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Transportation and Telecommunications Committee
February 13, 2017

[LB157 LB522 LB523 LB573 LB654]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 13, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB157, LB522, LB523, LB573, and LB654. Senators present: Curt Friesen, Chairperson; Jim Smith, Vice Chairperson; Bruce Bostelman; Tom Briese; Suzanne Geist; Mike Hilgers; Dan Hughes; and John Murante. Senators absent: None.

SENATOR FRIESEN: (Recorder malfunction)...hearing. I am Curt Friesen of Henderson, and I am chairperson of the committee. I represent District 34, which is Hamilton, Merrick, Nance, and part of Hall Counties. And I will begin with a few procedural items. And first, I'd ask that you silence all the cell phones and electronic devices, and that there be no displays of support or opposition when somebody testifies; we like to keep the hearing room very quiet. Those who are testifying on bills should move to the front of the room and be ready to testify. We have an on-deck chair in the front there so that a person can be up there and ready to go when their turn comes. If you will be testifying, you need to legibly complete one of the green testifier sheets located on the table just inside the entrance. Hand the completed testifier sheet to the page when you sit down to testify. Handouts are not required but, if you have a handout, we need ten copies, and one of the pages will assist you if you need help. When you begin your testimony, it is important that you clearly state and spell your first and last names for the record. And if you forget, I will stop you and remind you. We will be using the light system. You'll be given five minutes. There will be four minutes with the green light, one minute with the amber light, and then the red light will come on and then you need to wrap up. Those not wishing to testify, they may sign a pink sheet by the door to indicate their support or opposition to a bill. Now I will introduce the senators. To my far right is Senator Tom Briese from Albion, representing District 41. Next to him we have Senator Bruce Bostelman from Brainard, representing District 23. And next to him Senator John Murante from Gretna, representing District 49; and then Senator Smith, the vice chair of the committee, from Papillion, representing District 14. On my immediate right is committee legal counsel, Mike Hybl. On my left is committee clerk, Elice Hubbert. And next to her is Senator Dan Hughes from Venango, representing District 44; Senator Mike Hilgers from Lincoln, representing District 21; and Senator Suzanne Geist from Lincoln, representing District 25. We have two pages: Heather Bentley from Miller, Nebraska, a freshman at UNL, majoring in ag economics; and Jade Krivanek from Omaha, a junior at UNL, majoring in economics. With that, we will open the...I will turn the chair over to Vice Chair Smith, and I will be introducing the first bill.

SENATOR SMITH: Thank you, Chairman Friesen. And we're going to have Senator Friesen open on LB157, which relates to changing the prepaid wireless surcharge determination and duties of sellers and the Department of Revenue under the Prepaid Wireless Surcharge Act. Welcome. [LB157]

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SENATOR FRIESEN: Thank you, Vice Chair Smith. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent District 34. I am here today to introduce LB157. LB157 would amend the Prepaid Wireless Surcharge Act, to change the manner in which the Universal Service Fund surcharge is collected and remitted. Each of you has a cell phone and, if you were to look at your monthly bill, you would see three charges. These charges are: the Universal Fund surcharge, the Wireless 911 charge, and the Telecommunications Relay System charge. While you pay those three charges on your regular bill, a large and growing part of our society uses prepaid phones. They go to a store, they buy their phone, and they buy their prepaid service charges. For these customers, the Universal Service Fund surcharge is collected and remitted differently than the Wireless E-911 and the Telecommunications Relay System charges. With respect to the Universal Service Fund, the wireless carrier must determine the appropriate amount of the surcharge owed per prepaid product sold, and remit those funds to the Public Service Commission directly. But with the other two charges, the Wireless 911 and the Telecommunications Relay System, the retailer collects from prepaid consumer at the point of sale. The retailer then sends the charges to the Department of Revenue, just like they do for sales taxes. The Department of Revenue then transfers the funds to the State Treasurer for credit to the appropriate PSC fund. For their troubles today, the retailer retains 3 percent of the Wireless E-911 and the Telecommunications Relay System. And the Department of Revenue retains 2 percent. LB157 streamlines the process for collecting the Universal Service Fund, mirroring the way that Wireless E-911 and Telecommunications Relay System funds are collected. LB157 also revises the remittance obligation of retailers under the act. Currently all retailers are required to remit to the Department of Revenue on a monthly basis. LB157 will allow retailers who annually collect less than \$1,000 in surcharges to only remit to the Department of Revenue annually. LB157 further enhances the amount of fees collected for the NPSC by reducing the fee the Department of Revenue is authorized to retain from the collection of wireless prepaid surcharges remittance from 2 percent to .5 percent. In summary, LB157 treats prepaid wireless customers consistently as postpaid by treating the NUSF fees the same as 911 and the TRS fees. Thank you for time and consideration of LB157, and I'd happy to be answer any questions that I can. [LB157]

SENATOR SMITH: Thank you, Senator Friesen, for your opening on LB157. Do we have questions from the committee for Senator Friesen? I see none. We now move to proponents for LB157, those wishing to testify in support of LB157. Welcome. [LB157]

KATIE SPOHN: Thank you. Vice Chairman Smith and members of the committee, my name is Katie Spohn, K-a-t-i-e S-p-o-h-n, and I am here today on behalf of our client, TracFone, testifying in support of LB157. In short, this bill will modernize and streamline collection of the Nebraska Universal Service Fund for prepaid wireless customers. In addition, the bill levels the playing field for prepaid and postpaid wireless customers. As background, the NUSF surcharge was created in the late 1990s to help telecommunication...keep telecommunication services

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affordable in Nebraska. The traditional, or postpaid, wireless customer contributes to the fund via a line item surcharge on their monthly bill. The prepaid, pay-as-you-go wireless customer purchases their service...their wireless service, up front and do not receive a monthly bill from a wireless carrier. Our client, TracFone, sells the Straight Talk wireless brand at WalMart and has no direct contact with the customer. They buy a phone and a phone card for unlimited minutes, pay WalMart, and we don't send them a bill. Since there's no direct and ongoing billing relationship, we cannot collect the NUSF surcharge directly from those prepaid wireless customers. LB157 is designed to modernize collection of the fund and to level the playing field between prepaid and postpaid wireless customers. Using point-of-sale collection, the NUSF surcharge will be collected directly from the customer at the time they purchase the prepaid service, just like any other tax or fee on goods and services in the state. What's more, since retailers are already collecting the E-911 and TRS surcharges on prepaid wireless sales, it requires little additional effort to collect the NUSF surcharge, as well. We worked closely with the retailers in crafting LB157. As you can probably imagine, retailers would prefer to not collect any fees on behalf of the government, telephone or otherwise. But under the terms of the bill, retailers retain 3 percent of the NUSF surcharge to cover their cost to pay credit card processors for transactions on prepaid products. Since they're already collecting TRS and 911 fees at point of sale on these prepaid products, they've agreed to collect NUSF, as well, so long as they don't lose money doing it, hence the 3 percent collection fee. We've also addressed the concerns of Nebraska's smaller retailers. While TRS and 911 fees are currently being remitted monthly, LB157 would allow an annual remittance for retailers collecting less than \$1,000 in surcharges. This eliminates the concerns of some of our smaller retailers that have to send checks to the state for minimal amounts. And without this bill, smaller retailers will continue to have to remit tiny amounts to the state for TRS and E-911. Finally, we want to make a few points concerning the accuracy of LB157's fiscal note submitted by the Public Service Commission. First, the PSC's fiscal note fails to account for the increase to the E-91 (sic: E-911) and the TRS funds that results from the reduction of the Department of Revenue's fees from 2 percent to .5 percent. Without the bill, Revenue will continue to collect and keep 2 percent of the 911 and TRS surcharges. The fiscal note should have included these increases due to Revenue's reduced fees. More importantly, the fiscal note automatically assumes that collection of the NUSF surcharge, at point of sale, will have a negative impact of the NUSF fund. That's not necessarily true. As collected today, the PSC cannot tell you how much of the NUSF surcharge is collected on prepaid wireless services. That's because wireless companies who sell both prepaid and postpaid wireless, submit their remittances together. Collection of the NUSF surcharge, at point of sale, provides greater transparency and could actually increase the NUSF due to a higher degree of certainty with remittances. In conclusion, we appreciate Senator Friesen bringing LB157. The bill treats prepaid wireless customers the same as postpaid and creates consistency by treating NUSF fees the same as 911 and TRS. And with that, TracFone would respectfully request that the committee advance LB157. [LB157]

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SENATOR SMITH: Thank you, Ms. Spohn. Do we have questions from the committee? Just a couple questions for you. Can you venture to guess roughly what the adjustment to the fiscal note should be in dollar amount? [LB157]

KATIE SPOHN: We know that the fiscal note is a rough estimate. And I am not...I don't know exactly what that amount should be. But I'd be happy to get back to you with that. [LB157]

SENATOR SMITH: Okay. And then is the bill, in its current form here, is it comparable--the same, as what we had in the previous year? [LB157]

KATIE SPOHN: Yes, Senator. LB1003, which you introduced last year, was...is substantially similar, with the exception that we included the amendment that would address the concerns of the smaller retailers. And it also... [LB157]

SENATOR SMITH: Less than \$1,000... [LB157]

KATIE SPOHN: That \$1,000...yes, that \$1,000 remittance, and reduces the fee that Revenue keeps from the 2 percent to 1.5 percent. [LB157]

SENATOR SMITH: Okay, very good. Thank you. Further questions? I see none. Thank you. [LB157]

KATIE SPOHN: Thank you, Senator. [LB157]

SENATOR SMITH: Next proponent of LB157. Welcome. [LB157]

KATHY SIEFKEN: Good afternoon, Vice Chairman Smith and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and lobbyist for the Nebraska Grocery Industry Association, here today in support of LB157. I would like to thank Senator Friesen for introducing this bill because it fixes a problem that was brought about by the passage of LB1091, back in 2012. And the problem that was caused is simply that we have some small grocery stores that are collecting and remitting as much as \$1.80 a month. And when you have to track all of that, collect it, and then remit it, it's...it becomes fairly burdensome for the small amount that you do collect. And 3 percent of \$1.80 does not pay for the cost of collecting and remitting those funds. So if we would be allowed to collect and remit...or collect...those stores that collect less than \$1,000 per year, if they would be allowed to remit annually, it would cut down tremendously on the amount of paperwork, thereby labor, and we would support the bill. As far as the collection of the Universal Service fee, we are willing to collect the funds that

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go into the Universal Service Fund, but only if we collect 3 percent to pay for the cost of those collections. If we don't collect the Universal Service Fund, we're good with that, too. But we do support the entire bill, just because it is an agreement and it does fix the problem that was caused back in 2012. So if you have any questions, I'd be happy to try to answer them. [LB157]

SENATOR SMITH: Thank you, Ms. Siefken. Questions from the committee? Senator Hilgers. [LB157]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you for your testimony today, Ms. Siefken. Can you speak a little bit about the logistical burdens that adding a new point-of-sale fee that...for retailers to collect, what kind of burdens those might pose, especially for smaller retailers? [LB157]

KATHY SIEFKEN: Well, first of all, the larger retailers generally have newer systems that have more keys that allow them to collect more taxes. But if you take, for instance, the city of Omaha, where they collect an occupation tax on restaurant, they collect an occupation tax on phones, an occupation tax on tobacco, plus the regular sales tax, in our small stores there are only four keys. And so right now, our smaller locations are manually doing the math. So it is a burden, especially on the small locations. When you get into other communities that don't already have all of those occupation taxes, they may have one key left, but if the community would pass an ordinance where they would collect another tax, they wouldn't be able to just hit a key or program it in. It would actually cost them a considerable amount of money to upgrade their systems to electronically track all of that. So right now the small stores, when they get past those four keys or those four collection points that they have to break out, they would have to put it into and figure out a mathematical equation to figure out what they owe to whom. [LB157]

SENATOR HILGERS: Thank you. [LB157]

SENATOR SMITH: Senator Geist. [LB157]

SENATOR GEIST: Thank you for your testimony. I am curious about the \$1,000 amount. Is that a threshold that a smaller retailer finds palatable? [LB157]

KATHY SIEFKEN: When we moved last year, we were talking about...there was an amendment, I believe, to the bill and it was \$500. We moved that up because we assumed that the Universal Service Fund language would probably pass. So when that is raised up to \$1,000, what that means in reality, at retail level, is selling approximately \$1,000 worth of product to consumers.

