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Transportation and Telecommunications Committee  
July 16, 2007

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[LR181]

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. We have in interim study today, LR181. I would like to begin with introductions of the committee and staff. I am Deb Fischer; I'm the senator from the Valentine, the 43rd District; I'm Chair of the committee. To my right we have Senator DiAnna Schimek from Lincoln. Next to Senator Schimek is Senator Arnie Stuthman; he is from Platte Center and he is Vice Chair of the committee. Next we have Senator Ray Aguilar from Grand Island. To my immediate right is our committee counsel, Mr. Dustin Vaughan. To my left we have a new committee clerk helping us out today, Mr. Kris Valentin, who is usually with the Education Committee, but he's here helping us out, so welcome to Mr. Valentin. Next to Kris, we have Senator Mick Mines from Blair, Nebraska. And just walking in we are being joined by Senator LeRoy Loudon from Ellsworth. We do have a full committee today. We just came from another meeting, so when our other members enter the room I will introduce them to you. Our page today is Kim Weber from Lincoln. If you have any handouts for the committee or any information you need to give us, please hold that up and Kim will come and get that from you and pass it out to the committee. On our agenda we will be hearing LR181 today. We do have a green sign-in sheet at the table. I would ask that all of you who are coming forward to provide us with information on this legislative resolution, sign-in, only if you are actually going to testify before the committee. And please complete the sheet, with your name, complete address, and indicate who you are representing during this legislative resolution, and hand that green sheet in, please, to Mr. Valentin, before you testify. There is also a yellow sign-in sheet for those who wish to indicate their presence regarding a particular legislative resolution, without having to testify publicly, and this will be labeled as an exhibit and will become part of our official record of this committee. If you have a prepared statement, you could please make it available so we can follow along and have it inserted into the record; that would be helpful. And we have also been joined by Senator Dwite Pedersen. Senator Pedersen is from Elkhorn; he is on my far right. And on my left, Senator Carol Hudkins from Malcolm has joined us, so we have a

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full committee today. We will open with LR181. Mr. Vaughan will be giving the opening on that. We are having this hearing in order to gain information on municipal wireless. This is a technology and an item for discussion that I feel would be very beneficial for all of us, as committee members, to hear about and learn about, and what's happening, pros and cons. And I see we have a full room and I'm sure we're going to hear about that, so thank you all for being here today. And Mr. Vaughan. [LR181]

DUSTIN VAUGHAN: Thank you, Senator Fischer and members of the Transportation Committee, Transportation and Telecommunications Committee; we don't want to forget that today. [LR181]

SENATOR FISCHER: That's right. [LR181]

DUSTIN VAUGHAN: For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. We are an equal opportunity committee, so we got our fill of transportation this morning and we'll switch over to the telecommunications side this afternoon. We are here to discuss LR181, which deals with municipal wireless networks. I gave each of your offices a packet of information on this topic last week, and hopefully you all received that packet and got a chance to look through it. Just in case, I'll try and give you a brief overview of what was in there and what we're dealing with here. I think we've all heard of wireless Internet before. Wi-Fi is one of those technologies that allows for wireless Internet connection, and it is the most commonly used for a citywide network currently. Wi-Fi stands for wireless fidelity, and a Wi-Fi network data travels from place to place via radio waves. Wi-Fi uses a transmitter base that is connected to a wired network, and projects a signal in approximately a 300-foot radius, which allows you to move a computer from place to place within that radius. And what we are talking about with this Wi-Fi technology that you most see today are these wireless hotspots that have become increasingly prevalent and that you will see over around cities. Public gathering places like coffee shops, parks, and libraries have created these spots where the public can bring their laptops and connect

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to the Internet for free or for a small fee. Many cities have taken notice of this approach and have begun instituting a citywide wireless network available for different uses. On a large scale, like a whole city, using a physical wire to connect every wireless router to the Internet is expensive, and that's why most municipal wireless networks use a mesh coverage. And what we're talking about with these, a mesh is a series of radio transmitters, and each transmitter is able to communicate with at least two others. And they create a cloud of radio signals through the city, and the signal travels from router to router through this cloud. This system has several advantages over the ordinary hubs and spokes that you'll see in these hotspots. First, since there are fewer wires, it's less expensive to build, and if a few nodes fail, others in the mesh can compensate for it. In addition to being far less expensive, they're running high-speed cable to every location in the city. It's also a lot faster to build. Low construction costs allow municipalities to offer Wi-Fi Internet access at a lower cost per resident than traditional wired services, and in my research it seemed that between \$15 and \$20 was the average cost you'll see; that's per month. The price tag for building public broadband networks depends on many factors, including the size of the area to be served, population size, topography, and technology, and investments can range from as little as \$28,000 for a population of 4,200 in Vivian, Louisiana, to \$20 million for population of 1.5 million in Philadelphia. I think it's kind of hard to see what kind of benefits we're seeing from these municipal networks. I believe they're just kind of being realized right now because they are so new. One of the obvious ones that you see are free or low-cost Internet access for citizens. You'll see the term digital inclusion, and that's talking about getting broadband access to disadvantaged citizens, low-income residents, providing this broadband to them at a lower cost. However, this is only a small fraction of what a municipal network is capable of doing. Networks can also give police and firefighters remote access to security cameras, blueprints, criminal records, and other necessary information. City workers' jobs could be substantially easier with applications like automated meter reading. Building, fire, and restaurant inspectors can have access to blueprints and information, and can file reports without having to return to their office. In rural areas, wireless networks can give farmers a real-time access to security cameras and controls

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for irrigation and other systems. These are just a few of the possibilities we've seen. There are some off-the-wall things you'll see that IT departments in cities are coming up with. I think I saw something about crack ideas, is what they call them, just...it's amazing. They are talking about cameras on actual police officers and having these little button-pin cameras on police officers. It's just...I mean, it seems like the ideas are limitless right now on what these networks can do. I think with them being so new, though, the successes and failures that we're seeing are kind of hard to detect right now. Philadelphia is probably the most famous city that you hear about undertaking a massive Wi-Fi network. The city created a nonprofit corporation named Wireless Philadelphia to act as a wholesaler. Wireless Philadelphia selected EarthLink to build, operate, and maintain this citywide wireless network. And the final contract with EarthLink spells out that the company will finance, build, and manage the wireless network, along with providing revenue-sharing fees from it's ISP business to the city to help support nonprofit digital inclusion programs. And the city will retain ownership of the network. After the network is completed sometime later this fall, wireless access will be freely available in public spaces and would be offered at discounted rates to low-income residents and to women and minorities and small businesses. Again, Wi-Fi service will cost approximately \$20 a month in Philadelphia. Just last week, Riverside, California, launched a free-to-the-public wireless network that will eventually cover the entire city. AT&T is the company that will build the entire network for residents, as well as a second separate network for city businesses and public safety communications. Faster speeds will be offered at a discounted price. The network is currently available in three locations within the city, and that, like I said before, will be expanded to the entire city. Not all evidence points to success for municipal broadband networks, however. In April of this year, MetroFi and EarthLink, two of the larger companies that are building these networks, announced plans to limit their municipal partnerships to the country's largest cities. MetroFi went further and said it would no longer offer a free tier of wireless broadband unless municipal partners agreed to be principal customers of the wireless system and commit to an agreed upon level of spending each year. With competition driving down the cost of wireline broadband, plus the proliferation of

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wireless hotspots, cities and their industry partners are finding themselves in a tough fight for customers. In communities where city governments have elected to operate systems themselves, many find their lack of technical expertise, marketing know-how, and capitalization have left them far behind the broadband pack. And I think one of the most glaring examples, and if you saw that packet, is Lompoc, California, population 46,000. It spent \$3 million on a citywide municipal network, and just this past March it reported that it had signed up only 281 customers. And I've found several examples of cities, like Lompoc, that are having problems because they overestimated their citizens' interest in a wireless network and their level of competition with the private providers. But I believe whether the failures are going to outweigh the benefits right now is difficult to determine until there is more data available on these cities and are constructing these networks. Of course, not every one is thrilled with these municipal wireless networks, and I'm sure a few of the people behind me will be willing to testify on that. They have once again raised the question of whether public entry into the telecommunications industry is prudent. Municipalities are under the authority of state governments, and the United States Supreme Court has ruled in the last few years that a state has the right to limit political subdivisions' entry into the telecommunications field. This decision led to the introduction of LB645. I know all of you were here in 2005, so I'll just give you a brief overview of what happened with that bill and what it entails. It was passed in 2005. The law prohibits any agency or political subdivision of the state that is not a public power supplier from providing any wholesale or retail broadband, Internet, telecommunications, or video services. For the purposes of LR181, what this means is that municipalities cannot offer the public broadband, telephone, or cable services at retail. In addition, municipalities cannot offer these services at a wholesale to another private company. LB645 also established a broadband task force to study, and I'm sure each of you received a report of that and had a chance to look at it. The task force's conclusions was that private broadband providers are successfully deploying facilities to serve Nebraskans' needs, and that competition by public entities in providing broadband services is unnecessary at this time. However, future technological developments require the state's attention to ensure citizens have access to changing broadband

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offerings. Based on the language of LB645, I think it's obvious that a municipality cannot build and maintain one of these networks and charge its citizens or private telecommunications companies to use that network. A city-owned network could be offered to residents for free under the law. A municipality also could acquire a citywide network in the form of a public/private partnership and offer broadband in this form. In addition, a city could build a network for its own public safety use, only without offering it to the public. This option would keep the network out of the eye of LB645. As I said before, I am sure there are plenty of people behind me willing to offer their opinions on whether building a municipal wireless network is a wise and sensible thing to do. There are obvious disadvantages and advantages to them, and can and will be argued. However, I don't think anyone can know for sure at this time, until we see better results from these cities, these case studies after they have been up and running for some time. So with that, Senator Fischer, I will turn it back over to you, and if you have any questions, I'll try to answer them. [LR181]

SENATOR FISCHER: Okay. Thank you, Mr. Vaughan. Any questions? I see none. [LR181]

DUSTIN VAUGHAN: Thank you, committee. [LR181]

SENATOR FISCHER: Thank you very much for the introduction to the resolution. Since this is just a hearing on a legislative resolution, we don't have any proponents or opponents, and so I would invite anyone wishing to present information to the committee to please step forward. Welcome. [LR181]

JERRY VAP: We have brought a box of information for you folks. Your files aren't high enough yet. [LR181]

SENATOR FISCHER: Just what we need. We haven't seen you for awhile, Mr. Vap. [LR181]

