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Transportation and Telecommunications Committee  
February 21, 2017

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[LB43 LB156 LB389 LB472 LB483 LB612 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 2:00 p.m. on Tuesday, February 21, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial confirmation of Dennis Schworer to the Motor Vehicle Industry Licensing Board, LB389, LB472, LB483, LB156, LB43, and LB612. 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: Okay, we will call the meeting to order. Welcome everyone to the Transportation and Telecommunications hearing today. I'm Curt Friesen, the Chairperson, and I represent District 34, and I'll begin with a few procedural items. I'd ask you to silence all your cell phones and other electronic devices, and please keep all the noise in the back down as we take testimony. We'll be hearing bills listed in order on the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We've set aside an on-deck chair here in the front so the next testifier will be ready to go when their turn comes. If you'll be testifying, we ask that you legibly complete one of the green testifier sheets located on the table just to the side of the entrance, and when you're ready to testify, you can hand it to one of the pages and they will give it out. Handouts are not required, but if you do have some, we need at least ten copies and the pages will assist you in that if you need help. When you begin your testimony, it's important that you clearly state and spell your first and last names. And if you forget to do that, I will stop and ask you to do that. We will be using the light system today and I'll give you five minutes; four minutes with a green light, one minute with the amber light, and when the red light comes on, I'd ask that you wrap it up. Those not wishing to testify may sign in on a pink sheet by the door and indicate their support or opposition to a bill. And I will introduce the members of the committee. On my far right is Senator Tom Briese from Albion representing District 41. Next to him we have Bruce Bostelman from Brainard representing District 23. And then Senator John Murante from Gretna representing District 49 will probably join us later. Senator Jim Smith, Vice Chair of the committee from Papillion representing District 14. And right next to me is committee legal counsel, Mike Hybl. Next to me on my left is committee clerk, Elice Hubbert. And then we have 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. And we have two pages here with us today: 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. And with that we'll open the confirmation hearing on Dennis Schworer. I hope I said that right. Come on up to the table. And welcome, and if you would, I guess, just kind of give us a background and your interest in serving on the board. [CONFIRMATION]

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DENNIS SCHWORER: Okay, I've been in the car business...I've been a dealer...new car dealer since '84; been around the business quite a bit longer than that. I have Honda dealership in Bellevue, Nebraska. I have Schworer Volkswagen here in Lincoln and Schworer Mitsubishi...or Lincoln Mitsubishi here in Lincoln. Prior to that I worked for Randolph Oldsmobile-Honda for 11 years before I started my Honda franchise in 1984. [CONFIRMATION]

SENATOR FRIESEN: Any...I guess this is your first time on the board? [CONFIRMATION]

DENNIS SCHWORER: Yes, it is. [CONFIRMATION]

SENATOR FRIESEN: First appointment. [CONFIRMATION]

DENNIS SCHWORER: Yes, it is. Bill Jackson asked me to serve. I thought that was good to give back to the industry. It's a worthwhile board. I've been to two meetings so far. [CONFIRMATION]

SENATOR FRIESEN: So I take it your wife wasn't just trying to get you out of the house. (Laughter) Any questions from the committee? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Well, first of all, Mr. Schworer, just want to say thank you for your willingness to serve on this board and I know it's a voluntary position and we certainly depend on folks like you to help our government work. So thank you for doing that. And also I see that you...Senator Crawford is your representative. You actually live in Bellevue, is that right? [CONFIRMATION]

DENNIS SCHWORER: Pardon? [CONFIRMATION]

SENATOR SMITH: You live in Bellevue? [CONFIRMATION]

DENNIS SCHWORER: Yes, I do. [CONFIRMATION]

SENATOR SMITH: And so Senator Crawford is your representative. [CONFIRMATION]

DENNIS SCHWORER: Yes. [CONFIRMATION]

SENATOR SMITH: You have a good representative in the Unicameral. And so thank you for your investment in our communities and with your businesses. [CONFIRMATION]

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DENNIS SCHWORER: Well, thank you for the opportunity. [CONFIRMATION]

SENATOR FRIESEN: Thank you, Senator Smith. Any other comments, questions? Seeing none, thank you. And we will take testimony in favor or opposition, so if you want to take a seat back there. Any wishing to testify in favor of the appointment of Dennis Schworer to the Motor Vehicle Industry Licensing Board? Seeing none, any wish to testify in opposition? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, we'll close the confirmation hearing on Dennis Schworer. And I will turn the chair over to Vice Chair Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Chairman Friesen, and we will open our hearing on LB389 to be introduced by Senator Friesen. It relates to the adoption of the Small Wireless Facilities Act. Welcome. [LB389]

SENATOR FRIESEN: Thank you, Vice Chair Smith and members of the Transportation, Telecommunications Committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I represent the 34th Legislative District and I appear today to introduce LB389. LB389 modernizes Nebraska's telecommunications statutes to allow for greater investment by wireless communication providers in new technologies commonly referred to as small cells. It expands coverage and delivers the benefits of fifth-generation, or 5G, wireless capabilities to Nebraska. Next-generation 5G relies on small cells containing antennas, radio, and support equipment which can attach to existing structures like utility poles, street lights, bus shelters, traffic signals and they're barely visible to the public. And they solve the issue of aesthetics. Small cells differ from the traditional macro cell towers which are typically tall structures with a large footprint and can be 300 feet tall or higher. Wireless facilities are typically the size of a small cabinet. LB389 clarifies the right of wireless service and infrastructure providers to place facilities on existing structures in the public right-of-way and on publicly owned property. It allows small wireless facility siting as permitted use and endures a reasonable length of time for application review to install small wireless facilities by the appropriate city, county, or state departments. This legislation also makes permissible the submission of a single permit application for a batch of small wireless facilities, attachments that are similar in form and structure in order to expedite the processing. LB389 preserves local government control with the authority to deny an application that does not meet building, electrical, health, safety, and public right-of-way use permit requirements. LB389 also ensures that local governments are fairly compensated through reasonable and nondiscriminatory fees for permit applications for small wireless facility attachments assessed annually that are cost-based and consistent with federal pricing standards. Since LB389 was introduced, some political subdivisions have expressed their concerns with how this legislation will impact their operations. Representatives for Verizon have been working with these groups in an effort to ease their concerns and they'll be bringing forward suggestions to make this bill more palatable for everyone. They can also address any technical questions that

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you may have about small cells and 5G technology. I thank you for your time and will take any questions you may have. [LB389]

SENATOR SMITH: Thank you, Senator Friesen, for your opening on LB389. Do we have questions from the committee? I see none. We move now to proponents, those wishing to testify in support of LB389, proponents. Welcome. [LB389]

JOE RUGGIERO: (Exhibits 1-4) Good afternoon, Senator Smith, Chairman Friesen, and members of the committee. My name is Joseph Ruggiero; that's J-o-e R-u-g-g-i-e-r-o, and I'm senior vice president of public policy and legal affairs for Verizon Communications, Inc. Thank you very much for the opportunity to come before you to support LB389. I've submitted for the record a longer written version of my testimony that goes into greater detail and I'll try to keep my remarks here brief. I very much appreciate the Chairman's leadership in establishing an official uniform process to speed the deployment of mobile broadband infrastructure in Nebraska and the competitive advantage that that provides Nebraska and its citizens. I'm here in partnership with my colleagues, not just in the wireless industry, but in the broader in tech, agriculture, and business communities that rely on that platform of robust mobile broadband infrastructure. And let me say that from Verizon's perspective this isn't just a small cell bill, although it's narrowly drawn for small cells. But more broadly, it's a jobs bill. It's an infrastructure bill. It's an investment bill. And it's an economic development bill. It will enable Silicon Prairie to become a reality through private investment without government subsidies. Accenture estimates that the bill necessary for 5G in Nebraska alone will be \$875 million in capital investment and \$1.5 billion in GDP growth from the economic multiplier of having that broadband investment. And it'll bring 10,000 jobs to the state. This bill updates the statewide regulatory framework to make that growth possible. The other thing I very much appreciate about the Chairman's leadership on this is that this bill is a narrow-balanced bill. Fundamentally it does three things: It ensures that wireless providers can place small cells on vertical structures in the right-of-way; it provides...it ensures for local cost recovery for those localities for the cost of managing the permits and for us attaching to their vertical structures in the right-of-way; and it provides a streamlined process to move through zoning. This is an old story where technology innovation has outpaced the regulatory paradigm. For 20 years we've had a paradigm that has to care for these tall macro towers that have aesthetic and safety impacts. Today, at locality by locality they're faced with trying to apply those paradigms to a very small thing that you put on existing poles in the right-of-way. And having to go through that process dozens if not hundreds of times in every locality makes no sense either for the locality or for the carriers that are trying to deploy the network. And let me say, from our perspective that the language here is clear. But I want you to know, speaking not just for Verizon but I dare speak for the industry when I say there's no fox in the henhouse here. This is a s small cell bill. It's not a macro bill. It's not a tower-siting bill. We've worked with folks to ensure that that's not the case to the extent that the League of Cities or anybody would like to work with us to ensure that that doesn't happen. That

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is absolutely not the intent of this bill. It's a small cell bill. Second, the bill does a fantastic job--and thank you, Chairman Friesen, for this--of ensuring that...what it doesn't do is remove local control. It retains local oversight over the permitting process while setting a statewide policy framework that prioritizes small cells over macro towers, that expedites permitting, and that establishes a uniform process while ensuring that the localities can maintain their requirements for building codes, public safety, and the deployment of small cells that are congruent with their aesthetic and other objective requirements. I'd like to add that this, from our view, not just in Nebraska but in other states, accelerates rural deployment as well. What we've found time after time is when localities and carriers have to spend a lot of time reinventing the wheel on small cells, those cities will necessarily, through no fault of their own, suck the time and resources out of deployment and so, therefore, it takes longer to get out to those more rural and suburban areas. And the time for us to deploy is now. Data demand has increased 4,000 percent over the last 10 years, and I don't remember the statistics, 400 million times over 15 years. And it continues to grow: 400 million-fold over the last 15 years. Other states have passed this bill. Nebraska is not alone. I will say from Verizon's perspective and the industry's perspective...oh, I'm done. Thank you for the time, Senator Smith, Chairman Friesen, committee. Included in the packet are letters in support of this legislation from AgriSync, CTIA, Sprint, and resolution supporting the technology from ALEC, the Council of State Governments, and the Conference of State Legislatures. Thank you for your time. [LB389]

SENATOR SMITH: Thank you, Mr. Ruggiero. Did I pronounce that correctly? [LB389]

JOE RUGGIERO: You did. You did a great job. [LB389]

SENATOR SMITH: All right. Do we have questions from the committee? Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Vice Chairman Smith. Thank you, Mr. Figero (phonetically), is that right? [LB389]

JOE RUGGIERO: Ruggiero, yes. [LB389]

SENATOR HILGERS: Ruggiero. Thank you for your testimony. I think 5G is the way of the future and I think it's great technology. So my understanding is 4G...our current technology 4G systems are we have large towers that wire...not wirelessly but through a wire connect to the Internet back hall, is that right? [LB389]

JOE RUGGIERO: Yes. [LB389]

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SENATOR HILGERS: Generally, I know there's some exceptions. Generally correct. [LB389]

JOE RUGGIERO: Yes. No, you're right. [LB389]

SENATOR HILGERS: And then 5G is not through the big towers but little devices that you can spread throughout a municipality that connect to the back hall wirelessly, is that right? [LB389]

JOE RUGGIERO: Well, so Verizon's small cells connect...there's fiber to every small cell. There are other carriers that have a different technology where the small cells will talk to each other and then eventually connect to something else. But with Verizon's small cells, we have fiber to every node. [LB389]

SENATOR HILGERS: Can you just compare and contrast if you were to...if Verizon or any other entity were to deploy 5G under the current regulatory system that is built for these 4G towers, what would that look like? And how can you compare that to what it would look like under LB389? [LB389]

JOE RUGGIERO: This is my personal opinion based on my discussions with both engineers and the finance folks, you can't build it under the current regulatory structure. You need too many nodes in too many places to have the kind of capacity to provide for autonomous vehicles, telemedicine, all of those sorts of things that need that high capacity and low latency, you can't do it under the existing structure. So it may take years to get the frameworks that you need going city by city by city, but only then would you be able to build it. [LB389]

SENATOR HILGERS: And you're saying you can't do...practically you can't do it because there's maybe a regulatory regime in place, but there are so many nodes that need to be put in place that you have to do it one by one by one and it would just take so long to be practically doable, is that it? [LB389]

JOE RUGGIERO: Yes, yes. [LB389]

SENATOR HILGERS: Okay. Thank you. [LB389]

SENATOR SMITH: Other questions from the committee? Senator Bostelman. [LB389]

SENATOR BOSTELMAN: Thank you, Senator Smith. What's the distance for each of these units? How far can they reach? [LB389]

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JOE RUGGIERO: So it's dynamic because it's dependent on how many people there are. So if everybody is outside the stadium on a Saturday, they're going to have less coverage because there's a lot of you sucking it. And then when there's less people it will widen. But usually 100-400 yards is kind of the number that we've been using. [LB389]

SENATOR BOSTELMAN: So my question is going to be, with that in mind, I live in rural Nebraska. I live on a farm. My nearest neighbor is a mile away. That's going to take a whole lot of these nodes to be going out into the country. I guess I question how reasonable that's going to be that we're going to get it because right now we don't get high-speed Internet. We're rural. Most of Nebraska is rural. I hear talk about cities, so cities are going to get this first. We're not going to see it for some time down the line, if we see it at all. I guess I just...and I ask this question when they come in and talk to me one-on-one before. I'm concerned that we're not going to see this any faster where we're at, or if we're even going to see it at all, just because of the amount of nodes or whatever the equipment is that's going to have to come out and then the placement of those nodes as well. Can you speak to that? [LB389]