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And then the 911 surcharge is a little bit over 1 percent so, by the time you get through collecting everything, it's about 8 percent. [LB157]

SENATOR GEIST: Okay. [LB157]

KATHY SIEFKEN: And that's where we came up with the \$1,000 threshold, because of the dollar, or the pennies, basically that you would collect. And yes, it is palatable. [LB157]

SENATOR GEIST: Okay. [LB157]

KATHY SIEFKEN: But that's where we came up with that calculation. [LB157]

SENATOR GEIST: Okay, thank you. [LB157]

SENATOR SMITH: Senator Hilgers. [LB157]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Just to clarify what I thought I heard and how I read the bill, to make sure we're all on the same page, in my reading of the bill, I thought it was \$1,000 worth of surcharges. [LB157]

KATHY SIEFKEN: Yes. [LB157]

SENATOR HILGERS: And I thought that maybe you had said, maybe \$1,000 of product. So I was wondering... [LB157]

KATHY SIEFKEN: Ironically, it's the same thing. So because it's 8 percent, and if you take and divide it by the 12 months, it really does come out to...I did the math three times thinking that this can't be right. But it, because the percentage is around 8 percent, that \$1,000 in sales per month would include about 8 percent of the...I should have done the math and written it all out. But so, if you take 8 percent of \$1,000, you get \$80. And \$80 a month is \$1,000 a year. [LB157]

SENATOR HILGERS: Oh, I see. Okay. [LB157]

KATHY SIEFKEN: I think I said that right. [LB157]

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SENATOR HILGERS: I am...okay, I am with you. I see where you're...yeah, okay. Thank you. [LB157]

KATHY SIEFKEN: Okay, um-hum. [LB157]

SENATOR SMITH: Seeing no further questions, thank you, Ms. Siefken. [LB157]

KATHY SIEFKEN: Thank you. [LB157]

SENATOR SMITH: Next proponent of LB157. Next...so that concludes proponents. Next, opponent or opponents of LB157. Welcome. [LB157]

ERIC CARSTENSON: Thank you. Good afternoon, Senator Smith and members of the Transportation and Telecommunications Committee. My name is Eric Carstenson; that's E-r-i-c; Carstenson is C-a-r-s-t-e-n-s-o-n. I am the president of the Nebraska Telecommunications Association. The NTA is a trade association that represents the majority of local exchange carriers, LECs, telephone companies in Nebraska that provide telecommunications and broadband connectivity throughout the state. I am here to present our opposition to LB157. Our current Nebraska public policy is that we should preserve and enhance the Universal Service Fund. And the policy is there that it should also be a sufficient and predictable mechanism to promote universal service. The USF is a mechanism that this Legislature and the Public Service Commission have developed to provide that universal service. Unfortunately, because of the fiscal note attached to LB157, there is an impact to the Universal Service Fund which will diminish its sufficiency and predictability. Because of that, we must oppose LB157. That concludes my testimony. [LB157]

SENATOR SMITH: Thank you, Mr. Carstenson. Do we have questions for Mr. Carstenson from the committee? Senator Briese. [LB157]

SENATOR BRIESE: Thank you, Senator. And thank you for being here. And what is that impact, roughly? [LB157]

ERIC CARSTENSON: If the fiscal note is right, just a little bit more than \$250,000 a year, which would be, as I think of the projects that the commission has done, that could maybe be a wireless project, it could be a cell tower that they've given a grant for. So it does have some level of magnitude. [LB157]

SENATOR BRIESE: What does that derive from, that .5 percent? [LB157]

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ERIC CARSTENSON: I was told there would be no mathematics involved (laughter), but that's...Senator, yes. That's my understanding is it's the amount which would be diverted to compensate the retailers. [LB157]

SENATOR BRIESE: And what is the Universal Service Fund used for? [LB157]

ERIC CARSTENSON: It is used to make telecommunications available in high-cost areas, which are usually those areas outside of an incorporated community. [LB157]

SENATOR BRIESE: Okay, thank you. [LB157]

SENATOR SMITH: Mr. Carstenson, do you see any way in which the industry could provide suggested changes that would improve this, that would correct your opposition? [LB157]

ERIC CARSTENSON: I am...obviously we are always willing to sit down and try and work through solutions. Our biggest problem with this particular legislation is it does have a negative impact on the fund. For example, the members of the NTA collect USF; we're not compensated for that. We also collect relay and 911; we're not compensated for that. But that said, we'd be more than happy to think through solutions. [LB157]

SENATOR SMITH: Okay, thank you. I see no further questions. Thank you, Mr. Carstenson, for your testimony. Next opponent to LB157. Seeing no additional opponents, we move to neutral testimony, those wishing to testify in a neutral capacity. Welcome, Commissioner. [LB157]

TIM SCHRAM: (Exhibit 1) Good afternoon. Good afternoon, Vice Chair Smith, members of the Transportation and Telecommunications Committee. My name is Commissioner Tim Schram, spelled T-i-m, last name S-c-h-r-a-m. I am the current chairman, and I represent the 3rd District on the Nebraska Public Service Commission. I am here today representing the commission, in a neutral capacity, on LB157. The Universal Telecommunications Service Fund Act declares that all providers of telecommunications should make an equitable and nondiscriminatory contribution to the preservation and advancement of the universal service. LB157 amends that NUSF Act by removing the direct assessment of Universal Service Fund contributions for prepaid wireless carriers and moves the collection and remittance responsibilities to the retail selling agent. I want to draw your attention first to the impact on the Universal Service Fund program. As our fiscal note indicates, we estimate that the 3.5 percent of prepaid wireless carrier remittances will be diverted from the Universal Service Fund to the retailers and Department of Revenue. This would account for roughly \$219,000 in the next fiscal year and \$258,000 in the year thereafter. Due to changes in technology, remittances are declining. The most recent year

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showed a 12 percent reduction. Remittances are forecast to decline by 16 percent, and this bill would further exacerbate that decline. We have concerns that diverting NUSF support and allowing the retailers and the Department of Revenue to keep a portion of the NUSF remittances may be inconsistent with the overall purpose of the act, which places limits on the use of the NUSF funds and does not allow for...allow use for a general purpose. We would like to see the bill amended to eliminate or reduce the percentage to the retailers for collection of the surcharge. Second, we have concerns about our continued ability to enforce collection of the Universal Service Fund support from prepaid wireless carriers, as the bill specifically states that the surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless surcharges that the seller collects. As you know, the commission has jurisdiction over the provider. We think the bill needs to be clarified to indicate that the provider is ultimately responsible for the remitting of all owed surcharge revenue to the commission consistent with the language in the NUSF Act. Finally, we are concerned about the continued ability to ensure that low-income consumers are exempt from NUSF surcharge, consistent with the spirit of Nebraska Revised Statute, Section 86-329. We do not believe that retailers would have a mechanism to determine which consumers should have that exemption and where the surcharge should be applied. That has been, and should continue to be, the obligation of the provider. I would be happy to answer any questions you may have. Thank you. [LB157]

SENATOR SMITH: Thank you, Commissioner Schram. Do we have questions from the committee? Senator Briese. [LB157]

SENATOR BRIESE: Thank you, Senator. Thank you for being here, Commissioner. So the \$219,000 to \$258,000 we're talking about here, that's a combination of the 3 percent collected by the retailers plus the .5 percent collected by the department? [LB157]

TIM SCHRAM: Those are based on subscriber line numbers that, from the 911 surcharge that's collected. [LB157]

SENATOR BRIESE: You suggested in there you would like to see the retailers' commission maybe reduced or eliminated. What percentage...if it wasn't eliminated, what percentage would you deem appropriate? [LB157]

TIM SCHRAM: That's a question that, as far as what's equitable and what to this body seems fair, the 3.5 percent, the impact to the fund is stated. Certainly I would agree that businesses or the retailers are entitled to some amount for their work in the remittance process. So I don't know. As far...do I have a percentage in my mind? Not exactly. [LB157]

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SENATOR BRIESE: Thank you. [LB157]

SENATOR SMITH: I see no further questions. Thank you, Commissioner. [LB157]

TIM SCHRAM: Thank you. [LB157]

SENATOR SMITH: Next person wishing to testify in a neutral capacity on LB157. Seeing none, Senator Friesen, you're welcome to close. Senator Friesen waives closing, and that concludes the hearing on LB157. [LB157]

SENATOR FRIESEN: Okay. Next we will open the hearing on LB522. Senator Walz, welcome. [LB522]

SENATOR WALZ: Thank you, Chairman Friesen and the members of the Transportation and Telecommunications Committee. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent District 15 and all of Dodge County. I have brought forward LB522 with a collaborative effort from my office and the Center for Rural Affairs. I am bringing this information forward because increasing high-speed broadband is important to the health and stability in the rural areas of our state, where we are seeing a population decline. There are economic and social consequences of limited broadband access. Access to broadband is vital for small schools that are likely to have slower Internet connections, but are also more likely to use services, such as distant learning, to share teachers and cut down on costs for schools. Telehealth services are vital to those communities that don't have doctors readily available. Through the Universal Service Fund, 68 rural and critical-access hospitals are connected to hubs in Grand Island, Kearney, Lincoln, Norfolk, North Platte, Omaha, and Scottsbluff. Broadband is also key to attracting and keeping businesses in Nebraska. The University of Nebraska reports that 60 percent of Nebraska businesses reported selling goods or services online. Even farmers and ranchers are becoming more and more reliant on broadband to check commodity prices, manage crops, do regulatory reporting, and more. Most important, we want young people to stay and move to our community. Increasing rural broadband would enhance quality of life and make it easier for people to become entrepreneurs. LB522 would strike an already obsolete provision that unused money in the Nebraska Universal Service Fund, which I will often refer to as the NUSF or the USF, could be transferred to the General Fund by the Treasurer. Although money is not currently allowed to be transferred, I feel it is important to clarify that keeping its current funding and expanding funding for the Universal Service Fund should be a priority, moving forward. The NUSF was authorized in 1997 and used to collect around somewhere between \$70 million and \$90 million annually. However, those figures have been dropping because less people have landlines and the funds are collected through surcharges on in-state retail telecommunications revenue. In fiscal year 2015/2016, the NUSF collected \$42.9 million. The

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Public Service Commission projects those numbers will drop another 16 percent this year and an additional 20 percent the following year. We need to reform to help greater Nebraska, and this shows a message that we are serious about making it. I have more facts and figures that I can share with the committee members and more about NUSF. I'd be happy to answer any questions I can and follow up with those I, or the experts from the Public Service Commission and from the industry following me on this bill or the next one, which is LB523, cannot answer. I am happy to work with the committee, if you feel it is necessary, but do encourage you to advance LB522 to General File. Thank you. [LB522]

SENATOR FRIESEN: Thank you, Senator Walz. Are there any questions from the committee? Seeing none, thank you for your introducing the bill. Proponents who wish to come testify? LB522? Are there any proponents for LB522? Seeing none, are there any opponents to LB522? Seeing none, is there anybody who wishes to testify in a neutral capacity on LB522? Seeing none, you're willing to close. Senator Walz waives closing. We will now close the hearing on LB522, and we'll open the hearing on LB523. [LB523]

SENATOR WALZ: Oops. [LB523]

SENATOR FRIESEN: Welcome back. [LB523]

SENATOR WALZ: (Exhibit 1) Thank you. I am going to try to get through this without sneezing. Thank you, Chairman Friesen and the members of the Transportation and Telecommunications Committee. Again for the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent District 15, which is all of Dodge County. I have brought forward LB523 with a collaborative effort of my office and the Center for Rural Affairs. I'll skip the reasons why I want expanding rural broadband is important, since you just heard my argument. And we'll go straight to the bill. LB523 makes reforms to the Nebraska Internet Enhancement Fund, known in the industry as NIEF. In 2001, NIEF was created to provide financial assistance for infrastructure projects that bring broadband service to underserved areas. Grant applications are required to demonstrate that the service provider is an eligible service provider of telecommunications, video, Internet, or other related services, as determined by the rule of the commission. This bill would strike out the provision that the applicant must provide matching funds of at least 25 percent of the matching cost. My reasoning for taking this out of statute is that some communities or providers may not be able to come up with the matching 25 percent upfront and, therefore, inhibits the ability that the community can enhance their services. This would not prohibit the Public Service Commissioner from requiring matching funds to issue grants, but it would take out the mandatory matching funds in the state statute. After introducing this bill, my office has been in discussions with the Public Service Commission and the industry to figure out a way to make this program more effective. When the program was started in 2001,

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\$250,000 was allocated the first year. And then an additional \$100,000 was allocated the following year. The remaining funding has primarily consisted of proceeds from dark fiber leases, which has not gathered much revenue. No grant has been issued since 2012, and only approximately \$660,000 has been issued in the lifetime of the program. In discussion with the key players, I am bringing forth an amendment to the bill. AM231 would roll NIEF into Nebraska Universal Service Fund, also referred to as NUSF from a cash fund that the state is not looking to reduce. NUSF is prohibited into going into communities. It must be used outside city limits, but currently cannot give state or federal money. NIEF lacks funding because of the lack of black fiber money coming in. NIEF predates the broadband push in the NUSF. Most grants are awarded in \$50,000 increments, and that's too little to invest in a project. NIEF has used approximately \$660,000 since its adoption in 2002, whereas NUSF funding is much higher, including the possibility of contribution reform being worked on by the Public Service Commission. AM231 would keep the same language of the NUSF and NIEF, but allow NIEF to use NUSF dollars to do projects inside communities. The amendment would keep the strike of the mandatory 25 percent matching funds by the eligible service provider of telecommunications but eliminates the strike that restricts the ability to use grant funding in multiple years, which the Public Service Commission will be able to explain more after me. The biggest problem that we face for both the Nebraska Universal Service Fund and NIEF, going forward, regardless of whether LB523 is passed or not, is the dwindling revenue being created. The Public Service Commission has expressed to our office that contribution reform to put more money into the NUSF is in the works, and they brought...and they brought...and they thought it was likely that it would be done by January 2018. This would make more money available for the NUSF and would allow NIEF to be able to be rolled in without impacting what NUSF currently funds. The industry has concerns of passing this before contribution reform is complete because of the impacts it has on its providers and current projects they are working on. I think this is important to do so that our small towns can get the improvements they need to grow their community. I ask the committee to hold the bill at this time. That would give the Public Service Commission a year to pass contribution reform and work out other concerns regarding the matching fund requirements and others. I plan to incorporate other ideas with the committee, communities it affects, the industry, and the Public Service Commission over the interim, to find solutions on how to make NIEF useful for greater Nebraska. Thank you. [LB523]

SENATOR FRIESEN: Thank you, Senator Walz. Any questions from the committee? I know I share your concern with broadband access in the rural areas, and it's going to be a challenge getting it there. But anything we can do to try and get there, we will. Are there any proponents who wish to testify in favor of LB523? Welcome. [LB523]

TIM SCHRAM: (Exhibit 2) Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. I am Commissioner Tim Schram, spelled T-i-m, last name S-c-h-r-a-m, the chair of the Nebraska Public Service Commission, representing

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the 3rd District. I am here today to support LB523, as amended. The commission has administered the Nebraska Internet Enhancement Fund, or NIEF, since inception of the program in 2001. NIEF was created to provide start-up funding for economically viable and sustainable infrastructure projects to bring Internet and advanced telecommunications services to communities and counties where they are most needed. NIEF grants are awarded to counties or municipalities and their industry partner to construct and operate the project at completion. The commission typically awards grants in the amount of \$50,000; however, larger projects of exceptional merit have also been awarded. Over the life of the NIEF grant program, 13 grants have been awarded to various communities, counties, and cooperative government groups, including: the counties Cheyenne, Box Butte, Dawes, Nemaha, Harlan, Furnas, and Banner Counties; the communities of Broadwater, Chappell, Dix, Bushnell, and Elsie, along with numerous communities included in the Nebraska Cooperative Government group, including Humphrey and Schuyler. NIEF grant funds awarded to date total \$658,137.47. NIEF is funded by a portion of the profit of publicly owned dark fiber that is leased to private entities. In Nebraska, there is very little such dark fiber and, as a result, very few leases and very little funding for the NIEF grants. There were several years during the life of the NIEF grant program that there were no active dark fiber leases. The commission currently gets about \$40,000 annually into the NIEF for grants. As you have heard, the amendment to LB523 will merge NIEF into the Nebraska Universal Service Fund. The integrity of the grant program will be retained but under the umbrella of NUSF. Additional sources of funding will be available, making NIEF grants much more effective and enabling the program to truly be a tool of significant broadband development. Proceeds from dark fiber leases would now be put into the NUSF, earmarked for the Nebraska Internet Enhancement Grant Program. The amendment also removes the requirement of a 25 percent match by the applicant, removing any barriers to potential applicants. We appreciate the work of Senator Walz and her staff, and we thank the committee for its time and attention this afternoon. I would be happy to try to answer any questions you may have. [LB523]