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JERRY VAP: (Exhibits 1, 2, and 3) Good afternoon, Madam Chair and members of the committee. My name is Jerry Vap and I am a member of the Nebraska Public Service Commission representing the 5th District. The purpose of my testimony this afternoon is to offer information to the committee concerning the important issue of public entry into the telecommunications and Internet service industries. The study before you today addresses issues involving philosophical ideas of public policy and governance that have been hotly debated in past year and remain contentious today. The commission remains neutral on these issues. The commission is chartered with enforcing the laws of the state, not with setting fundamental issues off public policy, such as what type of entity may provide service in Nebraska. That is the role of the Legislature. The commission is appreciative of the opportunity afforded under LR181 to gather information and further explore the plethora of issues that surround public entry. As stated earlier, the commission is appearing before you today purely in the interest of providing information. To that end, I have provided each of the committee members today with a copy of the commission's Broadband Survey Report that we released in February of this year. The commission conducted a detailed survey of all telecommunications carriers eligible to receive Nebraska Universal Service Fund support and other nonregulated providers to determine the availability and scope of broadband service offerings in Nebraska. The survey focused on the availability of broadband services provided by cable, DSL, satellite, and fixed wireless applications. The report summarized the results by county and population center. It is the commission's belief that the committee will find the information gathered and summarized in the broadband survey relevant and helpful as it undertakes deliberations on these issues. Further, we are also providing the committee with a copy of an article that was printed in the Lincoln Journal Star concerning cities that have deployed municipal wireless Internet systems. The article illustrates some of the issues that surround a municipal system. I would be happy to try and answer any questions you may have or provide you with any further information the commission may have available that you think would be helpful to you in this study. Thank you. [LR181]

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SENATOR FISCHER: Thank you, Mr. Vap. Any questions? I have...oh, Senator Louden, please. [LR181]

SENATOR LOUDEN: Go ahead. [LR181]

SENATOR FISCHER: No, you go ahead. [LR181]

SENATOR LOUDEN: The area where I live, Jerry, is...we don't get a lot of this broadband or any of this. We have quite a lot of trouble getting communications of any kind. Does your agency have anything to do with cable televisions? Any authority over cable television or anything like that? [LR181]

JERRY VAP: Many would like us to, but no we do not. [LR181]

SENATOR LOUDEN: Now, then when you give your report here about using some of that for your Internet service and stuff, how do you have...? Do you have control over Internet service then? [LR181]

JERRY VAP: No. No. Basically when we went out with this survey, it was a voluntary only on the part of nonregulated entities such as cable providers and other Internet service providers. If they answered it, we were very grateful, but many of them did not answer it or chose not to participate in the study. [LR181]

SENATOR LOUDEN: Then this survey we have here isn't...not everybody answered your questions on this survey that you handed out? [LR181]

JERRY VAP: That's correct. [LR181]

SENATOR LOUDEN: Okay. Then what am I supposed to look at here and believe



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then? [LR181]

JERRY VAP: Well, their survey is accurate from the standpoint of those that reported to use, reported accurately, and that it gives a good picture in a lot of small communities, and large communities as well, all over the state: 577 population centers. And it gives a good picture of what is available in those at this point in time. And many of those rural exchanges, of which you live in one of them, obviously the one that you live in hasn't chosen to bring DSL out to the farm or the ranch at this point in time, but many of them have according to the survey. [LR181]

SENATOR LOUDEN: Now, then you do have authority over these cell phone systems that are sending in and that over the cell system? [LR181]

JERRY VAP: No. We have no authority whatsoever over cell phone companies. [LR181]

SENATOR LOUDEN: Okay. And then yours is all just hard line systems? [LR181]

JERRY VAP: Wireline telephone systems, yes. [LR181]

SENATOR LOUDEN: And you have this...oh, this fund that comes from...that everybody pays in the state of Nebraska, to improve these rural systems, right? [LR181]

JERRY VAP: Yes. [LR181]

SENATOR LOUDEN: And do you decide who gets those funds or...? [LR181]

JERRY VAP: It's on a formula basis based on the exchange, the number of lines that they serve, and the cost of operation. [LR181]

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SENATOR LOUDEN: Then how come Qwest has such poor service into the area I have? [LR181]

JERRY VAP: I can't answer that as a commissioner. Qwest has several reasons as to why they don't do certain things in the rural areas, and it would really be up to them to answer that question, I think, if they're going to be here. [LR181]

SENATOR LOUDEN: Are they eligible to receive some of these funds from the state of Nebraska? [LR181]

JERRY VAP: Yes, they are. [LR181]

SENATOR LOUDEN: And do they not apply for them or...? [LR181]

JERRY VAP: Yes, they do [LR181]

SENATOR LOUDEN: They apply for them? [LR181]

JERRY VAP: Um-hum. [LR181]

SENATOR LOUDEN: Are they not awarded those funds then? [LR181]

JERRY VAP: They are awarded a great deal of money; yes, they are. [LR181]

SENATOR LOUDEN: I see. And then do they spend that money in rural areas? Or do you have any control over where they spend that money once you give it to them? [LR181]

JERRY VAP: We have ordered them to spend money in certain rural areas of Nebraska over the last year and a half, or so, here, as a result of some serious problems they had.

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Generally, unless we have an inordinately large number of complaints filed in a service area, we don't enter into that to see what they are doing. They report to us that they are providing the services that they have to, according to the rules, and Internet is not one of them at this point in time that they're required to provide. [LR181]

SENATOR LOUDEN: Well, the reason I was asking those questions along that line, we have a communications company in Gordon that's got fiber optic all around. I think I have one in Hemingford that's got fiber optic. We've got one in Hyannis that's got fiber optic. And I'm on Qwest and we're still using the same barbwire hookup that was put in 25 years ago, and that's...I am wondering. And then Qwest tells me that they can't access that money and this is why I'm wondering why we don't have fiber access down to our part of the country. [LR181]

JERRY VAP: The money they are referring to, is that many of the rural independent phone companies use rural utility loans that come from the U.S. Department of Agriculture to deploy the broadband access. And Qwest, being a multistate company, is not eligible for those loans. [LR181]

SENATOR LOUDEN: I see. [LR181]

JERRY VAP: But all rural independent companies in the state area, and they do take advantage of that. And many of them, as you said, have spent the money to bring broadband out to everybody on their exchange. I have had discussions with Qwest concerning that, and they just think that the law ought to be changed in Washington to let them get that money, which is fine. If they can get that changed, good. Then I will be glad to say, when are you going to start deploying the system now you've got the money? But at this point in time, that's one of their reasons that they give that they're not taking broadband out to the countryside. [LR181]

SENATOR LOUDEN: But they are eligible for this rural--whatever this extra fee is we

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pay on our phone lines--they are eligible for that money? [LR181]

JERRY VAP: They are eligible to receive Nebraska Universal Service Fund money; yes. [LR181]

SENATOR LOUDEN: Can they use that to put in fiber-optic lines? [LR181]

JERRY VAP: Yes, they can. [LR181]

SENATOR LOUDEN: Okay, I'll bring that up next time I see those guys, and thank you. [LR181]

JERRY VAP: Um-hum. [LR181]

SENATOR FISCHER: Thank you. Senator Mines. [LR181]

SENATOR MINES: Thank you, Chairman. Commissioner, thanks for being here today. The reason we're here today is to talk about municipal wireless networks in Nebraska. So as I heard our committee counsel discuss, the only way, today, that municipalities can provide wireless service, is free. And does the commission have any experience with a municipality that's providing service within their corporate limits, for free? [LR181]

JERRY VAP: No, we don't. [LR181]

SENATOR MINES: Has the commission established any position? Is there a position on municipal Wi-Fi? [LR181]

JERRY VAP: No, we have not. The Internet basically is an unregulated entity. And if a city were to choose to expend the funds to provide that free to their citizens, it's their decision. And they would not have to come to the commission to get permission to do

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that. If they wanted to be provided telephone service, that's a different story. [LR181]

SENATOR MINES: So that's where I was going with this. So if a municipality was providing Wi-Fi service, and then chose to also offer some other service that was fee-based, particularly telecommunication service, that's when the commission would plug in? [LR181]

JERRY VAP: That's when we would have a say in it. [LR181]

SENATOR MINES: Okay. Thank you. [LR181]

JERRY VAP: However, there is also one form of telecommunications called Voice over Internet Protocol that it's still up in the air whether we would have any jurisdiction over that or whether a city could provide it as a... [LR181]

SENATOR MINES: And you are talking about Vonage or Skype or some of those others. [LR181]

JERRY VAP: Yes, that type of a product, yeah. [LR181]

SENATOR MINES: Okay. Do you see much...many customers using Vonage? On their ads, they say they've only got, like, 3 million customers in the country, but... [LR181]

JERRY VAP: I've heard that there are less than 2,000 customers in the state of Nebraska for a Vonage-type company, but that's hearsay. I don't know. [LR181]

SENATOR MINES: But if the city of Ellsworth would provide Wi-Fi, a resident could get Wi-Fi for free and then could go to Vonage and pay then \$20 a month, or Skype and get it for free, right? [LR181]

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JERRY VAP: Well, there is nothing free in this world, Senator. Somebody is going to pay for it. Some people may receive it, what they think, is free, but it's getting paid for by someone somewhere. [LR181]

SENATOR MINES: Thanks for your testimony. [LR181]

SENATOR FISCHER: Other questions? I would like to thank you, Mr. Vap, for bringing another copy of the broadband task force study. [LR181]

JERRY VAP: I knew you would like that. [LR181]

SENATOR FISCHER: I was curious. I received this first copy in February, attended a couple meetings of the study group last year. Have you gotten any feedback on this from public or from any of those folks that were involved with the study? [LR181]

JERRY VAP: Not to my knowledge. I don't believe we received a whole lot. We do have a little more teeth in our information gathering arsenal now thanks to the bill that was passed this legislative session, in that they do have to report into us and register. Whether we will get additional cooperation on our next survey, which we'll be working on this fall again, still remains to be seen. [LR181]

SENATOR FISCHER: I think the results are excellent, though, that they do show that the state is somewhat covered. Senator Loudon and I live out in the hinterlands, but this state is somewhat covered even with... You said not all the providers responded to the survey, so I think that's an important point to make here, that even with not all the providers responding... [LR181]

JERRY VAP: It is. The information is incomplete from that standpoint that we know there is more coverage out there because of the providers. But if they chose not to respond, we can't do anything about that. [LR181]

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SENATOR FISCHER: You just happen to have two of us sitting in front of you who don't have the coverage; I shouldn't quite put it that way. But also have you heard of any interest by any cities here in the state of Nebraska for any municipal wireless? [LR181]

JERRY VAP: The only one I have heard of, apparently Lincoln has been exploring that, and has recently come out with a committee report of some kind. I have not seen it, so. But I haven't...there may be some smaller communities that have thought about it, but I don't know for certain. [LR181]

SENATOR FISCHER: Do you know any other cities in surrounding states, maybe, that have experiences with it that we could look at? [LR181]