JOE RUGGIERO: Yeah, it's a fair question, Senator. The first use case for small cells are in those urban environments where you have a lot of people using a lot of capacity. But the truth is 3G we've built everywhere; 4G we've built everywhere...I don't mean everywhere, literally everywhere. But we've built it out on top of 4G. And eventually we'll build 5G on top of it. We won't have to use small cells in all places except maybe on your farm you'll have a use for small cells if you're using a lot Internet of things for your technology solutions for some of your agricultural undertakings. But as a general matter, small cells are primarily used in urban environments. The reason that it will be transformative sooner in rural...that 5G will be transformative sooner in rural areas is because the carriers, including Verizon, build where their customers are and we'll build in the cities first. And the longer that trudge takes, the longer it will take us to get out to our customers in the rural areas. And so what...and we've seen that time and again. The faster we can build, the faster we get out to the rural areas as well. [LB389]

SENATOR BOSTELMAN: Thank you. To follow up with that, while I appreciate what you're saying, I was just at my parents' home this weekend in Superior, Nebraska. And there is a wireless store there that no longer can find new customers, so now they're leaving. And now they're going to be 65 miles away to find any...be able to do anything with their cell phones on that side. I'm afraid that's a similar thing would happen with this is where our rural communities will be abandoned eventually if they get the service. And those of us who are even more rural won't see it at all. I guess that's more of a statement than a question. My other...my question would be from that is I've heard a lot from our utilities and placing these devices on power poles is of great concern to them and that they don't have a choice that it will be done. And now we're putting people up on their poles and we're putting equipment on their poles that their linemen

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may not be accustomed to. It may be in their way, it could cause problems, safety issues as we go down line could you address that, please? [LB389]

JOE RUGGIERO: Yes, Senator, on that particular question I think the language in the bill is straight on point there, which is that we've got to comply with all of the electrical and safety codes in every locality. And we're on investor-owned utility poles today, both small cells and macros are on investor-owned utility poles today. So we're actually...absolutely committed. And by the way, I think for the language in the bill cares for that safety concern, but we're more than willing to work with the utilities. In fact, we work with public power and the counties on a couple of amendments under Chairman Friesen's leadership that we'd like to propose to care for a couple issues they've had on timing and batch permits. If I could just go back quickly to the rural broadband question, I don't want to minimize what a challenge it is...what a challenge rural broadband is as a policy matter. I'm not suggesting that at all. But I will say that wireless has an important role to play there. In fact, one of the things that we're seeing because we need fiber to every macro tower, there may not be a business case for your local telecom provider or cable provider to roll fiber out into a very rural area. But when we have a macro tower there because we have to serve our customers, they've got to roll fiber out there because we're paying for it, right? And now they've got a business case for it. Well once they're out there, there's no reason they can't go that hundred yards, that last mile. It changes the business case. [LB389]

SENATOR BOSTELMAN: I appreciate that. You know, my area would be a little bit less. Once we get in the western part of Nebraska, it's...a you got a long ways to go. [LB389]

JOE RUGGIERO: Yeah, and I don't want to minimize that. [LB389]

SENATOR BOSTELMAN: Yeah, right. I understand. Thank you very much. [LB389]

SENATOR SMITH: Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. That conversation with Senator Bostelman reminded me of a question I think would be important for the record purposes because we hear about 1G, 2G, 3G, 4G, 5G, they all sound sort of...well, 5G is probably better than 4G. Can you give us some...can you kind of paint a picture for us about the difference in speed between 5G and 4G and maybe comparing it to what we might expect in our home broadband. [LB389]

JOE RUGGIERO: Sure, 5G...now a little bit of expectation setting. They're still developing the standards. Verizon is far ahead of the industry. We're doing precommercial testing right now.



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Based on our tests to date and what the experts are prognosticating, we think it's going to be 100 times faster than current speeds, so far exceeding what you get today in your local wire line service at your house on a fixed wireless use case. [LB389]

SENATOR HILGERS: So following up on Senator Bostelman's questioning, right now if you're in the rural areas, you usually have to have that last mile connected, unless you're using something like a DirecTV or something. So in other words, this is a wireless sort of broadband delivery system in a way that's at least, understanding your caveats, is functionally equivalent potentially to a broadband that we might have in our house. [LB389]

JOE RUGGIERO: Absolutely. You're going to see this as a real alternative to that wire line network. [LB389]

SENATOR HILGERS: Okay. Thank you. [LB389]

SENATOR SMITH: I have a couple questions here for you, Mr. Ruggiero. Can you speak to the concerns by our local governments with the interference with their local control for things like existing agreements for rights-of-way and zoning ordinances. [LB389]

JOE RUGGIERO: I can. I will say that I personally have worked on this issue in a number of states. And in those states where the municipalities and the League of Cities and the carriers and the policymakers are able to sit down and work through legitimate concerns, we've been able to work through it to where we actually have support for the bill because they see the economic development. If you start with a kind of philosophical perspective on something like this as an impingement on local control then it becomes ideological and the answer is just no, right, we'll handle it. And then it becomes very difficult to find common ground. But what I...what I will say is that what we as an industry care about and I think what Senator Friesen has done in this bill is just set up a framework under which the city still has all of their ability to do zoning. But on small cells, for example, rather than go through a lengthy discretionary zoning process on every one as a conditional use, it says if you have it under a certain size and you put it in a certain place with these safety and aesthetic requirements, then it's a permitted use. And on the right-of-way use agreement, the same way: It makes a policy choice in favor of these small cells but it doesn't take away the local...the local jurisdiction retains control over it. It just provides a certain framework under which they can use that control and authority. [LB389]

SENATOR SMITH: And you've seen that cooperative agreement work elsewhere? [LB389]

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JOE RUGGIERO: Well, this is very new. We have agreements with a lot of cities that aren't...so yes, the answer is yes we have cooperative agreements with cities that have been successful across the country, the statewide framework that passed in Ohio and Virginia this year, it just passed this year. Kansas is going very well. [LB389]

SENATOR SMITH: It's fairly new but in those states there have been cooperative agreements in place before. [LB389]

JOE RUGGIERO: There have been cooperative agreements in place, absolutely. [LB389]

SENATOR SMITH: Very good. All right. [LB389]

JOE RUGGIERO: And as I said before, I think from...we want to go build so we'll go build where we can. [LB389]

SENATOR SMITH: All right. Very good. Senator Geist. [LB389]

SENATOR GEIST: We were just listening to the 911. Can you tell me how this would work with that. [LB389]

JOE RUGGIERO: Sure. I can tell you that...how it will work with public safety generally. This will be a big enhancement for public safety. First of all, small cells create a much greater resiliency because you have more nodes, so you have less opportunities for single points of failure. You've got greater capacity so in a mass calling event folks can reach 911 when everybody is calling at the same time, or law enforcement needs to make phone calls. It provides the opportunity for things like body cameras which take a lot of video. As to...and location accuracy and all of those other things will, you know, will be a part of that 5G network protocol. So...but on the particular subject of next generation 911, my understanding of that is that it's a federal issue that's being worked through, that we've got to modernize the PSAPs, but Verizon is very supportive of enhancing 911 and public safety. [LB389]

SENATOR GEIST: Thank you. [LB389]

SENATOR SMITH: I see no further questions. Thank you for Verizon's investments in our state. Appreciate it very much. [LB389]

JOE RUGGIERO: Thank you, Senator. Appreciate it. [LB389]

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SENATOR SMITH: Thank you for your testimony. [LB389]

JOE RUGGIERO: Thank you. [LB389]

SENATOR SMITH: Move to the next proponent of LB389, next proponent of LB389. Welcome, Director Schneweis. [LB389]

KYLE SCHNEWEIS: (Exhibits 5 and 6) Thank you. Good afternoon, Vice Chairman Smith and members of the committee. My name is Kyle Schneweis, K-y-l-e S-c-h-n-e-w-e-i-s. I'm the Director of the Nebraska Department of Roads and I am testifying in support of LB389. The Department embraces the concept of collaborating with industry and understands that the shared use of some public facilities can benefit the state's citizens. We've all been in parts of Nebraska where the cell phone reception is poor or nonexistent. If we can use public right-of-way to help remedy this, NDOR would like to be a part of that solution. However, we do have some technical concerns about the language in LB389. I'd like to thank Senator Friesen and committee counsel Mike Hybl for meeting and working through some of our technical concerns. The bill as drafted would give wireless entities the authority to encroach, construct, and perform maintenance within the state's right-of-way at any time without notifying NDOR. This is a dramatic shift from the long-standing right-of-way protection that we see in Section 39-1359 of the Nebraska Statutes. Our proposed revision to the bill as introduced continues the state's commitment to safety by requiring written consent from NDOR before an entity may encroach in the right-of-way by referencing existing language in Nebraska statutes, specifically Section 39-1361, which applies to all entities, public and private, that wish to perform work on the state's property. Addressing these issues will ensure that all entities are treated equally. Furthermore, our proposed language will allow NDOR to regulate the location of an entity's equipment to ensure the safety of the traveling public, consistent with the Department's mission. We feel it's important to make sure that transportation use of the state's right-of-way remains the number one priority. The proposed language also addresses NDOR's ability to recoup costs associated with administering the permitting process and improving or replacing state property to accommodate an entity's equipment. The existing bill language is vague. And we feel it is necessary to plainly state that the Nebraska taxpayer will not foot the bill for any analysis, improvement, or replacement due solely to the private entity's equipment. We feel being reimbursed for work that would not otherwise need to be performed is reasonable and appropriate. Regarding the 60-day time frames included in the bill, it would be our preference to review and dispatch permit requests much quicker than 60 days--in just a matter of days. However, all situations are not the same and circumstances and variables may prevent that in some cases. And so we are willing to negotiate each submission in good faith to ensure a permit application is handled and ruled upon in a timely manner. We also think that appropriate liability protection for the state includes requiring proper insurance requirements and indemnity provisions. These issues are addressed in our proposed language revisions as well. Our research indicates that other states have been

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presented with similar legislation and have taken steps to ensure the safety of the traveling public and have also included financial safeguards for the taxpayer. For example, Missouri and Ohio passed bills in 2016, which included requiring permits to encroach on the right-of-way. In Missouri's case, the law includes strict protections for the public interest, property, and safety. Last thing I'd like to mention is that the FCC is currently accepting comments regarding a petition filed on this issue. Depending on the outcome of that petition, we may be back addressing this issue again soon. And so that being said, should the committee desire to advance the bill this year, we hope you look at the bill...we hope you look at the bill and our proposed language very carefully. At the department...I just want to thank you all here in the committee for your continued strong support for transportation as we look to build a robust twenty-first century infrastructure system in our state. And with that, I'd be happy to answer any questions. [LB389]

SENATOR SMITH: Thank you, Director Schneweis, for your testimony. Do we have questions from the committee? I see none. Thank you. [LB389]

KYLE SCHNEWEIS: Thank you. [LB389]

SENATOR SMITH: Next proponent of LB389, next supporter of LB389. Seeing none...okay. Welcome. [LB389]

JOSH BRODERSEN: My name is Josh Brodersen; that's J-o-s-h B-r-o-d-e-r-s-e-n. And I'm here today as a proponent for this bill because I'm a farmer and I live in a rural community. And in agriculture the technology is advancing at a rate at which our current broadband is just not keeping up with. So anything that will help expand the broadband in rural areas, it will greatly help out the efficiencies on the farm and I appreciate that. And I also feel that just because it might take, you know, a longer time to bring that technology to the rural areas, I don't feel that that's a reason to not give it to us at all. I guess any questions I'd be happy to answer. [LB389]

SENATOR SMITH: All right. Very good. Very good perspective you bring to the committee. Do we have questions from the committee? I see none. Thank you for coming and testifying today. [LB389]

JOSH BRODERSEN: Thank you. [LB389]

SENATOR SMITH: We are continuing with proponents of LB389. Welcome. [LB389]

BILL MUELLER: (Exhibits 7 and 8) Thank you, Chairman Smith, members of the committee. My name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of AT&T in support of

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LB389. The page is handing out two publications from AT&T describing what you've already heard from the representative from Verizon as to the development of this new technology. Dustin Blythe, who's our director of external affairs for Nebraska and Iowa, intended to be here today sitting in this chair. But he's hoping that Iowa may take up a small cell bill today in Iowa. AT&T does support a streamlined expedited process for approval of these small cell sites. It is critical for the development and rollout of this next generation of communication. I think in the materials that you were handed out, and you've probably all seen these, but they have some photographs or diagrams of these small cells. It's pretty impressive when you look at these compared to the large cell towers that we now have. So I think that it's exciting from a consumer standpoint. There certainly is a need for this. AT&T strongly supports this legislation and we'll be happy to work with the committee on amendments that it sees fit. I'd be happy to answer any questions you may have. [LB389]

SENATOR SMITH: Thank you, Mr. Mueller, for your testimony. Do we have questions from the committee? I see none. [LB389]

BILL MUELLER: Thank you. [LB389]

SENATOR SMITH: Thank you. Next proponent of LB389. Anyone else wishing to testify in support of LB389? (Exhibits 16-18) We do have letters for the record in support: Barry Kennedy representing Nebraska Chamber of Commerce and Industry; Stephanie Cassioppi of U.S. Cellular; and Tim Schram, chairman, Nebraska Public Service Commission. Those are all letters submitted in support of LB389. We now move to opponents, those wishing to testify in opposition to LB389. Welcome. [LB389]

