiviolator, someone who had twice been noted for not making one-calls and gone and made an excavation. And the Attorney General took action after we visited with their office in the end of June, and we pointed out some of these enforcement trends. The second enhancement that I'm

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asking this committee to consider is to provide a specific power for operators to enjoin excavators who are excavating and who have not made a one-call. As you noted, you know, we do have aerial patrols that go across our system. We also encourage our operators who are in the field--and remember that more than half of our employees are in the field--and we encourage them to identify excavators who are near our pipeline, and when they see an excavator, to make sure that that excavator has made a one-call. I should also note that it is our company's policy that if we know that an excavator is going to be present or be doing excavation near our pipeline, we will put one of our employees on-site to kind of guide them to make sure that when they get closer to our facilities that they take the appropriate action so that they don't result in damage. A lot of times this means either hand digging or some sort of extra reasonable care around our pipeline. The reason I say that is to underscore the fact that we're willing to put resources where we need to, to protect our pipeline and to prevent a third-party damage from occurring in the first place. A provision to allow an operator to enjoin would allow us, if we saw an action like this, to go and get...prevent the excavator from doing further excavation until they had made a one-call. This specific power to enjoin is something that is also included in 9 states in our 15-state survey. On slide 8, I know that I'll have other people talking behind me on this, but one of the things we're also encouraging the committee to consider is increased penalties. Because there are so few penalties that are actually...have been...have occurred in Nebraska, the cost of not making a one-call is just part of the cost of doing business. You know, the risk...we'll assume the risk because, you know, we...most of the time we're not going to result in damage. But even if we do, the cost of the fine is just an assumption of the risk. So we want to encourage the committee to increase penalties to take away the cost of noncompliance as just being a business risk that excavators are willing to undertake. You can see that in at least two of the states in our survey there are penalties that are higher than Nebraska. One of the things that we do commend about Nebraska's law is that the law recognizes that there is a distinction between not calling for a pipeline versus other utilities, again, reflecting that kind of low-incidence, high-risk factor of excavating around natural gas pipelines. With that, I would conclude my testimony. And I, again, want to thank you for

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the opportunity to speak, the opportunity to keep this issue in the forefront, and to ask you to consider different directions as we go to the next Legislature to ways that we might enhance the one-call statute in Nebraska. Thank you. [LR267]

SENATOR DUBAS: Thank you, Mr. Loeffler. Questions? Senator Smith. [LR267]

SENATOR SMITH: Thank you, Madam Chair. Those photos that you had provided, what type of activity was...were they engaged? And were they digging a trench or something? [LR267]

MICHAEL LOEFFLER: They were engaged in tiling. And one of the...agriculture tiling for those who don't know, is putting pipeline under the ground to encourage the proper irrigation or the proper movement of water under crops. I want to make a point, as long as you've given me the opportunity, is that these same people that were responsible for this incident, they did incur bodily injury. They had to go to the hospital. As you know that...you can see that the force of their equipment was thrown. They, too, were thrown from the equipment. Less than a week and a half later, these same excavators, these same ones that had caused this damage and had gone to the hospital for their injuries from this, we found them again in the field excavating without having made a one-call. Incidentally, the attorney general of the state of Iowa later imposed the maximum possible fine for that state against these excavators. [LR267]

SENATOR SMITH: Thank you. [LR267]

SENATOR DUBAS: Any other questions? I will ask my liability question to you then. I know that the excavator can be held liable for not following procedure. What happens if a utility says, oh, I know where you're at; just go ahead and go? [LR267]

MICHAEL LOEFFLER: Uh-huh. As you know, the statute doesn't provide specific liability. But that wouldn't relieve us from liability if our failure to act or our negligence to

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act had caused damage to some other party. For instance, let's say they were...they used their backhoe and they hit ours and we had improperly marked, we would be responsible for the damage to their facilities. Now that's not spelled out in the one-call statutes, but that would just be general tort law. [LR267]

SENATOR DUBAS: All right. Thank you. Senator Brasch. [LR267]

SENATOR BRASCH: Thank you, Madam Chairman. And back to the tiling, when that is taking place in agriculture that...besides the excavator, which is typically a commercial excavator, are there other entities involved like the Corps of Engineers or the...I mean, I believe there's several calls and permission levels before you get to that point. [LR267]

MICHAEL LOEFFLER: You know, I can't answer that. I can tell you from a pipeline perspective that whenever we construct pipeline, it often involves getting a lot of different permits. In this particular instance--let me talk first about Hinton--in this particular instance, you had people that were excavating on property in which there was within--and our postincident investigation showed this--there was actual signage that said natural gas facilities located nearby. So, you know, I don't know if they had to get a specific permit to do what they were doing. Usually, you get an Army Corps of Engineer permit only if you're near water or near a waterway. But that doesn't mean that you don't have, you know, local use permits or something like that, but I couldn't address that. I know that we're subject to a lot of permitting requirements for our pipeline and when we excavate for pipelines. [LR267]

SENATOR BRASCH: And when you mentioned water, when we had flooding along the Missouri River there, and...is it like yellow-painted pipe or something that's natural gas? Or is it all underground, none of it is aboveground? Is there any... [LR267]

MICHAEL LOEFFLER: The vast majority of our pipeline is underground. We do have, for instance, in our storage facility some valves and drips that are located above.

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[LR267]

SENATOR BRASCH: Right. [LR267]

MICHAEL LOEFFLER: But the vast, vast majority, 99.9 percent of our pipeline is located underground. And so, you know, that's why we were particularly concerned. Now when we bury our pipe, we try to bury it a specific distance. And we're governed by DOT regulations. [LR267]

SENATOR BRASCH: Uh-huh. [LR267]

MIKE LOEFFLER: But our concern is that over time, you know, either erosion... [LR267]

SENATOR BRASCH: Erosion, sure. [LR267]

MICHAEL LOEFFLER: ...or any things like that changes the depth of the pipeline.  
[LR267]

SENATOR BRASCH: Uh-huh. Very good. Thank you. [LR267]

MIKE LOEFFLER: Uh-huh. [LR267]

SENATOR DUBAS: Senator Smith. [LR267]

SENATOR SMITH: Thank you, Madam Chair. Related to what you're seeing, action with the Attorney General's office, do you feel that some of this lack of action could be the result of the gap that exists between law and policy or practice of the one-call operations? And that is, there's a certain amount of the locating activity by the excavator, by the operator, that's left up to interpretation. And then it becomes somewhat vague. Is that part of what we're seeing here? [LR267]

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MICHAEL LOEFFLER: I'm going to stay precariously away from that. But let me tell you this, that the importance is to enforce the law where it plainly and clearly applies. And you're not going to have any deterrent effect if you bring notice of violation and either nothing happens or a warning letter happens. Not just the incidents that I pointed out in our table, there are other incidences that we have brought to the Attorney General in which they are people who have violated the law multiple times. Can I give you just a little bit of background? When we get these reports from our field or when we get reports from our aerial patrols, we'll put together a packet of information and we'll send it to the specific state authority. In Nebraska it's Attorney General. In some states it's the county attorney in that county. In some states like in Kansas, it's the Kansas Corporation Commission. It's a state commission-based enforcement. But I think the important thing to really underscore is that when you have a clear violation of the law, that you have to enforce it. Otherwise, the lack of enforcement will not have the deterrent effect. And again, deterrence is our number one, and safety is our primary focus, not fining people, not enforcing against other people, but preventing it to begin with. But certainly where we could provide clarity in the law, I think that would be very helpful. [LR267]

SENATOR SMITH: Thank you. [LR267]

SENATOR DUBAS: Thank you again very much, Mr. Loeffler, for your information.  
[LR267]

MICHAEL LOEFFLER: Let me fill out my little form here. [LR267]

SENATOR DUBAS: Good morning. Welcome. [LR267]

ERIC CARSTENSON: Good morning. Thank you, Senator Dubas and members of the committee. My name is Eric Carstenson. Eric is E-r-i-c, Carstenson is

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C-a-r-s-t-e-n-s-o-n. I'm president of the Nebraska Telecommunications Association. The NTA is a trade association that represents the majority of local exchange telecommunications companies in Nebraska, 30-plus members. My purpose today is to discuss the consequence cutting our facilities has upon Nebraska customers and those companies. Nebraska telecom companies have deployed extensive plant throughout the state making possible modern, state-of-the-art telecommunications. Services include the traditional telephone call, but also broadband, cellular, and data services. When telecom facilities are damaged, here is some examples of the kinds of services that are disrupted: 911 emergency services, mobile and cellular--for we're the transport carrier--obviously, Internet, distance learning, telehealth, security systems, banking, and really any kind of commerce that relies upon communications. Nebraska has significant built-in redundancy. But when we experience a cut, traffic can often be rerouted. But the threat to health and safety and commerce is still very real. Now I asked NTA members for some examples of recent facilities' cuts. And let me share with you some instances that happened within just the last few months. The first two instances I'm going to give you there was no call made at all to one-call. Saturday, November 2, late in the afternoon, a local contractor was setting a power pole and they severed a member company's fiber that was actually serving another telephone company. So in other words, in this instance, the company was serving as a transport in between different telephone companies. They isolated the damage and had it repaired by 6:00 a.m. Sunday morning. Another instance--it must have been a bad week for them because this is November 4--at 6 p.m. there is damage made to a 50 pair copper cable that was caused by a farmer who was setting a fence post, also again with no locate. To immediately restore service, the company laid out a temporary cable that evening and they'll dig that in as soon as possible. Both of these instances, the costs were in the teens of thousands, around \$15,000 to repair those instances. Another NTA member shared these experiences: June 4, a contractor was doing work for a public power district who did call for a locate. The telephone company employees marked the facilities specified by that locate ticket. The contractor had even set up white flags. We call it white flagging the construction site, which means that's kind of where they intend

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to put the facilities. And when our member went out there, they noted that none of the white flags were close enough for our facilities to require standby staff. This company and many NTA members usually has standby staff actually there during the construction so we can make sure that the facilities are protected. But that usually is about 4 feet, and these locates were not within that range. The next day the NTA member received alarms that connectivity had been lost to a remote cabinet. They worked quickly to restore service and the service was rerouted very shortly. But the company then returned the next day to determine how many feet from the cabinet the fiber was severed. And while they're at the scene, the contractor noticed that there was a new power pole directly beside where the fiber had been marked. While doing this, the foreman for the contractor also arrived on-site and explained that they had moved the location of the hole to get the power pole closer to the county road. Cost to repair, \$19,103. On October 21, an NTA member began receiving alarms that connectivity was lost to four remote cabinets. And every customer served out of those remote cabinets had lost both telephone and broadband service. Emergency repairs were completed by 1 a.m. the next morning, and then later that day technicians returned to the site to make the work permanent. It was discovered that in this instance, the contractor did not have a valid digger's hotline ticket to be excavating in that area. Even though that contractor passed by several fiber warning posts while burying water pipe, the contractor did not call for a locate. Since no valid call was made, the telecom company didn't even know that there was construction going on in the area or we would have sent somebody out to observe. Cost of this repair, \$11,322. As you can see, failure to call one-call has serious consequences. Further, construction damage of buried communications facilities is not only frustrating for the customers who depend upon communications to conduct business and stay in contact with family and friends or have access to commerce or 911, contractors have a responsibility to call for their locate and then construct in the area that is indicated by that marking. If they don't, it can cause severe damage to telecommunications companies and also to the citizens of Nebraska. That concludes my comments, but I'd be happy to answer any questions. [LR267]