SENATOR FRIESEN: Thank you, Commissioner Schram. Any questions for the commissioner? Seeing none, I...when you look at how much dark fiber is out there... [LB523]

TIM SCHRAM: Um-hum. [LB523]

SENATOR FRIESEN: ...if regulations were eased some, do you think there would be a lot of demand for what's currently out there? [LB523]

TIM SCHRAM: Demand for... [LB523]

SENATOR FRIESEN: For leasing dark fiber. [LB523]

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TIM SCHRAM: That is a potential to look at, yes, that possibility. Right now, like I said in our testimony, we don't have a...we're not aware of that many dark fiber leases in the state of Nebraska. [LB523]

SENATOR FRIESEN: And because it has been so difficult to get a lease, I think, is...nobody has really wanted to take that up. But if we made those...there is a lot of dark fiber out there. It's just whether or not that it's needed where it's at. And so I...I don't know if it would be a...you know, it would help us down the road, but if we have to change some of the policy, so. [LB523]

TIM SCHRAM: It's certainly an avenue to look at. [LB523]

SENATOR FRIESEN: All right. Thank you, Commissioner. [LB523]

SENATOR GEIST: I have... [LB523]

SENATOR FRIESEN: Senator Geist. [LB523]

SENATOR GEIST: As a proponent, I am just curious if you feel that there is enough, when you merge these two interests together in this fund, to support both adequately, the telecommunications and data. [LB523]

TIM SCHRAM: That's a good question and, as some of the testimony you've heard today, our NUSF fund continues to decline... [LB523]

SENATOR GEIST: Um-hum. [LB523]

TIM SCHRAM: ...due to shifts in technology. The commission is working on that. As Senator Walz stated, the commission is working on contribution reform in docket NUSF-100, and we recognize the need to stabilize that fund and are working towards that goal. And we'll be...the commission will be working very hard this year to do that. [LB523]

SENATOR GEIST: Okay, thank you. [LB523]

SENATOR FRIESEN: Thank you, Senator Geist. Senator Bostelman. [LB523]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Commissioner, a question on the value or the amounts that have been awarded thus far. Was...on the \$50,000, was that there wasn't enough

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in the grant to be asked for, or was it the match that you think kind of kept communities or areas from seeking the grant in the first place? [LB523]

TIM SCHRAM: Well, certainly any time you administer grants, when you have a cost match, it certainly leverages that fund. You know, depending on the size of the projects and how much infrastructure has to be placed, some of the projects are very small, and the amount of grants that we awarded did accomplish the project. [LB523]

SENATOR BOSTELMAN: And just to follow up real quick, for me to...my clarification for myself, these grants would be used for outside of small communities, or are these primarily for small towns, small cities? Or what about those of us who live in the rural areas that don't have access? [LB523]

TIM SCHRAM: Towns or villages or recognized groups. And currently, under the NIEF program, they have to partner with either a city, county, village, or a recognized group that's looking to enhance broadband in their communities. [LB523]

SENATOR BOSTELMAN: Thank you. [LB523]

SENATOR FRIESEN: Thank you, Senator Bostelman. I see there are no more questions, so thank you for your testimony. [LB523]

TIM SCHRAM: Thank you. [LB523]

SENATOR FRIESEN: Other proponents for LB523. Welcome. [LB523]

JORDAN RASMUSSEN: (Exhibits 3 and 4) Good afternoon, Chairman Friesen, members of the committee. My name is Jordan Rasmussen, J-o-r-d-a-n R-a-s-m-u-s-s-e-n, and I am testifying on behalf of the Center for Rural Affairs. As Senator Walz has reported, the Internet is now considered a basic human right. However, rural areas are at a disadvantage when it comes to accessing broadband. In 2014, 90 percent of Lincoln residents subscribed to Internet at home. This number falls between 72-77 percent throughout the rest of the state, often with only one provider option available. This existing digital divide places Nebraska's rural communities at a disadvantage in the realms of healthcare, education, and economic development. Without broadband access, the advantages of telehealth are lost, leaving rural residents without more adequate access to healthcare providers and services. Limited broadband access also hinders Nebraska's students and educators. Broadband can provide rural communities with the option of virtual education to fill the gap with educational needs and availability. With a broadband

connection, the student can learn a foreign language, take advanced-placement courses, or enroll in a university class, providing students with the knowledge and skills they need to enter the college or the workforce. Further, broadband access boosts rural economic development. The University of Nebraska reports that 60 percent of Nebraska businesses reported selling goods or services online. The same report shows that access has a positive impact on jobs, with 364 respondents reporting a net increase of 654 jobs, due to using the Internet. For more than two decades the state of Nebraska has formally worked to bring Internet access to all Nebraskans. In 1997 the Universal Service Fund was authorized to ensure that all Nebraskans have comparable access to telecommunications services at affordable prices. The broadband program, within the Service Fund, is designed to provide specific and targeted broadband support to unserved or underserved areas of the state, specifically where there are fewer than 4.5 homes per square mile. The Universal Service Fund is funded through a 6.95 percent surcharge on instate retail communications revenue. Four years later, the Nebraska Internet Enhancement Fund, NIEF, was created to provide financial assistance for infrastructure projects that bring broadband services to underserved communities. Seed dollars were appropriated by the Legislature and through dark fiber leases, as has been discussed. Under the fund, the applicant is required to provide matching funds of at least 25 percent for the project. Most awards have been under \$50,000, and only 13 projects, in 8 counties, have been received. The last was funded in 2012. In recent years, the utilization of NIEF and the USF broadband program have declined due to funding and project limitations. Addressing the challenges of the funds limited in Nebraska Internet Enhancement Fund and the parameters placed upon the Universal Service Fund broadband program, LB523, pending amendment, offers a solution. By transitioning from a freestanding program to one housed within the Universal Service Fund allows funding and flexibility to come together for the benefit of Nebraska's rural communities and residents. LB523, as suggested with amendment, provides the Public Service Commission the capacity to grant the funding needed for...to bring broadband to Nebraska's rural populations. Thank you for your time, and I welcome your questions. [LB523]

SENATOR FRIESEN: Thank you, Ms. Rasmussen. Are there any questions from the committee? When you surveyed the rural residents, obviously, I think, some areas...we advertise a lot that we have broadband service... [LB523]

JORDAN RASMUSSEN: Yes. [LB523]

SENATOR FRIESEN: ...to a high percentage of our population. But it doesn't meet the terms of what we would consider high speed. Would that be...set? [LB523]

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JORDAN RASMUSSEN: Correct. Yes, yes. I believe, in the document they provided, there was a more specific...so it...there's a note that's 51 percent lack the...meet the minimum speeds for Nebraska. So that's a pretty...that's a pretty significant gap that... [LB523]

SENATOR FRIESEN: So when you see the satisfaction dropping in all of the different questions... [LB523]

JORDAN RASMUSSEN: Yes. [LB523]

SENATOR FRIESEN: ...it kind of...is it due to lack of regulation? Are we letting companies get by with something? Or is it just not...they just don't have access to high speed? [LB523]

JORDAN RASMUSSEN: I am not sure that I can answer that fully. My perception is that it is mostly there's only one provider so they...they're not going to spend the extra dollars to provide the services needed, so... [LB523]

SENATOR FRIESEN: Okay. All right, thank you for your testimony. [LB523]

JORDAN RASMUSSEN: Thank you. [LB523]

SENATOR FRIESEN: Other proponents for LB523. Seeing none, are there any opponents to LB523? Welcome. [LB523]

ERIC CARSTENSON: Thank you very much. Senator Friesen, my name is Eric Carstenson; that's E-r-i-c, Carstenson is C-a-r-s-t-e-n-s-o-n. I am the president of the Nebraska Telecommunications Association. I am here today to express our opposition to LB523. But I have to applaud Senator Walz; it is a very important concept that she's brought to you. We need to find ways to cooperate to bring more broadband throughout Nebraska. There's just one particular portion of LB523 that required me to sit down in opposition. When you check the box on the green sheet, you have to make a decision: Is this going to be for or against? And the portion on...of the bill that talks about the 25 percent match requires me to come before you and testify in opposition. That match, we think, is important because with that match, first of all, you extend the government money that's...that much further. And the other reason is because you get a much better quality product if there...if the company that provides the service has some skin in the game. And you protect the community by making sure that that company has some responsibilities, too. The commission is perfectly situated to make those kinds of judgments. We just think that you should give some guidance and keep the 25 percent matching in the

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legislation. With that, we look forward to working with you and Senator Walz, going forward. And that concludes my testimony. [LB523]

SENATOR FRIESEN: Thank you, Mr. Carstenson. Any questions from the committee? Just one from me. I mean, is 25 percent the magic number? Or is there some other number that would... [LB523]

ERIC CARSTENSON: There's nothing magical about 25 percent. It could be more; it could be less. It's the number that the commission has used, that has been in the statute. The important part is, I think, to be sure that there is some financial stability from the participating company. [LB523]

SENATOR FRIESEN: A little bit of skin in the game. [LB523]

ERIC CARSTENSON: Absolutely. [LB523]

SENATOR FRIESEN: Okay. Seeing no other questions, thank you for your testimony. [LB523]

ERIC CARSTENSON: Thank you. [LB523]

SENATOR FRIESEN: Any other opponents who wish to testify. Seeing none, is there anyone who wishes to testify in a neutral capacity on LB523? Seeing none, you're welcome to close. [LB523]

SENATOR WALZ: I am going to waive; thank you. [LB523]

SENATOR FRIESEN: You waive closing. With that, we will close the hearing on LB523. And I will turn the chair over to Senator Smith. [LB523]

SENATOR SMITH: Thank you, Chairman Friesen. And, as we transition, we are going to begin our opening on LB573, to be introduced by Senator Friesen. It relates to changing the local competition determinations and rate list filing requirements under the Nebraska Telecommunications Act (sic: Nebraska Telecommunications Regulation Act) and provide for a nonregulated activity. Welcome. [LB573]

SENATOR FRIESEN: Thank you, Vice Chairman Smith and members of the Transportation and Telecommunications Committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent the

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34th Legislative District, and I am here today to introduce LB573. LB573 would modernize the telecommunications statutes to reflect the current competitive environment in which telephone companies operate. When current statutes were enacted 30 years ago, telephone companies operated as monopolies, and regulation by the government was needed to ensure that the customer paid reasonable rates and received good service quality. Since statutes were enacted, a lot has changed. The Telecommunications Act of 1996, enacted by Congress, opened the local market to competition. Wireless services exploded to the point where virtually all adults, most teens, and even many preteens have a wireless phone. With this competition, the traditional phone companies' market share has dwindled substantially and is a fraction of what it once was. Given this level of competition, it does not make sense to regulate those companies that serve a small portion of the market, while leaving companies that serve a much larger portion of the market unregulated. LB573 will provide those traditional telephone companies with a path towards deregulation so that they may be treated the same, from a regulatory perspective, as other providers of telecommunications services. Thank you for your time and consideration of LB573, and I would be happy answering questions you may have. [LB573]

SENATOR SMITH: Thank you, Senator Friesen, for your opening on LB573. Do we have questions from the committee? I see none. We now move to proponents of LB573, those wishing to testify in support of LB573. Welcome. [LB573]

ANN PROCKISH: (Exhibit 1) Thank you. Good afternoon, Vice Chair Smith and members of the Transportation and Telecommunications Committee. My name is Ann Prockish; that's spelled A-n-n P-r-o-c-k-i-s-h. I am the governmental affairs director and registered lobbyist for CenturyLink, and I am testifying today in support of LB573. I would like to thank Chairman Friesen for offering this legislation. The current statutes were enacted 30 years ago at a time where consumers had only one choice for telecommunications service. These statutes do not contemplate the explosion of cell phone use, which are now ubiquitous in almost every person's life. Nor did the status contemplate the many alternative ways consumers communicate in their daily lives, such as: text, Snapchat, Skype, and e-mail, just to name a few. These are all forms of communication in addition to the voice communication that consumers use such as: wireless, VoIP, and traditional voice phone service. But the current statutes only regulate one of these communications platforms. The marketplace is still undergoing rapid change. In 2008 incumbent providers served approximately 53 percent of the market, with the remaining 47 percent split almost evenly between wireless and competitive providers. Today a little less than 50 percent of the adults in Nebraska use wireless exclusively for their voice telecommunications needs. Wire line competitive providers serve another 23 percent of the market with incumbent providers serving the remaining 27 percent. Clearly incumbent local exchange providers do not hold a dominant position in the market. The Nebraska Public Service Commission's 2016 annual report to the Legislature shows that there are 41 incumbent local exchange carriers and 105 competitive local exchange carriers certificated in the state. The report states that Cox Nebraska Telecom,