BOB DUCHEN: (Exhibit 9) Thank you, Senator Smith. My name is Bob Duchen, B-o-b D-u-c-h-e-n. I'm the vice president of River Oaks Communications Corporation. We have offices in Centennial, Colorado, and Colorado Springs, Colorado. I'm here today on behalf of the League of Nebraska Municipalities. I've been in this field, the telecommunications field, for more than 20 years. My background is as an attorney. If you count my cable television experience, I've been in this business for more than 30 years. We've done work here in Nebraska on behalf of cities and in 37 other states across the country. I've watched wireless regulations evolve. We want to see the rollout of wireless services. They're important for government and schools, for citizens, for telehealth reasons, telemedicine reasons. And we realize this bill tries to address an evolving technology. However, it negatively impacts cities and your constituents and goes way beyond federal law. As the gentleman said before me, one of the gentlemen, there is a federal proceeding going on right now. The FCC is seeking comments. It's a proceeding involving a company called Mobility. They're looking at a number of the small cell issues just as you are here. They're inviting comments from local governments. That comment period runs through the first part of

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next month, and reply comments are due first part of April of next month. I'd like to highlight a few of the problems and I'd like you...and I encourage you to ask industry some of these questions. This bill creates a new class of infrastructure providers. There's a difference between an infrastructure provider, a company that wants to put 70-foot poles on the right-of-way versus someone who's an actual utility company, a telephone company, a provider of telecom services, or a provider of broadband services. The bill includes cable operators. You may know this, but cable service is regulated as a Title VI service under federal law under the Communications Act of '34. If you include cable operators in this bill, you may be unwittingly setting a trend where they could make an argument that they no longer have to pay franchise fees to local governments and I'll tell you why. Franchise fees are derived based on cable services provided over a closed system. If the cable operators are included in this bill, they're going to be using wireless technology. Does that make that an open system? Do they still have to pay franchise fees? That could in turn cost your cities throughout Nebraska millions of dollars. The bill talks about the placement of poles, but there are no requirements in this bill for stealth. I'm working right now with Las Cruces, New Mexico. I'm working with Williston, North Dakota. I'm working with Coeur d'Alene, Idaho, on revamping wireless ordinances. This is what we do and these same questions come up. If you put...if you leave the bill the way it is now, what's going to be...what will happen if someone wants to put a 70-foot pole in the right-of-way. And it could be in a residential neighborhood and we're going to get to that. The bill talks about permits and a \$250 application fee. And the recurring fee would be tied to pole attachments. A pole attachment fee could be anywhere from \$5 to \$15 to \$20 a year. If you look at other bills around this country, they've even gone for compensation that's in the hundreds of dollars a year, not \$5 or \$10 or \$15 or \$20 a year. I would submit that a \$250 application fee spread over a permit that could last 25 years per this bill--10 years plus three 5-year automatic renewal periods--is inadequate. If you go to the federal law, the federal law says that local governments can manage the public rights-of-way and require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis. I respectfully submit to you that a pole attachment fee does not come near to covering that. If you're going to use a \$250 application fee, what are the communities going to do in rural Nebraska? They don't have the staff, the lawyers, the engineers to make some of these assessments. Going on, there's a provision in the bill that says local governments can't even require insurance. That's unfairly shifting the risk of liability to local governments. Let me briefly talk about the shot clocks under the federal law. There's a 60-day shot clock and 90-day shot clock and a 150-day shot clock. If you're going to put an antenna on a pole that was not used for wireless communications purposes that is a new site under federal law. That means a local government has 150 days to say yes or no. Your bill would provide that the local government only has 60 days. The only 60-day deem granted requirement under federal law is in a provision called 6409. And that's if the provider is going to make a modification that does not significantly change the physical dimensions of the existing tower or base station. That's the only 60-day shot clock under federal law and that's the only deem granted remedy under federal law. My point is this goes way beyond those provisions. In summary, I'd like to suggest that the city

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and industries work together to study the current situation. And I'd like to add this very quickly. If someone...if you were going to sell your home, it's your home, and a buyer came to you and had a contract that was heavily favored in favor of the buyer, you would not use that as a starting point. You'd say this is your home. The rights-of-way we're talking about are the municipal rights-of-way. They're entitled to negotiate under the provisions in federal law. And I would submit that the decision that you're going to make on this bill is going to impact your constituents and your communities for the next two and a half decades. I'll be glad to take any questions. [LB389]

SENATOR SMITH: Thank you, Mr. Duchen, for your testimony. Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you for your testimony today. You mentioned something a little earlier and I just want to flesh it out a little bit. You mentioned that this could lay some sort of potential trap relating to cable companies getting around franchise fees under Title VI. Can you just explain that in a little bit more detail. So I didn't fully follow the argument. [LB389]

BOB DUCHEN: Sure. I do not know what was intended by this bill, but by including cable operators...right now cable companies pay a franchise fee of 5 percent of the gross revenues, typically, on cable services provided in a community derived over a closed cable...derived over a cable system. A cable system is defined in federal law in the U.S. Code as a closed system. The question becomes when you start including cable operators in this bill and you say that they can put poles wherever they want in the right-of-way and they use that system in tandem with a wireless system, the question I have and I don't think this has been answered and I don't know if it's been answered elsewhere in this country, does that make that system an open system? If it's no longer a closed system under federal law, if I were a cable operator's lawyer I'd say, okay, well maybe this is no longer a closed system so maybe I don't have to pay franchise fees. [LB389]

SENATOR HILGERS: So just to...so break this up in pieces. So the definition is in a federal regulation, the CFR, somewhere in there? [LB389]

BOB DUCHEN: United States Code. [LB389]

SENATOR HILGERS: Okay. And so what you're saying is by doing this in Nebraska we might either change that definition or apply that definition in a way that would sort of undermine its original intent. [LB389]

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BOB DUCHEN: You may be unwittingly creating a slippery slope for cable operators to make an argument that their system is no longer a closed system. A cable system is defined under the U.S. Code. So that's my concern. I don't know what the intent of the bill was, but in my experience in dealing with wireless ordinances...and I go back to this '96 Telecom Act. I write on this for municipal leagues around the country. I talk on it. I've worked with hundreds of local governments on a number of projects. My concern is, are you opening up the door to giving the cable companies' lawyers an argument? [LB389]

SENATOR HILGERS: I'm sorry, go ahead. [LB389]

BOB DUCHEN: Did I answer your question, Senator? [LB389]

SENATOR HILGERS: Well, sort of. But do you know what the...do you have the cite to the regulation, the definition you're talking about? [LB389]

BOB DUCHEN: It's 47 USC...and I want to say...don't quote me on this...it's around 520-something. I'm sorry I don't know the exact...I could get you that cite. But you'll see... [LB389]

SENATOR HILGERS: So is it statute or is it regulation? [LB389]

BOB DUCHEN: It's statutory. [LB389]

SENATOR HILGERS: Statutory. [LB389]

BOB DUCHEN: If you go to the section, it's the Cable Communications Policy Act. There was '84, '92, and then the Telecom Act of '96 came into play. So in 47 USC 5...whatever that section is, you'll find the definition of franchise fees, cable system, cable service, and lots of other things. That's where it is, Senator. So I want to answer your question. I think you may be opening up the door to unintentionally let cable operators have an argument in terms of their systems now is a wireless system and it's a closed system. So what regs are going to govern? Is it going to be a Nebraska statute or is it going to be in conflict with the federal statute? That's my concern. [LB389]

SENATOR HILGERS: Okay. I appreciate that. If you do have the cite, I'd appreciate that. [LB389]

BOB DUCHEN: Sure, I can... [LB389]



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SENATOR HILGERS: I'll see if I can find it myself. My second follow-up question is on a different topic, is the cost cap that you referenced, the \$250 cost cap. Do you have any...is there any data or information you might have on the internal costs associated with applications?  
[LB389]

BOB DUCHEN: I do not have that data, Senator. I can tell you that other leagues around this country are wrestling with similar type bills that have proven very problematic for local governments. So this is not the only state that's thinking up this sort of a bill. I can talk to my colleagues. But to answer your question, I do not have data that I can give you that says how much a local government spends on applications, though my colleagues perhaps from Omaha and Lincoln who are here today can answer that. I do not know the direct answer to that.  
[LB389]

SENATOR HILGERS: You can see why that would be helpful. [LB389]

BOB DUCHEN: Absolutely. [LB389]

SENATOR HILGERS: The argument is this would be an onerous cap and this could cost us a lot a lot of money to handle. So the question then is, okay, what does it cost, right? [LB389]

BOB DUCHEN: Sure. [LB389]

SENATOR HILGERS: And how does that...in relation to the cap, where are we? I understand you maybe don't have that now, but to the extent you or your colleagues might have that I think that would be helpful.

BOB DUCHEN: Thank you, Senator. [LB389]

SENATOR HILGERS: Thank you. [LB389]

SENATOR SMITH: Senator Bostelman. [LB389]

SENATOR BOSTELMAN: Thank you, Senator Smith. Could you just elaborate a little bit more on the FCC, what's going on there, and how that may impact what we're talking about today.  
[LB389]

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BOB DUCHEN: Sure. Senator, at the FCC, Mobility filed a petition for declaratory ruling. Mobility put a number of things before the FCC and the FCC is trying to sort this all out. They're trying to figure out how to handle small cells. This is an evolving technology. So, you know, I am not anti-technology. I'm not anti-small cells. What I care about is that the local governments retain sufficient control to do this in a thorough and prudent and thoughtful manner. So you've got this proceeding. Based on what my colleagues are doing, they're going to be submitting comments to the FCC. They'll be comments both for and against the questions the FCC is raising. Is this...what's been said to the FCC basically is that this is a nationwide problem. The question then is this really a nationwide problem, are local governments slowing down the train in wireless broadband deployment? That's the question. So the FCC is taking comments from the industry, from cities, from interested parties to try to figure out what's the reality out there? Is it...is what we have working? Does it need to be improved? Does it need to be tweaked? So that's what's going on at the FCC. And my recollection is the first batch of comments are due around the 7th of March and the reply comments are due April 7. So they, the FCC is taking a broad-brush look and inviting interested parties, both industry and cities around this country, to factually tell the FCC what's going on, not just ideologically what's going on, but what's...what's the reality out there. [LB389]

SENATOR BOSTELMAN: Thank you. [LB389]

BOB DUCHEN: You bet. You're welcome. [LB389]

SENATOR SMITH: Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Following up on Senator Bostelman's question, just so I'm precise, is the FCC in the information-gathering mode or are they information gathering through a formal comment period through which they will issue or not issue...decide affirmatively not to issue a rule that would impact LB389? [LB389]

BOB DUCHEN: Senator, here's my perception and I don't have the federal rule-making in front of me; I suspect that what they're doing is gathering this information anticipating...in anticipation of either issuing an order or more rules. What happened is in October of 2014 the FCC came out with roughly a 155-page order telling the industry and cities what they can and cannot do. In January through April of 2015, there were a series of rules that were issued, okay? What's happened now is that the FCC wants to go the next step because even though the rules are quite complicated and we can get into that, but they're quite complicated, even...they want add on to what they've already done. So I think, my judgment is that this is just not a...that this is more than a fact-finding mission, that they intend to issue some sort of ruling. And the interesting thing is whatever they do, the question is, what's that going to do to LB389 if you go forward

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with this legislation in its current form? Will it trump it? Will it conflict with it? Until we know what's done at the federal level, my question not just for this committee but for other states is, how are you going to craft rules in anticipation of what the federal government is going to do if you don't have the rules in front you? We can work off the existing rules, but not what's coming down the road. And by the way, I think this is on a pretty expedited time frame, you know, to have comments due in...the comments were going to be due in February and March. And the National League of Cities and the National Association of Telecommunications Officers and Advisors, they asked for more time. They only got a month. The comment period was only extended a month for comments and reply comments. So I suspect this may move quickly.  
Senator. [LB389]

SENATOR SMITH: Further questions from the committee? I see none. Thank you, Mr. Duchon, for your testimony. [LB389]

BOB DUCHEN: Thank you, Senator. [LB389]

SENATOR SMITH: Next opponent to LB389. Welcome. [LB389]

ALAN THELEN: Good afternoon, Mr. Chair, members of the committee. My name is Alan Thelen, A-l-a-n T-h-e-l-e-n. I'm with the Omaha City Attorney's Office and I'm appearing today on behalf of the city of Omaha. The city of Omaha is in opposition to LB389. We were very surprised that anyone felt the need for this legislative bill because we've been able to achieve the goals of LB389 by agreements with providers. Omaha has had a cordial and productive...has had cordial and productive relationships with telecommunications companies and infrastructure builders that have come forward to us to start the build out of these small cell antennas. We've been able to successfully negotiate and develop agreements to provide for the use of our right-of-way. Recently we've consummated agreements with Unite Private Network, Verizon, and Mobility and we're working on a couple other ones right now in the hopper. We've developed a specifically thorough and effective template for an agreement that we've used as a starting point with all of those companies and we've been successful in satisfying them and arriving at an even-handed agreement. We have a good template. We've made that available to other local governments that have asked us for a copy of that. We do oppose LB389. We feel that it gives special preferred status to builders of towers and infrastructure as opposed to telecommunications companies themselves. We believe that that goes beyond federal law. It appears to give a blank check to private companies to build an unlimited number of poles and towers in the right-of-way. We're afraid that we could see a forest of poles and towers in our towns and cities. It takes away a responsible management of rights-of-way. And as I've said earlier, we have existing contracts. We fear that this legislation would create an improper impairment of those contracts. So I would conclude by stating that we recommend that this

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complicated matter be the subject of a study rather than have passage at this time of this one-sided bill. I can answer any questions. Thank you for your time. [LB389]