JERRY VAP: I think there is a city, Muscatine, Iowa, I think...Muscatine, Iowa, I believe is listed on one of those here's what's going on with Wi-Fi. [LR181]

SENATOR FISCHER: Okay. [LR181]

JERRY VAP: And they've...I think basically it listed the millions of dollars they had spent on it already, and I'm not sure what kind of results they've had. [LR181]

SENATOR FISCHER: Okay. Thank you very much. Other questions for the commissioner? I see none. Thank you very much for joining us today. [LR181]

JERRY VAP: Thank you. [LR181]

SENATOR FISCHER: Next person wishing to offer information to the committee. [LR181]

KEN DOTY: (Inaudible) what do I with...? [LR181]

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SENATOR FISCHER: You need to hand that to him, please. Thank you. Good afternoon. [LR181]

KEN DOTY: Good afternoon. My name is Ken Doty with the Wi-Linc Commission. I'm the chairperson of the Wi-Linc Commission I think was just referenced in regards to the study that we're preparing. So I'm not sure how this goes. Do I just read my statement and...? [LR181]

SENATOR FISCHER: That would be a good way to start. [LR181]

KEN DOTY: Fantastic. [LR181]

SENATOR FISCHER: And then hopefully we can ask questions then afterwards. [LR181]

KEN DOTY: Great. [LR181]

SENATOR FISCHER: Thank you. [LR181]

KEN DOTY: The Wi-Linc Commission was established in the fall of 2006 by Councilmen Jonathan Cook to examine the viability of wireless Internet for Lincoln and what role the government should play in facilitating such access. The commission convened for the first time in September 2006 and will be discussing the final report at a meeting later this week. When the commission was created, we established five core objectives. Number one, review what other communities are doing regarding wireless Internet access; determine the possible revenue and cost options; detail the options available to Lincoln, Nebraska; determine the pros and cons of each option; make recommendations to the Lincoln City Council and other local elected officials. I can't tell you what the recommendations will be until later, as we vote on them, but we're pretty much solidified



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and will be releasing our report here by the end of this month, okay. So this is very, very timely. We broke down our initial area in regards to the study itself by, first of all, doing a published survey on the city Web site in regards to what the citizens were looking for and what were some of the things that they were asking about in a municipal wireless system. After reviewing this informal survey, it was determined that the individuals who participated in our survey showed high interest in a wireless Web solution as long as the cost was negligible. The two main areas wanting focus were primarily the public safety and economic development. After further research in the wireless area, we had determined through an actual mapping of the city of Lincoln just how hot or how much access to wireless the citizens actually have. So we actually asked individuals to report what was hot and what was not, and we found out that the city of Lincoln was actually quite hot--not just temperature, but actually hot. Lots of overlap. From our community research, many communities throughout the United States have embraced the concept of municipal wireless access network. According to [Muniwireless.com](http://Muniwireless.com), as of June 2007 there were 88 regional and citywide networks were in some stage of implementation. Sixty-three had established hot zones; 39 had established public safety, including Lincoln, in a certain form, or municipal only networks; and 195 were in the process of establishing a city or countywide project. In many cases, the communities that have established municipal networks are subsidizing the service with significant tax dollars on an annual basis. Others have contracted with private providers to establish a network, but many are now having those private contractors come back to them, asking for public financing to support the system. In other communities, government is using a tiered-fee financial strategy to offset the investment of tax dollars. And this is where LB645 potentially hamstring the development of municipal network in Nebraska. It is my understanding that, under the law, the only way a municipality can establish a communitywide network for use by the general public is to establish a system for users, free of charge. Well, the current state law that the government entities cannot...well, again, I want to state this: nothing is free. We can't do any of this for free. You will find out fairly quickly in our study that it's very costly to implement a wireless solution. Government state law states that the government entities cannot provide a retail sales

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point of telecommunications in Nebraska. If our legal analysis is correct, essentially cities could establish municipal wireless networks at no cost to the user without restriction as long as it can be done at no cost to the user. However, if the network established by the city requires a user fee for access, then they are prohibited from providing the service. I think I just restated the statement before. Clearly, the idea that a municipality could operate such a system at no cost seems fairly unrealistic. The establishment of a wireless system that would provide access to the Internet throughout the community is comparable to creating a utility or infrastructure system in terms of physical investment and financial commitment. It is fairly daunting in the terms of its scope and financial investment required to not only establish a system but also maintain its operation for 24/7. Without the ability to establish a tiered system of user fees to support the establishment and use of the system, and very limited or no support for public financing, the commission was left with the following question: What steps could the city of Lincoln take to support the development of a citywide wireless access network? Those are the recommendations that we'll be providing you later this month. I want to note that despite these constraints, the city of Lincoln continues to utilize wireless functions to support daily services to citizens. In fact, the city of Lincoln has maintained a position at the forefront of communities implementing digital technology to enhance municipal services. In December 2006, the Center for Digital Government, a national research and advisory institute on information technology in government and education, named Lincoln one of the top digital cities in the nation. The Wi-Fi Linc Commission again will be releasing its final results later this month, and I wanted to thank the committee for your time this afternoon. And the role of the government with regard to wireless services is a very, very complicated one, and I personally look forward to actually helping our elected officials understand and hopefully push forward some of our recommendations. [LR181]

SENATOR FISCHER: Thank you, Mr. Doty. Are there questions? Senator Louden.  
[LR181]

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SENATOR LOUDEN: Yes. What is the purpose for Lincoln to have this system that you're putting in? I mean, are you using it just for people to access and use, or do you have surveillance cameras hooked up to it, or does the maintenance department use it? What's your purpose of it? [LR181]

KEN DOTY: Well, first of all, the purpose of the Wi-Linc Commission was primarily just to determine what role we believe that the city government should play, or no role, in the implementation of a wireless network. [LR181]

SENATOR LOUDEN: Okay. Now once it's... You've already put the wireless network in? [LR181]

KEN DOTY: We have not. This is just strictly to determine what we believe the role should be. [LR181]

SENATOR LOUDEN: Okay. Then those that, when you go to the little coffee shop or whatever, those are private entities that have put those in? [LR181]

KEN DOTY: Those are...yes, those would be when we referred to earlier about hotspots, or basically accessible free wireless, that would be one of those hotspots. [LR181]

SENATOR LOUDEN: Now, if you were going to put them in, what would your purpose be to put them in? Would you be able to use these to operate your city or you would have, like your surveillance cameras are on the streets and all that, would you be able to pick them up, or your maintenance, or what would you do with it if you did have it? [LR181]

KEN DOTY: Well, the first thing is, is that after you make the determination whether the city should be involved in this step or not, which is what our goal was, we looked at

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primarily several groups, and we determined that it was very important to understand the group you were trying to satisfy, and one of them being public safety, others being business travelers, casual users, or, in essence, potentially helping the rest of the community have access to wireless network. After you determine those three particular groups, then you can try to determine what you actually want the function to be. And if you look at our infrastructure designed for the police department and the fire department, they actually have a fairly solid wireless structure already today. So... [LR181]

SENATOR LOUDEN: So they wouldn't be a party to one of these Internet services probably. [LR181]

KEN DOTY: That's not necessarily true. There is some fairly secure higher levels of technology that would be included. For instance, instead of Wi-Fi, there would be the Wi-Max technology, which is fairly well-defined in our study, as well. [LR181]

SENATOR LOUDEN: Well, what I was wondering is, if you were just going to put this in just so people can surf the net or whatever it is, shouldn't that be considered more recreational than of useful value to the city? I mean, I would that would have to come under your parks budget or something like that, because that's more or less a recreational...no different than furnishing them a swimming pool, would it be? [LR181]

KEN DOTY: Well, unfortunately I can't answer that. That's really not my job to determine. I think that's more your job. But I would say that from our standpoint you look at how your customers would benefit from each of the particular types of services, and then you would determine what uses you could get from them. It can range anywhere from an economic indicator, so in other words businesses coming into the area; it could be ways of pulling individuals Interstate 80; there are... [LR181]

SENATOR LOUDEN: Well, businesses or somebody like that wouldn't use this thing,

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because that's highly insecure, isn't it, because, I mean now, you can go down O Street, down there, what, between 56th and 70th, and if you're on your little cell phone, why, you can...somebody will but in with their Internet service on your phone. So, I mean,... [LR181]

KEN DOTY: You hit a big topic, which was the hotspots. [LR181]

SENATOR LOUDEN: The security. You wouldn't want to be operating a business like that. I grew up around party lines so I know what handling party lines is. You don't handle a business that way, and that's the reason I'm wondering, you know, if this is more something that would be recreational for municipalities than it is of useful business nature. [LR181]

KEN DOTY: Again, yeah, the Wi-Linc Commission was primarily just put into place to determine what we felt the role of the government should be, and also what the cost and potential benefits of each of the particular customers would be. [LR181]

SENATOR LOUDEN: And what were your findings? [LR181]

KEN DOTY: Well, we'll be releasing those later this month. [LR181]

SENATOR LOUDEN: I see. Thank you. [LR181]

SENATOR FISCHER: Senator Mines. [LR181]

SENATOR MINES: Thank you, Chairwoman. Mr. Doty, thanks for being here. If I read between the lines, your commission has pretty much decided that the city of Lincoln should enter in to providing Wi-Fi of some kind, or Wi-Max...and...you can kind of tell. Then secondly, your path to success will mean that the municipal government should be able to provide this service at a cost. And that's really where we fall back to LB645. Not

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only that the city is precluded from doing that, but there is a basic core hurdle in that you would be competing with private providers, would you not? [LR181]

KEN DOTY: Well, and first of all, our findings have not...I did not state that we actually... [LR181]

SENATOR MINES: Let me assume that that's where you're coming from. [LR181]

KEN DOTY: Okay. Well, and I don't necessarily know that would be a correct assumption. [LR181]

SENATOR MINES: Let me just assume. You assume, as well,... [LR181]

KEN DOTY: Okay. All right, all right. So I'm assuming... [LR181]

SENATOR MINES: ...that your study is going to say the city of Lincoln should provide wireless... [LR181]

KEN DOTY: I remember... Remember the word "assume," so. (Laughter) I want to make sure I'm on that end. [LR181]

SENATOR MINES: You're in the seat. [LR181]

KEN DOTY: Okay. [LR181]

SENATOR MINES: Answer it. Can you answer...? Or do you want me to restate the question? [LR181]

KEN DOTY: Basically, I think what you're asking is, is that if the city of Lincoln were to engage in a wireless network project...? What was the back end of that question?