LLC, a competitive local exchange provider, is the largest carrier in the state in terms of access lines, and that 93 percent of access lines in the state have competitive alternatives. I believe these statistics reflect only wire line providers in the state of Nebraska, even though the commission's report does not state that. But while the business environment has changed, the regulatory environment has not. Currently there is no regulation of wireless carriers, which have the largest share of the market, while there is light regulation of competitive providers and significant regulation of incumbent providers. Given the highly competitive marketplace, it does not make sense to continue to regulate those companies that are providing voice service to less than 30 percent of the market. The marketplace can and does provide the necessary regulation. Better put, the consumer is the regulator in the competitive marketplace. If consumers are dissatisfied with their service or rates, they can vote with their wallet and choose to receive service from another provider. It happens every day. Regulation comes at a cost, and that cost is not borne equally among all the providers of voice telecommunications service in the state. Let's level the playing field so that all providers have an equal chance to succeed. Free from the burden of regulation, carriers can then invest in the networks and bring additional services to consumers and economic development to the state. In short, if you modernize the regulations, consumers will receive more modern service. LB573 will help create that level playing field for all providers of voice telecommunications service in the state, which will promote consumer choice, encourage fair and reasonable competition among all providers, and promote investment. This bill provides more focused tools for the commission to determine whether exchanges are competitive and creates a time line to make that decision. It is a streamlined step to ensure those areas that have competitive alternatives no longer are subject to retail voice regulation. The legislation also allows the Public Service Commission to reregulate incumbent providers in the unlikely situation that competitive environment changes and competition is reduced. In addition, there will be no impact on a carrier's obligation to interconnect with other carriers and provide wholesale services. In closing, many other states in the country have taken steps to modernize their telecommunications statutes to reflect today's marketplace. These states recognized that given the different ways that consumers buy and use technology, modernizing outdated statutes would allow companies to invest more in the products and services consumers want. A number of states close to Nebraska, such as Iowa, South Dakota, Missouri, and Colorado, have modernized their statutes over the last 10 years. On a broader scale, CenturyLink operates as an incumbent local exchange provider in 37 states, and 22 of those states have removed regulatory barriers to allow all carriers to compete equally for customers. Since states have been moving towards modernizing their telecommunications statutes, there have been no instances where rates have been increased dramatically or service quality has dropped. In addition, there have been no instances where the state felt the need to revert back to regulation. Simply put, market regulation works. Thank you for your consideration of LB573, and I will be happy to answer any questions. [LB573]

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SENATOR SMITH: Thank you for your testimony. Do we have questions from the committee? Ms. Prockish, I have a couple of questions. And just towards the end of your testimony, you talked about some of the surrounding states and that the trends that are taking place to modernize statutes...moving towards more regulation or less regulation? [LB573]

ANN PROCKISH: We move towards less regulation. [LB573]

SENATOR SMITH: Okay. And how does that seem to be working out? And what are some of the outcomes of those trends? [LB573]

ANN PROCKISH: It seems to be working out well. With the statutes modernized and the regulatory burdens and barriers coming down, we're more able to compete effectively for customers and have been able to stake, you know, reduce that drop or loss in access lines that we've been experiencing prior to that. [LB573]

SENATOR SMITH: So you're not seeing that the consumer is at a disadvantage from those changes? [LB573]

ANN PROCKISH: No, they are not disadvantaged. [LB573]

SENATOR SMITH: Okay, thank you. Further questions from the committee? I see none. Thank you. I am sorry. Did you have? Senator Briese. [LB573]

SENATOR BRIESE: Thank you for being here. Just a follow-up on your question. When you say consumers haven't been disadvantaged, how do consumer costs compare in those deregulated states versus the ones maintaining the regulations? [LB573]

ANN PROCKISH: As I indicated in my testimony, the rates have not...or have been increased dramatically. You're not seeing where, once the statutes have been modernized and regulations have taken away, that the incumbent carriers are going in and jacking up their rates, because the marketplace is regulating that. We're...a lot of other service providers out there, we have to keep in mind what they're charging for their service before we can go in and raise our rates. [LB573]

SENATOR BRIESE: Yeah, I noticed that your testimony was they haven't increased dramatically. I was just curious if they have increased at all. [LB573]

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ANN PROCKISH: Yeah. There have been minor increases, but those are just normally done through the normal course of business, not as a result of the reduced regulation. [LB573]

SENATOR BRIESE: Okay, thank you. [LB573]

SENATOR SMITH: I see no further questions. Thank you for your testimony. [LB573]

ANN PROCKISH: Thank you. [LB573]

SENATOR SMITH: All right. We move on to the next proponent of LB573. Welcome. [LB573]

ERIC CARSTENSON: Thank you. Senator Smith and members of the Transportation and Telecommunications Committee, my name is Eric Carstenson; that's E-r-i-c, Carstenson is C-a-r-s-t-e-n-s-o-n. I am the president of the Nebraska Telecommunications Association. We have reviewed LB573, and we are here to present our support for the bill. We're seeing deregulation in communities with multiple telecom providers all across the country. And the NTA would urge this committee to consider similar deregulation in populated communities with well-established competition throughout Nebraska. That concludes my testimony. [LB573]

SENATOR SMITH: Thank you, Mr. Carstenson. Questions for Mr. Carstenson from the committee? I see none. Thank you. Next proponent of LB573. Seeing no additional proponents, we move to opponents, those wishing to testify in opposition to LB573. Welcome back, Commissioner. [LB573]

TIM SCHRAM: (Exhibits 2 and 3) Thank you. Good afternoon, Vice Chair Smith and members of the Transportation and Telecommunications Committee. I am Commissioner Tim Schram, chairman of the Public Service Commission, representing the 3rd District. Spell my name...sorry for that. First name T-i-m, last is S-c-h-r-a-m. I am here today to testify in opposition to LB573. As drafted, this bill would remove the commission's authority over rates, terms, and conditions of telecommunications service, the result of which would be harmful to consumers. We agree that, in a competitive market, certain regulatory requirements could be lifted and carriers should be free to enjoy more pricing flexibility. However, that mechanism exists in our statutory framework now. Nebraska's statute, Section 86-126 states, "...the commission may limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation." We have not been asked to limit, remove, or waive regulatory requirements for a carrier under that section. However, it is an avenue that carriers could pursue. We have, in fact, declared the Omaha market to be competitive and, because of that, carriers in that market enjoy pricing flexibility, with only 10

days notice requirement for any rates. No provider has asked for similar relief in other areas of the state. There are mechanisms that currently allow providers to petition for a lighter form of regulation, on a case-by-case basis, that are not being used. Significantly, we are concerned about the impact of this bill on consumers and businesses. The legislation, as proposed, would remove the commission's ability to resolve consumer complaints relative to billing and service issues. We feel very strongly that consumers still need the commission to be an advocate for them. During the last fiscal year, the commission assisted consumers in resolving 287 consumer complaints relative to local exchange carriers resulting in over \$42,000 in savings to those consumers. The year prior, the commission assisted consumers with 276 complaints resulting in over \$10,000 in savings to consumers. Notably, Omaha and Lincoln, where these carriers have the highest number of subscribers, would be automatically deemed deregulated by LB573. Further, deregulation of the commission's service quality oversight could also have severe negative consequences. The commission needs to make sure that all carriers' networks are able to complete calls to 911 and that calls to rural areas are being completed. We cannot rely on the carrier to self-regulate such important functions. Actual, enforceable rules are necessary to make sure that core emergency functions work properly. Finally, we recognized, in our NUSF-108 docket, that there has been a significant decline in investment levels by price cap carriers over the last few years. While our universal service mechanism was designed to incent carriers to invest in their networks, we believe some price cap carriers may have been able to use the commission's mechanism to mask losses in competitive areas and inflate their need for universal service support. We are currently working on reform to address this concern. Incidentally, the FCC also recognized this and recently overhauled the federal price cap carrier distribution mechanism. Given this data and the reform the commission is undertaking, we would encourage you to wait on deregulating the market until we know that carriers are making the needed investments in their networks. However, if you do move this bill forward, we would strongly recommend some modifications. As written, Section 3 defines competitive local provider as a company offering a telecommunications service by which there are alternative services available without regard to technology employed. This definition is broad enough to include wireless, satellite, and wired technology. Satellite telecommunications service, we have been told, is available everywhere in Nebraska. However, we know that there can be limitations because of weather, vegetation cover and capacity, even though the providers claim to have the ability to serve everywhere. Similarly, certain wireless carriers claim to cover the entire state, even though we know that a number of consumers do not have access to wireless service, and coverage is far from ubiquitous. Section 3, together with Section 4 of the bill, would remove the commission's jurisdiction over rates, terms, conditions, definitions, and standards of local exchange retail telecommunications service provided by a competitive local exchange carrier. These two sections would mean the commission does not have jurisdiction over rates, terms, conditions of service anywhere in the state. We don't believe that this is the intent of the bill, given the language in Section 5 of the bill. We think the intent of the measure was to relieve providers of oversight if the triggers are met in Section 5. If that is the case, then Section 3 should be modified to spell

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that out. We would also recommend some changes in Section 5 to the bill. First, in subpart (2), the term "political subdivision" could include sanitary improvement districts, water districts, learning communities, school districts, and entities created pursuant to the Interlocal Cooperation Act. We believe the intent of the drafters was to include incorporated cities and villages or maybe even county boundaries. We'd recommend that the term be defined. We would also recommend setting this standard at the census block level as that is the geographic unit used to determine state and federal universal service fund support. Finally, we strongly recommend removal of subpart (3) in Section 5, which contains the 75 percent residential household trigger for determining whether all of the provider's incumbent territory is competitive. We believe this provision will harm consumers living in our rural areas, which could still have no practical choice in provider, even though their area would be deemed competitive. Adding to this concern is the ambiguity of the commission's continuing authority to impose any carrier of last resort obligations on the providers. If not, consumers in some areas could be left without telecommunications services altogether. The bill should be amended to clarify the commission's ability to require providers to serve customers within their certificated areas upon reasonable request and that the provider of last resort cannot discontinue service without an alternative provider in place. The commission would like to thank...would like the opportunity to work with the committee to discuss reasonable regulatory framework in truly competitive areas. I would be happy to answer any questions you may have. And also, attached to our testimony is some information on service outages by exchanges. So that's also been attached. [LB573]

SENATOR SMITH: Thank you, Commissioner Schram. Do we have questions from the committee for Commissioner Schram? Senator Geist. [LB573]

SENATOR GEIST: Go ahead, okay. I do have a question. I think I have a few, but I'll just keep it at one for now. You said, on the last page of your testimony, that you would recommend setting the standard at the census block level, as opposed to the exchange level. And I just have a question about that. Do those census block levels change with the census? [LB573]

TIM SCHRAM: They would. Currently...the last round of funding from the FCC, CAF-II funding, Connect America Fund... [LB573]

SENATOR GEIST: Um-hum. [LB573]

TIM SCHRAM: ...the FCC used, for the price cap carriers, support based upon census blocks. [LB573]

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SENATOR GEIST: Okay, but if it changed every ten years, would you have to change your administrative needs every ten years to accommodate those different...that's such a small...such a small area to regulate. I am just wondering... [LB573]

TIM SCHRAM: Yeah. You know, in areas of Nebraska where there's rapid growth, we would have to make those changes, you know. [LB573]

SENATOR GEIST: Um-hum. [LB573]

TIM SCHRAM: In some of the rural areas where we don't see a lot of movement in population, you know, it would be based upon the geographic area. [LB573]

SENATOR GEIST: Okay, thank you. [LB573]

SENATOR SMITH: Senator Bostelman. [LB573]

SENATOR BOSTELMAN: Thank you, Mr. Vice Chairman. Mr. Commissioner, thank you for coming today, testimony. [LB573]

TIM SCHRAM: Um-hum. [LB573]

SENATOR BOSTELMAN: A couple questions and one question not...I live 32 miles from here, in the country. And getting telephone communications, satellite communications, that's pretty tough. One of my concerns is...with this testimony has been given that: open it up to the market, the market will bear itself out, competition will be there. I am concerned about our rural areas, that there will not be companies that will want to service those areas. Could you speak to that? [LB573]

TIM SCHRAM: The commission is concerned about the rural areas in Nebraska and the value of getting better broadband to those areas for the economic stability of the state. We have seen that, within the cities, and the way this bill is written, and to follow up Senator Geist's question, it's based on exchange. And what the commission sees is, is within their towns we have lots of competition, whether it's the local landline carriers and also cable--franchise cable companies in those towns. Once you get beyond the city limits of those towns, you could be down to one carrier. And granted, there is wireless service available, and there is satellite available, as you mentioned. But based upon topography and weather and everything else, the reliability and, if our goal is for ubiquitous service, then it takes infrastructure that's land-line based. [LB573]

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SENATOR BOSTELMAN: Well, certainly, because we live just outside of that distance from that, to "hardwire" us in. And in other parts of the state, I am sure it's going to be significantly more and a lot more difficult to reach those areas. I guess the other question I have, and perhaps you can respond to, is competition will sort out itself, in a sense. And I guess, you know, for me to change carriers from one to another, my phone line from one...we do have a landline at our house, as well as we have cell phones. So for us to change from this carrier to this carrier can be challenges with our cells. It could be troublesome and, in a sense, if you...especially if you have a business associated with that. Could you speak to that just a little bit? Do you see that as an issue now? Is it easier for, if you have problems with a carrier, to be able to change to a different carrier, a different service provider? [LB573]

TIM SCHRAM: You should have number portability that, even if you go to a different carrier, you should be able to keep the same phone numbers. So the issue of rebranding your business, you can request that your number, even if you change carriers, can be ported to that carrier. [LB573]

SENATOR BOSTELMAN: So service quality, you think, should probably remain the same, as far as if you have issues with them, with a certain carrier. Your allowing competition between different service providers should take care of some of that, as far as issues that we may have. [LB573]

TIM SCHRAM: Where there is competition that exists, and in...we see it in the urban markets of Omaha and Lincoln where the consumers have lots of choices, the commission is concerned about rural areas outside of small towns, as we discussed earlier. [LB573]

SENATOR BOSTELMAN: All right, thank you. [LB573]

SENATOR SMITH: Further questions for Commissioner Schram? Oh, Senator Briese. [LB573]

SENATOR BRIESE: Thank you, Senator. And thank you for being here again. A previous testifier said that, something to the effect that free from the burden of regulation, carriers could then invest in the networks and bring additional services to consumers and promote economic development in the state. Do you disagree with that comment? [LB573]

TIM SCHRAM: I don't entirely disagree with it. What I would say is that the further removed the state regulation is from the carrier...and I have to tell you, as a commissioner, most of the calls I get are not voice related. As far as voice service, if a constituent calls, they want to know: When are we going to get better broadband? And that...the further that the carrier is removed

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from the regulatory body, I believe, weakens the commission's influence of our goal of pushing broadband into rural areas. [LB573]