SENATOR SMITH: Thank you, Mr. Thelen, for your testimony. Do we have questions from the committee? Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you for your testimony today. Can you explain a little bit about...you've mentioned the agreements that you have with the various providers. Do those look like a master services agreement by which they could do a number of them quickly, or is it an agreement per node, or something in between? [LB389]

ALAN THELEN: It's a master agreement. It contemplates that a provider can build out...let's...I can't remember the exact number, but let's say 120 nodes throughout the city under that agreement. And as each node is...each node is applied for separately or as a batch and we look at them and we approve them separately. But the whole scheme is under this master agreement. [LB389]

SENATOR HILGERS: And then how quickly do the agreements speak to how quickly those applications need to be acted upon? Or do they? [LB389]

ALAN THELEN: They do speak to that, and that is a concern to us. I mean we don't want these sitting on somebody's desk forever. I don't recall the exact number of days. Murthy Koti from our Public Works Department will speak after me and maybe he'll remember that. But it seems to me that it's a reasonable period of time, maybe 30, 60 days, something in that area. [LB389]

SENATOR HILGERS: And the only follow-ups I have are, how long have you been operating this program through these agreements? And then what...can you speak about the level of deployment of 5G in Omaha? [LB389]

ALAN THELEN: To my knowledge, Unite Private Network was the first company to come along where we did a master agreement with them. And that I think was around 2010. And again, Mr. Koti may have further information for you on the progress of 5G build out. [LB389]

SENATOR HILGERS: Thank you. [LB389]

SENATOR SMITH: Further questions from the committee? I see none. Thank you, Mr. Thelen, for your testimony. Next opponent. Welcome. [LB389]

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MURTHY KOTI: Good afternoon, Chairman and members of the committee. My name is Murthy Koti, M-u-r-t-h-y K-o-t-i, and I am the city traffic engineer with Omaha Public Works Department. I'm here representing city of Omaha. And personally, we're very excited about the small cell technology. It's the future. I truly believe that small cell technology is here. The challenge is, how do we manage this new technology? How do we regulate it such that it's a win-win-win for everybody: the providers; the public sector; and the public, the taxpayer? And city of Omaha, we have existing agreements with several providers, not only the communication providers like Verizon but also the infrastructure providers like Mobility. And I was personally involved with the negotiations with the pool of all these agreements and also the deployments. So I do understand. When I saw this bill the first thing that came to my mind was why this bill, why now, because small cell technology is typically deployed in the dense...densest part of the communities where there's a lot of population like a College World Series, a TD Ameritrade Ballpark, CenturyLink Center, and so on and so forth. So when we already have existing agreements--city of Omaha has existing agreements; city of Lincoln does have existing agreements--that's the first thought that crossed my mind. And when I read through the bill I was kind of shocked at the language, some of the things that were in the bill. And being a proponent of technology I certainly think small cell technology will have its place in the future from a safety standpoint...transportation safety...improving transportation safety, whether it be connected vehicles, autonomous vehicles, or self-driving cars, this is going to be a key technology that we'll be using in the future. So Omaha actually has deployed several dozen of these small cells. We've been working...I guess the first agreement we had was with Verizon back in 2015. And we also have existing agreements with Mobility that was executed in '16, and we're working with a couple of other providers as I speak today. And there were several issues that we had to negotiate. Verizon was a great partner to work with. I mean, you know, there were localized issues that we have to deal with: locations of cell towers...small cell towers in historic districts, for example, Old Market, Fairacres neighborhood. How do you make sure that the design of these poles or antennas are aesthetically pleasing for the neighborhood? And so we had to negotiate and they came back with several designs. The original design was a big antenna. And we said, no, we're not going to see that in a historic district like Old Market. So they came back with a panel antenna design, which we worked with the designers and we made sure the RF frequency, everything works fine for their needs. So it was a win-win for everybody. Yes, it took some time; yes, it was our first learning experience in Omaha with Verizon. It took us a year, year and a half. But we were also in the middle of a major federal-funded project: \$35 million traffic signal, our communication (inaudible) project that we're still working on. It's a ten-year project for us. This is to operate all our traffic signals. Omaha has about 1,000 traffic signals. We're operating communication, adding fiber to all these signals and we wanted to make sure that the interference issues from the small cell technology does not preclude us from future-proofing our project, the \$35 million project. So there was a lot of give and take. There was a lot of learning curve that we had to go through with the Verizon. But the following agreements, say with Mobility, it took us less than three months fundamentally to agree on the terms of that

agreement. So I'm very excited to say today that we have a template agreement in place that is a model to other communities. We've distributed this template agreement to other communities. There...my understanding is they are using that template very successfully. And today I'm...city of Omaha and myself personally, we're opposing LB389 because we don't believe that this bill is the vehicle to get us to the future on small cell technology. And we have a template that's working. We have proven that public-private partnerships are the way to go on the small cell technology. So I respectfully request that you please consider the interim study for this bill before taking it to the next level. And I thank you for your leadership and open it up for any questions at this time. [LB389]

SENATOR SMITH: Thank you for your testimony. Senator Briese. [LB389]

SENATOR BRIESE: Thank you, Senator. Thank you for being here. You indicated a little bit ago that you were shocked at the language in the bill. What parts of it are most troubling to you? [LB389]

MURTHY KOTI: Well, there are several parts of the bill, a couple ones that I can indicate as the time periods, the turnaround periods. [LB389]

SENATOR BRIESE: Okay, the 60 days? [LB389]

MURTHY KOTI: Yeah, that I think is very aggressive because, again, if it's a site that does not have any site-specific issues like historic neighborhood aesthetics, then certainly that time period is achievable. But there are several locations that we have to consider just beyond the location of the pole. Another challenge could be the actual structural strength of the pole, the utility pole in this case for example. City of Omaha, we lease 99 percent of our poles from the Omaha Public Power District. We don't own them but we have a mutual agreement with OPPD where attachment of any alien devices like RF receiver transmitter has to be approved by both the parties--OPPD and the city of Omaha. So there's those...some of those issues that we have to look at. And I just think, you know, typical time frames under our current umbrella of different projects, most of...I'd say 80 percent of our applications go through in 30 days, they get approved. There is that, you know, 10 percent to 20 percent that have special situations. We have to look into those. So that's one concern I have. The other biggest concern I have is it's carte blanche. You're basically giving the power to administer the whole small cell technology deployments to the providers, the communication provider or the infrastructure companies. And that's a big concern for us is how do we make sure that the product they're going to be deploying in a community fits the needs of the community, the hard work that the community has put up to develop that historic neighborhood as an example. [LB389]

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SENATOR BRIESE: Okay. Thank you. [LB389]

SENATOR SMITH: Senator Hilgers. [LB389]

SENATOR HILGERS: You looked right at me. Thank you, Mr. Vice Chairman. Thank you for your testimony today. I wanted to follow up on the questions I was asking your colleague. So I heard you testify...or say that you've entered into an agreement with Verizon in 2015 and that are several dozen small cell. [LB389]

MURTHY KOTI: Um-hum. [LB389]

SENATOR HILGERS: Okay. And then I also heard you say entered into agreement with Mobility. [LB389]

MURTHY KOTI: Yes. [LB389]

SENATOR HILGERS: How many through the Mobility project? [LB389]

MURTHY KOTI: So with the Mobility, currently I think...I believe they have submitted plans for approximately 38 sites and we're currently reviewing their plans. They have not deployed any as of today in Omaha. But we're very close to approving their final design for deployment. [LB389]

SENATOR HILGERS: And when was the contract signed about? [LB389]

MURTHY KOTI: Last year, 2016. [LB389]

SENATOR HILGERS: 2016. And then are there any other...so those Verizon and Mobility, any other contracts that have been signed? [LB389]

MURTHY KOTI: There's a contract with the Unite Private Networks that we have signed. They are the fiber provider wherein we entered an agreement with them where it's a win-win for everybody. What I mean by that is Unite Private Networks can go in the right-of-way and every time they put in fiber in our right-of-way or the city's right-of-way, they allocated twenty four dark strands of fiber for city use...public use. So what that does is it actually gives us free dark fiber for exclusively for the city taxpayer at no charge. So that has worked really well for us. [LB389]

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SENATOR HILGERS: So that's fiber piece. That's not the small cell piece though, right? [LB389]

MURTHY KOTI: The UPM is part of the Verizon network because as I understand Verizon teamed up with UPN for their small cell deployment. [LB389]

SENATOR HILGERS: Well, it's part of the small cell deployment because you have to have the small...the earlier testifier... [LB389]

MURTHY KOTI: The fiber. [LB389]

SENATOR HILGERS: You have to have the fiber connection. [LB389]

MURTHY KOTI: Yes, Senator. [LB389]

SENATOR HILGERS: But it's not the actual deployment of the... [LB389]

MURTHY KOTI: Correct, correct. [LB389]

SENATOR HILGERS: I'm just trying to get the facts. [LB389]

MURTHY KOTI: Sure, sure. [LB389]

SENATOR HILGERS: So that's three. Are there any others that have been signed? [LB389]

MURTHY KOTI: Not signed, there's two other providers that we're actively negotiating right now. [LB389]

SENATOR HILGERS: Okay. Thank you. [LB389]

SENATOR SMITH: I see no further questions. Thank you for your testimony today. [LB389]

MURTHY KOTI: Thank you. [LB389]

SENATOR SMITH: Next opponent of LB389. Welcome. [LB389]



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LASH CHAFFIN: (Exhibits 10 and 11) Thank you. Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities. The...when the League was first...when we first looked at LB389 we did a couple things. When we first read it, we realized this is complex stuff and we're also getting daily e-mails from the National League of Cities on the federal action. So the first thing we did was we sent the bill to a couple of right-of-way experts to analyze it section by section. And I'm handing out that analysis at this point. And it would have five pages and each and every section lends itself to three or four minutes of complicated testimony. This is complicated stuff. The interactions with the federal law are very complicated. And it's a tough row to hoe. And I'm been going to hit a couple of these sections and I'm also handing out a letter from the city of Fremont. As I said, Lincoln, Omaha, and other cities are being asked to approve these applications right now. So there is a method in place. People could go to cities and ask to have these small cell technology deployed. And the system is working. Then the second thing we did is we also asked the other state municipal leagues how it's going in their state. And we've yet to find a state municipal league who supported this. We found one state municipal league that ultimately was neutral on the concept, but when they were shown this, LB389, they said what was in front of them was a completely different, less restrictive package. So that I don't think the League is necessarily going to be a barrier. Again, this is...we want to bring high-speed technology to rural Nebraska. And I guess then the next thing we learned was that we were told by numerous technical experts that absent hard fiber, this technology didn't do a lot. And the Public Service Commission has a cool tool, mapping tool you can get on and look and find out not that much of Nebraska has fiber at this point. So this is just a component piece of a much larger issue of bringing high-speed Internet to rural Nebraska. This is a small component piece. I think the question of how to bring high-speed Internet to Nebraska, to rural Nebraska is a very important question. We definitely want to be a part of that discussion. But this is just...this does not on its face do that at this time. That said, you know, within the many, many issues, the drafting issues, one of them is the expedited time frame. This is a problem. The one city that we talked to, they were given a batch of applications by a facility provider, not someone who provided telecommunications or services, but merely a provider of built poles, and the batch application included a 120-foot pole, which is more than triple the size of a regular light pole, next to the airport runway. Okay, another one included...had a pole right in the middle of a historic district. These are complicated applications and they do require more than 30 or 60 days to review sometimes. Also the...along the same lines, a pole is not a pole in Nebraska. Accessing a pole in Nebraska is not always an easy task. One might think, the average person might think, okay, the city owns all the poles. That's not the case; every place is a little bit different. A very common arrangement is the old phone company that put in...the predecessor to the current phone company owns half the poles, the city electric utility might own the other half. And you know, there's just all these individual arrangements and that's a very common arrangement in Nebraska. Sometimes the REA owns the poles. Sometimes the city owns the poles. Sometimes the incumbent...the ILEC owns the...I mean there's a whole...every arrangement is out there. So it's not just one person who has to

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touch an application dealing with a pole. And it's this...similarly, the issues are similar with underground right-of-way access as well. Then also the nature of the...going down to Section 20, the nature of the fact that the applications can be ultimately for 25 years. That's a problem. A lot can happen in 25 years. As the city of Omaha indicated, they're testing the poles for structural issues. In 25 years, the structural condition of a pole can change a lot. The grade of the street can change. The whole nature of the neighborhood can change. I mean these are issues that make it so "expeditization" of--if that's a word--but making the process faster doesn't necessarily lend itself to this process. Also the cities that have been dealing with this are initially quite surprised to find that a lot of the applications don't come from traditional utilities. It's one thing to work with the gas company. It's another thing to work with the cable company or the electric utility. A lot of the applications come from a different business model. This is a business model of build...there's tower builders who build the towers and hope that people will come access their facilities. And that's a different mindset with respect to asking for insurance, for bonds, these sort of issues. So I think the mindset in dealing with a facility provider is something that's going to have to be learned in Nebraska. Thank you. I'll certainly answer any questions. [LB389]

SENATOR SMITH: Thank you, Mr. Chaffin, for your testimony. Do we have questions from the committee? I see none. Thank you. Welcome. [LB389]

CHRIS DIBBERN: Good afternoon, Vice Chairman Senator Smith and members of the committee. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel to NMPP Energy and MEAN, the Municipal Energy Agency of Nebraska. As power providers, we're opposed to LB389, but we would like to thank Senator Friesen for interest in broadband in rural areas. I want to...I've read Bob Duchen's technical explanation that you've got, the six pages and I found three themes. And the first theme is that the bill is discriminatory. It doesn't talk about communication service providers. It talks about communication facility providers. So there's a difference between the companies. One is...one is regulated by federal law; one is not a protected class under federal law. But we still have a duty to provide services to people in the rights-of-way that are competitively neutral and nondiscriminatory. That's one of the concerns about the bill. It could have applied to gas companies. It could applied to cable companies. But just this one type of communication facility company gets this opportunity. One of the best things I heard this afternoon was the Department of Roads might be open to using their rights-of-way and that might be a good place to start. Another piece that was discriminatory in the bill is a little confusing about occupational taxes. The language is unacceptable because it says that there's not an occupational tax when the project is constructed. So if I'm some other person paying an occupational tax, I might wonder why I'm paying it and they don't have to pay it--a little concern there. The second argument is concern for rights-of-way in general. You've already heard this: the time it takes to administer it, the looking at it, the shot clock--I like that expression--may not be reasonable because we're talking about buildings, water towers, light and power poles, antennas, equipment cabinets. It's all very complex and it's kind of ever-changing.