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SENATOR DUBAS: Any questions for Mr. Carstenson? [LR267]

SENATOR SMITH: Yes. Thank you, Madam Chair. [LR267]

SENATOR DUBAS: Senator Smith. [LR267]

SENATOR SMITH: Mr. Carstenson, any of your NTA members represented on the One-Call board? [LR267]

ERIC CARSTENSON: Yes, there is a telecom...and I can't...if I were sitting down, I would think of it immediately. But I can't think of that representative's name right now. [LR267]

SENATOR SMITH: Okay. [LR267]

ERIC CARSTENSON: But there is a telecom representative. [LR267]

SENATOR SMITH: So do you feel like some of these things you're bringing up may be identifying some of the gaps between the ambiguity of the law and the best practices of the one-call system? Are they able to bring these things forward through the board process to have those things addressed either in policy, in best practice, or in the law? [LR267]

ERIC CARSTENSON: Yes. And we do look at that on an annual basis with the hope of improving both education, practice, and where necessary, statute. We, of course, have a...as a trade association, we have a committee process. And you had some very good ideas presented to you today that we're going to take a look at and run through our process and evaluate. We always do that. [LR267]

SENATOR SMITH: All right. Thank you. [LR267]

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SENATOR DUBAS: Other questions? Seeing none, thank you very much for coming today. [LR267]

ERIC CARSTENSON: Thank you. [LR267]

SENATOR DUBAS: We appreciate it. Welcome. [LR267]

ROBERT ANDERSEN: (Exhibits 5, 6) Good morning, Senator. How are you today? [LR267]

SENATOR DUBAS: Very well, thank you. [LR267]

ROBERT ANDERSEN: Senator Dubas and members of the Transportation and Telecommunications Committee, my name is Robert C. Andersen. That is spelled R-o-b-e-r-t, middle initial C., Andersen, A-n-d-e-r-s-e-n. I serve as president of the Nebraska Cooperative Council. That is a statewide, nonprofit trade association representing the farmer-owned agricultural cooperatives throughout the state of Nebraska. Our members service approximately about 390 Nebraska communities in terms of assets and facilities to help the farmers throughout the state. I appreciate the opportunity to address this committee today, and I compliment Senator Dubas for her continued efforts to find a common ground and resolve the one-call notification situation, and for Senator Smith for introducing LR267. The issue has been of concern among Nebraska Cooperative Council since it first surfaced in like 2010. The one-call notification system is intended to provide an orderly process to allow for the excavation of soils and, at the same time, avoid disruptions to our utilities statewide. Its intent is honorable, but for the agricultural soil testing industry it's not very practical. To the best of my knowledge, the vast majority of Nebraska cooperatives prior to January 2011 were not reaching out to the one-call notification system before conducting soil testing because of their firm belief that such activity was included in the agricultural exemption

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to the notification requirement. On March 25, 2011, the Attorney General released an Opinion clarifying his earlier January 21, 2011, Opinion. That March Opinion stated the following, and I quote: Confusion has arisen because our Opinion did not address this office's position on the enforcement of the One-Call Act's provisions under the current law. As we told interested parties in January, we believe under existing law that the following persons are exempt from the One-Call Act: farmers, their employees, and any third-party consultants or entities that farmers designate to conduct routine soil sampling for agricultural purposes. Therefore, these entities do not need to call the One-Call Hotline when collecting routine soil samples for agricultural purposes. This letter should eliminate confusion regarding our office's enforcement of the existing language in the statute. End of quote. To many in the industry, including cooperatives, this was interpreted as an exemption for soil testing. While the Attorney General's Opinion clarified the office's intent regarding enforcement of the One-Call System Notification Act, it is our understanding that the Attorney General Opinions are simply that, opinions. It may not necessarily be relied upon as a legal precedent in a court of law. That uncertainty and the confusion as to their legal requirements for the One-Call Notification Act for our farmer/rancher-owned cooperatives has continued. Many of our members would argue that the act should not require notification for soil testing done by third parties who had been retained by the cooperative. Our association has advocated this as evidenced by our support for LB484 in 2011. I need to address today before you, and I come here a little bit in a different mode than my prior testifiers here today. But we are out there applying the soil testing, not necessarily utility or from one-call. But you have to understand how it affects cooperatives and others in the industry. Our cooperatives are challenged with extreme large volumes of soil sample requests. Earlier this year I did a survey among our members to get an idea of just how this affected our members. First of all, I received about a 73 percent response, which is very high on that. But it showed that last year there was approximately 225,000 soil samples taken. That's a lot of soil samples, especially when you couple it with that these tests are done normally following the harvest and before the spring planting. Consequently, weather generally greatly influences the window of opportunity for cooperatives to conduct the soil

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sampling in order to provide meaningful information to the farmer to allow the farmer to determine what soil nutrients may be required to support crop activity. This window of opportunity for a test is further narrowed by waiting for the utilities to respond to notification of intent to probe the soil when the utilities are being overwhelmed by the number of requests they're receiving in a short period of time. In many instances, the utilities have told our members that they, the utilities, do not have the time to mark locations or to determine if they have underground facilities in a specific location so the cooperative should simply proceed ahead with the soil testing. This past summer Senator Dubas, as Chair of the Transportation Committee, had asked the Council and others to sit down and to address the exemptions there in terms of how it affected our industry--in essence, to try to come forth with something different than where we had been. We went to our membership and we had a long, hard discussion on this. We brought people in from across the state to address this. And the input of that included a legal counsel, cooperative managers, and this whole policy was adopted by cooperative directors and managers from across the state. I provided to you a copy of potential legislation that would rectify what we believe the issue before us. It is, in essence, what we believe is a straightforward compromise. Let me address what this wouldn't do. First, it does not impact Nebraska farmers and ranchers by changing or modifying the definitions allowing farming and ranching excavations to be conducted by farmers or ranchers in the course of tilling the soil. Second, our proposal would specifically exempt drilling, augering, or probing for soil testing and analysis at a depth not to exceed 15 inches. Third, it creates a requirement the utility operator with underground facilities present in the notification area shall, shall mark the underground facility's location no later than two business days from the date of notification. Fourth, it requires the utility operator who has no underground facility located in that area of the proposed soil testing to do so, to notify the excavator that nothing is present within 24 hours of the notification of intent by the excavator. Last--and it comes back to what Senator Dubas was asking earlier there--it does provide for a private right of action for an excavator who is delayed in conducting its excavation by a utility who fails to mark or identify the underground facilities within the statutory time frame. This private right of action would

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be either recourse to district court to seek injunctive relief and/or a civil penalty, attorney fees, and court costs. What is the rationale of the proposal that we're presenting for your consideration at this point in time? First, the 15-inch exemption parallels the exclusion found in the Iowa statutes regarding an agricultural exemption from the notification requirement. In the course of conferring with our counteracting trade association in Iowa and with cooperative managers and directors over there, we have not heard of any real problems with the 15-inch level. So it parallels that approach that the state of Iowa has utilized. I would also add that the 15-inch exemption does address a significant number of agricultural soil testing in eastern and central Nebraska. However, it is not of a solution for those people in the Panhandle in the sugar beet industry where you see a lot of soil testing of at least a minimum of 36 inches or greater. So this would not be that helpful to them in western Nebraska. Consequently, at the 15 inches we think that it would go a long ways in protecting the underground facilities and would not negatively impact them. The provisions of our proposal that place time-sensitive duties and penalties for failure to timely respond upon the utilities address a problem that came to light two years ago when the soil sampling first became an issue for the one-call system. At that time this issue came to light, many of our members began calling the one-call before doing any soil sampling. What our members found at that time was a very mixed message from the local utilities regarding the utilities' ability to respond or mark fields within the 48-hour time frame. In one case, a soil sampler was told the utility would need to send an employee from Kansas to mark the field and it would be two weeks before that could happen. In another case, one of our members was asked by a local utility why they were calling one-call because our member had never called in the past. The utility further indicated that they did not have the staffing to mark all the fields in the expansive trade territory. In essence, the local utility did not see the need for the one-call notification and was not staffed to meet the 48-hour requirement for responding and marking the field. We believe that fairness dictates that if our members must notify the one-call system if conducting routine soil tests, the utilities need to promptly respond so the cooperatives can meet the time-sensitive need of the farmers and ranchers requesting soil testing. By providing a legal recourse for the soil testing entity, you

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create an avenue to address noncompliance by the utilities. Senator Dubas, our intent was to try to find a commonsense format that is simple to understand, respects the safety concerns with deep drilling, places less of a burden upon the utilities, and doesn't hinder or create delays in marking fields. We're faced with a limited time factor, uncooperative weather, and numerous requests converge upon cooperatives in a short time frame. Our goal is to remove the inefficiencies for our members in doing the soil sampling and for the farmers who rely upon the data for formulating their crop nutrient plans. Senator Dubas and members of the committee, I'd be more than happy to respond to any questions that you may have at this time. [LR267]

SENATOR DUBAS: Thank you very much, Mr. Andersen. Are there questions? Senator Brasch. [LR267]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Mr. Andersen. When this came about in 2010, did it go to the Ag Committee or which...the legislation on digging and soil testing? Was it... [LR267]

ROBERT ANDERSEN: I believe it went to the Transportation Committee. [LR267]

SENATOR BRASCH: It was Transportation? [LR267]

ROBERT ANDERSEN: Yes. [LR267]

SENATOR BRASCH: And then it did go to the floor? No, it just stayed in Transportation? [LR267]

ROBERT ANDERSEN: Yes. [LR267]

SENATOR BRASCH: And now I do remember the legislation at that point in time. And I was not on Transportation, and so it must have been through the co-ops or information

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read upon it. Do you see any, I guess, any significant changes from 2010 until now, incidents? You brought this draft forward, correct? [LR267]

ROBERT ANDERSEN: Yes. [LR267]

SENATOR BRASCH: And is it the same proposed legislation as in 2010 or... [LR267]

ROBERT ANDERSEN: Well, if you go back to 2010, that legislation there was to exempt soil testing in total. [LR267]

SENATOR BRASCH: In total. Okay. [LR267]

ROBERT ANDERSEN: And that it would be included under the definition of the ag exemption. [LR267]

SENATOR BRASCH: Okay. [LR267]

ROBERT ANDERSEN: What this proposal does here, it does not affect Nebraska farmers and ranchers throughout the state. We create a separate category there for the soil testing, the drilling, and the augering for them. [LR267]

SENATOR BRASCH: Okay. [LR267]

ROBERT ANDERSEN: So it does not impede them. And it does go to that 15-inch level which parallels what they have over in Iowa. [LR267]

SENATOR BRASCH: I see. Okay, I have no other questions. Thank you. [LR267]

ROBERT ANDERSEN: Thank you. [LR267]

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SENATOR DUBAS: I'd just like to say thank you, Mr. Andersen. I charged you with a duty and you went forward and, you know, I said making sure that you have public safety in mind, you know, what are some things that you could bring forward for the committee's consideration? So I do appreciate everybody this morning has been very helpful in bringing forward good ideas for us to look at. And I appreciate the work that you and your members did, so thank you. [LR267]

ROBERT ANDERSEN: Thank you, Senator. [LR267]

SENATOR DUBAS: Welcome. [LR267]