SENATOR BRIESE: Could you explain that a little further? Or how does it do that? Or why does it do that? [LB573]

TIM SCHRAM: Well, I think we have a lot better relations with the carriers...Government Affairs folks. Today, even though...you have to realize that states are preempted from broadband and Internet. And virtually, in a lot of the...a lot of consumers today have bundled...bundled services. They...when I say bundled, they may have landline, voice, Internet, and, where it's available, TV. If the commission is removed from regulatory of all three of those components, I think it dilutes the commission's influence, working with those carriers, to get broadband into the remote rural areas. [LB573]

SENATOR BRIESE: Thank you. [LB573]

SENATOR SMITH: I see no further questions from the committee. Thank you, Commissioner. [LB573]

TIM SCHRAM: Thank you. [LB573]

SENATOR SMITH: The next opponent of LB573. Welcome. [LB573]

ANNE BOYLE: Thank you. [LB573]

SENATOR SMITH: It's good to see you again. [LB573]

ANNE BOYLE: It's great to see you; it always is. Hi, my name is Anne Boyle. My first name is Anne, A-n-n-e; my last name is Boyle, B-o-y-l-e. And I am here because a long time ago, in my world, I became a public service commissioner. Then I retired two years ago because...I wanted to because I don't want to be 100 years old and still be on the commission. The reason I am here, though, is because I am disturbed by this--I don't know what you call it--something for the big-shot telephone companies? We are called the Nebraska "Public" Service Commission, so we are there for everybody in the public. And we bought, we...when I was there, we had problems with carrier to carrier. We had...also we had problems with a lot of people who were just people who did not know what to do because they couldn't find anybody to help them when they had problems with their phones. And so...and I can tell you one thing. One time, in...we went up to Valentine, Nebraska, because at that time...it was not called CenturyLink at that time, but they

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had a hearing where a senator from Valentine lived at that time. And we had well over 100 people come in and complain about the services they were getting from what's now called CenturyLink. And the head of the CenturyLink, at the time, put his head down like this because he never thought they would have that many complaints from rural Nebraska, who were having hardly any telecommunications services. And at that time, after everything was done and said, the commission did not fine them. They told them that they would have to get in there, clean it all up, and do it quickly, because they had been just absolutely saying: we don't have...they don't...we only have so many people; therefore, we don't have to do it really bad or, really, they can just wait. It is obnoxious, and it is something that they should never have done. And it is something that I have never forgotten, because you cannot turn your back on the public. And I don't care if they live in Omaha, Nebraska, or if they live in Valentine or if they live in a small, tiny town; everybody has to be taken care of. I might...my concern about this is they don't want to come under the eyes of the Nebraska Public Service Commission because we...when we did not fine them, we told them: you get in here. Several days after--and it costs money, of course--but several days later, they came in to the commission, and they were with Commissioner Landis, and I was in there, too. And these were their lobbyists, and they were trying to...those lobbyists were trying to get us to say: Well, we won't do this much. And I, frankly, got so angry I said: You better get down on your knees and genuflect to this commission for what they did. And they did not ever, ever give you a big fine. So that's what we had to deal with then. And now what they're trying to do is saying: We don't have to come before the commission to do something to people who live here, because we're big. Their headquarters is in Denver, Colorado; they're big. I would be so disappointed if we did not stand up for the public, and we did not stand up, even between the big corporate telephone companies and for the smaller companies that are here in Nebraska. They've always had some problems, as well, with each other. We figured them out. But the bottom line is I don't think this is a good bill. And I know that it was said that a whole lot of states are doing something different. We're not a big state. And we have a lot of people who live in rural Nebraska, and we have a lot of people that live in Omaha. I am, I am from Omaha, and its population is almost \$400,000 or so...or dollars...oh, I wish so. No...400,000 people. We have a lot of people who are there in Lincoln...get anything they want. Not in rural Nebraska. I don't think it is a good policy to turn our backs on the places where you cannot get help and say: We have to wait, but we have to build something or we have to do this or that. We need to have the commission that can stand up and say: Well, you need to do it; you are going to do it. And I know that CenturyLink just, not that long ago--sometime in 2015, they had an outage, even in Omaha, for 13 hours. People could not get to anybody who would...if they needed an ambulance, if they needed anything else, they just had to wait. And that's their primary place in the city of Omaha. They have people there. So I am pleading. I hope that you understand I am so disappointed that they would even try to do this in a small state. We're not a big state, we're small compared to the...some of the other places where they are. And we don't have the time to help people. And we will not be able to help people who have no place else to go except to just say: I guess we have to just wait. So I am sorry to be so straightforward, but that's the way

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I always was. And I was on the commission for 18 years and, if it was the wrong thing to do, I said it. So I was trying to be polite, but can't do that when you are ruining people's lives. And thank you very much for the opportunity to speak to you. [LB573]

SENATOR SMITH: Well, Ms. Boyle, you have a good reputation of the number of years you stood on the Public Service Commission. And I know we have a number of new people here on the commission that may not have had a chance to work with you or know you, but you served the state very well on the Public Service Commission. I see we have former Commissioner Jerry Vap in the audience, as well, and I appreciate both of you for what you did for our state. And you served the state very well on the Public Service Commission. Let's see if have any questions for the...from the committee. I see none. [LB573]

ANNE BOYLE: Good. Thank you so much. [LB573]

SENATOR SMITH: Thank you. [LB573]

ANNE BOYLE: Um-hum. [LB573]

SENATOR SMITH: Next opponent of LB573. Welcome. [LB573]

JASON BROMM: (Exhibit 4) Good afternoon, Senator Smith, members of the Transportation and Telecommunications Committee. My name is Jason Bromm; that's J-a-s-o-n B-r-o-m-m. I am here today as executive director of the Nebraska Cable Communications Association. On behalf of Cable ONE, Cox Communications, Charter Communications, Eagle Communications, and Great Plains Communications, the Nebraska Cable Communications Association opposes LB573. While we understand the desire to deregulate aspects of the telecommunications industry to improve the business environment for Nebraska companies, the bill, as drafted, does not ensure protection of interconnection rights and obligations or the Nebraska Public Service Commission's oversight of the wholesale carrier relations to ensure a competitive, vibrant telecommunications market in the state. The cable industry supports safeguards to interconnection agreements and wholesale tariffs because, if an ILEC were to refuse interconnection or require unreasonable or asymmetrical terms, it would increase costs on competitors and hinder competition in the state. Such concerns, we feel, are not addressed in the bill as it stands today. The deregulation of traditional circuit-switched, local telephone service, without also addressing the potential to deregulate voices over IP, is incongruous. Also another concern is the possibility of the state Universal Service Fund being used to fund broadband services in an unregulated market with sufficient choices of service providers for the consumers. High cost support subsidies should not be provided in areas that have an unsubsidized carrier offering comparable service. We have talked to Senator Friesen as late as today. Appreciate his

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willingness continue to work on LB573. We also would like to be there at table, if there's any work committee groups or studies or anything going on. We're happy to help and be part of that conversation. But for these reasons that I've said, the association is currently opposing LB573. [LB573]

SENATOR SMITH: Thank you, Mr. Bromm. Questions from the committee? I see none. Thank you. Next opponent of LB573. Welcome. [LB573]

CRYSTAL RHOADES: Hello. I am Commissioner Crystal Rhoades, C-r-y-s-t-a-l R-h-o-a-d-e-s. I hadn't originally intended to testify but, based on some of the questions, I thought I might be able to be helpful in clarifying some things. The first thing that I want to explain is that you should think of the telecommunications network really as a highway and, as the different providers, as cars and trucks on it. So you may have Verizon and AT&T and CenturyLink and Cox all providing service in your market. But the reality is, is that they're all driving on the same network. They're all driving on the same highway. What that means is, is that while they may be able to provide competitive services to...at a retail level, they are buying from the same wholesalers, and they are, you know, engaged in these interconnection agreements, which you just heard the cable association speak to pretty eloquently. So I am not going to recover that. But what that means, in practical terms, is that if there are problems with that underlying network, and there's no one to make sure that the service is being adequately provided for and that protects consumers when there are billing issues, that creates a real deficit in terms of what the public can do if they experience problems with their carrier. And so the notion that the market can take care of all of this isn't wholly correct because the reality is, is that they're all sort of using the same network. Secondary to that, this idea that they can vote with their feet also is a bit of a fallacy. In 2015 there was a major 911 outage in Douglas County and Sarpy County. It took down 227,000 Verizon and AT&T and CenturyLink customers, collectively, because a CenturyLink cable was cut. If a bill like this were to pass, the commission would not have any ability to look into the cause of that event, nor would they have the ability to ask that carrier to test for redundancy or put in provisions to ensure that those kinds of accidents don't happen again. Finally, when we talk about, you know, consumers voting with their feet and competitive market, the idea behind that is that if you don't do a good job, people will leave you and, therefore, your company will lose business. Okay. But the reality is, is that the Nebraska Universal Service Fund actually compensates those that have these underlying networks, that own these underlying networks upon which all the traffic rides. We help to fund building those roads, right, that infrastructure? And so when they experience competitive losses because people have elected to go with a different service, it actually makes them eligible for additional public dollars to subsidize and underwrite the networks. So the idea that the consumers will regulate misconduct or negligence or bad service isn't wholly true because of the mechanisms that we have in place to ensure that there is enough money to build those networks. And so, as I heard your questions, I wanted to

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make sure that you were able to understand those various components. Does anyone have any questions? [LB573]

SENATOR SMITH: Thank you, Commissioner Rhoades. Senator Hilgers. [LB573]

SENATOR HILGERS: Thank you, Vice Chairman Smith. Thank you, Commissioner, for being here. I thought that was very well stated and informative. Just so I understand sort of what you're saying; a test of my understanding. So you're talking...there's the retail customers, which are the people who are using the telecommunications services, like members of the committee or yourself. And then there are wholesale customers, which might be the AT&T and Verizon, and they're purchasing, maybe, backbone services from something...someone like CenturyLink. [LB573]

CRYSTAL RHOADES: Right. [LB573]

SENATOR HILGERS: So I take your point that the retail customers, like us, would not necessarily have market pressure to bring to bear on the wholesale provider, like CenturyLink. [LB573]

CHRYSTAL RHOADES: Right. [LB573]

SENATOR HILGERS: What can you say as to the, the market response, if any, for the customers who are purchasing wholesale services? In other words, do the Verizons and AT&Ts of the world, do they put market pressure to bear on the wholesale providers in a way that maybe we wouldn't? [LB573]

CRYSTAL RHOADES: No, not really. And the reason for that is because they're only game in town. I mean these networks are incredibly expensive to build, which is why we help to build them through Universal Service Funds, both at the federal and the state level. And so what you really do end up having at the, you know, at the base, is you still have a monopoly. You still may only have one or, if you're really, really lucky, two but, in most cases, one provider that has that underlying infrastructure that can support those ride-along services. And that's...that's kind of where the rub comes. [LB573]

SENATOR HILGERS: Thank you. [LB573]

SENATOR SMITH: Thank you, Senator Hilgers. Further questions from the committee? I see none. Thank you for your testimony. [LB573]

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CRYSTAL RHOADES: Thank you. [LB573]

SENATOR SMITH: Next opponent of LB573. Seeing no additional opponents of LB573, we move to neutral testimony, those wishing to testify in a neutral capacity on LB573. Seeing none, Senator Friesen, you're invited to close on LB573. [LB573]

SENATOR FRIESEN: Thank you, Chairman Smith. I'll make it very brief. Obviously we're going to sit down with some of the questions that were raised yet and see if we can't work to a conclusion to address some of those concerns. And at that point, we'll have to make a decision on whether...how we want to proceed. So we are looking forward to working together with some of the parties and seeing if we can reach a conclusion. So with that... [LB573]

SENATOR SMITH: Thank you, Senator Friesen. And that closes the hearing on LB573. [LB573]

SENATOR FRIESEN: Thank you, Chairman Smith. And now we'll open the hearing on LB654. Welcome, Senator Murante. [LB654]

SENATOR MURANTE: Thank you, Mr. Chairman. For the record, my name is John Murante, J-o-h-n M-u-r-a-n-t-e. I am the State Senator for District 49, which includes Gretna and northwest Sarpy County, and I'm here today to introduce LB654. LB654 in its green copy really poses, for this committee and for the Legislature, a simple question which is: Which agency of government is best able to regulate political activity, in the specific, political robocalls? It is my belief that the Nebraska Accountability and Disclosure Commission, which governs and regulates political activity across the board, is the agency that is best suited for doing that. And the reason for that is simple. First of all, they have a tremendous amount of experience in regulating political activity, including the regulation of political robocalls. In point of fact, there are already pretty significant regulations on political robocalls within the Nebraska Accountability and Disclosure Act, but also they have a tremendous amount of experience with political activity broadly, and they understand what they're doing. They are an independent agency. They are nonpartisan. It is an agency that...whose executive director I have a tremendous amount of respect for. He is a person who, although he, Mr. Daley, regulates political activity, I can say that I have been observing the commission's rulings and behavior over a period of years and I have absolutely no idea what his political ideology is one way or the other, which is about as good of a compliment as I can give for a person in his position. With that said, political activity, in my view, should not be regulated by either (A) elected officials or (B) and in particular, elected officials who are elected on a partisan basis. And when I say partisan-elected officials, I don't mean that as a pejorative. I mean it simply to say that these are elected officials who have partisan primaries and are affiliated with political parties. In my view, that is not a place for political activity to be

regulated. So that's really the policy question which underlies LB654. I have done an extensive...I've had great conversations with both members of the Public Service Commission and the Accountability and Disclosure Commission about how best to effectuate that policy objective. We have been working on amendments that will ensure that there is no fiscal note. There's no cost to this bill, which is an absolute objective of mine, but while maintaining that fundamental goal that, in my view, all political activity, all political activity ought to be regulated by the Accountability and Disclosure Commission. And I cannot think of another example in state law where political activity is regulated by an agency other than the Accountability and Disclosure Commission. So there is an amendment that we are working on. It is not finalized yet. We don't have final approval on it. I do think that that amendment will...we'll get that hashed out very soon, probably within the week, because there is a lot of common ground on the subject matter. But that is the purposes of LB654 and why I'm here today. And when that amendment gets drafted and approved, we will submit it to this committee for its opinion. So thank you, Mr. President...Mr. Chairman. [LB654]