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The last argument is that it may not adequately protect communities or political subdivisions that are bringing...and/or bringing services to rural areas. I think that's the real problem today. We do have concern about rural areas getting digital services. But as a provider that can install poles close to roadways, they must...the bill has a problem. One of the senators asked what's a problem with this bill? The insurance requirement is a problem. You don't operate a business and have a baby shower without asking people to make sure that they have liability insurance. This one says that you cannot require any other insurance but your own negligence. Well, there's comparative negligence. There are other reasons that they might be negligent not because of their own negligence. And it also says you can't require that additional insureds be named. That's pretty common in contract law. So that's another problem with the bill. In summary, I think Senator Friesen, his heart is in the right place. We'd like to see more in this area, but I don't think this bill is the right tool. Any questions? [LB389]

SENATOR SMITH: Thank you, Ms. Dibbern, for your testimony. Do we have questions from the committee? I see none. [LB389]

CHRIS DIBBERN: Thank you. [LB389]

SENATOR SMITH: Thank you. Next opponent. Welcome. [LB389]

KARLA RUIPIPER: Good afternoon, Senator Smith as Chair and committee members. My name is Karla Ruper; that's spelled K-a-r-l-a R-u-p-i-p-e-r, and I am the city attorney for the city of Papillion in Sarpy County. I'm here to testify in opposition to LB389 on behalf of the League of Municipalities, as well as the city of Papillion. I believe that one of the other letters that you would have received came from United Cities of which Papillion is a part. I'd like to share with you two of Papillion's very recent experiences in receiving requests from what I'll call speculative tower builders. They approached us to build new towers in our very fine city. These are...I will refer to them as speculative tower builders, although in the bill they are referred to as facility providers. However, they are, be very clear, they are in the business of building towers and then later attempting to secure cell equipment and siting lease agreements with cell service providers. So in other words, it appears that their business model is one in which build it and they will come. And so I will give you two very specific instances that we had last spring, last May of 2016. A speculative cell tower builder by the name of Mobility, and I believe that's been referenced earlier here today, approached the city. The city did in fact determine that this company had no agreements with any wireless service providers. But they submitted a request to the city to construct an 80 foot, that is a seven story tower for future installation of cell equipment. And this was proposed to be located in the city's very narrow right-of-way at the end of a local restaurant's driveway--Runza--and at the entrance of the main street of our city's historic downtown area. And this location from the city's viewpoint was illogical. We considered

it to be unsafe in terms of line of sight and driveway safety issues and was wholly inconsistent with the city's efforts to ensure public safety and to maintain the aesthetics and vitality of Papillion's historic downtown business area. Our city has gone to extraordinary lengths to attract new businesses to locate in our historical downtown in order to keep it economically strong and to maintain a historical sense of community, thus, the city is very opposed...was very strongly opposed to the construction of the cell tower at that specific location. If you carefully read the provisions of LB389, it would strip our city's ability to oppose that type of construction, the specific location proposed which, again, was illogical, unsafe, and wholly inconsistent with our city's economic development plans and efforts. Another example I will provide to you, again, in May of 2016 from the very same speculative tower builder was to locate an even higher cell tower. This time it was 120 foot, that is an 11 story metal monopole, again, to be located in a very narrow right-of-way between the sidewalk and the curb at the corner of a local church-- Overland Hills Baptist Church--and in the midst of what we consider to be a well-established, single-family residential area. It was apparent that in making this request, this particular company had made no effort to consider the zoning considerations or the residential character of the community at that specific location, and thus, in these types of instances it becomes the city's responsibility to protect its residents and the community from what we consider to be totally illogical siting of proposed cell towers. And these were for new towers. Again, LB389 would completely strip local communities of its responsibility and ability to protect its residents from these abusive situations. And I heard earlier in some of the other testimony that the bill was very narrowly constructed to address the location of small cells on existing towers. And our read of the bill goes far beyond that and I would ask you to read that very carefully. The means that is proposed for expanding wireless technology under LB389 in our view is a very broad brush and a very one-size-fits-all approach that we believe is very one sided to the benefit of the wireless cell industry. It would significantly interfere with our local zoning regulations and ordinances and the controls that are in place for the logical and safe regulation of tower siting and colocation of tower equipment. It would also significantly interfere with our existing right-of-way agreements with other utility carriers for the use of the city rights-of-way. We have a number of those agreements in place in which we receive either an occupation tax or franchise agreement. And I'm really not prepared to tell you how much the city makes off of those, but that...the larger issue for me is not how much the city makes off of those but what this bill would do to undermine all of those other agreements because we are really...what this bill is suggesting is that we single out these cell tower providers and the cell operators from those types of agreements in which the city can request a reasonable occupational tax or franchise fee. [LB389]

SENATOR SMITH: Ms. Rupiper. [LB389]

KARLA RUPIPER: Yes, sir. [LB389]

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SENATOR SMITH: I'm going to ask you to close and then I think we have some questions on the committee for you. [LB389]

KARLA RUIPIPER: Sure. I would like to close by saying that it is my understanding that the FCC is highly experienced in regulating wireless cell communications industry. And I think it would be dangerous and irresponsible to adopt this bill in contravention to federal law and regulation without an in-depth analysis of its impact to local governments across state. So I would welcome any questions. [LB389]

SENATOR SMITH: Very good. Thank you for your testimony. Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you for your testimony today. I want to touch on the examples you had about the Mobility tower because it's an argument that I've heard a few different flavors from different opponents. And I wanted to talk to you about it because the argument essentially is this will strip all authority from local municipalities from stopping exactly what you're saying, which is we're going to construct a seven story tower right in the middle of a residential area or in the Old Market or somewhere where it should not be. The way that I read LB389 and specifically Section 20(d) is that it allows municipalities to reject permits so long as they do it on a nondiscriminatory basis. In other words, if you have a zoning requirement or rule or regulation, some standard that says, you know, something is not safe, if it meets these general requirements, it doesn't meet the character of the neighborhood, or whatever it might be so long as you're not singling out wireless facilities or wireless carriers then you can do that. And so my question to you I guess is, am I reading the statute wrong? Am I reading that...am I missing another statute or what...how does that statute not at least partially if not completely address the examples that you discussed? [LB389]

KARLA RUIPIPER: Well, as we read it, we read it to be this very broad brush in so many ways. And the time clock was, you know, for a small community and I would say we're not the smallest community, but still, when we are receiving a number of these types of requests all at one time, we really don't have the personnel to address those. And so there were just a number of issues. But one of our greatest concerns was that the cell tower builders such as Mobility, that or any other entity, this bill would give them basically the same protections or same footing as the utility providers. That gave us great concern. And they basically approach us, if you read the letter of Fremont's...that Fremont...that was submitted earlier here today, our experience was very similar as I read what was in that letter. [LB389]

SENATOR HILGERS: I appreciate that very much. And I know there's been a lot of different arguments made. I just want to focus in precisely on this one and I could ask someone else as well, which is this very...this argument that the cities essentially are stripped of their authority to

deny those permits. Put aside the timing or the insurance requirements or the cost, put aside all of that. But my read of the statute is that under certain conditions they can deny the permits, and in particular, when we talk about the character of the neighborhood and those types of generally applied principles, that they can deny the permits. And I just want to make sure...am I reading the statute incorrectly on that very precise question? And I guess that's my question. [LB389]

KARLA RUIPIPER: I'm sorry, without looking at the bill in that specific section, I can't address it at this time. But we noted a number...there was really very little about the bill that we did not raise great concern. And again, it is not that the cities want...or the League want to oppose cell technology. We all rely upon it and we do want it to advance. But it needs to happen in a very controlled and thoughtful manner. This seemed to be very much shotgun approach to addressing that. And that was really the basis for our concern. [LB389]

SENATOR HILGERS: Okay. Thank you. [LB389]

SENATOR SMITH: Senator Briese. [LB389]

SENATOR BRIESE: Thank you, Senator, but my question was virtually identical to Senator Hilgers' so it's covered. Thank you. [LB389]

SENATOR SMITH: All right. Very good. All right. I see no further questions. Thank you, Ms. Rupiper, for your testimony. Next opponent to LB389. Welcome. [LB389]

KRISTEN GOTTSCHALK: (Exhibit 12) Thank you. Vice Chairman Smith, members of the Transportation and Telecommunications Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the director of government relations for the Nebraska Rural Electric Association and today I'm testifying on behalf of the Nebraska Rural Electric Association representing our 34 rural electric providers as well as on behalf of the Nebraska Power Association which represents all of Nebraska's public power electric utilities. I'm going to...you have my written testimony so I won't cover a lot of the points that I had originally put in place because they have been covered before. We agree that this is an overly broad authority to a particular class of communication providers. We are concerned, as others have indicated, with the time frames for approval and for the make-ready aspects of this. Electric utilities in Nebraska are cost-based entities and the fee requirements within this bill may not allow a public utility to properly recoup the costs incurred as a result of the application and make-ready process. And for us, since we may not have some of the other standards in place, it appears the only means for denial are shortcomings with respect to construction standards or codes. And if those shortcomings are corrected, the authority shall be able to approve the application...or must approve the application regardless of what the other local concerns or needs may be. And for

electric utilities, safety is the utmost concern. With LB389, placement of small wireless facility infrastructure atop electric utility poles would require nonutility...nonelectric utility workers to work above energized lines. And to put it simply this is a very dangerous zone. And LB389 does allow blanket authority...access to those utility poles by the private company once an application is approved. And one thing I really wanted to address is that LB389 perhaps implies that utility companies may be an hindrance to the development of this technology across the state. I should say on the contrary. And even the FCC when they created and they drafted pole-attachment regulations, they exempted rural electric co-ops and public power districts from these regulations. The FCC recognized that communications companies and rural electric providers share a mutual interest in seeing that this technology is developed and deployed in rural areas. And as we've heard before, the cities of Lincoln and Omaha where this is the first choice for communication providers to develop already have agreements and those have been very productive and are not a hindrance. So in summary, LB389 is really not about the deployment of wireless and broadband technology across rural Nebraska. The electric utilities in this state have had their arms open wide asking for this type of technology to be developed in rural areas. And we have very significant and broad gaps in service provision. We do invite the committee and we would be well...we would welcome the opportunity to be part of the process to study how access to these technologies can be developed across all of Nebraska and specifically rural Nebraska and that includes through public and private partnerships that we have seen be very successful in this state so far. LB389, however, right now goes too far to support for-profit companies while not promising anything in regard to deploying the technology that is desperately needed in rural Nebraska. With that, I will conclude my testimony. [LB389]

SENATOR SMITH: Questions from the committee? I see none. Thank you, Ms. Gottschalk, for your testimony. Welcome. [LB389]

LARRY DIX: Good afternoon, Senator Smith, members of the committee. My name is Larry Dix, L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in opposition to LB389. By now, pretty much everything that can be said probably, for the most part, has been said. We certainly...NACO certainly does not want to be an impediment to this and I don't believe we will. We have met with the Verizon folks and I would tell you those negotiations and those discussions went very well. We had some concerns. Right before the hearing they gave me an amendment that addressed some of those concerns, so we have every belief that ours...will be concerned. When we look at the rural areas--and, Senator Bostelman, you talked about that--we, too, from NACO, we want to get that 5G out to that rural area. But I think as you heard today it's probably going to be awhile. We just want to make sure this is correct for by the time it does get to the rural areas. And I think we're well on our way with the discussions that we've had with the folks from Verizon and any of the other service providers. I think we will come to a common agreement. And our issues are a little bit different than what you're seeing inside the cities because we know the small cell technology is going to

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be a little bit different application when you get to the rural areas. So some of our concerns are just that if you just make this just for the cities and now you move into the rural areas, it may look and feel a little bit different. So if this moves on, if there's an interim study, we want to make sure we're there to have those conversations and get it drafted correctly. So with that, I'll be happy to answer any questions anybody has. [LB389]

SENATOR SMITH: I see no questions from the committee. Thank you, Mr. Dix, for your testimony. Next opponent of LB389. Welcome. [LB389]