BRIAN MONKE: (Exhibits 7, 8) Thank you. Chairman Dubas and members of the Transportation and Telecommunications Committee, my name is Brian, B-r-i-a-n, Monke, M-o-n-k-e, and I appear before you on behalf of Monke Brothers Fertilizer in Waterloo, Nebraska, and on behalf of the Nebraska Agri-Business Association. The association represents fertilizer, agricultural chemical and seed retailers--both cooperative and independent--manufacturers of those products, soil testing laboratories, equipment manufacturers, crop consultants, and Certified Crop Advisers. LR267 addresses several issues surrounding the one-call notification system. We will address some of the points in the resolution relating to our industry. Point 2 in the resolution discusses comparison of practices across the country. As it relates to soil sampling, we can find no other states which require one-call notification for this practice. The Michigan legislature introduced legislation this year related to the practice and the bill was killed. The state of Florida requires notification of any excavations within 100 feet of the center of the road. The state of Georgia has looked at this issue, but no legislation has been passed to our knowledge. This issue surfaced about three years ago when one of our retailers was soil sampling and a utility company turned in the retailer to the Attorney General's Office for prosecution under the law. In March of 2011, Nebraska's Attorney General ruled that the current agricultural exemption in Nebraska statutes includes "farmers, their employees, and any third-party consultants or entities that

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farmers designate to conduct routine soil sampling for agricultural purposes." Prior to that ruling, our industry began calling the one-call system and found that there were not enough employees of the utilities to meet the requirements of marking fields within 48 hours. The number of soil samples sent to laboratories in Nebraska totals over 600,000 in a year, with most of these--up to 70 percent--being done immediately after harvest for a period of about one month and one-half in time. There are other states who provide laboratory services such as Iowa and Minnesota, but those samples were not included in our data. Those samples are a result of six to ten probes per sample in some cases and the samples may be up to 50 samples per 160 acre field. Using the above numbers, utility companies could be required to respond or mark up to 98,700 fields in a month and a half time period or 33 business working days. Our statistics show that of the 600,000 samples taken, 70 percent of those will be taken in the fall at 141,000 different field locations in that month and a half period. The time frame for marking or clearing would result in 2,999 clearings per day. This means about 375 calls per hour. Based on the history of our industry and the industry nationwide, we do not believe soil sampling or other tillage practices that are referenced in the bill should be covered under the excavation requirements which would require us to notify Diggers Hotline. A few points that we have: We have not experienced any accidents. No other states are required to make this phone call. The utility companies will not be able to respond and give us clearing or marking at a rate of over 2,999 markings per day in October and early November. And we do not feel that we are excavating the soil like using a backhoe, digging, or leveling equipment, but rather using a small, one-inch diameter tube inserted in the soil to gather a sample. We recently held five area meetings across the state and addressed this issue with crop consultants, retailers, agronomists, and other soil samplers. Their experience with local utilities is that they are unable to keep up with marking these fields in a timely fashion. The ideal situation would be allowing our field samplers to be able to utilize a GPS system with information supplied by utilities showing where there may be pipes, fiber optics, or other utilities as they go to the field. We have one other suggestion which may be included, and that would be soil samples at 48 inches or less be exempt, all hand probes be exempt, and soil sampling

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would not be conducted within the first 25 feet of the edge of the field or 100 feet from the edge of a road. Three- and four-foot samples are required by the natural resource districts and water protection areas. They are also required by the Department of Environmental Quality in the case of the application of manure. And they're required for the sugar beet industry for nitrate concentrations. We also believe that if this is a safety issue, the regulation should apply to all individuals and not just third parties. In most instances, our retailers and consultants--third parties--know the farm fields and are more familiar with the fields that even a farmer would be. Thank you for allowing me to testify today, and I'd be glad to entertain any questions you have. [LR267]

SENATOR DUBAS: Are there questions? I would have one. Are you familiar with or have you used the Internet ITIC? [LR267]

BRIAN MONKE: I have not. [LR267]

SENATOR DUBAS: Okay. Thank you. Any other questions? I really appreciate you coming forward today. [LR267]

BRIAN MONKE: Thank you for your time. [LR267]

SENATOR DUBAS: The information is very helpful. Thank you. [LR267]

BRIAN MONKE: Thank you. [LR267]

SENATOR DUBAS: And last we have Mr. Tyler Nesheim on the phone if he's ready to join us. [LR267]

TYLER NESHEIM: Hi. I'm here. I have no prepared testimony. I was just going to offer any assistance... [LR267]

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SENATOR DUBAS: Okay, well... [LR267]

TYLER NESHEIM: ...answer any questions. [LR267]

SENATOR DUBAS: I do appreciate you taking time out of your schedule today to join us and listen to the testimony. And I guess...are there questions from the committee to start off with? I would simply ask, and I asked this earlier, I think, of Ms. Lynch, do states have the ability or capabilities of kind of adapting their 811 number and the statutes and how they would foresee their state conducting the 811 business? And how flexible is it? [LR267]

TYLER NESHEIM: In my experience, typically that happens through two different vehicles. One, being a board of directors may make a policy decision. Typically, all the members in a given state are either volunteering members or that they're legislative. It's a matter of law that they have to be members. And then they follow whatever procedures the board puts in place. The second thing is that they could...they'll often form legislative committees that will draft language that addresses specific concerns within the law. And then they find a senator to carry that message and, hopefully, get the law updated. [LR267]

SENATOR DUBAS: Are there certain guidelines that have to be followed that come from the federal level? [LR267]

TYLER NESHEIM: I think a pipeliner like Val could probably speak to that better than I could. I think PHMSA is often involved. So I'll pass that question over to Val Snyder. [LR267]

SENATOR DUBAS: Okay. All right. So you are saying that there is the ability to adapt so that it's relevant to the particular state and their issues? [LR267]

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TYLER NESHEIM: Absolutely. It's a dynamic environment, and we often find ourselves changing either policy or software to adapt to changes, whether those changes are made at the request of the board or through state or federal changes in the legislation. [LR267]

SENATOR DUBAS: So your company would provide that technical assistance, is that correct? [LR267]

TYLER NESHEIM: For the states that we service, yes, ma'am. [LR267]

SENATOR DUBAS: Okay. [LR267]

TYLER NESHEIM: That's correct. [LR267]

SENATOR DUBAS: Do you receive a lot of requests from the states that use your services to help adapt the software? [LR267]

TYLER NESHEIM: Define a lot. We often find that as we address concerns whether it's, for instance, weaknesses in education, we like to think of ourself as a damage prevention resource. And we'll offer solutions that we feel could be easily implemented, be cost effective, and effective as far as outreach is concerned. I suspect that we probably--I'll use Nebraska as an example--we probably do two upgrades or so a month, and we continually evolve our education and outreach programs through Jill Geyer and Susan Lynch. [LR267]

SENATOR DUBAS: Okay. How many states that are under your contracts allow for the Internet...use of Internet to submit their tickets? [LR267]

TYLER NESHEIM: As far as I know, all of them. I would say that with 90-plus percent certainty. [LR267]

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SENATOR DUBAS: Is that a procedure that is generating a lot of interest? Is there...can you kind of give me a rough estimate as to the usage of the Internet versus the telephone or the fax? [LR267]

TYLER NESHEIM: I can. We average better than 50-ish percent when you look at across-the-board companywide. Some states do better than others due to certain environmental factors. I think Nebraska is somewhere in the neighborhood of 60 percent. Another example may be Maryland is 70-plus, Missouri is mid-50s, but average of about 50 percent usage across the board. Obviously, more people turn to the computers to do business these days and to communicate. So it's just a natural evolution from the phone, to the fax, to the Internet. [LR267]

SENATOR DUBAS: So this may sound like a repetitive question, but I guess I'm going to ask it from different angles just to make sure that I'm understanding it. So if Nebraska wanted to adapt or adopt a specific Internet protocol to use these tickets, we would be able to...you would be able to help us create that computer program, so to speak?  
[LR267]

TYLER NESHEIM: There are already several Internet products that exist. There is one for ticketing, there is one for member utilities to manage their notification areas, there is one for ticket management and positive response. If we saw the need for further development, we've always been active partners. And as an example, we're currently developing a mobile application for use on Android or iPhone devices. But, yes, if there were...if you wanted a new Internet product, I'm sure we could partner with you to make that happen. [LR267]

SENATOR DUBAS: So you said you are in the process of developing a mobile app?  
[LR267]

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TYLER NESHEIM: We are, and there are currently at least three existing mobile or I'm sorry, check that, three existing Internet platforms for different stakeholders whether they be excavators or member utilities or homeowners or the one-time excavator.  
[LR267]

SENATOR DUBAS: Very good. I know Ms. Lynch kind of gave us a little bit of an overview of your company. But if you'd just like to give us a little bit more detail about One Call Concepts and, in general, what you do. [LR267]

TYLER NESHEIM: In general, what we do is the company has existed for 30 years. We operate in 20-plus states. We have 11 physical locations so there are many locations, Missouri being one of them, that operates more than one state. Leveraging economies of scale, we can operate lean and mean, offer these additional services like the Internet products and the boots on the ground for marketing. We like to think of ourselves as more than just a call center. I alluded earlier to being a damage prevention partner. We like to be involved in the outreach. We like to help identify areas of concern or weakness that we can address, and we often do that by incurring some cost ourselves. But we all have the same mission, and that's damage prevention. And that would be my 30-second One Call Concept spiel. [LR267]

SENATOR DUBAS: Very good. Are there any other questions from the committee?  
Senator Smith. [LR267]

SENATOR SMITH: Thank you, Madam Chair. Mr. Nesheim, so how many contracts does your company have throughout the United States? [LR267]

TYLER NESHEIM: I'm going to estimate 20; I could get you a definitive answer on that. I'm not involved in all of that, but I believe it's right in the neighborhood of 20, 20-plus.  
[LR267]

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SENATOR SMITH: So those would be roughly 20 contracts for call center or one-call services, right? [LR267]

TYLER NESHEIM: That's correct. Yes, sir. [LR267]

SENATOR SMITH: Does your company also provide the locating services? [LR267]

TYLER NESHEIM: We do in some areas. We have One Call Concepts Locating Service that operates in Maryland, Delaware, D.C. area. [LR267]

SENATOR SMITH: Okay. But not in Nebraska? [LR267]

TYLER NESHEIM: No, sir, not at this time. [LR267]

SENATOR SMITH: All right, thank you. [LR267]

SENATOR DUBAS: Any other questions? Well, again, I really do appreciate you taking the time to sit through our hearing with us, it's very helpful. And I know I've made some calls to your company in the past as well, and it's been very helpful. So thank you so much. [LR267]

TYLER NESHEIM: No problem. There is one thing I wanted to jump in on. Somebody had asked earlier about cost per call. Was that you? [LR267]

SENATOR DUBAS: Correct. There was a question about cost for call, per call. [LR267]

TYLER NESHEIM: Okay. Okay. Because contracts and environmental conditions vary, it's a little bit hard to compare one state to the next. However, in terms of Nebraska it's typically \$1.10 per request. Again, that cost is borne by the utility member. If that request is placed using one of the Internet products, there's a 35 cent discount, so it's

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75 cents. So the potential of paying 75 cents per notification for the things that we've discussed, the redundant hardware, software, free upgrades, put two boots on the ground, the outreach, it would be my opinion that Nebraska got a really good deal on that. [LR267]

SENATOR DUBAS: Very good. Thank you. Again, thank you so much for sharing your expertise with us today. [LR267]

TYLER NESHEIM: Thank you for having me. It's been an honor. [LR267]

SENATOR DUBAS: Thank you. Well, that will conclude our interim hearing for this morning. I thank you, again, for bringing forward your testimony and your ideas. We appreciate that so much. Thank you. [LR267]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, November 12, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR276. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Charlie Janssen; and John Murante. Senators absent: Galen Hadley; Beau McCoy; and Dan Watermeier.