SENATOR FRIESEN: Thank you. Thank you, Senator Murante. Any questions from the committee? Seeing none, thank you. [LB654]

SENATOR MURANTE: Thank you. [LB654]

SENATOR FRIESEN: Any proponents wish to testify in favor of LB654? Seeing none, any opponents wish to testify on LB654? Seeing none, any wish to testify in a neutral capacity on LB654? Welcome, Commissioner. [LB654]

TIM SCHRAM: (Exhibit 1) Good afternoon. Chairman Friesen and members of the Transportation and Telecommunications Committee, I am Commissioner Tim Schram, spelled T-i-m, last name S-c-h-r-a-m, the chair of the Nebraska Public Service Commission, representing the 3rd District. I'm here today representing the commission in a neutral capacity regarding LB654. As you all know, currently the commission administers the Automatic Dialing-Announcing Devices, ADAD, Act. As part of the administrative and regulatory responsibility, auto-dialers register or permit their devices with the commission. The act also requires dialers to include certain identifying and contact information in the scripts they run and file copies of the scripts with the commission. Outside of telemarketing calls, the majority of auto-dialers are used to place what most people would characterize as political calls: calls from candidates, public action committees, or groups in support or opposition to a ballot initiative. All of these scripts are filed at the commission. The commission is comprised of five elected commissioners that run on partisan tickets. Administering and enforcing the act when it involves a dialer placing political calls places commissioners in a politically difficult position. Therefore, we understand the intent behind LB523. However, we share the concerns of the Accountability and Disclosure

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Commission, including the need to more clearly define political candidate, specify whether the requirements apply to federal candidates for office, and the need to deal with so-called issue calls. We also agree there is no need to duplicate the registration requirement with two agencies; one registration in Nebraska would be sufficient. I would be happy to try to answer any questions you may have. And a correction, I said LB523; it should be LB654. [LB654]

SENATOR FRIESEN: Thank you, Commissioner Schram. Any questions from the committee? Senator Hilgers. [LB654]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Commissioner Schram, for being here today. [LB654]

TIM SCHRAM: Uh-huh. [LB654]

SENATOR HILGERS: Just as a point of clarification on the topics that you've identified as being concern areas, are those the subjects of the potential compromise amendment that you're working out with Senator Murante? [LB654]

TIM SCHRAM: Yes, staff...we have had discussions with Senator Murante's staff on an agreeable amendment. [LB654]

SENATOR HILGERS: Okay. Thank you. [LB654]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Senator Briese. [LB654]

SENATOR BRIESE: Thank you, Senator. Thank you for being here. [LB654]

TIM SCHRAM: Uh-huh. [LB654]

SENATOR BRIESE: Does taking these calls out of your purview generate any cost savings for the commission? [LB654]

TIM SCHRAM: I don't know. I don't think we prepared a fiscal note on this. Election season we have a number of staffers that...commission staff that do dedicate quite a bit of time of keeping track of the scripts and processing auto-dialer applications. Those applications...the companies

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that have the devices do apply with the commission and register them. And we do formally act on those at our weekly meetings. [LB654]

SENATOR BRIESE: Thank you. [LB654]

SENATOR FRIESEN: Thank you, Senator Briese. Do you get a lot of calls during an election year? Do you get a lot of complaints from citizens for robocalls? [LB654]

TIM SCHRAM: The one thing I would say about robocalls, and I want to make the record very clear and I think I stated it at the interim study also, is I believe that Nebraska consumers need protection from them. If I do get calls, I generally direct them toward staff. You know, a lot of times somebody may call me and say: Commissioner, what do we need to do to be in compliance, a new candidate or something. And at that point I would refer all those calls to staff. [LB654]

SENATOR FRIESEN: Is there any system in Nebraska where you can block robocalls from your phone? (Laughter) [LB654]

TIM SCHRAM: I don't believe so. The "Do Not Call List," but you know that's a touchy thing about this issue is...and I'm not an attorney so...but I know you're getting into the First Amendment issues here which I'll leave it at that. [LB654]

SENATOR FRIESEN: I was just looking to make my phone not ring. (Laughter) [LB654]

TIM SCHRAM: Yeah. [LB654]

SENATOR FRIESEN: All right. Seeing no more questions, thank you, Commissioner, for your testimony. Any others wish to testify in a neutral capacity? Welcome. [LB654]

JACK GOULD: Thank you, Senator Friesen, members of the committee. My name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I came here to oppose the bill. (Laugh) But I have talked with Accountability and Disclosure and briefly with Senator Murante, and I'm anxious to see the amendment. Because I feel that the current bill, as it's in your hands, neglected to explain exactly how much of the Public Service Commission responsibilities were going to be shifted, and it was not clear whether Accountability and Disclosure had the resources to handle that. And when you looked at the fiscal note and you see a \$71,000 fiscal note, you start to wonder, what is it they got to...do they have to add and how much education does the staff have to have. Those things aren't very clear. And so we were in opposition in fear that this bill might perhaps not disclose all that

we would want it to. And I would propose one amendment to the bill. I think that when we are shifting those kind of responsibilities over to Accountability and Disclosure it would be very wise to also include the names of the donors to the independent committees that sponsor the robocalls, because, you know, there was concern mentioned about the public, but there's also a concern for the senators and the elected officials who are attacked by those ads. They're not always truthful, they hurt people, and it's to the responsibility, I think, of either commission to get that information out as to who is financing this stuff. And that might actually cut back so that some of you weren't getting all those robocalls if we actually could say who it is that's putting them out there. One other concern that was raised, and it was raised in the paper today, and I just would like to address it. I don't know whether you'll let me or not, but it's a question of conflicts...a statement of conflict of interest. Could I address that? Okay. [LB654]

SENATOR FRIESEN: Part of your neutral testimony? [LB654]

JACK GOULD: Am I neutral? This is neutral. My concern is in this situation Senator Murante did identify himself as the state director of Victory Enterprises, which deals a great deal...makes a lot of money in the state and also does a lot of robocalls in the state. Normally, if you are going to make any financial advantage comes to you, you would have to disclose that financial advantage and identify the conflict of interest. There's no evidence that Senator Murante is gaining any financial advantage from this. But it is in the best interest of all elected officials that if you're dealing with a company that you are that connected to, as a director or as a...even as a paid consultant or whatever, you should declare that and say in front of the body, just for the clarification of everyone involved, that you have that connection. And at that point, you know, you can bring the bill, you can vote on the bill, you can testify, you can speak on the floor. You're completely free, but it notifies the public that this conflict exists. And I just bring that forward because I think that is something that should be addressed. Thank you. [LB654]

SENATOR FRIESEN: Thank you. Any questions? Senator Hilgers. [LB654]

SENATOR HILGERS: Thank you, Mr. Chairman. I have a couple questions on two different topics. [LB654]

JACK GOULD: Sure. [LB654]

SENATOR HILGERS: The first is the one...the suggested amendment that you had which you suggested the donor's name should be included. Was that...are you suggesting the donor's name should be included on the call or as part of the submission to whatever commission regulates? [LB654]

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JACK GOULD: The filing. I mean... [LB654]

SENATOR HILGERS: In the filing. [LB654]

JACK GOULD: ...very much like you would report your campaign filings. Anything over \$250 you would have to report that. It would seem that anybody that wants to take part in the political game should also have to disclose who they are. If it's over \$250, report it. [LB654]

SENATOR HILGERS: Okay. Appreciate that. The second question is on the last bit of your...or a couple questions over the last bit of your testimony. [LB654]

JACK GOULD: Sure. [LB654]

SENATOR HILGERS: I've been reading your quotes in the paper for years and respect... [LB654]

JACK GOULD: Uh-oh. [LB654]

SENATOR HILGERS: ...your engagement on ethical issues, so I appreciate that. However, when I read that, I had one...my first concern was I'm in law. I own a law firm. [LB654]

JACK GOULD: Sure. [LB654]

SENATOR HILGERS: And that's actually an area that I am very familiar with, the law and operating a small firm. And so in your view, if I were to bring a bill that were to impact, say, the Supreme Court or to impact the State Bar of Nebraska, not to take away its regulatory authority, is that something that you would view would be a conflict? [LB654]

JACK GOULD: Well, I think it could be. I always looked back to Senator Raikes when he was in the Legislature and he was a farmer, among other things, but he always identified himself as a farmer. And then he would list all the ag bills because he felt that, you know, he could gain or lose by any of them and, therefore, he should declare it. Now I think, you know, the rule of thumb in your case, and I sure don't know your client list, but I would say, you know, if you see legislation that would affect a client, it wouldn't hurt to say you have a conflict. I mean you don't have to go into great detail. It just says that there might be a conflict here and I should be...make the public aware. [LB654]

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SENATOR HILGERS: And just so as I understand our current conflict rules, if you have a financial interest in the outcome of the legislation,... [LB654]

JACK GOULD: Right. [LB654]

SENATOR HILGERS: ...you should fill out the form. And then you make a subsequent decision whether or not to recuse yourself. In this instance, did Senator Murante fill out a form? Are you aware? Is that what you're suggesting he should have done? [LB654]

JACK GOULD: Well, no. This is what...Senator Murante did file his statement of financial interest and that's where I saw the fact that he was identified as the state director of the company. The only...the thing that he...that was the proper thing to do, by the way. He said he had income over \$1,000; he reported it. The problem is, and I think this was where he ran into conflict, he was not sure that the amount of money he was getting would be...would force him to file a conflict of interest statement. I guess my testimony is simply you file it regardless. Don't get into the fine...because, you know, it's very hard to show if a company gains financial advantage or even disclosure advantage, the state director can benefit from that. But when you try to put a price tag on it, it's pretty hard to say. So the best scenario is, for everybody, just say, I have a conflict of interest. Frank files it up there. Unfortunately, the public doesn't get to see that. You don't get to see the statements of financial interest or the conflicts of interest statements, but they will. Frank is working very hard over here and we're soon going to have all of that on-line, and that will cause me not to have to testify very often and I can stay home, so. (Laughter) [LB654]

SENATOR HILGERS: So this is my last takeaway. [LB654]

JACK GOULD: Okay. [LB654]

SENATOR HILGERS: Mr. Chairman, thank you for the indulgence here. So one point is we all should be thinking about, not just Senator Murante, but... [LB654]

JACK GOULD: Right. [LB654]

SENATOR HILGERS: ...being overcommunicative, communicative? Overcommunicate. [LB654]

SENATOR HUGHES: Talk a lot. [LB654]

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SENATOR HILGERS: There are a couple words that I have really struggled with; that's one of them (laughter). We overcommunicate with the public. And then secondly, that there's no...you're not suggesting here today that Senator Murante actually has some sort of financial interest in changing a... [LB654]

JACK GOULD: I (inaudible). [LB654]

SENATOR HILGERS: ...it's one regulation...or in proposing a change from one regulator to another regulator. [LB654]

JACK GOULD: I think I agree with you. (Laughter) I... [LB654]

SENATOR HILGERS: I think I do too, but I am not sure that's... [LB654]

JACK GOULD: No, I just...I think that it's best to make those things clear right at the start and then you don't have any more problems. And, by the way, I did not write that article in the paper that you're talking about. I was quoted but I didn't write it. [LB654]

SENATOR HILGERS: Fair enough. [LB654]

JACK GOULD: Okay. [LB654]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? You know, in what you bring up, I've seen in my couple years here already and it is difficult at times. I mean I'm a farmer, too, but when you talk about regulations on any of the different companies or whether you're talking taxes on cooperatives or property tax relief, it's... [LB654]

JACK GOULD: I'm interested in that. [LB654]

SENATOR FRIESEN: ...we all have a conflict of interest, I mean, but the interesting part sometimes is whether you feel you can still vote on the issue or you want to recuse yourself from voting. But I have never seen anyone, in my time here, not vote, so. [LB654]

JACK GOULD: Well, sometimes...I mean one way to gauge that is to look at if you're representing an agriculture community and your constituents in the majority are in agriculture, then you have a responsibility to speak. If it's something dealing with...if you're, let's say, run a supermarket and you're dealing with something, you're dealing with supermarkets, that may not

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affect everybody directly so you would have to, at that point I think, declare the conflict.
[LB654]

SENATOR FRIESEN: So when you're mentioning who pays for the robocalls, so if it's a political action group and they have hundreds of donors, do they all need to be listed, do you think, on there? Or do they just list the group that's funding it? [LB654]

JACK GOULD: Well, we require that with campaign filings. I mean everybody over \$250 has to be reported, and I think that's a fair guideline. I don't think these robocall companies are that big that there would be a list, you know, that long. I think probably there would be maybe a handful of people that made the donations to get the robocall out. But the public has a right to know who they are. I think that's the thing. [LB654]

SENATOR FRIESEN: Okay. I know on my meager salary, I'm not going to do that. Thank you.
[LB654]

JACK GOULD: (Laugh) Okay. [LB654]

SENATOR FRIESEN: Thank you for your testimony. [LB654]

JACK GOULD: Thank you. [LB654]

SENATOR FRIESEN: Any others who wish to testify? Welcome. [LB654]

FRANK DALEY: Thank you very much, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Frank Daley, Frank, F-r-a-n-k, Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. I'm appearing in a neutral capacity as to LB654 because there's an amendment that's coming somewhere along the line. I have to say that the green copy had...or has a lot of problems with it, but I'm assured by the...by Senator Murante and his staff that we're working on some of the issues that we saw as problematic. One thing I do want to note is that the green copy carries a high fiscal note. Based upon some of the discussions that we're having right now and some initial drafts of an amendment, our fiscal note could actually go down to probably as low as zero. So I did want to let you know about that. There was a question, I believe, about the PAC contributions and so forth and so on. Certainly if they're political action committees that are paying for robocalls or other types of committees that are paying for robocalls, they are listing their donors on their campaign statements. They may not be specifically associated with a particular call or series of calls, but that information is out there. That's not universal when we're talking about

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other types of entities that may be paying for calls, but that's the current state of the law, if you will. So at any rate, I do want to thank Senator Murante and his staff for being so willing to consider some of the issues involved in LB654 and thank the committee for the opportunity to testify today. [LB654]