VANESSA SILKE: Good afternoon, Senator Smith, Senator Friesen, members of the committee. My name is Vanessa Silke; that's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm an attorney with Baird Holm and the lobbyist for the Northeast Nebraska Public Power District. I'm here today to oppose LB389. I'll give you a little overview of Northeast PPD. Northeast Nebraska Public Power District serves over 8,500 ratepayers and they're located...those ratepayers are all located in Pierce, Thurston, Wayne, Dixon, and Dakota Counties. They serve the very small communities of Wayne, Wakefield, Winside, and Emerson, among a few others--so rural northeast Nebraska. They operate over 3,000 miles of power lines and, of those, about a hundred miles are high-voltage power lines. They have a limited number of miles where dark fiber has been set out. Many of their ratepayers do not have adequate or reliable telecom services by any stretch of the imagination. I can get you specific numbers from Northeast if you would like. And we agree with Verizon and any other major provider that 5G service is awesome. It's a great economic development driver and we want it as soon as possible for the ratepayers of Northeast Nebraska PPD. But we do oppose LB389 and I agree with all the prior testifiers in opposition for their technical issues with the bill so I'm not going to repeat those here. I don't think it's necessary to facilitate telecom development in rural Nebraska through LB389. Northeast Nebraska PPD, other rural PPDs, municipalities, and counties are simply not a barrier to the development of telecom infrastructure in rural Nebraska. We've had, as Kristen said, our arms open years. We're waiting for this technology. We do believe it's time to revisit statutes governing telecommunications to evaluate how rural Nebraskans can be better served. And to that end, I met with Senator Friesen along with our one of our board members last week to address those concerns and he was very open to listening to how those next steps could be taken. Northeast-elected directors are looking for statutory means to better facilitate economic development through telecom in their communities through public and private partnerships, greater access to grant funding for telecom projects, and also exploring a statutory mechanism for political subdivisions and state agencies to provide telecom services when private companies have refused, for whatever reason, to make that investment in our rural communities. Although we don't think LB389 is a vehicle for rural access to telecom, we do see an opportunity to continue this dialogue with the committee through an interim study. We'd like to be a part of that along with other PPDs, municipalities, and counties as well as private companies that are seeking to make these investments to explore



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how to better facility access in rural Nebraska. So with that, I'll take any questions you might have. [LB389]

SENATOR SMITH: Thank you. Questions from the committee? Senator Bostelman. [LB389]

SENATOR BOSTELMAN: Thank you, Vice Chairman Smith. Ms. Silke, the question I have I guess that comes to mind as we've talked about other types of light poles or other type of places there's these type...other devices, some devices are placed on those. On power line, power poles, single poles I'll say are common throughout the counties and that, are there any...what type of devices are currently placed on those poles... [LB389]

VANESSA SILKE: I could... [LB389]

SENATOR BOSTELMAN: ...that are not--I'm sorry--that are not the utility's property, that's someone else's? [LB389]

VANESSA SILKE: Video cameras in some cases, cable lines. A lot of it is through the conduits that are hanging through the lines on the poles at this time. Because of the technology, we don't see a lot of small cell technology out in rural Nebraska yet. [LB389]

SENATOR BOSTELMAN: And who places that on those poles? [LB389]

VANESSA SILKE: It would be through agreements with different companies. And I can get more of a rundown for you for Northeast's service territory. [LB389]

SENATOR BOSTELMAN: That would be good. Thank you. [LB389]

SENATOR SMITH: I see no further questions. Thank you, Ms. Silke, for your testimony. [LB389]

VANESSA SILKE: Thank you, Senator. [LB389]

SENATOR SMITH: Next opponent of LB389. Welcome. [LB389]

ERIC CARSTENSON: (Exhibit 13) Thank you. Senator Smith and members of the Transportation and Telecommunications Committee, my name is Eric Carstenson, E-r-i-c C-a-r-s-t-e-n-s-o-n. I'm the president of the Nebraska Telecommunications Association. You've heard a

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lot of testimony so I'm just going to summarize a couple big, major points. We're here to oppose LB389 because we believe it creates a competitive disparity and we're handing out an amendment that we think addresses some of those disparities. The first area that it deals with is with regard to structures. This amendment would clarify that the local exchange industry would have the same access to colocate telecommunications lines and facilities on structures that the small cell providers would too. The second disparity exists in the treatment of occupation tax. And our amendment clarifies that to the extent that those providers would receive relief from occupation tax, so would the local exchange carriers. Bottom line: We feel it treats similar providers in a desperate way. That concludes my testimony. [LB389]

SENATOR SMITH: Thank you, Mr. Carstenson. Questions from the committee? I see none. Thank you. Next opponent of LB389. Welcome. [LB389]

DAVID YOUNG: (Exhibit 14) Thank you, Senator Smith. My name is David Young, D-a-v-i-d Y-o-u-n-g. I am the fiber network and right-of-way manager for the city of Lincoln. I'm here this afternoon to testify against LB389. And I want to thank you for the opportunity. First, I want to thank Senator Friesen for bringing this issue to the floor. I personally believe that broadband Internet is the infrastructure for the twenty-first century. Many of you will agree that this is an exciting time to be alive. We saw yesterday...or Sunday, excuse me, that SpaceX launched an autonomous rocket into space and landed it back on Earth. You see that last year GE 3D-printed an entire working jet engine. IBM right now is working with Memorial Sloan Kettering Hospital to deploy AI, artificial intelligence, to study cancer. This is an exciting time. The challenge we have is keeping up with the technology leaps. And those are becoming more common and appearing faster than ever before. These new technologies have several things in common. They create jobs, high-paying jobs. They show the world that America is the leader in advanced technology. And they are powered by a robust broadband infrastructure. A brief discussion about the state of broadband service in Nebraska is in order here. Nebraska currently ranks 46th in the nation, 46 out of 50 for broadband speed. We are 120th globally for network traffic produced. Do you know who is 121 and 122 are? Haiti and the Dominican Republic. We are just above them. Why are these rankings important? In 2015, U.S. e-commerce generated almost \$1 trillion and 6 percent of the U.S. economy. Cisco projects that it will go to \$19 trillion in the next ten years. That's a lot of jobs and a lot of opportunities that Nebraskans will be competing for with current outdated broadband infrastructure. You'll see included in my packet are two maps. These are produced by the Public Service Commission. Those show where fiber is available today and where broadband, as currently defined by the FCC, is available. The FCC defines broadband as 25 megabits down and 3 megabits up. The blue areas are what you're looking at. Fifty-three percent of Nebraska households do not have access to high-speed broadband. Only 4 percent of Nebraskans have access to 100 megabit service. Nebraska was the only state last year to see an average maximum download speed decrease in the nation. You've heard both Lincoln and Omaha have successfully negotiated multiple small cell agreements. Yes, we have master license

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agreements. We want the deployment of this technology. We don't restrict the number of permits you ask for. We don't restrict the location. We are in the process of negotiating more of these agreements. Lincoln has over 40 of them, public-private partnerships for the broadband...for broadband deployment. LB389 effectively eliminates the ability of municipalities to negotiate these types of agreements. I also question what impact LB389 will have on the 40 agreements that Lincoln has right now. It has been suggested that LB389 is the first step to addressing barriers to rural broadband. I respectfully disagree. The maps that you see and the testimony that you have heard today suggest that fiber is required to deploy this infrastructure. I agree. The reason that is, a small cell is capable of basically consuming 600,000 megabits per second of data. In rural Nebraska we're lucky if we get 20 megabits. So how is that going to help us? Without addressing the underlying broadband infrastructure facing our state, LB389 will result in more of the same: poor quality and expensive broadband service in our rural areas. You have heard many passionate voices expressing how LB389 fails short of our common goal to improve broadband in our state. We would like to be a part of the discussion. We would like an interim study. We would like to help craft a broadband infrastructure bill for Nebraska by Nebraskans. And I would be happy to assist in that effort. Thank you again for the opportunity to speak. [LB389]

SENATOR SMITH: Thank you, Mr. Young, for your testimony. Senator Hilgers. [LB389]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you, Mr. Young, for your testimony. I appreciate you saying that there are 40 broadband agreements, did I hear you right? [LB389]

DAVID YOUNG: Correct. [LB389]

SENATOR HILGERS: And I don't know if you were here when I had the previous back and forth with the city of Omaha testifier. How many have you deployed? [LB389]

DAVID YOUNG: Oh, God. So small cell specifically we have two. One of them we have just completed last week and we'll be going before the city council. Verizon was complete in December. Right now we are designing our first small cell application. Verizon has identified 118 sites in Lincoln that they would like to deploy this year. The other 38 agreements are with private fiber providers such as UPN, Level 3, CenturyLink, NebraskaLink. I'm trying to forget...remember them all. [LB389]

SENATOR HILGERS: So on the Verizon agreement, for instance, are these master service agreements...oOne agreement and then you could get many nodes behind that agreement or...? [LB389]

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DAVID YOUNG: Correct. [LB389]

SENATOR HILGERS: Okay. [LB389]

DAVID YOUNG: Unlimited. [LB389]

SENATOR HILGERS: And when did that process start with Verizon? [LB389]

DAVID YOUNG: We engaged with Verizon in June...something like this June. The agreement was complete in August. And then we jointly designed a small cell pole that would be approved in 85 percent of the locations in the city. [LB389]

SENATOR HILGERS: And that is 120 did I hear you right...total, 118 plus the 2 that have already been deployed, is that right? [LB389]

DAVID YOUNG: We're deploying our first one now. Verizon alone has identified 118 locations. The other company we're working with is 25 to 30. And then we are having conversations with two other carriers, most likely the same two as Omaha. [LB389]

SENATOR HILGERS: And do you have a sense of the 120, does that cover the entire city? [LB389]

DAVID YOUNG: No. [LB389]

SENATOR HILGERS: What does geographically represent? [LB389]

DAVID YOUNG: We expect it will take 400 to 600 small cells to cover the entire city. And we expect that over the next ten years. [LB389]

SENATOR HILGERS: Thank you very much. [LB389]

SENATOR SMITH: I see no further questions from the committee. Thank you, Mr. Young, for your testimony. Next opponent of LB389. Welcome. [LB389]

WALT RADCLIFFE: (Exhibit 15) Senator Smith, members of that committee, my name is Walter Radcliffe, W-a-l-t-e-r R-a-d-c-l-i-f-f-e, appearing before you today as a registered

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lobbyist on behalf of the Nebraska Cable Communications Association. We're also registered for the Nebraska League of Municipalities and the Nebraska Telephone Association that previously appeared in opposition to LB389. I've circulated a letter which is signed by Mike Drahota, the president of the Cable Association. You are fully capable of reading that yourselves. I'll just leave you with one thought that I haven't heard expressed yet, which is that traditionally this committee seeks to eliminate any disparities in the marketplace, not to create them. And I think that this bill would create some disparities in the marketplace among the various companies out there and I'd urge you to not advance it. I'd be happy to answer any questions, Senator. [LB389]

SENATOR SMITH: Thank you, Mr. Radcliffe. Questions from the committee? I see none. [LB389]

WALT RADCLIFFE: Thank you. [LB389]

SENATOR SMITH: Thank you for your testimony. Next opponent of LB389. (Exhibits 19-21) We do have letters in opposition submitted on LB389. We have Mayor David Black, City of Papillion; Mayor Douglas Kindig, City of La Vista; Mayor Bob Roseland, City of Springfield; Mayor Jim Timmerman, City of Gretna--all for the United Cities of Sarpy County. There's also a letter from Mark Kirby representing Butler Public Power District; and a letter from Don Kelly, chairperson of the Sarpy County Board of Commissioners. Those were all submitted in opposition to LB389. We now move to those wishing to testify in a neutral capacity, neutral. I see none. (Exhibit 22) We do have one letter that was submitted in a neutral capacity on LB389. That was from Nathan Leach. And we now ask Senator Friesen to close on LB389. [LB389]

SENATOR FRIESEN: Well, Chairman Smith and members of the committee, at least there was nobody that didn't care. (Laughter) You know, it's interesting sitting in the back there. You see the providers come forward and our proponents and everybody else that owns a pole or controls right-of-way was opposed. So I do think we have a problem. And, no, I don't think this is the cure for rural broadband. But I do think something like this is needed by business because they want to come in and provide a service and at times they feel as though they're negotiating with every different entity out there in trying to reach an agreement. So I still think there's...we've got some work to do with this bill. There's no doubt. But I...and I think there's a place for it. You know, when you look at technology and the way it changes down the road I think there's...if we want to speed up the process, to me, taking away some of the obstacles that business has to go through to provide a service is one start. And if we can smooth that process by creating a road map I guess, so to speak, that works throughout the state I think it would help facilitate getting broadband into the smaller communities. In just my time also with the municipalities in the past, I mean each municipality attacks it differently because of the city councils or who they're made up for. And suddenly you have issues that pop up in different towns and communities that are

totally different from one from the next. And for companies to have to come in and work around each of those, I for one at least think that the process needs to be smoothed out. We have too many little private territories we're all trying to protect. But in the end, we want broadband access and we want it cheap. And at the same time we sometimes throw obstacles up. And it's true that small cells will drive fiber. In order to have a small cell you have to have fiber placement. But in the end, some of these small towns where we...fiber is generally in these small towns. It's either going to their school already or it's out to their hospital. And so access is there and the cheapest way to provide high-speed internet is through small cells. It is the cheapest way to deploy that technology. So I think it's something we have to keep in mind. We'll keep working on this bill. We'll see once where it goes, but glad to answer any other question. [LB389]

SENATOR SMITH: Questions from the committee? Senator Friesen, I do think that this...I hope we can work through some of the differences with the public power districts, REAs, and also with local governments because I think this is the type of bill that we need. We need to look at this to improve innovation in our state and to meet some of the growing needs in our state, too, for coverage. And also you do understand I get premium pay for hearing your bills. (Laughter) [LB389]

SENATOR FRIESEN: Time and a half for overtime. [LB389]

SENATOR SMITH: That concludes our hearing on LB389 and I turn the hearings back over to Senator Friesen. [LB389]

SENATOR FRIESEN: Thank you, Chairman Smith. The next bill, we'll open the hearing on LB472. Welcome, Senator Bostelman. [LB472]