SENATOR DUBAS: It is 1:30 so I think we will get things underway here with the afternoon session hearings for the Transportation and Telecommunications Committee, so I welcome you. This afternoon we'll be hearing Legislative Resolution 276 introduced by Senator Ernie Chambers. I will take the time to introduce the committee members that we have with us this afternoon. I know there's other committees doing some Executive Session work and what have you, so I don't know if any senators may be popping in and out. But for the start, you do have a few who are here to listen. So we have to my immediate 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 Transportation and Telecommunications Committee. To my immediate left is Anne

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Hajek, she is the committee clerk. She's the one who is in charge of making sure that everything is accurately recorded. And so I will ask that you fill out a green sheet when you come forward to...he's ready to go, Senator Chambers is. When you come forward to testify, if you'd at least fill out a green sheet so that we can have your name for the record. And then I have Senator Lydia Brasch from Bancroft joining us this afternoon. So thank you. We'd like to remind everybody to shut off or silence your cell phones or any other electronic devices you may have with you, just so we don't interfere with the recording. And we do have a page with us this afternoon. She's out making some copies for us, but her name is Phoebe Gydesen. She is a senior at the University of Nebraska, majoring in history and political science. So with that, welcome, Senator Chambers, and we'll listen to your introduction of your resolution. [LR276]

SENATOR CHAMBERS: Thank you. Madam Chair, members of the committee, loyal, competent staff, I'm Ernie Chambers, and I represent the 11th Legislative District. These hearings, in my view, are for the purpose of offering anybody with an interest in the subject matter the opportunity to present his or her point of view. It's not designed for me to give my arguments or my rationale at any length. But another purpose for my position is to let anybody who has an interest in this subject know that I'm very serious about it, that I do intend to bring legislation in January. It's something that goes beyond merely the impact on the people who are locked up, but it has a bearing on their families also. I will listen very attentively and with great interest in what is presented. And for those who may not be familiar with the system, the number of people here is not really what's important. The fact is that a record is going to be created, and every word that is spoken will be recorded then transcribed so nobody need feel that his or her contribution will be minimized or go unrecognized. I have one other point to make which is somewhat off the subject. I noticed the perfect balance in this committee. At the head of the table sits the Chairperson. To the Chairperson's right is a state senator. To the Chairperson's left is a balancing state senator. Right next to the Chair is a staff member on the right. Right next on the other side is a staff member. So when I see such perfect balance in the committee, that means more to me than when the stars line up. If you

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have any questions you want to put to me, I'll answer them. But that's all that I have to say. [LR276]

SENATOR DUBAS: Very good. Thank you, Senator Chambers. Are there questions for the senator? [LR276]

SENATOR SMITH: Yes. [LR276]

SENATOR DUBAS: Senator Smith. [LR276]

SENATOR SMITH: Thank you, Madam Chair. Senator Chambers, I'm just trying to make certain I understand kind of what's in front of us with this issue. And I understand people that are incarcerated, they oftentimes do not have the ability to earn money, sometimes they do not go into prison with money. Now I understand they've done a crime and many would not have much sympathy for them. But, nonetheless, they're incarcerated and they do not have the wherewithal to make a phone call. And these phone calls cost money. And sometimes they have family members that can put money into their accounts, and they can make the phone calls using that. And if...but if they do not have those resources, they're not able to make those phone calls. Is that kind of at issue here? [LR276]

SENATOR CHAMBERS: Yes, plus the amounts that are charged. [LR276]

SENATOR SMITH: And the amounts. [LR276]

SENATOR CHAMBERS: And I'm glad you made the point. And I agree, we all recognize that people who are locked up, we hope that the crime they were convicted of is one they really committed and that innocent people are not there. But dealing with those who are guilty, a punishment is not to be separated from family, friends, and the outside world entirely. And when you have no way to communicate with the outside

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world, it's a type of solitary confinement which I don't think is wholesome for the inmate, for the prison staff, the jails in this case, the local and county, and certainly not for society. [LR276]

SENATOR SMITH: So kind of what we're...is at issue is enabling them to have some access to phone services and the access that is granted, that the charges be reasonable for someone in that position to be able to pay? [LR276]

SENATOR CHAMBERS: If there be charges. I'm starting with a blank tablet, a clean slate. And there has not always been a charge assessed, but in jails and prisons they have found ways throughout the country to profit financially from the people who are locked up. It's one thing to know that your punishment for the crime is to be deprived of your freedom, of your liberty, but another part should not be the profiting financially by the state or any private, commercial enterprise. [LR276]

SENATOR SMITH: All right, thank you. [LR276]

SENATOR DUBAS: Senator Brasch. [LR276]

SENATOR BRASCH: Thank you. And thank you, Senator Chambers. When you mention the profit, are you saying that the vendors who provide the phone services are not charging the same rate as typical households? Is there a price difference? [LR276]

SENATOR CHAMBERS: There are contractual negotiations, and as much as the traffic will bear is what the cost will be. But it is, in my view, unreasonable, unjust. And my job as one of those who makes laws--some of which result in people being locked up--to make sure that something in addition to the punishment described in the law is not piled on top of them. And when the cities and the counties and, to some extent, the state--but not to the same extent--are profiting, then they are on the wrong side of me. And if it is to be an adversarial relationship, I'm the enemy they would rather not have. So they can

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total up the cost. The little amount of money, relatively speaking, that they get through their exploitative situations compared to what...let me say this, quoting Stonewall Jackson. If the sleeves of my coat knew my plans, I should have to burn my coat. But I assure you, I would have plans. [LR276]

SENATOR BRASCH: Thank you. My question would be, do you know...are you saying the rates are not fair? [LR276]

SENATOR CHAMBERS: Right. For sure. [LR276]

SENATOR BRASCH: Okay. Do you have documentation of what a typical household rate would be for the nonincarcerated versus those incarcerated? Do you have something to show or is that what this document...you know, for me, it's that... [LR276]

SENATOR CHAMBERS: I'm not providing that today. [LR276]

SENATOR BRASCH: My question would be if it's 5 cents from my house, you know, 5 cents per minute to my friend in Colorado or Kentucky, and it's 5 cents, but if I were incarcerated, is my rate \$5 per minute versus the, you know, is there a... [LR276]

SENATOR CHAMBERS: There would be that kind of imbalance. [LR276]

SENATOR BRASCH: And is that what's at issue today, is the imbalance in the structure fee? Or... [LR276]

SENATOR CHAMBERS: Sometimes there's a commission involved. And I'm sure each one of these people who will speak on this resolution can tell you what the terms are of the contract they have entered, the entity with whom they have entered it, the fees that are charged to open an account by the inmate, additional fees on top of that if somebody wants to add to the inmate's available money. And I would not try to give

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even a general type contract that all these different cities and counties may have or whether...or even the entities with whom they contract. [LR276]

SENATOR BRASCH: And what is at issue today is that the current telecommunications structure... [LR276]

SENATOR CHAMBERS: Uh-huh. [LR276]

SENATOR BRASCH: ...price structure... [LR276]

SENATOR CHAMBERS: Uh-huh. [LR276]

SENATOR BRASCH: ...for those incarcerated, by means of their contractual vendors, is a burden on friends and family and those incarcerated? [LR276]

SENATOR CHAMBERS: Yes. It's what I would describe as an exorbitant, exploitive amount. [LR276]

SENATOR BRASCH: Okay. [LR276]

SENATOR CHAMBERS: And there are two ways to look at it. First of all, should there be a charge at all? That's one way to look at it. The other, if there is a charge, should it be left entirely up to these cities and counties to negotiate with these providers--both of whom want to make as much money off the inmates and their families as possible--just leave them free to extort or extract as much money as they can from the inmates and whomever they may call? [LR276]

SENATOR BRASCH: I understand what you're saying. [LR276]

SENATOR CHAMBERS: And I won't even tell right now the type of legislation that I'm

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contemplating, because I want to hear what they have to say. And who knows? In the same way that I wrote a rhyme and it concluded that a person may teach a horse to fly, they may be able to change my mind. But I think they'll teach a horse to fly before they do that, just being honest. [LR276]

SENATOR BRASCH: Like Pegasus? Is that what you're...? Thank you. No other questions. [LR276]

SENATOR DUBAS: Other questions? Senator Janssen. [LR276]

SENATOR JANSSEN: Thank you. And I apologize for being late, I was in the Tax Modernization hearing. I wanted to come over here, I always want to see Senator Chambers and talk to him. [LR276]

SENATOR CHAMBERS: I'm honored and flattered. [LR276]

SENATOR JANSSEN: I think...I'm hoping that we can get a horse to fly this next legislative session with my military license plate bill that Senator Dubas and I have been working on. So that's to an aside, but I take very seriously this hearing today. And when I saw it, I actually went and met with our county supervisors that are in charge of our, you know, local jail system, which is in Saunders County now; we co-oped with them. And I toured that facility, and one of the things was phone calls and how much it costs. And I talked to some people that have been in there before, and it seemed to me...it seemed egregious compared to what I pay. So it was very interesting to me to kind of get an inside look at that. And, in full disclosure, I wasn't even aware this hearing was about this until I got the notes from our capable staff here. And so I did some late work on it this morning. And hopefully you have some answers on this and, if not, I'm hopeful that somebody that comes behind you has some answers on this because... [LR276]

SENATOR CHAMBERS: They will. [LR276]

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SENATOR JANSSEN: ...I think it's important to remember that while people are incarcerated, sometimes there are innocent people that are incarcerated as well. And would a person be able to call their attorney free of charge? [LR276]

SENATOR CHAMBERS: I really don't know for sure. [LR276]

SENATOR JANSSEN: Okay. [LR276]

SENATOR CHAMBERS: Again, it depends on what they're going to do in each one of these facilities. [LR276]

SENATOR JANSSEN: In Saunders County, which is where...I represent Dodge County but as I talked, we co-op. I saw the phone bank system, which eerily reminded me of my military service because it looked about exactly the same. The...are there additional security concerns that would probably raise the price? And I don't know this at all. I'm coming in here pretty cold, talking about taxes just across the way there. But if there's additional security concerns with inmates making calls outside that would enhance the price of it perhaps? [LR276]

SENATOR CHAMBERS: Well, they monitor the calls. So if somebody is engaged in a conversation that is inappropriate, they know it. They can cut it off. I know this because it has happened when some people have been talking to me. And I always tell the inmates when they call me. They've given a disclaimer that these calls are monitored. You got me to answer the phone. You may not mind them taping you, but they're not going to record me so I'm not going to have anything to say no matter what you say. And I would advise you to keep that in mind. And if you want to write to me, you can do so. But there are a lot of things that happen in these jails and at the state pen which I think are atrocious. And during the four years I was gone, things have gotten worse, in my opinion. So I've got a lot of correcting to do. And I know how to fight, and I will fight.