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[LR181]

SENATOR MINES: Well, the back end is, you also...I can presume that the recommendation would be to set up different tiers of service, some free, some you charge for...you may charge for. [LR181]

KEN DOTY: Um-hum. [LR181]

SENATOR MINES: And then ultimately is that not the core of LB645? You have a public entity providing a service in competition with a private entity...with private entities, plural. [LR181]

KEN DOTY: As I understand it, that would be true. [LR181]

SENATOR MINES: And is that part of your study, the impact on private entities if a public entity that has the authority to bond projects, that has all the advantages of a private entity? Are you studying that, as well, or is this just from a technological perspective? [LR181]

KEN DOTY: Actually, we took a couple different approaches. We actually went to multiple communities to determine how they were paying for these types of things. [LR181]

SENATOR MINES: And those are where? [LR181]

KEN DOTY: Where are the communities or...? [LR181]

SENATOR MINES: Yes. [LR181]

KEN DOTY: I'm going to have to... [LR181]

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SENATOR MINES: To go to Philadelphia (inaudible)? [LR181]

KEN DOTY: Actually we went through probably...yeah, I know definitely Philadelphia was one. [LR181]

SENATOR MINES: Portland. [LR181]

KEN DOTY: Corpus Christi was another. Our actually study will actually show...Terry, do you have any of the...? [LR181]

TERRY LOWE: Well, actually I think Corpus Christi is probably the most well-known (inaudible). [LR181]

KEN DOTY: What we had determined was, is that there were...not to step into the actual study itself because it's, again, being released here very shortly, but the actual study showed that many communities were actually starting to invest into the Wi-Fi solutions for various reasons, and using different ways to actually pay for them. And you're right, the LB...is it LB645? [LR181]

SENATOR MINES: Correct. [LR181]

KEN DOTY: The LB645 would not...would eliminate a whole ability to fund something in that respect. [LR181]

SENATOR MINES: That's correct. [LR181]

KEN DOTY: And some of those communities used that type of funding. What we're finding is, is that the success rate is not very encouraging. [LR181]



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SENATOR MINES: Okay. Thank you. [LR181]

SENATOR FISCHER: Other questions? Now, I assumed, Mr. Doty, that your report was going to discourage Lincoln from going into the business, so we'll see who is correct here, Senator Mines or myself. But however, you know, nothing from what you said. But you did point out some things. When you talked about all the hotspots in Lincoln and the coverage, is that from a variety of private providers now? Do you know how many providers do cover Lincoln with wireless?...even wireless...just go with that. [LR181]

KEN DOTY: Don't know the exact number, but we actually were fortunate enough to have several of them sitting on the commission who were able to provide us basic locations of hotspots. And so we were able to map them on the city Web site and the city map, to give us an idea of actually where we are hot. And I think we were all quite surprised at the availability of wireless throughout the city of Lincoln. [LR181]

SENATOR FISCHER: Would you say it's fairly substantial coverage of the entire community? [LR181]

KEN DOTY: It depends upon the definition of that question. If you're saying that the availability of wireless throughout the city, it is fairly extensive. But to be able to cover all the residential homes and so forth, no. Because there is...when you think about a business having a hotspot, it has a small area it can cover so you would be basically covering all your retail business, and so forth, corridors. [LR181]

SENATOR FISCHER: So basically it is just corridors of the city that are covered... [LR181]

KEN DOTY: Yes. [LR181]

SENATOR FISCHER: ...and not so much in the residential parts of town. [LR181]

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KEN DOTY: That would be correct. [LR181]

SENATOR FISCHER: You mentioned--and I don't want you to give anything here on your final report--but you mentioned economic development as benefitting from having wireless in a community. If the business areas, the business corridors, are already covered by wireless, how would there be any economic development by having a city provide wireless for the entire community? [LR181]

KEN DOTY: Actually, I think that's an excellent question; it's one that we actually posed. And we found that wireless from the individuals that are actually handling the requests from businesses in regards to what is being requested found that while this is not in their top five, top ten, of requests, wireless would be one of those amenities that you could potentially sell after the fact, but it is not one of the core areas. And so these are some of the things that we determined through our study that I think should hopefully be well laid out in the final report. [LR181]

SENATOR FISCHER: And then just a final question here: Did I hear you correctly when you said that in most of the cases where cities have undertaken to implement wireless, they eventually have to look for public financing? [LR181]

KEN DOTY: I don't necessarily want to use the word "most," because this keeps changing daily, but I would say that from what the studies that we had seen, those individuals that had implemented a wireless solution supported by the city, some of them are no longer doing it. Some of them are looking for someone to buy the solution so that it can be privately supported. And then some of the private ones are now looking for additional support from the public side. And then of course there are also others that are implementing today, and hopefully will get better results as time goes on. [LR181]

SENATOR FISCHER: When you say they're looking at the public side, are they looking

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within their own community--taxpayers in their community--to take money out of a general fund budget, or are they approaching state government, looking for money? [LR181]

KEN DOTY: And that I really couldn't tell you. The only thing that they would tell us, because we, of course, were talking to the Wi-Fi group, is that these particular groups are now, in some situations, asking for additional funding from the individuals that brought them to the table. And if it was a city, county, it would be, in essence, those individuals. [LR181]

SENATOR FISCHER: And I just have another question. The capital cost in setting up a system like this, I would assume it is large. [LR181]

KEN DOTY: The actual cost to implement it, and it depends upon the technology we're talking about and I think that's again fairly well detailed out in the report itself, is the difference between Wi-Fi and Wi-Max. And personally had no idea of the difference but now learned quite a bit. Well, the difference would be is, your Wi-Fi is your little...your small little mesh networks that actually have to be visually in sight of one another. The Wi-Max can actually cover up to 30 miles of area. So there is a major technology shift. It's a pretty significant investment when you start talking about Wi-Fi. [LR181]

SENATOR FISCHER: And by the time you got the Wi-Max installed, it would probably be out-of-date, and the next new one would come me up. [LR181]

KEN DOTY: Well, and those are issues that everyone faces every day, if you installed a computer recently. [LR181]

SENATOR FISCHER: Can I ask you if you would provide copies of your study to the committee members when you release it? [LR181]

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KEN DOTY: Oh, absolutely. [LR181]

SENATOR FISCHER: That would be fantastic. [LR181]

KEN DOTY: It will be released probably within the next ten days. [LR181]

SENATOR FISCHER: Great. Thank you. I appreciate stopping in today, Mr. Doty.  
[LR181]

KEN DOTY: Absolutely. [LR181]

SENATOR FISCHER: Thank you very much. Anyone else interested in presenting any information to the committee? Good afternoon. [LR181]

GREG BARTON: (Exhibit 4) Good afternoon. Madam Chairman, members of the committee, counsel, good afternoon, folks. My name is Greg Barton and I am a partner in the Harding & Schultz law firm here in Lincoln, and we serve as chief legal counsel for the Nebraska Telecommunications Association. My purpose in appearing before the commission today is to provide an overview of the history of the major legal events which led to the development of the Legislature's current policy of barring political subdivisions from providing telecommunications services as a common or a contract carrier. The development of this policy has taken a rather winding road over the last ten years, as the Nebraska Legislature has reacted to decisions by the Nebraska Supreme Court and the United States Supreme Court in cases which involved attempts by political subdivisions to break into the field of private, for-hire provision of telecommunications services. The first decision of consequence was made by the Nebraska Supreme Court in 1999, in the case of Nebraska Public Service Commission v. Nebraska Public Power District. That case actually arose out of events beginning in 1996 when NPPD entered into contracts to provide telecommunications services to Northeast Community College and the city of Norfolk. The PSC initiated its own

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investigative proceeding, and after investigating the matter for nearly a year, determined that NPPD was precluded from providing for-hire telecommunications services, and they had actually gone and sought an opinion from the Nebraska Attorney General as to whether a public power district had the legal authority to provide telecommunications services. However, NPPD had also indicated it had no intention of applying for certification. Once the Public Service Commission entered a cease and desist order, NPPD appealed. The Nebraska Supreme Court took the case from the Court of Appeals, and when it ruled in 1999, the court decided not to rule on the merits. What the court did in that case was hold that the Public Service Commission did not have jurisdiction to regulate contract carriers of telecommunications. Now a common carrier of telecommunications, they require to provide service to everybody. Contract carriers have no such requirement. They can pick and choose who their customers are and create an individual deal with each specific customer. What the Supreme Court held was there was not sufficient statutory authority granted by the Legislature to the commission to regulate contract carriers of telecommunications, and based off the facts, NPPD was actually acting as a contract carrier at that time. The NPPD decision left a huge loophole in the regulatory framework governing the provision of intrastate telecommunications services in Nebraska. Now, the Legislature, to its credit, reacted quickly to close that loophole, enacting legislation in 2000, to define a contract carrier of telecommunications services, and authorizing the commission to regulate contract carriers of telecommunications services. Now, at about the same time that the commission was opening a docket to seek comments regarding appropriate regulatory standards to govern contract carriers of telecommunications services, on October 4, 2000, Lincoln Electric System, LES, a political subdivision of the state, filed an application seeking authority from the commission to provide nonswitched digital transmission services in and around Lincoln, Nebraska, as a contract carrier of telecommunications services. In its application, LES asserted, among other things, that the charter of the city of Lincoln authorized LES to provide for-hire telecommunications services. The NTA formally intervened in that case, sought a declaratory ruling from the commission that LES was not authorized to provide for-hire telecommunications

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services, and succeeded in convincing the commission to enter such a ruling. LES then appealed to the Nebraska Court of Appeals, and the Supreme Court removed that case to its docket. Now, while the LES appeal was pending in the Supreme Court, the Legislature passed, on May 21, 2001, LB827. LB827 precludes--well, precluded, since it's past tense now--political subdivisions from engaging in the provision of for-hire telecommunications services. At that point also, the case was already fully briefed in the Nebraska Supreme Court. The Nebraska Supreme Court eventually held that two provisions of LB827, Sections 2 and 19, which were codified in Sections 86-128(1)(b) and 86-575(2), were preempted by Section 253(a) of the federal Telecommunications Act as amended in 1996. Under Section 253(a), no "state or local statute or regulation, or other state or local requirement, may prohibit or have the effect of prohibiting the ability of"--and this was the key language everybody was arguing about in that case--any entity from providing telecommunications services. As I'm sure you are all aware, the 1996 Telecommunications Act was designed to promote competition and development of technologies in the telecommunications field, as well as promoting the concept of universal service. The court held that the "any entity" language of Section 253(a) precluded the state from telling its political subdivisions what they can do with respect to telecommunications. In making that decision in the LES case, the Supreme Court fell down on one side of what was a split of legal authority at the time. The D.C. Circuit had determined that the "any entity" language did not preclude states from regulating their political subdivisions with respect to their entry into the telecommunications field. A subsequent decision by the United States Court of Appeals for the 8th Circuit in what we shorthand as the Nixon case, had determined that the "any entity" language of Section 253(a) did preclude states from adopting legislation which would regulate whether, and if so how, their political subdivisions could be involved in the telecommunications field. And the LES court adopted the Nixon side of that split of authority, in holding that Sections 2 and 19 of LB827 were preempted by federal law. Now, we did file what's called a petition for a writ of certiorari to the United States Supreme Court, asking the court to take discretionary review of the Supreme Court's LES ruling because of the split in legal authority. While that petition for cert was pending