SENATOR FRIESEN: Thank you, Mr. Daley. Any questions from the committee? Senator Hilgers. [LB654]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Daley. I have one question. From a policy perspective, do you think that this fits more naturally within the Accountability and Disclosure Commission or with the PSC? [LB654]

FRANK DALEY: Well, there are two issues. There's the policy perspective, but there's also the expertise perspective and how the regulated are treated. I understand the policy of moving certain categories of regulation from an entity that is elected on a nonpartisan basis to an entity which, by law, has a political balance and theoretically is nonpartisan. However, one of the concerns I have is that, number one, we get into a whole new regulatory area where we have no particular expertise, that is telephone automatic dialing equipment and telephone lines, and things like that. Currently, our only attachment to all of that is the disclaimer requirement realistically. The other problem I think you have, particularly with the green copy, is that you do not want to create a situation in which these calls are treated differently based upon content. So if you've got a call that's soliciting money for charity, it's regulated by a certain agency in a certain way, whereas if you've got a call that deals with a candidate, it's regulated in a different way. Again, whenever we're talking about political calls, we're in a First Amendment landmine field and we have to be awfully cautious about that. [LB654]

SENATOR HILGERS: Thank you. [LB654]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions for the committee? See, I was just looking for how do they not get my number (laughter)...something that (inaudible) on the list (inaudible). [LB654]

FRANK DALEY: I'll have to tell you, if the answer (sic) is how do I not get robocalls, the answer is if...no one has figured that out yet. [LB654]

SENATOR FRIESEN: All right. Thank you for your testimony. [LB654]

FRANK DALEY: Thank you very much. [LB654]

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SENATOR FRIESEN: Any others who wish to testify in a neutral capacity? Welcome. [LB654]

ANNE BOYLE: I have to fill this out again? But I will. My name is Anne Boyle. [LB654]

SENATOR FRIESEN: You can hand it in after you're done. [LB654]

ANNE BOYLE: Okay. Thank you. Anne Boyle, A-n-n-e B-o-y-l-e. Thank you for allowing me to testify. The reason I'm here is this. It seems to me that there's a lot of things in the air that says simply because you're elected as a Democrat, Republican, Independent, whatever, that's a bad thing. The Public Service Commission is not partisan and should not be partisan. In politics, partisanship should never be a part of what we do. When I was there, it wasn't. When I was there we dealt as friends but we also said...we had hearings and we had to decide what good and what was bad. And for the most part we found that we almost always agreed. The era that we're living in now has...and I will tell you this. My great-grandfather was a state senator in...when it was a Bicameral. My grandfather was a state senator here when it was a Unicameral. My mother's sister was a state senator later on. My mother's grandmother...or uncle was a state senator here. My father was a Douglas County Treasurer for 38 years in Omaha. I married my husband who was mayor of Omaha and is now a county commissioner. I grew up in politics. It was nobody had to tell me, I heard it and so did all of my 11 brothers and sisters. Therefore, when I hear people say this is...these are partisan issues and people who are elected partisan, that they're just going to go right with the party line, that is an absolute theory. It is not really right. My father and the people I knew, they were always friends. Sometimes they agreed; sometimes they disagreed. But it was never something so...saying, no, I'm a Democrat, therefore I'm going to only do what the Democrats want me to. I never did that and neither did my father who I grew up with and loved him dearly and died from cancer. Bottom line is, I would hope that all of us in this room would quit saying that if you are a Democrat or Republican, you're going to vote this way and you're going to vote this way. That is absolutely...should not happen. And that is happening across our country now. It's too bad. And it's not just because I'm a Democrat and the Democrats are down on the other end of the rope. However, it is because it is not worthy of our country. So we need to be able to talk to each other and say, yes, I agree; no, I think we have to do this. Compromise, but that's what we should be doing. We should not be doing this wholly terrible partisanship and think that we're all bad or all good. So thank you for the opportunity to say this but it really bothers me and it's come from the way I grew up. [LB654]

SENATOR FRIESEN: Thank you, Ms. Boyle. Any questions from the committee? You know I grew up in a family that had absolutely no political history whatsoever, so I'm setting the tone here sort of. And I came here to get things done, so I look forward to it. [LB654]

ANNE BOYLE: Thank you. [LB654]

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SENATOR FRIESEN: Thank you for your testimony. Any others wish to testify in a neutral capacity? Seem to be a lot of people that don't care. (Laughter) [LB654]

ROD EDWARDS: I care. I just care in a different way. [LB654]

SENATOR FRIESEN: Welcome. [LB654]

ROD EDWARDS: (Exhibits 2 and 3) Good afternoon. Chairman Friesen, members of the committee, my name is Rod Edwards, R-o-d E-d-w-a-r-d-s, and I'm here to testify in a neutral capacity as a campaign consultant and manager. I have strong concerns with the way call scripts for automated calls have been handled by the Public Service Commission over the last election cycle. It was only over the last election cycle call scripts were required to be submitted in advance of calls being broadcast. While I fully acknowledge there should be oversight as to the time the calls can be broadcast, I do not believe the content of calls, prior to their broadcast, is relevant information for the public good. Sharing call scripts prior to their broadcast is highly unethical, at least, and could be possibly unlawful. To do so without following standard operating procedures for public records requests and to do so for the benefit of chosen political candidates is clear evidence the current system is not equitable and does not serve the public interest. I am neutral on this bill because I believe that any government agency shouldn't require the content of any political message prior to its publication or broadcast. Having this information in advance opens up an agency for questions of how and when this information can and should be shared. In the information that I've provided you there will be...there's a series of e-mails. The e-mails were provided by a member of the Public Service Commission. One e-mail containing call scripts from several candidates was forwarded from the PSC member's public account to one political campaign team prior to the broadcast of the calls. The second e-mail was forwarded from the same member to her own personal e-mail account. This should never occur. All of you have been through campaigns to become a member of the Nebraska Legislature. I am sure we can all agree that you would never want your campaign material sent to your opponents in advance of their public distribution. While removing oversight of automated-dial calls from a partisan Public Service Commission would be a favorable step to avoid inappropriate action in the future, I believe there should be standards that would prevent this from ever happening again. Whether the authority stays with the PSC or is transferred to the NADC, we must act to prevent such inappropriate actions. Thank you for allowing me time to speak, and I'd be happy to answer any questions. [LB654]

SENATOR FRIESEN: Thank you, Mr. Edwards. Are there any questions from the committee? Senator Smith. [LB654]

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SENATOR SMITH: Thank you, Mr. Chairman. You have no idea how long I've waited to have you in that chair. (Laughter) [LB654]

ROD EDWARDS: (Laugh) Yeah. [LB654]

SENATOR SMITH: I don't have any questions. (Laughter) Thank you. [LB654]

SENATOR FRIESEN: Thank you, Senator Smith. Seeing no other questions, thank you for your testimony. [LB654]

ROD EDWARDS: Thank you. [LB654]

SENATOR FRIESEN: Any others who wish to testify in a neutral capacity? [LB654]

CRYSTAL RHOADES: Hello. [LB654]

SENATOR FRIESEN: Welcome. [LB654]

CRYSTAL RHOADES: I'm Commissioner Crystal Rhoades, C-r-y-s-t-a-l R-h-o-a-d-e-s, and I was hoping to get away with not testifying on this one, but given Mr. Edwards' testimony I thought I'd come and clean things up again. The Public Service Commission doesn't require that scripts are filed in advance. They can be filed up to 24 hours after the time that they run. So they have...they do not have to be filed in advance. That is not part of our rules nor has there ever been an enforcement action that would indicate that they should be. However, vendors are certainly welcome to file those scripts at any time they so desire. Once they do file those scripts, they do become a public record. And once they become a public record, anyone who requests those public records must be given those by law, as all of you know. Now the Public Service Commission could require that they use exact statutory language and file an extremely formal request, or we could get a call or an e-mail and just give them the information. Our office oftentimes has elected to do that because we don't believe that adding additional bureaucratic barriers to fulfill a request which we're legally mandated to fulfill anyway serves the public good. So I just wanted to be very clear that the commission's rules do not require advance service and that we are required by law, upon receipt of a request for those scripts, to disclose them. They have been disclosed to both Democrats and Republicans without regard to party at all. Enforcement actions related to violation of commission rules have also been administered without regard to party at all. I just wanted that to be very, very clear to this body. And I'm happy to take any questions. [LB654]

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SENATOR FRIESEN: Thank you, Ms. Rhoades. Are there any questions from the committee?
Senator Smith. [LB654]

SENATOR SMITH: Thank you, Mr. Chairman and Commissioner Rhoades. I know during the fall we had some exchange, and it may have been with me or it may have been one of the other committee members that was asking. And it seemed at that time that you acknowledged that for the appearances alone that it's probably a good idea to let the staff have that exchange with someone who's making a request for those scripts. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: Now I think we heard earlier Chairman of the commission, Commissioner Schram, mention that he turns that over to staff as well. And then we've heard also from other people coming up and testifying that when in doubt, probably avoid the appearance of impropriety and avoid it as best we can. So with that said, I know some of these scripts here, it does look like you were having that direct exchange with the person that had requested it. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: Do you believe that it's in the commission's best interest to allow the staff to handle that? [LB654]

CRYSTAL RHOADES: I... [LB654]

SENATOR SMITH: Would you have done something differently,... [LB654]

CRYSTAL RHOADES: What I would say to you... [LB654]

SENATOR SMITH: ...in hindsight? [LB654]

CRYSTAL RHOADES: What I would say to you is that I reject the premise that it's improper for a commissioner to release public information to someone upon request. What I would also say though is that in, you know, if it makes people feel better, sure, we can do it that way. And in fact, since the interim hearing, when I have gotten requests, they have been forwarded to staffs for fulfillment. So, you know, I reject the premise that it's improper, because it's not. However,

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with due respect to the committee and their wishes, I have no problem processing those requests that way. [LB654]

SENATOR SMITH: Commissioner Rhoades, did you understand me to say it was improper? [LB654]

CRYSTAL RHOADES: I...I have...I...yeah, yeah, I guess I kind of did. I think that the general tone, particularly within the interim committee and the dialogue that happened there, was that it gives the impression of impropriety, and it doesn't. I mean if the commissioners are requested to give information to the public which is public information, I think the improper thing for us to do is to make the public jump through unnecessary hoops. So, you know, if a procedural change makes people more comfortable, I'm absolutely willing to do that and have, in fact, already. [LB654]

SENATOR SMITH: Please let the record show that I did not suggest that it's improper, but what I did suggest, and we've heard the testimony leading up to your being in that seat, we've heard it very clear that as elected officials we need to do whatever possible to avoid that appearance. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: And we owe that to the public. And I think former Commissioner Boyle was saying that herself, that we do want to have the public's trust. And so I think it's not a matter, Commissioner Rhoades, of us suggesting that you've behaved improperly. That's not what we're talking about here. What we are talking about is trying to make certain we avoid that appearance. [LB654]

CRYSTAL RHOADES: Uh-huh. I certainly respect that, Senator Smith. And what I really want to convey to this committee is that robocalls are universally hated. Democrat, Republican, nonpartisan, doesn't matter who I ask in my district, they really dislike these calls. They feel very strongly that the rules need to be enforced. They want access to the information about what's being said on these calls and who's paying for these calls. And so what I want to make clear is that what we're really trying to do is to enforce the statute as this body, as the legislative body, crafted it and gave it to us. And if your feeling is that it would be better served in another capacity or in another agency, we certainly respect that. But I have been troubled by the idea that there's an appearance of impropriety by simply executing faithfully the law as it's written. [LB654]

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SENATOR SMITH: So are you testifying in a neutral or in opposition? [LB654]

CRYSTAL RHOADES: Well, no, I mean we're in the neutral. We are absolutely in neutral territory. And I am telling you quite plainly that whatever the Legislature decides is quite all right by me. But what I wanted to do was to clear up incorrect information that was given in testimony immediately preceding me. [LB654]

SENATOR FRIESEN: Thank you, Senator Smith. [LB654]

SENATOR SMITH: Thank you, Mr. Chairman. [LB654]

SENATOR FRIESEN: So maybe just for my clarification, when a request to put out some robocalls comes in, do you guys have to approve each one that's done? [LB654]

CRYSTAL RHOADES: Actually, no, we don't. We don't do any approvals. [LB654]

SENATOR FRIESEN: Okay. [LB654]

CRYSTAL RHOADES: And in fact, the only reason that the commissioners began receiving copies of the script--that wasn't something that was historically done--the reason that that...that we began asking staff to forward those to the commissioners so that we would be aware of that was because of the volume of complaints that we were receiving. And so what we really started looking at in the scripts is, are the rules being adequately enforced and does the commission have adequate policy--fair, reasonable, concrete policies that are applied regardless of who the vendor is, regardless of who the candidate is? And what we found was that we didn't have very strict, well-defined written policies on how these calls were processed. So as a result of those scripts starting being forwarded to commissioners and us looking at them and comparing them to the rules and talking with Accountability and Disclosure, we were able to develop very concrete policies that allowed for us to make sure that every vendor was treated exactly the same and that we knew exactly what we were going to do with each offense and each subsequent offense. [LB654]

SENATOR FRIESEN: Did you ever deny anybody the ability to do robocalls? [LB654]

CRYSTAL RHOADES: No. No. [LB654]

SENATOR FRIESEN: Did you ever edit their contents? [LB654]

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CRYSTAL RHOADES: Nope. We don't have the authority to do that. [LB654]

SENATOR FRIESEN: So I guess, what I am... [LB654]

CRYSTAL RHOADES: They just...they just file. [LB654]

SENATOR FRIESEN: ...what I'm saying is that the only thing you're dealing with is the complaints from them going out, correct? [LB654]

CRYSTAL RHOADES: Correct. [LB654]

SENATOR FRIESEN: So I guess, other than having them so that when the complaints come in, what was the point of you even having them? [LB654]