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And if I can't bite the apple here, I'll bite it on the other side. So I want these people who have had their way with these inmates to know now they've got somebody that they're going to have to contend with. And I will not draw the line at just the extorting of money from inmates and their family. When they send these lobbyists here, the lobbyists make statements because they have to make money. But they'd better keep in mind that they've got principals, p-r-i-n-c-i-p-a-l-s--not ethical principles--who are concerned about what my view might be toward them and their other interests. All the lobbyist wants to do is earn his or her keep. And we're all adults. And I'm not going to pussyfoot or soft pedal for anybody. And I want them to know what it is they're contending with. I have a voice on the floor of the Legislature, they don't. I have a vote in the Legislature, and they don't. And before you badger, tease, or bait a large, ferocious predator, you'd better make sure there's something between you and that predator that will keep that predator from inflicting on you what you have inflicted on others who are helpless. [LR276]

SENATOR JANSSEN: Well, I know a lot of people have always said that you're a guy that pussyfoots and soft pedals, so I appreciate bringing that point forward. The...when you talked about mail in your initial thing, now would inmate mail also be subject to basically people looking at before they...surveillance? [LR276]

SENATOR CHAMBERS: What they stamp on mail is, this mail is from--some version of this--this mail is from a correctional or jail facility. It was not censored or read or something like that. [LR276]

SENATOR JANSSEN: Okay. [LR276]

SENATOR CHAMBERS: So they are not to read the mail. And if some of them do, then the inmates would probably make that clear. But none has ever told me that the mail I sent to them or that they sent to me was monitored. But I don't know whether that would be the case with somebody who's not in an official position. But no families to date have indicated to me that their mail was censored or held back. So I can't say anything about

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that other than what I just did. [LR276]

SENATOR JANSSEN: Well, sure. I've seen that in my office. I have received inmate mail and I wasn't certain if that was monitored or not. So I've never received a phone call in my office from that, so it's very interesting. And it's something that I'm kind of a little bit embarrassed to say I just started digging into this morning when I saw this hearing was happening and wanted to come over here and ask a few questions. And I hope there's some clarification that is to come forward. Thank you, Senator Chambers. [LR276]

SENATOR CHAMBERS: I appreciate you being here. [LR276]

SENATOR DUBAS: Other questions? Senator Smith. [LR276]

SENATOR SMITH: Thank you, Madam Chair. And, Senator Chambers, just a recap on a couple of things I'm hearing here. [LR276]

SENATOR CHAMBERS: Could you speak just a little louder? [LR276]

SENATOR SMITH: Yes. A couple of things we're addressing here is, one, we've heard from your exchange with Senator Brasch, determination of how reasonable the level of the rates are that are charged for calls. But the other point that I'm hoping to hear from others that follow you is some discussion around making available an access to phone calls--a reasonable number of phone calls--to those that do not have the resources to pay for them. And what--once again, I'm going back to what we said before--some of these inmates that go in, they've done a crime. You know, I know that they're in there, perhaps for a reason, hopefully, that it was a just punishment. But nonetheless, they may not have resources, they may not have a family, they may not...they may have been disowned by their family. They may not have access to money to be able to pay for those phone calls. And so what is the reasonable amount of access that should be

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provided to these inmates? Then also, to discuss the rates that are in place, are they reasonable beyond maybe what is allowed to them or afforded to them by the state? Beyond that, what is a reasonable charge to make for those? So those are some things I'd like to hear from the discussions that follow you. [LR276]

SENATOR CHAMBERS: And they are, I'm sure, able to answer any question that any committee member would have. And they should do the best they can in responding so that the record will be clear from them as it is...has been for me. Here's something I haven't investigated, but it's an analogy. There were companies that manufactured these, I call them red light traffic cameras. That's what they're called. They photograph cars going through intersections, and if they go through on a red light, it takes a picture. Cities were not the ones reaching out to these companies, companies started contacting cities. They sent their sales people, they mentioned how much money they can make, that they didn't have to worry about money coming out of their pocket because they could charge enough as a fine to defray the cost of the camera, the monitoring of the camera, and make some money for themselves. This is what I call cash register injustice. And I don't believe any jail started researching to see if there was some way to install a system whereby they could make some cash. I believe this originated with companies who wanted to exploit a captive--literally--audience. And these city people and county people took the bait, and they're getting a profit from it. And I think that each member of the committee has to have an open mind, be willing to hear their argument. But my mind is made up, and my face is set like flint. But, nevertheless, for those who won't be here during the hearing--and now I'm talking about the other members of the Legislature--they will have access to the record put together during this hearing. There are people who are familiar with what I'm talking about, and they will be able to review what is said at this hearing in their absence and can see how much it comports with what they know about this situation. I shouldn't tip them off like that. I should have just let them come up here and feel that the only ones who are going to be aware of this would be the ones in this room. But I am so confident in the justice of what I ultimately will try to do that I want them to have the opportunity to present their

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best case, because they're not going to do it on the floor of the Legislature. They won't be there. This is it. And it also may have a bearing on whether or not whoever hired them as a lobbyist, whoever voted them into office will feel that the person placed in that position is as capable and competent as he or she ought to be. [LR276]

SENATOR DUBAS: Thank you, Senator Chambers. Senator Brasch. [LR276]

SENATOR BRASCH: Thank you. And I'm not familiar with...can the Legislature regulate rates? [LR276]

SENATOR CHAMBERS: Sure. [LR276]

SENATOR BRASCH: I mean, do we have that authority to... [LR276]

SENATOR CHAMBERS: We can do anything we want to. We can tell them they're not going to charge anybody who is locked up for a phone call. And since they're operating the jail, it's up to the city and the county to raise the money necessary to operate that jail. [LR276]

SENATOR BRASCH: So everyone else pays for a phone call. There are...there's somebody paying a phone bill somewhere whether it's a cell phone or a landline phone, wireless. But the Legislature, for incarcerated individuals, could have perhaps a rate where...and I'm thinking about one of my plans where you have 20 people that you can call in my friends and family circle or whatever that perhaps mothers, grandmothers, got a cheaper rate than, you know, and the children and family versus associates and...I mean, we could do that as well, that if they're calling the casino or something, then there would be a difference between calling them and their mother or someone who is...or their pastor or a group of people who would help them. Or are you just saying it doesn't matter? If you're an inmate, you should have a free call. [LR276]

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SENATOR CHAMBERS: What they should...what they can do is find a list of people whom this individual is going to call. A call outside of that list to--because you mentioned a casino or something--they may not...we both know they may not let them make those kind of calls. But for the sake of the example... [LR276]

SENATOR BRASCH: Uh-huh. [LR276]

SENATOR CHAMBERS: ...if you want to make that kind of call, you're going to have to pay for it. And when I say set rates, I don't mean telephone rates for everybody because... [LR276]

SENATOR BRASCH: Okay. [LR276]

SENATOR CHAMBERS: ...the Service Commission does that. [LR276]

SENATOR BRASCH: Absolutely. [LR276]

SENATOR CHAMBERS: But we can determine what these people are going to charge these inmates because they set up a contractual amount. And it's between these people--and when I say these people, I meant the ones who run the jails--they and whoever is providing the service are the ones who decide how clean they're going to pick the bones of their victims. [LR276]

SENATOR BRASCH: And so are the jails themselves, the facilities, making a profit on these calls? [LR276]

SENATOR CHAMBERS: They are making money or they wouldn't even do it. [LR276]

SENATOR BRASCH: They are as well. Okay. [LR276]

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SENATOR CHAMBERS: And they'll be able to tell you what...who gets a commission or whatever term they call it. But I assure you, it's not a situation where they talked to this company and the company says, we can make a profit that is reasonable by charging so much for a call. And the jail is going to say, what are we going to get out of it?

[LR276]

SENATOR BRASCH: Okay. And then the other...from what Senator Smith said, incarcerated individuals do have an ability within their institution there to earn some money, whether it's... [LR276]

SENATOR CHAMBERS: In some of them. [LR276]

SENATOR BRASCH: ...unless it's... [LR276]

SENATOR CHAMBERS: That's in the state pen. I don't know if local jails and any of those allow people to make money. Uh-huh. [LR276]

SENATOR BRASCH: To have...okay. All right. [LR276]

SENATOR CHAMBERS: Uh-huh, because I don't think there would be that much work to be done that they could be paid for it. But, again, those who come after me can say if, in their jail, they have a system where a person can earn money. [LR276]

SENATOR BRASCH: Earn money to buy phone calls or candy or whatever they...  
[LR276]

SENATOR CHAMBERS: Right. And see, when you don't have a standard that's imposed by the state, then each one of these jails is almost like a self-contained entity. Now certainly, they cannot abuse prisoners and things like that. There are state laws that would cover that. But for this kind of stuff they're doing, no two of them may have

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the same rate that they charge or maybe there's one company that has all of them. But that is for them... [LR276]

SENATOR BRASCH: Okay. [LR276]

SENATOR CHAMBERS: ...to give in the way of information, and that's the kind of information I did not research for this hearing because I have confidence that the committee is going to get that information from those who have it and not from me, who would be speculating. There might be ten jails, just for an example, and maybe I know concretely what the arrangement is in two of them. And maybe I'd try to extrapolate and say since it's that way in these two, it must be that way in the other eight. But that may not be so at all. So each person who comes up here from one of these jails or representing one of these jails is going to have specific, concrete information, detailed information. They'll explain the contracting arrangement, how they determine with whom they will contract, and all these other things. I wouldn't even try to speak for them or answer for them. [LR276]

SENATOR BRASCH: So is that public information that the State Auditor's Office or another office would make available statewide? [LR276]

SENATOR CHAMBERS: I'm sure that what they're doing can be obtained by the public. But, again, I cannot say that authoritatively. [LR276]

SENATOR BRASCH: Thank you, Senator Chambers. And thank you, Madam Chairman. [LR276]

SENATOR DUBAS: Other questions? Thank you very much, Senator Chambers.  
[LR276]

SENATOR CHAMBERS: May I stay for the hearing? [LR276]

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SENATOR DUBAS: Absolutely. [LR276]

SENATOR CHAMBERS: Thank you very much. [LR276]

SENATOR DUBAS: Be glad to have you. This hearing is less formal than our usual legislative hearings, so we don't have people who are in support or in opposition. It's just, as Senator Chambers said, an opportunity for us to gather information. So it's kind of on a first come, first serve basis as to who would like to get up and start testifying, present at the table. Welcome. [LR276]

ROLAND HAMANN: (Exhibit 1) Good morning, Madam Chair and Senators. My name is Roland Hamann, R-o-l-a-n-d H-a-m-a-n-n. I'm the administrative services manager at the Douglas County Department of Corrections. And I'm here today to merely provide you with some information. I'm not here to speak in favor of or opposed to this legislation. Just to help you understand what we do and why we do it and how we came about doing it. Douglas County Department of Corrections is the largest correctional facility in the state of Nebraska. Our average daily inmate population is 1,096 inmates. We operate a community corrections center with an average daily population of 152 inmates. Douglas County contracts with Global Tel\*Link--or GTL for short--to provide inmate telephone services at the correctional center and at its community corrections center. GTL offers three categories of telephone service for inmates: debit calling, where the inmate is responsible for the cost of the call using funds from their institutional accounts; collect calling, where the called party is responsible for the call with charges added to the called party's home phone bill; and prepaid collect calling, where the called party is responsible for the cost of the call and pays in advance by establishing a prepaid phone account with GTL. I have provided a table that gives you the calling rates for intraLATA calls, interLATA calls, interstate calls, international calls, both for debit, collect, and prepaid phone calls. And I have provided a estimate of what a typical 15-minute phone call from our facility would cost. GTL pays a commission on