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in the Supreme Court, LES--or I guess I should say the city of Lincoln--took steps to remedy the one shortfall that the Supreme Court had determined justified affirming the commission's ruling, which was the court determined that the city of Lincoln had not, by ordinance or otherwise, specifically granted the authority to LES to engage in telecommunications services. And so while the petition for cert was pending the United States Supreme Court, the city of Lincoln acted fairly quickly to adopt an ordinance to authorize LES to get into the field of for-hire telecommunications services. The Supreme Court did deny our petition for cert. I would like to think it's simply because they had already accepted certiorari in the Nixon case that came out of the 8th Circuit. Also while our petition for certiorari was pending, LES filed a new application for telecommunications contract carrier authority in the commission on March 27, 2003. However, during the over two years it had taken for the LES to work its way through the court system, the commission had developed and adopted rules to regulate contract carriers of telecommunications services in Nebraska. Simultaneous with the filing of its new application, LES also filed, in the commission, a petition for a declaratory ruling seeking a declaration that five specific provisions of the commission's contract carrier rules did not apply to LES's new application. One of them was obvious because it was basically a regulatory repeat of LB827, which precluded state agencies or political subdivisions from providing telecommunications services. And at that point in time, LB827, those provisions of it anyway, had been annulled by the Nebraska Supreme Court. LES also did not want to be subject to the commission's public interest standard for an applicant for contract carrier authority. They did not want to be subject to service quality rules on contract carriers. And they especially did not want to be subject to the commission's regulation which limited a contract carrier to one permit under which it may serve no more than five customers. Now, in the hearing before the commission, LES's counsel admitted that the filing of LES's new application was carefully timed to be made four days prior to the effective date of the commission's contract carrier rules, which LES believed gave it a legal basis to avoid having the new rules applied to LES. I was involved in that case, and the commission was not impressed with LES's attempts to do an end run around the commission's regulatory authority. So the commission

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entered an order holding that LES's new application would be subject to requirements, if not the regulations, which were virtually identical to the contract rules which LES had sought to avoid. LES then appealed to the Lancaster County District Court under the Administrative Procedure Act, which after the issues were fully briefed, determined that all of the challenged contract carrier rules were applicable to LES's new application, including the five-customer limit rule. Once LES realized that it would be limited to a maximum of five telecommunications customers, LES lost interest and eventually withdrew its second application. The United States Supreme Court made the next major decision in the legal travails over the last ten years involving the issue of public entity entry into the telecommunications field. That was a decision entered in Nixon v. Missouri Municipal League in 2004. The Nixon court resolved the split in the circuits, and held, quite definitively, that the "any entity" language of Section 253(a) did not preclude states from regulating their own political subdivisions, including with regard to entry into the telecommunications field. After the Nixon decision, that basically erased the legal basis for the Nebraska Supreme Court's 2003 preemption ruling in the LES case. The Nebraska Legislature again moved promptly to restore order by ensuring that the state's subordinate political units could not flout the preexisting state policy of keep state agencies and political subdivisions out of the telecommunications business. In 2005, as you all know, the Legislature adopted LB645, which prohibits political subdivisions from providing retail and wholesale telecommunications services, all with except to public power entities, which are precluded from providing wholesale telecommunications services only until January 1, 2008. So that's how we got from point A to point B. [LR181]

SENATOR FISCHER: Are you going to take us to point C now? [LR181]

GREG BARTON: Well, I'm going to tell you that I believe, Madam Chairman, I think there is a problem with trying to go to point C. And with all due respect to legal counsel, I think there are serious questions as to whether or not the Legislature could constitutionally authorize municipalities to provide free Wi-Fi services. I think everyone



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who has appeared before you thus far has conceded the point that under LB645, if there is any sort of a user charge by any political subdivision attempting to provide this, that would run afoul of LB645. I also agree with the prior speakers today that there is no such thing as a free lunch. Somebody is paying for it somewhere, even if it's getting called "free." But I would refer the committee to long-established Nebraska law that expenditures of public money for private purposes is constitutionally prohibited. And that's State ex rel. Beck v. City of York. It's a 1957 decision. The Beck case was decided 50 years ago, and in that case the Supreme Court made what I thought was significant common sense: that encroachments by public entities into the private markets--and I'm quoting the court now--will inevitably lead "to the ultimate destruction of the private enterprise system." That's why it was unconstitutional for the city of York to do what it was doing in that case, which was building warehouses at public expense just to lease them back to a private entity. More to the point is Nebraska case law, which holds that--and again I'm quoting--"A municipality may not..." of course, "...make a gift of its property to private persons for purposes other than corporate ones." And that was a 1978 Nebraska Supreme Court decision, Cather & Sons Const., Inc. v. City of Lincoln. And this true, whether a gift is direct or indirect. So if we're talking about free Wi-Fi, we're talking about a gift, and we're talking about a gift of property; that's what it is. And that, the Nebraska Supreme Court says, is unconstitutional. Thus I would submit that the provision of free Wi-Fi by municipalities could be found to run afoul of the rule of Nebraska law which bars municipalities from giving away their property. So on the one hand we have LB645, which I would submit to you is sound public policy, that says the political subdivision are not to be players in the for-hire telecommunications field. And on the other hand we have the Nebraska Supreme Court's long-standing precedent that says, municipalities, you can't give stuff away. And with that I would be happy to answer any questions if I can. [LR181]

SENATOR FISCHER: Thank you, Mr. Burton. Are there any questions? Senator Mines.  
[LR181]

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SENATOR MINES: Thank you, Madam Chair. Greg, your last statement: Could you define property. In a municipality that would provide free Wi-Fi, how are they giving...? What property are they giving away? Is it airspace? Is it...? What are they giving away? [LR181]

GREG BARTON: Well, airspace actually is property, I think, under your definition. [LR181]

SENATOR MINES: Yeah. [LR181]

GREG BARTON: I had property law from Professor Berger, but that was 20 years ago so. I just remember him talking about, you have a bundle of sticks, and you're giving away part of that bundle, that's part of your property. This is one of the city's bundle of sticks. They are giving away their Wi-Fi system that they invested as far as we can tell would be millions of dollars, and they're giving it away at taxpayers' expense. And I think that that is a species of property. There is tangible property; there is intangible property. It may qualify under intangible property but I would think it's certainly property. [LR181]

SENATOR MINES: But don't municipalities...isn't that what they do? They use the people's tax monies to provide services and conveniences and... [LR181]

GREG BARTON: Sure they do. But the last time I looked, I still have to pay my bill to Norris Public Power District, and, you know, I have to pay for garbage services, and I have to pay for sewer services. There is a fee associated with those things. And I think that's an excellent analogy, Senator Mines, but then how do we justify just giving away this citywide service as opposed to others? If I understood the testimony from the gentleman from the task force here a little bit ago, they were looking at three separate classes of people to serve, one of which is itinerant travelers. I think what the standards the courts use to test these things as to whether it's a gift for a private purpose, is you have to show a public purpose. And although that can be almost...the definition of that

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can be almost amoebalike, depending on how somebody wants to do that. There is a point where the court would say, you know, you can call it a public purpose, but if it walks like a duck and quacks like a duck, it's a duck. It's a private purpose. And I think we're getting to that point, especially when we look at historically in this state, telecommunications services are a privately provided service. [LR181]

SENATOR MINES: Okay, thank you. [LR181]

GREG BARTON: Sure. [LR181]

SENATOR FISCHER: Other questions? Senator Louden. [LR181]

SENATOR LOUDEN: Yes. Then do you think LB645 should be repealed so that the municipalities can charge us like they do for sewer or lights or garbage collection or anything else? [LR181]

GREG BARTON: Do I personally think LB645 should be repealed... [LR181]

SENATOR LOUDEN: Yes [LR181]

GREG BARTON: ...because I'm certain that the NTA doesn't. And I can...my own personal opinion, Senator, is, no, I don't think so. I can't think of too many good examples, at least in my 47 years on this earth, where a public entity has tried to get into private enterprise and made a success out of it. [LR181]

SENATOR LOUDEN: Rural public power, for one. [LR181]

GREG BARTON: Rural public power is probably the exception to the rule. And I'd be the first to admit, at least based off all the numbers I've seen over the years, that we are unique in Nebraska in our 100 percent public power, and we are unique in the level of

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success we have had with public power. But just because somebody is really good at running an electrical system, that doesn't necessarily, I would submit, Senator, translate into being really good at providing telecommunications services. [LR181]

SENATOR LOUDEN: Well, of course, that gets into the discussion of rural public power. The reason rural public power came about is because the private entities didn't want to go out there and spend the money and serve the people in the rural areas. And, of course, I voted against LB645, and that was part of the reason, so that our rural areas, someone would go out there and give some of these services to the rural areas. And private entities, if there isn't enough people out there, won't spend the money to go out there, as our discussion with Qwest and their fiber optics. There isn't enough people out there so they won't spend the money. So, consequently, that's the reason I was against LB645. I think that some of these public entities, or these public power districts or them, should be allowed to do that, and that's the reason we're getting into talking about whether municipalities should, should some of your rural power electric systems be able to furnish this type of service. [LR181]

GREG BARTON: And I understand exactly where you're coming from on that, sir. Now, I like to tell people I work in Lincoln; I just work in Lincoln. I actually live four miles southeast of Hickman, but I still have pretty good computer access out there, and I have to. I have a 24-year-old and he would go crazy without it. But I understand what you're saying philosophically about that. I can simply tell you what I know, what the legal standard is supposed to be under the Nebraska Universal Service Fund Act, and that is the job of the Public Service Commission is to ensure that the industry is providing service to within 96 percent of Nebraska. And I believe some of the people who will speak to you after me will be able to address that in a lot more detail for you. I know that's the legal standard and I've never heard anyone yet say we're not meeting that as a state industry. [LR181]

SENATOR LOUDEN: Now, you're telling me that 96 percent of the area of Nebraska

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has Internet service, or 96 percent of the people have Internet service? [LR181]

GREG BARTON: I'm telling you...I don't even know that the statute is Internet specific. I'm telling you that the statute that the Legislature adopted in response to the 1996 Federal Telecommunications Act sets a minimum baseline for the commission of 99 percent telecommunications customer access across the state. [LR181]

SENATOR LOUDEN: Okay. Well, that's fine, but until we have fiber optic out in different areas of western Nebraska, we don't get Internet service unless we use satellite. And that's the reason the Internet service that was first brought into the city of Alliance was brought in by Panhandle Rural Electric. They were the ones that brought the very first Internet service in there. Whether or not it was legal or not, they got by with it because they were a private co-op. But nonetheless, some of our public power districts in the area followed suit for awhile until it looked like it was going to get kind of sticky, and so they gave it up. But this was my question and I'm wondering if this was the right thing to do by passing LB645. [LR181]