CRYSTAL RHOADES: So my understanding--and this predates me so forgive me, I'm just going on what I've been told--my understanding was that the reason this law was put into place was that there was a company that had taken spliced audio of a candidate and put together a robocall and then ran that robocall in the wee hours of the morning and it created a large outcry from the public. And so as a result of that, the Legislature passed a law that said from now on you have to file the scripts within 24 hours of running a call. And there's certain information that you must disclose on the call. You have to say who it is that's calling, on whose behalf you're calling, and that you have to limit the amount of time that the call can take. And there are telecommunications-based reasons for that. People pay by the minute, they pay by data, and so that's restricted. We don't want someone ending up with a consumer bill of \$100 because some robocall got trapped in their phone system. But that was the initial crux. The commission doesn't approve or disapprove of any of these calls. They're made, they file the scripts. We make sure that the dialer is registered. We make sure that they have complied with the rules and regulations related to how the telephone call is processed. But we don't...we don't tell people what they can or can't say. [LB654]

SENATOR FRIESEN: Okay. Thank you. Any other...? Senator Hilgers. [LB654]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Commissioner. A couple clarifying questions on Freedom of Information Act requests. And I sort of have a general understanding; you have a specific understanding, so I'd like to get your understanding of how this works. My general understanding is that you typically...public entities don't just give out the information unless there's a specific request. [LB654]

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CRYSTAL RHOADES: Correct. [LB654]

SENATOR HILGERS: And in this case I take your point that you can do it formally or you can do it informally. [LB654]

CRYSTAL RHOADES: Correct. [LB654]

SENATOR HILGERS: My understanding also is that generally you...members of the public don't provide standing requests, in other words saying, hey, I want item X; you can just give it to me as X comes in. It has to be a specific request, I want whatever that...whatever that piece of information is, but it's not a running request without any sort of end period. Is that how it typically works? [LB654]

CRYSTAL RHOADES: I don't know how it typically works. I know that we've had both and we've done the best that we can to honor that. But I've also been clear with folks that we'll do the best that we can but if there's something specific they want, they probably need to call just to make sure. Because you can say I want a...you know, I want to see all the calls in District 21, and we're going to do our best to comply with that. But it is helpful to us if they know that a call happened in 21 that they specifically want to see, we would ask them to try to do that. We do the best that we can. To my knowledge, that hasn't been an issue where people have been like, I asked for something, I didn't get it. [LB654]

SENATOR HILGERS: Okay. Thank you. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR FRIESEN: Senator Briese and... [LB654]

SENATOR BRIESE: Thank you, Senator. Thank you for being here. I believe you said earlier that the PSC doesn't require a script presented to them ahead of time. Is that correct? [LB654]

CRYSTAL RHOADES: That is true. [LB654]

SENATOR BRIESE: Okay. But for point of clarification, I believe the statute does require a detailed explanation of the message to be conveyed in the application. Correct? [LB654]

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CRYSTAL RHOADES: Yeah. Yeah, it does, but basically how those applications typically work is they say...they don't submit an application for every call. They submit an application to get their license on their dialer. And so what we do then is they give us a general number: We think we're going to make this many number of calls; we think we're going to make them at this time of the day. Typically, we have not required them to do that with every single call. If we get a complaint, we will go back to the vendor and ask the vendor how many people did you call, what date did you make the call, you know, what geographic area did you make the call. But that's typically complaint-driven. So we have the ability to ask for those things but we don't usually require them to file that. [LB654]

SENATOR BRIESE: Okay. But by statute, though, they're required to present something to you ahead of time that... [LB654]

CRYSTAL RHOADES: Yes, in their...in their... [LB654]

SENATOR BRIESE: ...that really describes the content of the message (inaudible). [LB654]

CRYSTAL RHOADES: In their application, they are required to do that when they apply for license to use a "robodialer," but the scripts themselves, the content of the call, what they said on those calls, they are not required to give us in advance. [LB654]

SENATOR BRIESE: Thank you. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR FRIESEN: Thank you, Senator Briese. Senator Smith. [LB654]

SENATOR SMITH: Yes, Commissioner Rhoades, I gave you a copy of what was distributed to us, and I just have a... [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: ...a question about this. And I'm looking at the last two pages,... [LB654]

CRYSTAL RHOADES: Okay. [LB654]

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SENATOR SMITH: ...the last two pages. And trying to understand here, so this might be a normal process that would be followed where you would get a request from someone for some scripts and then you would forward it on. In this particular case, it looks like...I'm trying to put the pieces together. I see a May 10, 1:57 p.m., where someone, an Evan Schmeits... [LB654]

CRYSTAL RHOADES: Schmeits, uh-huh. [LB654]

SENATOR SMITH: ...sent something to Susan Horn, which would have been at the Public Service Commission, right,... [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: ...about some scripts. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: And then I see that Susan Horn forwarded it to you. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: ...at 2:00 p.m.,... [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: ...and said, hey, here's an auto-dialer script I received. And then at 2:33 you forward that to an address: Crystal.Rhoades17. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: Is that your personal e-mail? [LB654]

CRYSTAL RHOADES: It is. [LB654]

SENATOR SMITH: And for what purpose would that have been? [LB654]

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CRYSTAL RHOADES: I forward a lot of things to my personal gmail account, particularly when I'm having problems with the state e-mail, which is something that happens quite frequently. And once I leave the office, I oftentimes need to reference those things at home. [LB654]

SENATOR SMITH: Okay. [LB654]

CRYSTAL RHOADES: And, quite frankly, my husband gets a tickling out of these. And so sometimes I send them to my personal e-mail so he can look at them. [LB654]

SENATOR SMITH: Did you have any relationship with this political campaign, the Synowiecki campaign? [LB654]

CRYSTAL RHOADES: I did not have a personal...well, I mean I know, of course, John Synowiecki. I know, of course, Evan. So, yeah, I mean I know them but I didn't work this campaign. [LB654]

SENATOR SMITH: So you nor your family or any friends have any relationship with that campaign... [LB654]

CRYSTAL RHOADES: No. [LB654]

SENATOR SMITH: ...or had a relationship with that campaign. [LB654]

CRYSTAL RHOADES: No. Uh-uh. [LB654]

SENATOR SMITH: Okay. All right. And then the other one, there's one here where again this Susan forwarded something to you on another campaign. This one looked like Victory Phones, "Script Submission--Victory Phones." [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR SMITH: And you forwarded it on to a Mandy, a Micek, and an Onkka. Who are they? [LB654]

CRYSTAL RHOADES: Onkka is my husband. [LB654]

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SENATOR SMITH: Okay. [LB654]

CRYSTAL RHOADES: And Mandy and Micek are part of the Vargas campaign and had asked for these to be for...had asked for any scripts related to their race to be forwarded to them,... [LB654]

SENATOR SMITH: Okay. And... [LB654]

CRYSTAL RHOADES: ...so we complied with that request. [LB654]

SENATOR SMITH: ...and you provided a little bit of a commentary with that one. [LB654]

CRYSTAL RHOADES: Sure. [LB654]

SENATOR SMITH: "Weak attacks. People will hang up." [LB654]

CRYSTAL RHOADES: Yeah. [LB654]

SENATOR SMITH: All right. Not particularly impartial. [LB654]

CRYSTAL RHOADES: Well, I mean we all have opinions about what the content of the calls are. [LB654]

SENATOR SMITH: But you're a Public Service Commissioner and we want the people to have trust for in what you do. Thank you, Commissioner Rhoades. [LB654]

CRYSTAL RHOADES: I...I... [LB654]

SENATOR SMITH: That's all I have. [LB654]

SENATOR FRIESEN: Thank you, Chairman. Thank you, Chairman Smith. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR FRIESEN: You know, I guess...any other questions from the committee? I find it a little troubling myself that until complaints would come in these should be handled I think

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very...in a neutral capacity. Now once complaints start coming in, which means the robocalls are starting, I can see where you can maybe justify doing this. But up and to this point, I'm a little troubled by this. No other questions from the committee? Senator Hughes. [LB654]

SENATOR HUGHES: Yes, I guess...thank you, Commissioner Rhoades, for coming in. [LB654]

CRYSTAL RHOADES: Uh-huh. [LB654]

SENATOR HUGHES: I do find it a little troubling that you forward, I don't remember what you used, a lot of commission e-mails to your private account and then your husband has access to look at them for his enjoyment. Is that accurate? [LB654]

CRYSTAL RHOADES: Look, we listen to a lot of political robocalls. We work in politics. There's no way to do that but...or no way to avoid doing that, but, yes, sometimes. I'm sure you also share information with your spouse. Again, these are public records. There's nothing proprietary or personal or protected in any of this. And quite frankly, if I had my druthers, we would post every single script as it came into our office on-line and then there would never be any question about who could access what at any time. And hopefully that is something that you're going to be willing to provide resources for. [LB654]

SENATOR HUGHES: Are you just forwarding the robocalls or basically any e-mail that comes? [LB654]

CRYSTAL RHOADES: No, I forward to my personal e-mail information that I need to access at home if I'm not going to be able to access it from home otherwise, as I'm sure... [LB654]

SENATOR HUGHES: Okay. Thank you. [LB654]

CRYSTAL RHOADES: ...many people do. [LB654]

SENATOR FRIESEN: Thank you, Senator Hughes. Any other? Senator Smith. [LB654]

SENATOR SMITH: One last question, and since Senator...you mentioned to Senator Hughes that your husband is involved in campaigns. [LB654]

CRYSTAL RHOADES: I did not. [LB654]

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SENATOR SMITH: Oh, I thought I heard that. I'm sorry. [LB654]

CRYSTAL RHOADES: No. [LB654]

SENATOR SMITH: Then I stand corrected. Thank you. [LB654]

SENATOR FRIESEN: Thank you, Senator Smith. Any other questions from the committee? Seeing none, thank you for your testimony. [LB654]

CRYSTAL RHOADES: You bet. [LB654]

SENATOR FRIESEN: Any others who wish to testify in a neutral capacity? Seeing none, Senator Murante, you wish to close? [LB654]

SENATOR MURANTE: I do, as a matter of fact. Thank you, Mr. Chairman. I think we need to make a couple of things pretty clear. First of all, this bill is not about Commissioner Rhoades. It is not targeted towards any single person. This is a broad policy question which has been brought to this committee in the past, before, I believe, Commissioner Rhoades was even on the Public Service Commission. So this isn't anything new. John Nelson sat before this committee in, I believe, 2009 and had this exact same bill. And I happened to be his legislative aide at the time which is why I have some familiarity with the background of it. So with that said, the question before us is a policy one. And I believe to address just a couple of things that were stated, first of all, the question is not whether or not political robocalls ought to be regulated. Nobody is proposing that political robocalls be deregulated. The extent of the green copy is, who should regulate those political calls? In my view, Accountability and Disclosure is the best institution to do that, although I will say that in conversations with NADC and the Public Service Commission there has been some talk of ways to more efficiently regulate the robocalls while keeping the consumer protections in place, because that is the fundamental goal of the...of this legislation. There were...I'll address a little bit of Mr. Gould's testimony. He had recommended that this committee put in place reporting requirements for independent expenditures or independent committees. I would advise Mr. Gould that there is a bill in the Government, Military and Veterans Affairs Committee to do just that. I assume what he's referencing are (c)(4) organizations which do not currently report. Independent political action committees, which already are reportable under the Accountability and Disclosure Act, already have to disclose donors of greater than \$250. So if there is an entity out there that's conveying political robocalls that has spent or raised more than \$5,000 over the course of the campaign, they're already registered with the Accountability and Disclosure Commission. If they're doing political robocalls over \$250, they're already...they're already reporting that under the Accountability and Disclosure Commission. So there's nothing in this bill that would change that. There has been

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some concerns and Senator Crawford has a bill that there are so-called (c)(4) organizations. These are organizations that don't have express advocacy. When you see television commercials, they will typically say things like call Senator Jones and tell him to vote X on a bill, rather than express advocacy saying vote for Senator Jones. Those are typically (c)(4) organizations which are not required to file under Accountability and Disclosure. And there has been some discussion about reporting under those. So I would submit that this is not the time nor the place to have that discussion about (c)(4) organizations and the proper reporting of those sorts of things. With respect to the conflict of interest, I will try and quote Senator...or Senator Gould--I just promoted him I think or gave him less money, I don't know how it will work (laughter)--where he stated that there is no evidence that Senator Murante is gaining any financial interest, and that's true because this bill doesn't have any...no person in the world has a financial interest over or a financial gain over whether NADC or the Public Service Commission regulates political robocalls. He then stated that even though no conflict of interest exists, that senators should file a conflict of interest statement anyway. I would submit to you that that is terrible public policy, that it waters down and dilutes the conflict of interest statements. If people who do not have conflict of interest forms file conflict of interest...or people who do not have conflicts of interest file conflict of interest forms, it dilutes the purpose of the conflict of interest laws. So if we state from the outset that no conflict of interest exists and no financial gain exists, then it seems to me entirely inappropriate for a member of this Legislature or any public official to file a form which they know to be not true. And there was a statement made that I had stated that I was not sure the amount of money that I had earned was sufficient to file a conflict of interest statement. That is not accurate. Two issues got conflated: the issue of the conflict of interest statement and the statement of financial interest. Those are two entirely different forms. The statement of financial interest form is something that every elected official has to turn in where we report, among other things, how much income we have on an annual basis. I am not sure, because my activity with Victory Enterprises was so minimal in 2016, whether I am required to disclose my association with Victory Enterprises in 2016 because my income may not have been high enough. That has nothing to do with the conflict of interest, because there is no financial gain that I have on with LB654 and, therefore, no conflict of interest statement needs to be filed and that would be appropriate. So there was talk--and, Senator Briese, you got into this a little bit--about the jurisdiction of the registration of the machines themselves. I don't want to go down that road at all. It seems to me that the Public Service Commission is very capable of registering the devices that make the robocalls themselves. What I am interested in is the conveyance of the political messages themselves. So when a robocall goes out, what I am interested in, how we are going to regulate the political messages, not the devices. And I'm unaware of any campaign that has its own auto-dialer device registered with the Public Service Commission. In almost every instance, a campaign hires a vendor who has a machine that is registered with the Public Service Commission and I don't seek to change that relationship at all. So that is where we are at. I think we finished the hearing not quite...I wasn't...not where I expected when we started, but that's

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sometimes what happens in public hearings. So I thought I would address those to the extent possible and I thank the members for listening. [LB654]

SENATOR FRIESEN: Thank you, Senator Murante. Any questions? Seeing none, thank you. We will now close the hearing on LB654 and we will close the hearing for today. [LB654]