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the revenue they collect from inmate phone calls. Commissions from collect and prepaid collect calls are deposited into Douglas County's general fund. Commissions from debit phone calls are deposited into our inmate benefit account. The inmate benefit account is used to purchase goods and services for the inmates that the county is not statutorily obligated to provide. These include recreational supplies, including televisions, basketballs, volleyballs, and board games; reading materials, including newspapers, magazines, and books; undergarments, including shorts, T-shirts, stockings, and sports bras; hygiene supplies for newly incarcerated and indigent inmates, including soap, shampoo, toothbrush, toothpaste, and deodorant; stationery supplies for newly incarcerated and indigent inmates, including pen, paper, envelopes, and postage; release clothing based on climate conditions. Some of our inmates get incarcerated during the summer and they come in in shorts and a T-shirt and then get released in the winter. And we make sure that they have warm clothes when they leave. Educational and counseling services, including GED, anger management, effective parenting, and substance abuse counseling. These counselings and programming are services we provide...are evidence-based practices proven to reduce recidivism, make communities safer, and helping inmates become more productive citizens. GED testing is another part of our curriculum, and we've just learned that the cost per student to take a GED test starting January 1, 2014, will be \$120 per student. In 2012, approximately 80 students or 80 inmates received their GED while incarcerated. Douglas County is able to provide these goods and services only through the use of the funds generated by commissions from the inmate calls. If commissions on inmate calls are curtailed, most of these goods and services would have to be curtailed. According to our vendor, the state of Nebraska assesses a tax between 15 percent and 20 percent on each inmate call, meaning on a 15-minute local call costing \$1.50, the inmate would pay 20.29 percent tax or an additional 30 cents for a total cost of \$1.80. I thank you. And opportunity to ask any questions...to answer any questions you have. [LR276]

SENATOR DUBAS: Thank you, Mr. Hamann. Questions? Senator Janssen. [LR276]

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SENATOR JANSSEN: Thank you, Madam Chairman. I apologize, I didn't catch your name. [LR276]

ROLAND HAMANN: Roland Hamann. [LR276]

SENATOR JANSSEN: Thank you for being here today. I wanted to ask a question. Douglas County, right? [LR276]

ROLAND HAMANN: Correct. [LR276]

SENATOR JANSSEN: What's the population right now in comparison to years before? Have you seen a population increase? Maybe just the last... [LR276]

ROLAND HAMANN: Our population typically, up until the last year, was running around 1,150, 1,160. We had a slight decline, and that's kind of seasonal. It goes up and down during the year. [LR276]

SENATOR JANSSEN: Do you do a yearly census or anything? How about your budget? I guess that would be the best way to...has it gone up, down? I'm just...I did a crash course this morning on my local budget. In Dodge County we plan for something around \$60,000, which is peanuts to you. But and then it turned out to be a third more than that because we had the number of incarcerated individuals. So I was just wondering where you guys were at. [LR276]

ROLAND HAMANN: Our budget has remained pretty flat the last three years. This budget year for 2014, fiscal year 2014 was \$32.5 million. [LR276]

SENATOR JANSSEN: Do you think...what's the level of, I guess, what you would classify--you probably have different term--but as violent, nonviolent criminals and the lag time between their court hearings? Do you see...in which I did see in my own

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legislative district. I see a case a lot of times where people are remaining in county lockup and just because they can't get into the judicial system. Is that something that you see or...? [LR276]

ROLAND HAMANN: Right. The typical--you know, and this is an estimate on my part. You know, I'm a fiscal person at the jail so I can't speak on correction stuff--typically, six to nine months to get through the adjudication process. Or I can tell you I knew of one individual that spent six years in our jail going through the judicial process. [LR276]

SENATOR JANSSEN: And do you as, I guess, a self-admitted bean counter, if you will, with these price ranges...I'm looking at the connect fees. What is the justification for a \$3.95 connect fee to make a phone call? And is that if I call somebody up...if I call you up and you just hang up the phone on me, is it \$3.95 and then call back? Is it... [LR276]

ROLAND HAMANN: The way the calls work at the jail, somebody actually has to accept the call. The inmate will make the call and it will say something, you have a call from the Douglas County Department of Corrections. And the person on the other end actually has to accept it. If they don't accept it, there's no charge to the inmate. If they do accept it and start talking, they'll be charged the connect fee and then the per minute fee.  
[LR276]

SENATOR JANSSEN: Is there a limited--and maybe this just speaks specifically and you're not on the corrections side--but let's say you call up and...call you up and I say, hey, how come, I don't know, you hang up on me. Can I call back? And then is it another \$3.95 or \$1.50 to \$3.95 to connect? [LR276]

ROLAND HAMANN: That's correct. The inmate can call back. Nobody can call the inmate. [LR276]

SENATOR JANSSEN: So can...okay. Okay. Thank you. [LR276]

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ROLAND HAMMAN: You're welcome. [LR276]

SENATOR DUBAS: Senator Brasch. [LR276]

SENATOR BRASCH: Thank you, Madam Chairman. And I also wanted to thank you, Mr....? [LR276]

ROLAND HAMMAN: Hamann. [LR276]

SENATOR BRASCH: Hamann. Okay, thanks. I'm curious here. You do have that what...your average population is around 1,000 inmates at your center, and a daily population. You have your rates per minute on the different types of calls generated. It is good to see that, you know, these funds, the commission that is made is going to two different funds. What is the revenue generated on each fund annually from one, the commission for what does Douglas County get in commission and what does the inmate benefit account get annually, average? [LR276]

ROLAND HAMANN: Okay. During the last 12 months, the general fund Douglas County received a commission off collect and prepaid collect phone calls. [LR276]

SENATOR BRASCH: Okay. [LR276]

ROLAND HAMANN: And that total was \$81,816. Okay? Off the inmate debit calls... [LR276]

SENATOR BRASCH: Uh-huh. [LR276]

ROLAND HAMANN: ...that commission was \$632,500. [LR276]

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SENATOR BRASCH: So over half a million dollars, basically. [LR276]

ROLAND HAMANN: Yes, ma'am. [LR276]

SENATOR BRASCH: Six hundred...okay. And debit calls are funds that someone would deposit into their account or their own...whether it...are they able to earn money in the Douglas County jail? Is there an income? [LR276]

ROLAND HAMANN: Right. Their institutional account holds money... [LR276]

SENATOR BRASCH: And that's their debit, correct? [LR276]

ROLAND HAMANN: It's an account where we secure their money while they're incarcerated. [LR276]

SENATOR BRASCH: Okay. [LR276]

ROLAND HAMANN: We secure any money they have on their person when they come in the jail. Or friends and family can come and deposit money in the inmate's account either by stopping by the jail or doing it over the Internet. Or they can earn money as being a trustee. [LR276]

SENATOR BRASCH: Earn money as a trustee. Very good. My other question is, when you mentioned that as the inmate calls out, that the person...is it an automated call or do you have somebody on staff 24/7 or 8:00 to 5:00 or 10:00 to 10:00 to be the intermediary, you know, when that call is made? When they try to make a phone call, is there someone in an office that's actually saying this call came from the correctional facility, will you take it or not? You know, that kind of... [LR276]

ROLAND HAMANN: No. This...it's an automated call. [LR276]

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SENATOR BRASCH: It is automated... [LR276]

ROLAND HAMANN: ...with a computer voice. [LR276]

SENATOR BRASCH: So there is no personnel cost? [LR276]

ROLAND HAMANN: No. [LR276]

SENATOR BRASCH: There is no personnel. Is the technology different in delivering from...is the phone call just a phone call or is it a secured line or something different or more expensive? Why does it cost this? You know, you're paying the vendor, you're paying...and then you're paying into a commission for a general fund. And then you're paying into the commission for the benefit account. [LR276]

ROLAND HAMANN: Inmate benefit account. [LR276]

SENATOR BRASCH: Yeah, so... [LR276]

ROLAND HAMANN: The inmate phone system is like a small, telephone company all of its own. And it connects with all the local and long-distance carriers. They put in equipment in our jail, and they have people that have to maintain it. And there's software associated with this equipment to...for billing purposes to keep track of the minutes the inmates talk on the telephone. [LR276]

SENATOR BRASCH: And so it's a stand-alone? We've been on a tour looking at switches and... [LR276]

ROLAND HAMANN: That's correct. [LR276]

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SENATOR BRASCH: ...you know, out in our districts. So... [LR276]

ROLAND HAMANN: That's correct, it's stand-alone. [LR276]

SENATOR BRASCH: And is it owned by correctionals or by the person who's awarded the bid on... [LR276]

ROLAND HAMANN: That's correct. [LR276]

SENATOR BRASCH: Okay. So does the hardware belong to them, so if somebody else gets the bid they come out and they pick up their servers and they walk out the door and someone else... [LR276]

ROLAND HAMANN: That is correct. [LR276]

SENATOR BRASCH: That is correct. [LR276]

ROLAND HAMANN: Yeah, each company owns their own. [LR276]

SENATOR BRASCH: And how long have you used the same vendor? Or do you change vendors frequently? Is there a... [LR276]

ROLAND HAMANN: This vendor has been providing service in our jail since about 2004. [LR276]

SENATOR BRASCH: Okay. [LR276]

ROLAND HAMANN: We renewed their contract in 2007. [LR276]

SENATOR BRASCH: Okay. Is it done by a bid process or... [LR276]

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ROLAND HAMANN: We published a request for proposal and gave vendors an opportunity to bid on it. And this was the best vendor, in our opinion. [LR276]

SENATOR BRASCH: So it is a competitive bid where...? [LR276]

ROLAND HAMANN: Competitive bid. [LR276]

SENATOR BRASCH: And have the prices gone up or down for incarcerated individuals? Has that changed over the years? [LR276]

ROLAND HAMANN: Competition has brought the prices down slightly. One of the calls that we're seeing on here now that we refer to as the debit calls is relatively new. In previous contracts, all...the only calls we had were collect calls. The inmate couldn't buy his own. And the collect calls were much more expensive, as they are on your sheet today. When they introduced the debit calls, it reduces the risk for the phone service provider. He knows he's going to get his money because it's deducted right from his institutional account and that way he can provide a cheaper call. [LR276]

SENATOR BRASCH: And my final question here is, when your...all very good, your education, counseling, all of these other entities, is this the only provider of funds or are there other organizations that also provide funds for a GED and for counseling and for...you know, is this a supplement to or sole funding? [LR276]

ROLAND HAMANN: Our inmate benefit account pays for all of those. [LR276]

SENATOR BRASCH: Uh-huh. [LR276]

ROLAND HAMANN: But I will tell you we have received grants to work on our community corrections program. But that's the only other source of revenue that they

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have. [LR276]

SENATOR BRASCH: So it's the primary source, you would say that? [LR276]

ROLAND HAMANN: That's absolutely correct, yes. [LR276]

SENATOR BRASCH: Okay, very good. I have no other questions. Thank you. [LR276]

ROLAND HAMANN: Okay. [LR276]

SENATOR BRASCH: Thank you, Madam Chairman. [LR276]

SENATOR DUBAS: Other questions? Senator Smith. [LR276]

SENATOR SMITH: Thank you, Madam Chair. Mr. Hamann, when you said competitive bids, so for the phone services you put out an RFP or an RFQ of some sort? And so there are vendors that bid to provide those services, right? [LR276]

ROLAND HAMANN: Yes, sir. [LR276]

SENATOR SMITH: Whenever you make a decision on that, how are you determining the most competitive bid? Is it based on the cost to the inmates or is it based on other income that is being received? How do you base that determination? [LR276]

ROLAND HAMANN: Actually, it's based on both. The best cost for the inmate and the commission that we would receive for the inmate benefit account. [LR276]

SENATOR SMITH: Okay. And is...does the same thing occur...you listed some of these other services and items. Is it the same vendor for the phone services that are providing these other services and items or is that a separate vendor? So if you look through