GREG BARTON: Well, we could go philosophically back and forth on that all day, Senator. I can tell you, I as a voter would have supported it on a referendum. I understand your concerns about access in rural areas, and maybe that's something that the industry itself and the commission could take more steps toward addressing your concern. But I don't think the answer is opening the floodgates to public entities into a private enterprise. What I'm pretty confident that the people who will speak to you after I am done speaking will be able to point you to a whole lot of facts and data about the level of telecommunications and Internet coverage throughout this state. [LR181]

SENATOR LOUDEN: Okay, thank you. [LR181]

GREG BARTON: Yes, sir. [LR181]

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SENATOR FISCHER: Other questions? Senator Schimek. [LR181]

SENATOR SCHIMEK: Thank you, Madam Chair. I have heard a couple of things here this afternoon that I'd like to try to frame a question around. I think it was Senator Louden who mentioned that perhaps we were talking about recreational purposes to some degree when we were talking about the Wi-Fi usage in both metropolitan areas and elsewhere. And then I also heard one of our presenters say that in some respects it's an amenity that perhaps businesses are glad to have once they move into an area, but it's not something that they think is necessary to their business. How then, if those are accurate descriptions, how then is it different for a city to provide Wi-Fi than it is for a city to provide access to city parks without fees, or access to swimming pools without fees? How is it different? Or is the whole premise wrong in the first place? [LR181]

GREG BARTON: I don't...I almost think that's like comparing apples and oranges. [LR181]

SENATOR SCHIMEK: Well, it may be, but I was asking you, I guess, to tell me the difference then. [LR181]

GREG BARTON: Well, first of all, there are fees associated with certain aspects of what happens in a park. If you go swimming, you pay to go swimming. [LR181]

SENATOR SCHIMEK: The swimming pools, often; yes. There is often a charge. [LR181]

GREG BARTON: And that's something that various municipalities have invested in, and there is a fee for that. There is some...somebody is paying for those parks somehow as part of the city's budget, out of the people's tax dollars. [LR181]

SENATOR SCHIMEK: Right. But there are other kinds of things: libraries, for instance.

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Which are...they are service-oriented kinds of amenities that citizens get to enjoy. How is wireless any different from that? [LR181]

GREG BARTON: Well, as I understand the testimony from your own task force chairman in Lincoln, was it's like building a new utility. A public library is not a utility. [LR181]

SENATOR SCHIMEK: No, it's not. [LR181]

GREG BARTON: It's a storage center, basically. Telecommunications... [LR181]

SENATOR SCHIMEK: Well, you could argue that a library is too. [LR181]

GREG BARTON: Telecommunications grids are public utilities. That's why they're regulated by the Public Service Commission. That's why the Public Service Commission has constitutional power to regulate carriers of telecommunications services. And I think a utility is just fundamentally different than a park. It's a piece of land that sits there, that's set aside for people to walk around back and forth over. To take the people's tax dollars and invest millions of dollars in creating a grid and try to call it just a park or an amenity when it's public, but it's a regulated utility if it's private, I think that's a real problem. And frankly, I'm having a hard time figuring out why a municipality would want to get involved in that if they're going to invest millions of dollars, they're going to have ongoing maintenance and other costs of running that Internet service, and get zero in return. I'm having a hard time figuring out the public policy behind that. [LR181]

SENATOR SCHIMEK: I bet Teddy Roosevelt had some of the same arguments used against the National Park Service, and the national park system too. Investing all these millions of dollars and all this land and taking it out of the public domain... I mean, I know they're different. I understand your distinctions, but... [LR181]

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GREG BARTON: No. But I'd like to address your point, Senator, respectfully. And for all I know, Teddy did have all that opposition, and I'm glad he overcame it. But as far as I know, back then there wasn't a whole bunch of private entities running around, saying we can build a park system; we'll provide a park system. And as we sit here today, there is Internet and telecommunications providers all over the place willing to provide Wi-Fi and all other kinds of telecommunications services. We don't have a void like Teddy had back then. [LR181]

SENATOR SCHIMEK: I don't want to turn this into an all-afternoon back-and-forth, but I appreciate your answers. Thank you very much. [LR181]

GREG BARTON: Thank you, Senator. [LR181]

SENATOR FISCHER: Thank you, Senator. Other questions? I see none. Thank you very much. [LR181]

GREG BARTON: Thank you. [LR181]

SENATOR FISCHER: Anyone else? Good afternoon. [LR181]

ERIC CARSTENSON: (Exhibits 5-8) Good afternoon, Senators. I call this the big stack. My name is Eric Carstenson. I'm the president of the Nebraska Telecommunications Association. The NTA is a trade association and we represent the local exchange industry throughout Nebraska. The majority of the local exchanges providers are members of the NTA. And I'm here today to explain our position on the concept of competitive telecommunications services. First of all, let me give you a time line. The issue at hand, the governmental provision of telecommunications services, in some fashion or another, has been before this Legislature numerous times in the past ten years. And since you just listened to a very complete case history of where we've gone, where we've been, and where we've ended up, I've put this into a time line for you that I



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would like to hand out when the page has a moment. And you can take and read over this time line at your leisure. I'll just sit that over here on the side of the table. Not only has the Legislature extensively debated this issue, but as you heard it's been before the Nebraska Supreme Court, before the Federal 8th Circuit Court, as well as the U.S. Supreme Court. The issue has had an enormous amount of discussion. But let me also take you through the evolution of the private telecommunications industry. You've already heard testimony about our statutory status of governmental telecommunications services. But let me now bring you some information about the private network capacity that exists today in Nebraska. The technology to provide a modern telecommunications system in our state has evolved at a very rapid pace. There is a great deal that goes on behind the scenes and under the ground to make a modern telecommunications system happen. Local exchange companies in Nebraska have buried over 11,000 miles of fiber-optic cable throughout the state. And that 11,000 mile number doesn't include the buried fiber-optic cable of other private companies like Level 3, Dark Fiber Solutions, AT&T, United, Sprint, or MCI. All of those companies were not included in that particular number. All of the company switches--in other words, the computers in the central offices of the telephone companies throughout Nebraska--are digital. Staying current with technology means that companies are always upgrading their operations. And currently many companies are upgrading their digital switching to soft switches that will make voice services possible throughout the state by using IP, Internet Protocol, technologies. Privately owned companies, when they are properly incited, will continue to invest in and develop the infrastructure and maintaining the state-of-the-art network throughout Nebraska. The result of all this investment and commitment to maintaining the network means that there are a large variety of ways to achieve fast Internet connections throughout Nebraska. Those options include digital subscriber line--we call it DSL; cable modem; point-to-point wireless; 700 MHz licensed wireless; a recent cellular option called EvDO; and satellite services. The extent of that competition is significant. A number of these broadband options utilize the traditional voice network. Now, the NTA maintains an extensive database showing broadband availability in each Nebraska municipality. That database is very large and I'd like to hand a copy out right

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now. I'll give this to you so you have it on file for the committee, but what I've also done--let me just show you this--what I've also done is broken it down for each senator. And if you would please hand that out to each senator, I would appreciate it. Since it's so big, what I have done and what she is handing out right now is a breakdown for your legislative district, by community, by municipality, of where broadband access exists today. The question we're dealing with in this hearing and in this resolution today is municipal. We are in government competition with private industry. Nebraska has already adopted sound public policy with the passage of LB645, but there are several reasons for this sound public policy. Taxes. It's unfair for public entities to compete with private entities, because public entities do not bear the same tax burden. And there is the likelihood that this competition would result in diminishing and disincenting private investment. We believe that the advantageous tax environment that public entities enjoy, along with their access to low-cost financing, would create for them a significantly unfair competitive advantage. It would disincite private investment and ultimately, in the long run, it would reduce the competition. And I would ask you to recall that Section 86-102 of our statutes provides, in part, that it is the policy of the state to "promote diversity in the supply of telecommunications services and product throughout the state and to promote fair competition in all of Nebraska's telecommunications markets." It's our view that due to the different manner which our income and property is taxed, that you can never create a level playing field upon which public and private entities can fairly and efficiently compete. There would be less economic development. Given the information society in which we live, more and more companies that are looking at expansion consider, as a top-of-the-line issue, access to communications networks, as a necessity and not as a luxury. A governmental network simply won't be able to keep up with the investment required to maintain the state-of-the-art capacity. Private companies are constantly investing in technology and services, and offer businesses the most attractive environment for economic growth. There would be a loss of privacy. Allowing governmental entities access to private telecommunications records should be troubling to everyone. Governmental entities should not be able to access private business phone records and personal residential phone records or the financial

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information contained in those billing records, nor should governmental entities have access to the kinds of Web pages that are viewed. There would be fewer choices. As the data I presented you shows, there is significant competition within the telecom industry. This is desirable and we should work to maintain this competitive environment. Once a governmental entity begins offering telecommunications services, private companies will leave the market because of unfair regulatory and financial environments. If the public entity is the only telecommunications provider that is left in a market, there is less incentive to keep up with consumer demand, and customers ultimately will lose choices. There would be decreased network capacity. All of Nebraska's political subdivisions are under pressure at some level to reduce taxes. Maintaining and expanding the telecommunications network requires significant investments of capital and it's unreasonable to expect governmental entities to increase taxes to sustain this network. We've shown you under Nebraska law the concept of this resolution is not legal. Regardless, there simply is not a compelling reason for this kind of investment by governmental entities. This point has been made abundantly clear in the experiences we've seen throughout the country. I have a long list of articles which I will leave with you. But for the record, let me hit just a couple of highlights. Now I didn't bring copies for everyone. I figured your committee counsel would enjoy falling asleep to some of these articles. But they're there and available for you. But let me give you just a few highlights for our purposes today. Number one, the Iowa communications network was built using \$350 million of tax money. Today it's for sale because of the lack of funding to continue to support it. Number two, "Wi-Fi Waste: The Disaster of Municipal Communication Networks," this article concludes that incurring millions of dollars in debt to provide residents with subsidized access to CNN and ESPN is not in the public interest, nor is creating a new broadband bureaucracy that will plant the seeds for even greater governmental growth. Number three, not every Nebraskan chooses to make the investment necessary to use the Internet. Unlike the 99 percent penetration of phone service, many Nebraskans have chosen not to have Internet access. When the vast majority of Nebraskans have access to multiple providers of broadband service, it's not necessary to have everyone, through our tax dollars or other