SENATOR BOSTELMAN: (Exhibit 1) Thank you, Chairman Friesen and Transportation and Telecommunications Committee members. My name is Bruce Bostelman, that's B-r-u-c-e B-o-s-t-e-l-m-a-n, and I'm the proud representative of District 23. And I'm here to introduce LB472, which I have brought on behalf of the Department of Roads. LB472 amends Section 39-220 of the reissued Revised Statutes of Nebraska to change provisions relating to permits for advertisements along the Highway Beautification Control System to eliminate a fee for such advertisements and to change provisions regarding the Department of Roads' authority to make rules and regulations concerning the signs along the highways. This bill includes some cleanup measures for Statute 39-220. This bill clarifies that the Department of Roads may require permits for advertising signs, displays, and devices, which are at any point visible from the main travel way of or placed along or upon a Highway Beautification Control System. I believe in your information you have a copy or you have a colored map of what this system is. And the Highway Beautification Control System is defined in Section 39-201.01 and was created by Congress to

control outdoor advertising and junkyards and promote the safety and recreational value of public travel and promote natural beauty. The state of Nebraska, by enacting legislation in 1972, elected to participate in the control of advertising signs and junkyards. There is an exception for on-premise signs, displays, and devices as defined by the department's rules and regulations for advertising activities conducted on the property on which a sign, display or device is located. The bill would eliminate the statutory permit fee paid by bill board companies which own and maintain Class IIA, IIC, and Class III outdoor advertising signs. And you have a handout on the definition of those signs that was just passed out. These companies would still be required to apply for and renew these permits and otherwise comply with all state and federal laws and regulations regarding outdoor advertising and highway beautification. Originally, the statutory fee for each permit was set at a range of 25 cents to \$15 and has not been changed since. The Nebraska Department of Roads currently charges \$15 regardless of the size of the billboard or technology used. This bill would simply eliminate that fee to help make it easier and more attractive for companies to do business in Nebraska. The fee the department receives currently is very modest...is a very modest amount and the department is in favor of eliminating this fee. The bill would result in the Roads Operation Cash Fund losing approximately \$19,000 annually, which is 100 percent from the Nebraska Department of Roads. No other state or local agency is conceivably affected by this bill. Therefore, I ask for your support on LB472 and its advancement. And I welcome any questions. [LB472]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any questions from the committee? Seeing none, thank you. Proponents who wish to testify in favor of LB472. Welcome, Director Schneweis. [LB472]

KYLE SCHNEWEIS: (Exhibit 2) Thank you. Good afternoon, Chairman Friesen and members of the committee. I'm Kyle Schneweis, K-y-l-e, last name, S-c-h-n-e-w-e-i-s; I'm the Director of the Department of Roads testifying today in support of LB472, and I'd like to thank Senator Bostelman for introducing it. As he stated, it eliminates the fee for permits issued by the NDOR for billboards and other advertising signs along the state highway system. The \$15 fee that is in current statute dates back to 1974 and the amount collected is not significant to our highway program. It is important to note these signs are not on the state right-of-way, these are on private property. Our permitting process for these signs will continue as required by state and federal law. The only substantive change is the elimination of the fee. The other changes in the bill merely update and clarify references in the statute. That concludes my testimony. But I'm happy to answer any questions. [LB472]

SENATOR FRIESEN: Thank you, Director. Any questions from the committee? I just have one, do you...interstate signs, do you control those or is that a different (inaudible)? [LB472]

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KYLE SCHNEWEIS: We do. The control of signs along our highways and interstates is a very complex and complicated and regulated heavily, and yes we do control it. Yeah, many are on-site, off-site; there's a lot of different requirements, as you know, and we have some experts on the team that help us navigate through it. And our most important goal is to make sure that they're put in place in a safe way and that they comply with state and federal law. And so the \$15 doesn't help to cover the cost of the program and we see no reason to continue collecting it. [LB472]

SENATOR FRIESEN: Okay, thank you. Seeing no other questions... [LB472]

KYLE SCHNEWEIS: Okay, thank you. [LB472]

SENATOR FRIESEN: (Exhibit 3) Any other proponents wish to testify? Seeing none, any wish to testify in opposition to LB472? Seeing none, anyone wish to testify in a neutral capacity? We have one written testimony by Nathan Leach. No one wishes to testify in a neutral capacity. Senator Bostelman waives closing. And we'll close the hearing on LB472. Next we'll open the hearing on LB483. Welcome, Senator Hilgers. [LB472]

SENATOR HILGERS: Thank you, Chairman Friesen and fellow members of the Transportation and Telecommunications Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I represent the citizens of northwest Lincoln and Lancaster County in District 21. I'm here to open on LB483. LB483 would accomplish a minor modification of the Administrative Procedure Act that would help solve a looming problem for parties who go before the Public Service Commission. To give you a sense of what the problem is, I'll give you some context. Currently, the Public Service Commission has proceedings where someone maybe applies for some sort of regulatory resolution. That's analogous to maybe a litigation or a court case. And so there's a certain...the PSC has rules that govern that process. One of the rules that's part of that process is a rule governing when other parties can intervene. And so the rule that has been in place for decades as far as we can tell, at least maybe 30 years, says that after someone files an application or an entity files an application with the PSC and notice is provided, within 30 days after that notice period, someone can intervene. Over the last year or so, the PSC was modernizing their rules and regulations that apply to this process and in communication with the Attorney General's Office, the Attorney General's Office indicated that that scheme for intervention conflicted with the Administrative Procedure Act which has a different scheme, which is that someone can intervene up to five days before the actual hearing. And as a litigator, I don't practice in front of the PSC. There are individuals behind me who do and will speak to this. But I will tell you as someone who operates in the court system, it's very difficult to overstate the disruption, the delay, confusion that could be caused by allowing intervention at such a late date. It's very important to have the proceedings go through a logical, defined manner to actually



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refine the issue before whatever regulatory or court system might be, in this case the PSC. And so having that at least...that runway to get all those arguments and the parties to the table early on in the process helps streamline and allows for timely resolution of applications. So the way to resolve this issue would be through either for the PSC to change their rules to accommodate the APA or to have a slight statutory modification to accommodate the PSC's longstanding process that has served it and the counsel who represent parties and those parties before the PSC, served them very, very well. So what LB483 would do would be a slight modification of the APA to accommodate that process. There will be individuals who will testify behind me to answer any technical questions you might have about that process, but I'm certainly happy to answer any questions and I ask that the committee advance it to General File. [LB483]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any questions from the committee? Seeing none, thank you. [LB483]

SENATOR HILGERS: Thank you. [LB483]

SENATOR FRIESEN: Any proponents who wish to testify in favor of LB483? Welcome. [LB483]

LOEL BROOKS: (Exhibit 1) Good afternoon. Chairman Friesen, members of the committee, my name is Loel Brooks, L-o-e-l B-r-o-o-k-s, and I'm an attorney with the law firm of Brooks, Pansing Brooks here in Lincoln. I'm here today in support of LB483 and wish to thank Senator Hilgers for introducing it. I'm here today offering testimony that is the product of many meetings and discussions over the past several years with members of the community of lawyers who routinely represent clients in front of the Public Service Commission. I'll call them the commission bar for short. All of those attorneys rely on the commission's rules of procedure to help advance and protect the interests of their clients. And I'm one of those attorneys. I've practiced before the commission since 1987, representing primarily local, state, and regional competitive telecommunications companies, both wireless and wire line. As Senator Hilgers pointed out, there has been in recent years a conflict, or at least a perceived conflict, between the commission's longstanding, decades-old rules of procedure involving intervention and a companion set of rules adopted back in 1993 under the APA with regard to the same concept. I think Senator Hilgers pointed out very well, we have a 30-day rule for intervention under the commission rules and we have a different set of rules that would permit a party of interest to intervene within five days of a hearing. We have, as members of the commission bar, we have long opposed adoption or incorporation of the APA rules in our commission rules because we felt that to do so would create some serious due process problems and would interfere with the orderly processing and administration of the commission's proceedings before it. As you may know, the Public Service Commission is the only constitutional agency of the state. It has quasi-

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judicial and quasi-legislative responsibilities and authority and, therefore, the proceedings before the commission can be contested and they can be adjudicated in a fashion similar to a district court here in Lancaster County and throughout the country...or throughout the state. In an effort to try to resolve this impasse, we have concluded with the commission bar and with the commission itself that one way to resolve this would be to have a slight exemption through legislation that would exempt the commission from the APA rules of intervention. And that's what we feel LB483 does. It satisfies this joint common perception that we have an impasse here that should be eliminated and the easiest way to do so is through exempting the commission from these restrictive rules we feel and ones that don't serve the interests of the clients nor the commission under the APA. It is worth noting as we go through this, and I think Senator Hilgers very accurately described the nature of the problem that we have, but I wanted to point out to you, and it's in my testimony, that in 1993 under LB446, Senator Bob Wickersham introduced that law and that was the statute adopted by the Legislature that effectively codified the APA. After many discussions with Bob over time and reading the transcript from that particular legislation in committee and on the floor, I approached Bob and he indicated that the rules of the APA were never intended to supersede the independent statutory authority of the commission to adopt and practice its own rules. And I am pleased to add with my testimony a letter from Senator Wickersham that explains his point of view and his conclusion on this particular topic and I think it's interesting historic input. So that is really the essence. We've gone from the sublimely exciting to the sublimely boring kind of concept, but I think that the rules and procedures, as Senator Hilgers pointed out, are critically important to how we administer cases at the Public Service Commission. And for the three decades I've been practicing there and for many more before that, the rules of procedure have worked effectively with appropriate notice, they've protected the due process rights of all parties including the commission's interests in these proceedings, and we feel that they should be sustained. And given the circumstances, we feel that applying the intervention rules of the APA would not be appropriate or in the best interests of the public. And in connection with this I would like to express our appreciation to Senator Smith and Chairman Friesen and, of course, committee counsel, Mr. Hybl, who is, as you may know, a former Executive Director of the Public Service Commission, for their keen interest in this issue. And even though it is important, it is indeed arcane. I also want to acknowledge the critically important cooperation of Commissioner Landis and Commissioner Schram of the Public Service Commission, who through sitting on the bench with the commission and also recognizing that we have issues from time to time, took a very significant interest in trying to find an appropriate way to resolve this issue. And that's why we're here today. So with that, I'd be happy to respond to questions. I think there's another member of the commission bar who may wish to testify. We'd be happy to give you examples or explain this narrow kind of rule analysis. But we certainly appreciate your attention and hope that you will advance this bill to the floor. [LB483]

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SENATOR FRIESEN: Thank you, Mr. Brooks. Any questions from the committee? Seeing none... [LB483]

LOEL BROOKS: Thank you very much. [LB483]

SENATOR FRIESEN: ...thank you for your testimony. Welcome. [LB483]

TIM SCHRAM: (Exhibit 2) Good afternoon, Chairman Friesen and members of the Transportation, Telecommunications Committee. I am Commissioner Tim Schram spelled T-i-m S-c-h-r-a-m, the chair of the Nebraska Public Service Commission, representing the Third District. I am here today in support LB483. LB483 resolves an issue that came to light when the commission attempted to update its rules of procedure. Historically, our rules of procedure have provided that an interested person must file a protest or formal intervention in a proceeding within 30 days from the date in which the proceeding was noticed. A duly filed protest or formal intervention affords a person or entity with party status which gives that person or entity certain rights in the proceedings, including the right to appeal a decision of the commission. The 30-day deadline is important because it allows the commission, the applicant, and the other parties involved the ability to plan a case with an understanding of the parties' rights, interests, and scope. In most of our contested cases, the assigned hearing officer has a procedural conference early on where the interested parties discuss deadlines for discovery, witness lists, exhibits, pre-filed testimony, the hearing date, and post-hearing briefs. Nebraska Administrative Procedure Act, Neb. Revised Statute Section 84-912.02 allows interested parties to intervene as late as five days prior to a hearing. That provision further allows the commission to grant or deny that intervention 24 hours before a hearing. When the commission proposed a rule change to be consistent with the APA, many commenters in the rulemaking proceeding objected to this change. We agree that the following process laid out in Section 84-912.02 is impracticable for many of our cases. It is reasonably foreseeable that some entities will wait until the eleventh hour to file an intervention. Allowing formal interventions to be filed within five days of the hearing puts an applicant at a significant disadvantage and may prevent a fair, organized hearing process for all parties. We thank the committee for its time and attention this afternoon and urge you to support of LB483. And I'd be happy to try and answer any questions you may have. [LB483]

SENATOR FRIESEN: Thank you, Mr. Schram. Any questions from the committee? Seeing none, thank you for your testimony. [LB483]

TIM SCHRAM: Thank you. [LB483]

SENATOR FRIESEN: Welcome. [LB483]