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here, like the miscellaneous items that can be purchased by the inmate, whether it's toothpaste, undergarments, soap, things like that. [LR276]

ROLAND HAMANN: Right. [LR276]

SENATOR SMITH: Is that a vendor-provided service as well? [LR276]

ROLAND HAMANN: It's a vendor-provided service, but not with this vendor. [LR276]

SENATOR SMITH: Separate. [LR276]

ROLAND HAMANN: Completely separate contract, bid separately. [LR276]

SENATOR SMITH: All right. So in your exchange with Senator Brasch, there is a profit that is derived from the purchasing of these products and services by the inmate. There is a profit, is that correct? [LR276]

ROLAND HAMANN: There is. [LR276]

SENATOR SMITH: All right. And tell me again, where does that profit go? [LR276]

ROLAND HAMANN: Okay. The profit from collect calls and prepaid collect calls goes to the Douglas County general fund. The profit from debit calls goes to the inmate benefit account. [LR276]

SENATOR SMITH: All right. And you made a note here and talked about some of these other products and services, you refer to a newly incarcerated as opposed to, I assume, someone who's been incarcerated for some time. Do all of these inmates have the opportunity to earn money into their accounts? I assume they do not. [LR276]

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ROLAND HAMANN: Not all of them do. It depends on their security risk. Generally, it has to do with the crimes they were charged with, the amount of bond they have. Typically, it's our minimum- and medium-security inmates that perform as trustees. And that also could include ICE inmates or U.S. Marshal Service inmates. [LR276]

SENATOR SMITH: Is it also a timing issue, so initially maybe they do not have an opportunity to earn it, but then in time they are able to have a job of some sort? Or is it...at what point do they have the opportunity to earn? [LR276]

ROLAND HAMANN: They can apply to be a trustee on the day they arrive, and then it's a waiting list. You know, we always have plenty of trustees that are or plenty of inmates that want to be trustees. And as we "attrit" out old trustees, we replace them with new ones. [LR276]

SENATOR SMITH: All right. So initially, if they're on that waiting list, during that time they are dependent upon someone putting money into their account to be able to make those phone calls. [LR276]

ROLAND HAMANN: That's correct. [LR276]

SENATOR SMITH: Okay. Thank you. [LR276]

ROLAND HAMANN: I will say one thing. Attorney calls are free calls. And when an inmate comes into our admissions area, we have phones set up that they can call anybody they want and there's no charge. But if they want to call their attorney, there's no charge for that. [LR276]

SENATOR SMITH: All right. There was someone that had sent in a letter here and it looks to me that they are disputing as to whether all the legal calls are free. [LR276]

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ROLAND HAMANN: Okay. [LR276]

SENATOR SMITH: But to your understanding, those legal calls are free? [LR276]

ROLAND HAMANN: They are. [LR276]

SENATOR SMITH: Okay. [LR276]

ROLAND HAMANN: Those calls are...they have to let us know who their attorney is, and we actually enter the attorney's phone number into the system. And then any call to that phone number is a free call. And that's...I will stipulate that that's for attorneys in the local calling area. Outside the state, you know, it could be a long-distance-charges call...for the call. [LR276]

SENATOR SMITH: All right. Thank you. [LR276]

ROLAND HAMANN: You're welcome. [LR276]

SENATOR DUBAS: Senator Brasch. [LR276]

SENATOR BRASCH: I do have another question, thank you, Madam Chairman. You represent Douglas County, but is this true for all 93 counties or the counties that have jails? Is there a universal or a standard rate, budget, etcetera? This is the format for Douglas County. Does this also apply to Lancaster County and all the others, Washington County, Burt County, Cuming? You know, is it a statewide or is it your own, each municipality, a county decides their rates, their commissions? [LR276]

ROLAND HAMANN: No. Everybody negotiates their own rates and commissions.  
[LR276]

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SENATOR BRASCH: So there could potentially be 93 different... [LR276]

ROLAND HAMANN: Yes. [LR276]

SENATOR BRASCH: Very good. I have no other questions. [LR276]

SENATOR DUBAS: I would have a couple of questions for you. How often do you negotiate for your... [LR276]

ROLAND HAMANN: Like I said, this contract was first let in 2007. It was a six-year contract with an option for three two-year extensions. [LR276]

SENATOR DUBAS: Three two-year extensions. Okay. [LR276]

ROLAND HAMANN: So potential for an 11-year contract. [LR276]

SENATOR DUBAS: Is it a pretty competitive bidding process? Do you have a lot of people who are submitting bids for these services? [LR276]

ROLAND HAMANN: When we put this out to bid, I believe there were four vendors that competed for the contract. [LR276]

SENATOR DUBAS: Is this...that seems like an awful long contract time for me, 6 years plus another 6 years or 11...is that a typical contract arrangement? To me, it would seem like it would be more beneficial to have these contracts up for bids more often, especially in the area of telecommunications with things changing so much. [LR276]

ROLAND HAMANN: Typically, the contracts in Douglas County are generally three-year contracts with an option for one or two additional years. This one is longer than normal. You know, I don't know the reason why, it just is. [LR276]

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SENATOR DUBAS: All right. All right, thank you. Any other questions? Thank you very much, Mr. Hamann. [LR276]

ROLAND HAMANN: Well, thank you for giving me the opportunity to provide information. [LR276]

SENATOR DUBAS: Appreciate your information. Next testifier. [LR276]

STACY ANDERSON: My name is Stacy Anderson, S-t-a-c-y A-n-d-e-r-s-o-n. I am just a private citizen who cares about these issues generally. So I'm sorry that I'm a little ill prepared. I just read about this in the newspaper this morning at 10:30. I do want to make you aware of a resource that's out there if you're not currently familiar with it. The Center for Media Justice is an organization that works specifically on how telecommunications interacts with people's lives and affects all of us as a community. This is an issue, specifically, that they've been working on for many years because what they're discovering is that inmates' ability to connect with their families directly correlates with recidivism. And so if they don't have continued contact with their support system, the likelihood of recidivism goes up because they don't have a good way to develop a new life once they get out of prison. And so I'm partially just here to say that I think you know this, but part of the reason it's so important that these calls be affordable and be available to all inmates and not just inmates that have a support system that can afford it, is that when we're looking at this as a public policy, we're talking about how this affects the entire community. And recidivism, obviously, is something we all care about. We want to make sure that inmates--yes, even if they're guilty--they need to do the time, but they also need to be able to develop a life after prison. And so the Center for Media Justice has done a lot of research on this, they've done a lot...they have a lot of research on their Web site about...and I'm sorry. Again, if I had more lead time, I would have brought you one of their reports on this. But I do think it's important that as you move forward--and I realize that there are overhead costs and things--and I think there's

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a way to balance that. But I am concerned with profit driving this as well, when the effect on the entire community might be a negative effect if people aren't able to stay in contact with their support system outside of prison. So that was pretty much all I wanted to say just as a private citizen. But it's all interconnected, so...and give you that resource because it really has been a good resource to me. [LR276]

SENATOR DUBAS: Thank you very much, Ms. Anderson. Are there questions? Senator Brasch. [LR276]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Ms. Anderson, for being a citizen, paying attention, and seeing something, and coming in to testify today. I'm curious on the Center for Media Justice. Your familiarity is because you've been a staff person or you're a student or just aware of...just take a great interest in... [LR276]

STACY ANDERSON: I actually work in some criminal justice reform work myself, and so I'm connected with these people. I've met them at conferences and sort of became familiar with their work. So I, myself, have never talked to an inmate on the phone, I have no idea how that system works. But they, you know, they tell me that Nebraska is actually better than some states. There are many states where it would cost upwards of \$50 for a family member to talk to an inmate for more than ten minutes. And so Nebraska is doing better, but they did have concern. I specifically asked them, how is Nebraska doing? And they said, you know, they're probably middle of the road on providing access for inmates. But it varies from county to county, as you've heard today. But we are doing better than some. But it very much...just peripherally, I became familiar with their work because of meeting them at conferences. [LR276]

SENATOR BRASCH: So you do have an occupation that focuses on corrections or...?  
[LR276]

STACY ANDERSON: Not corrections, no, specifically. Just criminal justice reform in

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general, yeah. [LR276]

SENATOR BRASCH: Okay. And are you affiliated with an organization to attend conferences too, and... [LR276]

STACY ANDERSON: I am. But I'm not here representing... [LR276]

SENATOR BRASCH: Them. Okay. All right. Just... [LR276]

STACY ANDERSON: ...them. Yep, I'm here on my own. [LR276]

SENATOR BRASCH: Okay. All right. Okay. Well, I do want to thank you for coming in and that is important information for us to know. Thank you. [LR276]

SENATOR DUBAS: Other questions? [LR276]

SENATOR JANSSEN: Senator Brasch asked mine. [LR276]

SENATOR DUBAS: All right. Thank you very much for coming forward, we really appreciate it. [LR276]

STACY ANDERSON: You bet. [LR276]

SENATOR DUBAS: Other testimony? Welcome. [LR276]

NEIL MILLER: Thank you. Good afternoon, Senator Dubas and members of the committee. I wanted to come today to just kind of give you an idea of the county jails... [LR276]

SENATOR DUBAS: I'll have you state and spell your name, please. [LR276]

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NEIL MILLER: I'm sorry. My name is Neil, N-e-i-l, Miller, M-i-l-l-e-r. I am the Buffalo County Sheriff. I wanted to come today to just go through...I looked at this when this came up. And the two concerns that I have, the first one actually, is not so much the revenue as it is the security of the phone system. Second obviously, being that there are some revenue issues here for the counties in how this has been done. Senator Chambers brought up the point of, you know, he didn't think that they just came out and decided to do this with phone systems to inmates, that the companies came up with this. And what happened, I can tell you, I remember. I've been around for a while in law enforcement. I remember when our jail used to plug telephones in and let the inmates actually call and make free phone calls. And they called out of their cells, and did that in the county on the phone system. The problem we've got is with the number of jails that we've got and the amount of security measures that there currently have to be in place with these phones is that these companies had a market out there to come and do something because the security issues with phone systems were very, very real. I can tell you that I get phone calls all the time about, please block this phone number. Don't let this person call my house. Why did you allow this call to happen? How come...what are you doing down there running the jail and they're calling my 14-year-old daughter? The other side of this thing is the security side of running an inmate phone system is not something that is very well done at the local level. And so part of the reason that this has happened is because of the security side, getting a phone system that we can manage. I don't have the ability to listen to all of these calls as they're happening. We generally go back to these calls when we get a complaint, and then try and investigate from there on exactly what happened, if we had a protection order violation or if there was something else that was going on that caused our phone to ring over why we were...whatever the issue might be with that telephone or that phone call. So, you know, that is the concern is, how do we put in a phone system that can take care of the security side of this with the public safety side of it, protection order violations, those things that happen that we get called about if there's not somebody in there to provide the system? The cost side of things, recently the FCC took this matter up and had

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hearings. And they have now, I think, established at least a partial model for what they want to charge for some of these calls which, you know, I think that's a good start. I think that heads down the road there's got to be some consistency in the rates that are charged out there. And I think that can help with that. I would hope that we'd at least look at that and see whether or not what the FCC is doing can meet some of the concerns that are brought up here and the concerns that are out there. And so that's kind of what, you know, I wanted to talk about today is, not just the money side of it. More importantly for the smaller places, how do we deal with a phone system that can keep three-way calling from happening? Okay? Because a lot of times what happens is the phone call gets made by one inmate, transferred to a telephone number, and then the person who receives the call transfers that call again. And so now the control of where that phone call goes is out of our hands. And we need to know when those are happening so when our phone rings and they want to know how this call got to them, we have the ability to go find out exactly what did happen. We get three-way call reporting back to us so that we know when these calls end up going to someplace that they shouldn't go or a third party gets added onto the call. So that is one of the services that the companies are able to provide for some of the places that could not do it on their own. I'm not sure who the penitentiary uses, if that, you know, system is an option or if that is something they own. But certainly we're not prepared for that at the local level to deal with all the issues that come up with running a system like this. [LR276]