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governmental revenue, support the existence of a public competitor that only a portion of the population will utilize. Number four; Lebanon, Ohio, launched a full-scale city-owned and -operated telecommunications system that provided telephone and Internet and cable with video television services and the city ran up \$9 million in debt. They had to divert money from their core services, like police and fire and roads, to help fund those telecom deficits. And the city's electric fund was forced to loan more than \$2 million to help float the telecom system. Voters recently approved the sale of that system to Cincinnati Bell, even last year. Number five, municipal Wi-Fi poses problems as well. In Chaska, Minnesota, starting the municipal wireless network costs 50 percent more than it was planned and a host of customer complaints followed. The city has turned that network over to a private company and it's no longer free. Number six; St. Cloud, Florida, the large number of users for the city's free wireless service led to significant congestion on that service. For many people, the service ended up being so slow that it became unusable because a wireless bridge needed to be purchased. The city now wants homeowners to pay a mandatory fee of \$118 per house and individual users will have to pay the city \$170 for rooftop equipment. This Legislature has already created good public policy. You've debated this issue extensively over the last ten years. We would encourage you to stand by that public policy that has been developed. There are those who would argue the other side of this question. And in December of 2006, they filed with the Secretary of State a proposed initiative petition that would essentially repeal the restrictions that LB645 has placed on governmental entities. While those of us in the private sector stand willing to argue the merits of this issue and justify our position with facts and information that we believe to be compelling, we do believe that this initiative does change in a number of ways the focus of this now ten-year-old policy debate in Nebraska. The issue, as I have noted before, has been in the Legislature a number of times in the past ten years. It's been argued before the Nebraska Supreme Court, before the U.S. Supreme Court, and it's been the subject of a number of different dockets at the Public Service Commission, and it's also been the subject of a special task force created by this Legislature. It's our opinion that in each instance, whatever the venue, those who have been asked to decide the appropriate

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telecommunications policy for Nebraska have reached decisions that are sound and promote the provision of quality services at affordable rates, while protecting both the taxpayer and the ratepayer. The proponents of public telecommunications have elected to take this issue at this time to the voter, taxpayer, for the next round of debate and decision. That's their right to do and we would encourage you to respect it, just as we have to. The NTA would like to encourage this committee to continue to monitor the experiences that municipalities across the country are having as they enter the world of competitive telecommunications. We believe those lessons are stark and instructive about the limits of government and the risks inherent in this industry. But the NTA would also advocate that since the proponents of public entry have elected to bypass the Legislature and turn to the initiative rather than the Legislature, the consideration of this issue should be minimal until such time that the current initiative has formally ran its course. Thank you for the opportunity to appear before you and I'd be happy to answer any questions. [LR181]

SENATOR FISCHER: Thank you, Mr. Carstenson. Are there any questions? Senator Louden. [LR181]

SENATOR LOUDEN: Thank you for your testimony, Eric. But as the way I listened to it, what the hell does this have to do with the price of beans? (Laughter) You were talking about not allowing these cities to do this Internet service or this Wi-Fi service because, I mean, they got into so much trouble with it and spent their money. That's a decision they should've made themselves, whether or not they wanted to spend that money. That shouldn't necessarily be something that would have to be regulated. I mean, we don't just put the candy up on a higher shelf and tell them you can't have any. This is a decision they should have been making themselves. Wouldn't have been a business decision rather than a regulatory decision by someone else? [LR181]

ERIC CARSTENSON: The fact of the matter is, is Nebraska has created good public policy. And as a result, in addition to our very high rate of subscription service for

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telecommunications services, we also have a very high level of broadband deployment. There is a...this committee should be very, very proud of the, comparing to other states, how much more connected Nebraska is than other states. And the reason that has happened is because Nebraska's Legislature has created good public policy. And the ability for those companies to make those investment decisions has existed. They've been able to look forward to a fair return on their investment, which I don't think would happen if they were competing with a governmental entity. [LR181]

SENATOR LOUDEN: Now getting back...the part I'm trying to defend is our rural areas. We don't have it. I mean, this list you gave for the 49th District is great and I agree it's accurate. But it's just the towns, it isn't the people out in between. Because usually you have to do the wireless as a satellite service to get something out there. And of course, if you're out there in satellite service, you get a thunderstorm, you don't have any Internet service. You know, it isn't like your DSL with your fiber optics. And this is what has brought a lot of that to the rural areas, is the fact that our phone service, whatever it is, Nebraska Universal Service Fund, some of these companies have put fiber optic into the area and these people then are able to get DSL. Now when you look at LB645 here and they tell what public supplier means, this is all of your electric irrigation districts and everybody else, it's any public entity can't get into this type of business. But yet those may be the people that are helping you get into that business, by being into that area and having the money and the wherewithal to go ahead and develop the rural areas. [LR181]

ERIC CARSTENSON: I think it's reasonable to look at how the telecommunications industry has evolved to see what we can expect to happen in different services. You know, we first started with party line service and rotary dial service. And as technology evolved and developed, in Nebraska now we have single party. We have all single party. And we have a high number of people connected to the telephone network, to the communications network. And as technology has evolved, then the Internet came along. And at first, people were able to connect with a dial-up but that wasn't very fast and so it

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evolved to different ways, which I listed from various wireless options and so forth. It is an evolving network that is always evolving, that in order for it to continue to evolve we've got to have the proper kind of investment atmosphere for people to be able to...for companies to be able to make that investment and make those gains. And it just simply, I don't think, is reasonable to expect that the city of Ellsworth, the municipality of Ellsworth, would tax its citizens for a municipal Wi-Fi and at the same time be expected to serve someone 15 miles outside of that municipal city limits. But the telephone industry on the other...and the broadband industry, on the other hand, will work to find that market and will work to serve that market. And as we found ways using wireless to push that capacity further out, we found ways using satellite to push that capacity out. Are those perfect solutions? No. But it is always a constantly evolving...and that's why I like to refer to the network as being state-of-the-art, because at any particular point in time, it is the newest kind of...it is, as the network, is the newest kind of technology that's out there. [LR181]

SENATOR LOUDEN: Now suppose in my electric utility--which I'm under a co-op, it isn't a public power district. But under your public power districts, you have your towers out there, our receiving towers. They do that for their radio communications. Now they can put these wireless Internet services on those towers, you know, and reach about 15 miles at each one. And my understanding is the technology is there that they can start reading your meters that way. Now if that is available, should that, what they have invested in that, should they be able to go ahead and sell that service to local people if they want to use it to go ahead and pick up the Internet? [LR181]

ERIC CARSTENSON: And that's where the whole public policy debate... [LR181]

SENATOR LOUDEN: But according to LB645, they can't do that. [LR181]

ERIC CARSTENSON: That's where the whole public policy debate comes from. Our Legislature and our Congress has decided over the years that it's in the public interest

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that we build a network that everybody can connect to. And we're talking, when we talk about that, we're talking about a voice network. But the voice network as it evolves can also carry this broadband information. So if we do something that disincent, that makes impossible the advancements in telecommunications, we put at risk our very fundamental public policy question, which is, should everybody--for public safety purposes, for economic development purposes--should everybody be able to have access to that network? [LR181]

SENATOR LOUDEN: Okay, thank you. [LR181]

SENATOR FISCHER: Other questions? I'm going to give you a couple short questions so you can give me short responses then, okay? (Laughter) You mentioned that some of the municipalities have sold their systems that they've put up. Did I understand you right on that? [LR181]

ERIC CARSTENSON: I'm aware of some. [LR181]

SENATOR FISCHER: Why did they sell? Do you know why? [LR181]

ERIC CARSTENSON: Well, there's...it's going to vary from different political subdivisions, from different municipalities. They didn't make money and they cost more than they expected. [LR181]

SENATOR FISCHER: Okay. Did they sell at a profit to a private company? Did they lose money for their taxpayers or did they sell to profit, do you know? [LR181]

ERIC CARSTENSON: I know of no one that sold at a profit. I believe the Iowa communications networks is valued right now at somewhere near a dime on the dollar. [LR181]



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SENATOR FISCHER: Oh, okay. You mentioned the risks that are inherent to your industry. What are they? [LR181]

ERIC CARSTENSON: Technology moves very, very quickly. The kinds of things that work today that are state-of-the-art will change tomorrow. And that is a moving target that we've got to quickly respond to in order to provide modern telecommunications. We've got to adapt with those technologies. And there's a whole bunch of different kinds of things. [LR181]

SENATOR FISCHER: And obviously, Mr. Carstenson, you believe that private companies, private enterprise are able to respond quicker to those changes. [LR181]

ERIC CARSTENSON: They are much more nimble than governmental entities would be and can adapt to changing markets and can adapt to changing technologies. [LR181]

SENATOR FISCHER: And whether those private companies are held by family individuals or open to the public at large, they have the resources, the immediate resources to respond to those changes quickly? [LR181]

ERIC CARSTENSON: Different companies respond at different rates. And you know, there are differences between companies just like there are differences between families. [LR181]

SENATOR FISCHER: Okay. How are the private companies regulated? Through the Public Service Commission if they are land-based, correct? [LR181]

ERIC CARSTENSON: The industry I represent, the local exchange industry, is all regulated by the Public Service Commission. That's a condition of membership. When we speak of some of our competitors, they are not necessarily regulated... [LR181]

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SENATOR FISCHER: Well, we'll only speak to your companies then. [LR181]

ERIC CARSTENSON: Okay. Then they are all regulated. [LR181]

SENATOR FISCHER: Okay. Are your rates regulated then by the Public Service Commission? [LR181]

ERIC CARSTENSON: The rates for telecommunication services, voice-grade telecommunications, are regulated by the commission. [LR181]

SENATOR FISCHER: If municipalities would become involved in wireless networks, they would not be regulated by the Public Service Commission, would they, since they are wireless? [LR181]

ERIC CARSTENSON: That's...well, that's correct. [LR181]

SENATOR FISCHER: So they would be, I guess, more on terms with some of the companies that you don't represent then. Would that be correct? It would be similar in that either wireless phones, wireless Internet are not regulated by the Public Service Commission. [LR181]

ERIC CARSTENSON: They are...okay, let me parse that a little bit. They are not regulated to the extent that they are not providing telecommunications services for a fee. If they would provide... [LR181]

SENATOR FISCHER: If the law would change, if the law would change and a municipality could provide services for a fee, they would not be regulated if it was wireless Internet, just as some of the companies you don't represent are not regulated. [LR181]

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ERIC CARSTENSON: Presuming that part of the law didn't change, yes. [LR181]

SENATOR FISCHER: Okay. Maybe I'll wait until someone you don't represent comes forward then. So thank you. [LR181]

ERIC CARSTENSON: Thank you. [LR181]

SENATOR FISCHER: Any other questions? Okay, thank you very much, Mr. Carstenson. Welcome, Mr. Speaker. Now that we have the expert here on just what was going on. I'm not putting any other (laugh) speaker down who came forward, but it's nice to have our former Chairman and former Speaker present today. So welcome. [LR181]