SENATOR DUBAS: Thank you, Sheriff Miller. Are there questions? Senator Brasch.  
[LR276]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Mr. Miller. Buffalo County, when you set your rates... [LR276]

NEIL MILLER: Uh-huh. [LR276]

SENATOR BRASCH: ...how much revenue, even though it's security, how much

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revenue do you have annually for... [LR276]

NEIL MILLER: Let me just go through and I'll tell you... [LR276]

SENATOR BRASCH: Okay. [LR276]

NEIL MILLER: ...what our rates are. The rates for a local call is \$2 to connect and 5 cents per minute, making an average 15-minute phone call \$2.75. Intrastate calls are \$2.25 to connect and 20 cents per minute, making that 15-minute call \$5.25. And interstate calls are another 5 cents a minute, making the same 15-minute call \$6.00. As far as the revenue side, Buffalo County, when we did an RFP similar, I think, to probably what Douglas County did. And I think we had about the same number of people respond to that RFP. Our district judge has very much made his opinion known that he wants the rates at a reasonable level to the inmates. He wants that because the inmates don't generally end up paying these costs, the families do. And so he made that clear, so cost was a part of our consideration doing the RFP of what those costs were going to be. We negotiated out a contract with them that 55 percent of the profit from that, off the cost of the money that they made or commission off of this, came back to Buffalo County. Last year's numbers on that was \$24,000 was the revenue amount.  
[LR276]

SENATOR BRASCH: Very good. And about how many inmates do you serve? [LR276]

NEIL MILLER: We've been running about 100 to 105 inmates per day. [LR276]

SENATOR BRASCH: And my next question is, when you were concerned about the security, is there someone that actually listens to the call or is it automated as well?  
[LR276]

NEIL MILLER: It's an automated system that has the ability to listen to the calls that's

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going on. But, again, if you...we've got about eight pods that have phones in them. So to listen to all those phone calls going on, I don't...I mean, I've only got six corrections officers per shift. [LR276]

SENATOR BRASCH: But it properly records the calls? It doesn't... [LR276]

NEIL MILLER: It does. [LR276]

SENATOR BRASCH: Okay. And the other that I'm curious about is do you know...you don't network with other states. Or not states, but other counties. You have no idea...do the same four vendors serve the...all 93 counties? Or is there one predominant one that everyone seems to work with? [LR276]

NEIL MILLER: I don't know. I can tell you the company that we're with, I think they only have like three places in the state. They're doing three or four. [LR276]

SENATOR BRASCH: They do three, okay. [LR276]

NEIL MILLER: Yeah. [LR276]

SENATOR BRASCH: And how do you renew your contract and how often? [LR276]

NEIL MILLER: Our contract is up for renewal this year. And we will actually go back to an RFP and go through that process again. [LR276]

SENATOR BRASCH: My other thought is that in today's technology, almost every household, I believe, has the ability to block a call with a star and a number. And that three-way calling can even be blocked from certain systems as part of what bundle you affiliate. [LR276]

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NEIL MILLER: Sure. [LR276]

SENATOR BRASCH: So there could be ways to work around, you know, for a correction facility. [LR276]

NEIL MILLER: It's a whole different world of having... [LR276]

SENATOR BRASCH: It's just...it's something that someone else can manage for you. And that's what...you're kind of jobbing it out. It's contracting out the phone responsibility. [LR276]

NEIL MILLER: Exactly. Is having that, so that if we get that, we can block them using software. We'd be able to block the call. [LR276]

SENATOR BRASCH: Okay. [LR276]

NEIL MILLER: The number is not always going to come up from the same telephone number every time it comes out. So about after the first call, if you're one of the people receiving one of these calls that you don't want it and...or you don't know that someone in your household has accepted it. And then, you know, you're unhappy that happened. It's just...there's got to be a way to control that. And that's the concern that we have for that...that I have for this. [LR276]

SENATOR BRASCH: Okay. I have no other questions. Thank you very much. [LR276]

SENATOR DUBAS: Senator Janssen. [LR276]

SENATOR JANSSEN: Thank you, Madam Chairman. On the block calls, I guess I heard in a previous testifier that you will get a call and it says, this is coming from...do you want to accept it or decline it? So should that...is that an issue for you or is it

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different for Buffalo County as it would have been for Douglas County? [LR276]

NEIL MILLER: It does the same thing. The same exact thing happens. It says this is a call from the Buffalo County Jail, will you accept those charges or will you take...accept the collect call? The point is, if they say no and that call comes back again or that call comes back a second time or a third time, that phone is still ringing each time it's coming back to one of these. And so what we can do is, we can block the number from actually...they can't even dial the number and have it go anywhere. Once it's done inside the system, that number cannot be dialed any longer. So it allows them not to be able to call that particular number again. [LR276]

SENATOR JANSSEN: Okay. And on the security side, it's just a matter of...I guess, my own business I do quite a bit of phone banking. And we have the ability--we don't monitor every call--but we have the ability to monitor every call over a Voice over IP system. And it's...I mean, I couldn't be in business if I saw the rates that I saw from Douglas County here, or at least I wouldn't be in a profitable business with the volume of calls. So I'm wondering if the security is different. We only...and much like you, I don't have time to monitor every single phone call that--I won't call them inmates, they're called employees--that work for me. But if there is a concern though, and it's usually customer driven if somebody complains about something, we'll come back and we'll check that. And I assume you would probably do the same thing. Is that at a higher level? Well, I assume it's at a higher level of security for certain reasons, but does it cost more to do that? [LR276]

NEIL MILLER: Well, you know, obviously I don't understand exactly what it takes for them to do the security that they do. But we have the ability to be able to control when the phones get turned on and when the phones get turned off. We have the ability to go into that system and just make changes to keep them from, again, calling the numbers we don't want them to call. There's a group list and there are people that they just can't call. [LR276]

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SENATOR JANSSEN: Right. [LR276]

NEIL MILLER: And for us, it's real easy now because it's a Web-based sort of thing where we can manage that pretty easily. The point is, there's back room equipment to that system somewhere and software that it takes in order for that to work. And that's the part that I don't know how we would manage or how we would take care of that. It's more than...like I say, it's more than just a phone call. Our phone calls end up being recorded or stored for a period of time. [LR276]

SENATOR JANSSEN: Right. [LR276]

NEIL MILLER: So there are storage costs for that information. And so I guess that's the part is managing the whole thing. [LR276]

SENATOR JANSSEN: Yeah, and I certainly can understand that. Are you aware--and maybe you're not--if anybody here...is there anybody here today that's going to testify on behalf of the companies or maybe you're not...that maybe have some more...  
[LR276]

NEIL MILLER: I don't. Yeah, I don't know. [LR276]

SENATOR JANSSEN: I didn't know maybe if you came with somebody that has a more detailed...because that's a question that, you know, talking about voice override...  
[LR276]

NEIL MILLER: Sure. Sure. [LR276]

SENATOR JANSSEN: It doesn't sound too dissimilar from what I do. And I'm not here--I don't want to upset Ernie Chambers here--but I'm not here advocating for free calls for

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inmates, by the way. I just want to make sure that, you know, maybe we're getting the best deal possible from the state and the county levels. [LR276]

NEIL MILLER: Sure. I understand. [LR276]

SENATOR JANSSEN: And a question about your facility. [LR276]

NEIL MILLER: Uh-huh. [LR276]

SENATOR JANSSEN: As I talked to my county today, how is your population? Is it up, down, indifferent? [LR276]

NEIL MILLER: It's been around about the same, about 100 to 110. It fluctuates a little bit, but we're staying right in those numbers. We contract with Adams County for about eight to ten a day, so eight to ten of those numbers actually belong to Adams County. So our numbers would probably be that 95 to 100 a day range of our own inmates that we have every day. [LR276]

SENATOR JANSSEN: Seems like I got the only county that the population is going up, so. [LR276]

NEIL MILLER: Yeah, it's been pretty steady, I would say, is what I would call it. [LR276]

SENATOR JANSSEN: I also understand it's seasonal, which is what Douglas County kind of mentions. Thank you. [LR276]

NEIL MILLER: Uh-huh. [LR276]

SENATOR DUBAS: Other questions? I would have a question. If you have someone who is deaf or hard of hearing, do you have the capability of the technology for them to

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use communications? [LR276]

NEIL MILLER: And they have a...it can increase the volume in your ear so that they can hear that call better, a hearing-impaired sort of a handset. There's one of those, I think, in the eight cell blocks. I think we've got those in two and two, two in the female area and two in the male area. We also have them on our video visitation. And that's one of the things that we can do, is they can turn the volume up on the handset as well to do video visits because we use video visitation inside the jail. Now if people come to the jail to visit in the lobby and then they have their video visit in the other end of that's in each cell block. It reduces the amount of movement that we have inside the jail. [LR276]

SENATOR DUBAS: If they're completely deaf, do you have TTY, you know, where they can read it on the screen? [LR276]

NEIL MILLER: I don't know the...not inside the jail, we do not. [LR276]

SENATOR DUBAS: Okay. All right. Thank you. Any other questions? Thank you for making the trip today, we really appreciate it. [LR276]

NEIL MILLER: Sure. [LR276]

SENATOR DUBAS: Other testimony? Any other testimony today? Senator Chambers, would you like a closing? [LR276]

SENATOR CHAMBERS: I will be brief just so that whoever might look at the transcript will know that I didn't walk out while people were testifying. When the person from Douglas County was talking, he mentioned that--you can't hear back there clearly everything that's said--had indicated that some of the money goes into the general fund. Then that's like the inmates and their families underwriting or subsidizing providing things that the jail ought to provide to the people who are sent there. And that should

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never happen. These phone companies operate for profit, and they're going to earn or obtain as much as they possibly can. So there are various issues that I'm sure will be discussed at greater length and in more detail in a hearing on a bill than will occur at an interim hearing such as this because a lot of people can't make it. And I understand that. There are inconveniences in operating any kind of penal system, whether it's a penitentiary, a jail, a correctional center, or whatever they call it. But if society--and it has--creates these systems, if legislators create crimes and say they should be punished by incarceration rather than look for alternatives to that incarceration for people who don't need to be there, they exacerbate all of these types of issues that are coming forth now. And somebody is going to pay. And I don't want it to be the inmates and their families. If the state created the system and allows it to happen--the locking up, the creating of crimes--then they turn these cities and these counties loose to charge as much as they can, part of the responsibility is on the state. But when you let these counties and cities run free, they're going to use every method they can to supplement the money coming into their coffers. And I appreciate the committee having this hearing, and I don't have anything else that I would add. [LR276]

SENATOR DUBAS: Thank you very much, Senator Chambers. We appreciate it. Thank you. [LR276]

SENATOR CHAMBERS: Thank you. [LR276]

SENATOR DUBAS: (Exhibit 2) Before I close the hearing, I do want to read into the record we did receive a letter from Reiman Law Firm. Korey Reiman sent a letter to submit for the record. With that, we'll close the hearing for today. Thank you very much for your attendance and your attention. [LR276]