CURT BROMM: (Exhibit 9) Thank you very much, Madam Chairperson. And it's a pleasure to be here. I want to say...well, first of all, Curt Bromm, 551 North Linden, Wahoo, Nebraska, here on behalf of the Nebraska Cable Communications Association and the Nebraska Telecommunications Association. And let me compliment you. I don't know how you can have a hearing in July and have a full committee. That's... [LR181]

SENATOR FISCHER: Dedicated. [LR181]

CURT BROMM: That is a new feat. It's a tribute to your leadership and your committee. Anyway, I appreciate you taking the time and also getting into this subject matter, which is...it's always very interesting. And I did have, I guess, the opportunity of serving with many of you during many of the years when the public policy in Nebraska developed and changed and was challenged and it evolved into what it is today. And it was quite a trip and I'm not going to reiterate all of that. I think Greg Barton did a fantastic job on that. And then Eric Carstenson said the rest of what I had to say. So I'm going to be relatively brief, I think. I would say that the Nebraska Legislature, following the '96 Telecom Act, was one of the first states to react and develop policy quickly and I think

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very well, because it has stood the test of time to a large extent. Our Universal Service Fund system, while not perfect--and Senator Loudon, I'm certainly hearing you loud and clear--while not perfect, is far superior to many other states and far superior to Iowa, who elected instead, as you've heard, to try to get into the business and develop a statewide network and spend a lot of state resources, which has not proved to be necessarily successful one, which I visited with some of our counterparts, your counterparts over there. They are sorry for the most part, I think, that they took that step. So we've been forceful, I think, in our legislation. We've been cautious in exposing government to some of the pitfalls that you've heard about. In 2001, the dark fiber legislation and discussion was extremely complicated. There were a lot of compromises that were made. In the end, the compromise for the most part was, if we have overbuilt technology, overbuilt companies with excess fiber, let's let them lease it, let's let them sell it. And if there's a profit, since it was built with taxpayer expense, let's put at least half of that profit into the Nebraska Internet Enhancement Fund, which is administered by the Public Service Commission, and allow communities who have needs but don't have resources and don't have a company that necessarily is standing in line to build what you need, let's make grants available to help with that process. And NPPD, I know, leased some fiber and generated some revenue. Some revenue went into the PSC. But unfortunately, that has not taken off like--I think it was Senator Wickersham's brainchild really--and it hasn't taken off like it was envisioned to take off. And that's too bad because the concept is good, it's very good. But...and one of the reasons that I heard for it not taking off is that the development is out there for broadband and wireless technology and it's evolving so rapidly that there really isn't a pent-up demand for the grants and the money to help subsidize it. So I don't know. But that was, I think, a major effort. I think I handed out, and you probably have these reports sitting around your office, but another copy of the LB645 report. And I think that report is instructive to your hearing today because many of the terms, many of the concepts, many of the arguments pro and con were studied by that task force in depth; a task force that some of your colleagues, representatives of the Public Service Commission, of the Power Review Board, citizens from each congressional district, all met numerous times and

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had quite a bit of information and took a lot of time. And they came down, after all of the time of studying it, to the same things that you've heard today. Basically that they're concerned about the implications on competition of having the public sector be able to get into the business. How do we level the playing field from the tax standpoint? How do we avoid the disincentive for companies to come in here and invest millions of dollars on a new technology if they're concerned that tomorrow a local government might decide to take them out of the saddle with taxpayer money, with which they can't compete, with bond financing and so forth? Those were kind of the bottom lines of all that they went through. I think also that group assessed the information that Eric Carstenson handed out to you, and that is the availability of these services throughout the state, and found that it was surprising at how many available services there were and in some cases, multiple competitive companies trying to serve the same area. Once again, not covering every corner of Nebraska, but covering the large and vast area better than we would have expected. The findings of that report are summarized in what I handed out on page 3, and I won't repeat all of those. I think that the bottom line, at least I think, and this has remained consistent over the last ten years, in this area technology is absolutely a moving target. It will not be the same one year from now as it is as we sit here today. And government doesn't operate very well in that kind of environment. Government does not react quickly, usually, when there is a change in direction, as private enterprise could do. And so that is a huge concern, I think, in underwriting or getting into this area. The task force did suggest, and you're doing it today and you'll continue to do it, I know, that the state--and when we talk about the state it generally always means the Legislature, it means you folks--continue to monitor the progress of deployment in the state, to monitor how effective it is, how efficient it is, how affordable it is, and all of those things. And of course, the Public Service Commission, to the extent that they can, as you heard today, is a great arm for you in helping to monitor the progress. So I hope that you will be watchful and continue to monitor but not take any rash action that would change the direction that this state has followed, and I think, very successfully in saying, you know, government is best...we have limited resources here. And government, with our limited resources, is best used

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to meet those problems that we can't solve any other way. And off the top of my head, I know you're facing tremendous demands in costs in the area of health and human services, in the area of education, and under your jurisdiction of this committee, roads. And we never can seem to find enough resources to handle those things. So if we have private industry willing to step up to the plate and do a reasonably good job, as good as we can, as technology allows, why would we want to do that or open that Pandora's box, so to speak? With that, I won't take anymore of your time. I, again, commend you for being here and thank you very much for your great attention and the questions that you asked the people that went before me. I'm not going to thank you for the questions you might ask me because I might not be able to answer them. (Laughter) Thank you, Madam Chairman. [LR181]

SENATOR FISCHER: Thank you, Senator Bromm. Are there questions? Senator Louden. [LR181]

CURT BROMM: I'd be disappointed. [LR181]

SENATOR LOUDEN: Senator Bromm, thank you for being here today. As you, you know, gave your testimony, you talked about why would it, you know, why would you want to have it, municipality be in competition with privately owned. And I agree, to me that isn't the problem in your municipality areas. There's already all kinds of technology available in there. My concern is out in your rural areas where no one wants to always put up the money to get Internet service out there. A few years ago we were trying to work out of Alliance with these tower deals and they had to have a tower every 15 miles, whatever. And as long as we would put up the money and build our tower and get seven or eight people to come off of that tower, they would put it in for us. That was an investor-owned person doing that. Consequently, it didn't happen. Everybody finally just, we went to satellite or something else. This is my concern, is out in the rural areas and by having some of this legislation like we have, that kind of stymies any of these probably public power district or...and as they mentioned in LB645, irrigation district, for

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gosh sakes, of putting anything like that in. And this is my concern. If that...is that something we're just going to do away with or not allow those people to have? Or how should we address that problem? [LR181]

CURT BROMM: Yeah, and I understand it. And I think it's a really tough question. The thing that I think we got to keep our eye on is if the technology develops that would be practical and usable over, for example, the power lines to get to your ranch, then does it make sense for your power district to be involved with that or for them to simply be like the many power poles that exist in our town that the cable industry hooks on to and goes with and gets cable to my house. They get cable to my house by going on the poles that are owned to the city. And so maybe the power industry can be a player in helping provide some means. But for them to get into the business, I think in the long run, would be counterproductive for getting the best service to your ranch that's possible. Now I think, you know, the changes that have occurred in technology in the last 18 months to 2 years are tremendous. And it may be that, in a shorter period of time than I know, that they'll be able to push that out there to you, which they couldn't do a year ago, you know, through other means. Now satellites become pretty effective most places and I recognize there are instances, storms and what have you, where it isn't. But it's becoming a lot better than it was even two years ago. So I think the answer for cases like yours has got to be technology and possibly some utilization of a combination of resources that might get it to you. But to put a whole another...to put a governmental entity into the business probably would, in the long run, not help and might hinder. [LR181]

SENATOR LOUDEN: You then feel that the investor-owned companies will go out into those rural areas and invest that money to put broadband out there then? [LR181]

CURT BROMM: Well, I think eventually they will utilize technology that will allow them to get out there and it won't take near the investment that it would in a traditional sense that it did to bring power out to you or to, you know, to bring copper phone lines out to

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you. It'll be a different means. [LR181]

SENATOR LOUDEN: Of course, all of that power and all those phone lines were done by some type of cooperative or public power, I mean... [LR181]

CURT BROMM: Well, or...yeah, low interest loans and so forth. [LR181]

SENATOR LOUDEN: ...there wasn't investor-owned utilities that did that, I mean... [LR181]

CURT BROMM: I understand that. [LR181]

SENATOR LOUDEN: ...I grew up with that when we had rural electric came out. I grew up when we built our own phone line and gave it to the Bell System... [LR181]

CURT BROMM: Right. [LR181]

SENATOR LOUDEN: ...in order to get it there because they themselves wouldn't come out there and build that. You had to do that yourselves and then give it to them. And this is where I think we are on some of our Internet service with these entities. If they do have the authority to do something, it perhaps will happen a little bit quicker. [LR181]

CURT BROMM: Yeah. Well, we're sitting here with a void of service like you had with the power situation. It would be a lot more compelling. But it seems that we have fairly decent coverage. We just have those pockets that are yet to be served...or at least served satisfactorily. You have satellite service, or not? [LR181]

SENATOR LOUDEN: Yeah, that's what we had to get, was satellite service. We had dial-up but that Qwest line was so terrible that it was...as Mike down here, when I was trying to get hooked up with the state down here, he looked at it and I told him I was



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getting 1,600 bytes a minute. He had to ask somebody who that was. And all he said, Senator, it's going to be awful slow. And that's what it is. Thank you, Senator Bromm. [LR181]

CURT BROMM: You bet. Thank you. [LR181]

SENATOR FISCHER: Senator Stuthman, did you have a question? [LR181]

SENATOR STUTHMAN: Yes. Thank you, Senator Fischer. Senator Bromm, I was just hastily going over your final report here. The consensus of your group was not...the majority of them was not totally in agreement as far as the LB645. Thirty-three percent of the task force had some other considerations and some other concerns also. So in my opinion, this final report--you know, which I appreciate--but there are some issues we probably need to address in the future. Do you feel that would be about right? [LR181]

CURT BROMM: Well, there was a majority and a minority view, Senator Stuthman, as you pointed out. And certainly that needs to be read in its entirety. But it's just like the Legislature, it's going to be pretty rare when you get 49 votes on a controversial subject all the same. I mean, it does happen, but it's pretty rare. And certainly in the minority view, for the most part, the minority view were representing the Power Review Board and people had felt like broadband over power lines had more immediate promise, I guess, than the rest of the task force. But certainly need to read it all. [LR181]

SENATOR STUTHMAN: Thank you. [LR181]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here today. [LR181]

CURT BROMM: Thank you. [LR181]

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SENATOR FISCHER: Were there others who wish to come forward? Are you on your way to the testifying chair? (Laughter) Anyone else? Well, I see none. I thank you all for being here today. And with that, I will adjourn the hearing on LR181. Thank you.

[LR181]