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ANDY POLLOCK: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Andy Pollock, A-n-d-y P-o-l-l-o-c-k. I am here today as a registered lobbyist for the Rural Telecom Coalition of Nebraska, for Northwestern Energy and Natural Gas Company of Nebraska, and for the Nebraska Transportation Association which consists of passenger carriers, all of which that are certified by the Public Service Commission. I'm also presenting my testimony today on behalf of the Nebraska Telecommunications Association as well. I won't take too much of your time and I think Mr. Brooks covered a good share of what needs to be covered and I think Senator Hilgers did a great job of laying things out for this bill and we'd like to thank him for introducing this bill. I think Mr. Brooks summarized the bill as being perhaps boring but sublime and I would agree with him and I would also add that it is an important bill. It's a simple bill that hopefully this committee will consider seriously and advance. And it's an important bill to the orderly administration of the Public Service Commission's regulatory oversight in all of the arenas that it oversees. And I'll talk a little bit more about that. In a nutshell, this bill is simply memorializing an existing practice of the PSC that's also in its rules and regulations. And it's a current practice in rule and regulation that, without question, works and works very well. In putting this bill together, Mr. Brooks and another attorney, Paul Schudel, who's with the Woods Aitken firm here in Lincoln who's been practicing before the commission probably for 30 years as well, spent a lot of time figuring out the way to put the bill together and also importantly reaching out to the other members of, as Mr. Brooks called it, the PSC bar, the attorneys that practice before the Public Service Commission. The good thing is there's not a lot of us. There's maybe 12 of us or so in the state who have a regular practice before the commission, meaning we're there every month or so if not more often. I can tell you that everyone that we reached out to had no concerns about this bill and agreed that it was an important step that this Legislature should take to make sure things remain orderly at the Public Service Commission. As Senator Hilgers said correctly, order when it comes to litigation is incredibly important. It's incredibly important for the parties of whom I am here representing whether it's a transportation company or a natural gas company or a telecom company. It's also, I would submit, important for the judge. And in this case I think you just heard from the judge--the Public Service Commission. And we appreciate their support of this bill and I think it shows that they understand that this is an important bill procedurally as well. Before the bill was introduced by Senator Hilgers, he wanted to know what the Attorney General's Office had to say about it. I contacted the Attorney General's Office and they said as long as the Public Service Commission is not in opposition to the bill, they're okay with it. So you just heard the PSC testify that they're in support of the bill. I do quite a bit of practice before the commission and have in the last five years. I've represented telecom companies. I've represented natural gas companies and represented transportation companies. And in terms of pure volume of work load, there's probably more contested transportation cases before the Public Service Commission than anything else. And I would submit this is very important for those transportation cases. In terms of the volume of documents and time involved in any particular case, there may be nothing second to none than the natural gas rate case. A natural gas rate case

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is prosecuted under the Natural Gas Act of 2003. And I was going to give you the time frame for those proceedings to file a rate application and then have it approved by the commission or rejected by the commission. But the statute that governs those time lines is three pages, almost...actually it dips into the fourth page. It's more than three pages long. It's a cumbersome process. It's a time-driven process. I was at the negotiating table. I was working with the Public Service Commission at the time, was at the negotiating table when the Natural Gas Act was passed. The cities on one side and the utilities on the other side spent a lot of time going through the way the process was supposed to work and each side was very determined that they made sure that there was a fixed deadline that the commission has to apply by or enter a decision by. I would submit to you that, as you heard from Commissioner Schram, they have a planning conference in almost every type of case. They set the hearing and there's an enormous amount of discovery and investigation that goes into those proceedings, especially natural gas cases where you have a public advocate that's retained, a consultant that's retained by the commission, and of course the utility on the opposite side of the table. Those utilities...the public advocate represents the cities of the state that are served, it is not beyond imagination to envision a public advocate and a natural gas company pushing things to hearing, five days before the hearing to have a city come out of the woodwork and say, hey, we're going to intervene in this case. We're not happy with the work that the public advocate has done. That's certainly possible, feasible. That would disrupt not just the order of the proceeding, but probably the procedural deadline which is set forth in statute as well. So for those reasons I would ask you to advance the bill and I'd be glad to answer questions. [LB483]

SENATOR FRIESEN: Thank you, Mr. Pollock. Questions? Senator Briese. [LB483]

SENATOR BRIESE: Thank you, Senator. Thank you for being here. Perhaps I should have asked someone earlier this question. But do you know if any potential intervenor has been turned away for failure to timely file a petition under the current rules? [LB483]

ANDY POLLOCK: Yes, they have. [LB483]

SENATOR BRIESE: How often does that occur? [LB483]

ANDY POLLOCK: Not very often. You have 30 days to intervene, so there's plenty of time now. But it does happen on occasion. I'd say probably a couple times a year somebody just misses that deadline. I would also tell you that that's the deadline for formal interventions. Right now under current law and PSC rules, and this would not change under the rules that they're anticipating in this modernization process, there is an opportunity to informally intervene. And you can do that up until a lot closer to the hearing. I don't know if there's a specific deadline, but I know you can intervene informally a lot later than that. That is true, and also if someone chooses not to

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intervene formally or informally or protest in a proceeding, they can always make a public statement at the hearing and that happens not infrequently as well. [LB483]

SENATOR BRIESE: So there are other options for folks that run afoul of the 30 days. [LB483]

ANDY POLLOCK: There are, Senator. Good question. And those options would not be changed by the rules that the commission has been looking at. [LB483]

SENATOR BRIESE: Thank you. [LB483]

SENATOR FRIESEN: Thank you, Senator Briese. Any other questions from the committee? Seeing none... [LB483]

ANDY POLLOCK: Thank you. [LB483]

SENATOR FRIESEN: Thank you. Welcome. [LB483]

JILL BECKER: Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee. My name is Jill Becker spelled J-i-l-l B-e-c-k-e-r, and I appear before you today representing Black Hills Energy. We'd like to thank Senator Hilgers for introducing LB483 and voice our support of that bill. As you may know, we as Black Hills appear before the Nebraska Public Service Commission on numerous matters primarily related to our natural gas customers. We serve approximately 300,000 natural gas customers in over 300 communities across this state and we invest millions of dollars annually in our infrastructure. Almost all of our business decisions affecting our natural gas customers are reviewed by the Nebraska Public Service Commission in one form or another. As you heard earlier from Mr. Pollack, the regulatory approval process for natural gas...for regulated natural gas utilities in Nebraska can be expensive and time consuming even when the issues to be reviewed and considered are not necessarily that extensive. This is especially true in complex filings such as a rate case or a systems safety and integrity rider which have strict, statutorily-defined time lines. In those types of filings, the commission and other parties in the case including the public advocate must review hundreds of pages of testimony, prepare and respond to numerous rounds of data requests, and resolve numerous issues involved in the lengthy and complex case. We support the changes under LB483 because it will give us greater regulatory certainty and efficiency. As has been mentioned, we believe that parties having 30 days to formally intervene in a process to become a party provides adequate notice and an opportunity for intervention. In addition, allowing an entity a statutory right to intervene and become a formal party late in the process really disrupts the process. It gives that formal party the ability to raise new issues, cross

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examine witnesses, and advance other issues at the expense of the statutory time frames and really reduce that regulatory uncertainty. As I mentioned, we support LB483 and I encourage this committee to advance it to the floor. With that, I'd be happy to answer any question. [LB483]

SENATOR FRIESEN: Thank you, Ms. Becker. Any questions from the committee? Seeing none, thank you for your testimony. [LB483]

JILL BECKER: Thank you. [LB483]

SENATOR FRIESEN: Others who wish to testify in favor of LB483? Seeing none, are there any who wish to testify in opposition to LB483? Seeing none, any who wish to testify in a neutral capacity? Seeing none, do you wish to close? Senator Hilgers waives closing. (Exhibit 3) We have one letter in the neutral: Nathan Leach. We will close the hearing on LB483. Next we will have Mike Hybl introduce LB156 which is just a highly technical bill and hopefully he can explain it. Welcome. [LB483]

MIKE HYBL: Thank you. Senator Friesen, members of the Transportation and Telecommunications Committee, my name is Mike Hybl, M-i-k-e H-y-b-l, I'm the committee legal counsel for the committee and I'm introducing LB156 on behalf of Senator Friesen. We're looking back at the LB938 from last session, the legislation that dealt with the adoption of the 911 Service Systems Act. Part of what the committee did with that bill, as it was being put together, as we noted earlier this afternoon, has an operative date of July 1, 2018, on it. Also, part of what happened with that bill, and it was a part of what was negotiated out in the committee, during the consideration of that bill was there's also a termination date put on the bill, June 30, 2018. What the bill does is remove that termination date from LB938. There's not an intent to move forward with the legislation this year. It was, basically, we were needing just to have a placeholder to have in regard to the 911 Service Act since we were putting together the bill last year when we were looking at the session starting this year, just to be in a position if something came up as the PSC started the development of the study process, if there was some change that may have happened at the federal level, something that would have come along where we may need a vehicle yet this year if we have to make a change in the 911 Service Act before we get out of session this year to assist in the study process, as well as the implementation study. So that's what the bill does, it's just opening up the section in case we need a vehicle should it happen during the rest of the session. Otherwise, the request would be that we hold the bill in committee, because next year we do know, one way or another, we will need to make some changes in the 911 Service Act once we get through the full study process. With that, that would conclude my introduction, Mr. Chairman. [LB156]

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SENATOR FRIESEN: (Exhibits 1, 2, and 3) Thank you, Mr. Hybl. Any questions from the committee? Seeing none, thank you. Any proponents wish to testify on LB156? Seeing none, any opponents wish to testify on LB156? Seeing none, anyone wish to testify in a neutral capacity on LB156? We have two proponents here: Gerald Stilmock from the Nebraska State Volunteer Firefighters Association and Nebraska Fire Chiefs Association; and Tim Schram, Chairman of the Nebraska Public Service Commission. And a neutral testifying from Nathan Leach. And with that I think we'll close the hearing on LB156. Next...looking for Senator Hilkemann. He's on his way? Okay. Okay, we will now open the hearing on LB43. Senator Hilkemann, welcome. [LB156]

SENATOR HILKEMANN: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Senator Robert Hilkemann, that's R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I'm proud to represent Legislative District 4 in west Omaha. I'm here today to introduce LB43 for your consideration. As you may know, the installation, operation, and maintenance of 911 services are funded by surcharges on landlines and wireless services. Current law allows all but one county in Nebraska to charge 50 cents per month on landlines with the possibility of increasing that surcharge by an additional 50 cents. That one exception--Douglas County. It's limited to a 50 cent charge on landlines. Additionally, all but one county may charge wireless users up to 70 cents per line for 911 services. Again, Douglas County is limited to a 50 cent charge on wireless users. LB43 is a bill that adds an element of fairness to the funding of these services across all Nebraska counties by removing the singular limit imposed upon Douglas County and putting a uniform cap on landline surcharges at a dollar. It also aims to ensure that our largest and one of our fastest-growing counties has the resources that it needs to meet the increased public safety demands that comes with that growth. New technologies are available for 911 services and who knows what new technologies will be available in the future. We need to make sure that our state supports Douglas County's ability to fund improvements to emergency services. Furthermore, Douglas County would like to enter into a regional system for 911 services. The fact that surrounding counties are able to increase the surcharge, while Douglas County lives under a singular limit, is a barrier to regionalization and streamlining of these services. Simply, this bill is about fairness and public safety. Douglas County should be brought into balance with the rest of the state. This is good public policy and it will have real consequences for emergency services in Douglas County. Thank you for your time and consideration. I respectfully ask you to advance LB43 to General File. [LB43]

SENATOR FRIESEN: Thank you, Senator Hilkemann. Any questions from the committee? Senator Smith. [LB43]

SENATOR SMITH: Thank you, Mr. Chairman. Senator Hilkemann, do you have any idea as to why there's this disparity? [LB43]



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SENATOR HILKEMANN: Well, Senator, I understand that when this bill was presented, that one of our state senators had a carve out for Douglas County and that that carve out was to...and their feeling was poor persons should not have to pay that additional fee. So that's why that has been in this bill since then. [LB43]

SENATOR SMITH: Very good. You know what you're headed for. Thank you. [LB43]

SENATOR FRIESEN: Thank you, Senator Smith. Any other questions from the committee? Seeing none, thank you. Will you stick around for closing? [LB43]

SENATOR HILKEMANN: I'll be here. [LB43]

SENATOR FRIESEN: Okay. Anyone wish to testify as proponent of LB43? Welcome. [LB43]

DAVID SLEETER: (Exhibit 1) Thank you. And thank you for giving me your time. Obviously, you're inundated with information here. I don't know how you keep up with it. My name is David Sleeter, first name D-a-v-i-d, last name Sleeter, S-l-e-e-t-e-r. I'm the Emergency Communication Director for Douglas County in Omaha. As mentioned, over the last 15 years, Douglas County has continually spoken in support of any bill that eliminates the restriction of limited 911 surcharges in a Nebraska county that contains a city of metropolitan class, such as and only Omaha. This surcharge restriction has negatively impacted the ability of the Douglas County Emergency Communications Center to meet the current and future demands on emergency services in our county. Douglas County residents account for approximately a fourth, a little over a fourth, or 27 percent of all state residents, and an increase in the 911 surcharges would help our emergency communications center to better meet the needs of our residents. In fiscal year 2015-2016, the Douglas County Emergency Communications Center budget reached the \$6 million level, a little over. The landline 911 surcharges received by Douglas County were \$1.1 million with the statutory limitation of 50 cents and the wireless 911 surcharge reimbursement was \$270,200. The Douglas County Emergency Communications Center has not been able to increase its staffing levels by a single employee over the last five years, while 911 call answering and dispatching activities have increased dramatically. During this same time period, it was necessary for the city of Omaha and Douglas County to almost double their emergency communications center financial contributions. I have those numbers if you'd like them. In the year 2016, the Douglas County Emergency Communications Center received 850,396 phone calls, with 579,000-plus of these calls being 911 calls. This is a large volume of 911 calls to process considering that our call-taking staff had not increased in the last five years. With some of these 911 calls requiring additional processing time due to technology limitations, such as cellular 911 call accuracy issues where you need to rebid calls, staying on calls longer, technology advances such as text to 911, which we're now receiving, and other issues that we

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elect to take such as emergency medical dispatch, a voluntary program where our operators are trained to stay on the line and provide pre-arrival instructions for medical incidents. In other words, we're in dire need of more advanced telephony equipment in the future and additional staffing to meet these expectations. The potential impact of increasing the 911 surcharges in our state for Douglas County would be improved public safety services for our county residents, period. This would allow us the money to purchase technology that's going to be coming with Next Generation 911, and also as to answer the 911 call volume that continues to increase for our county. The Douglas County Emergency Communications Center would be able to employ additional call-taking personnel, and implement technology enhancements such as things you've seen and heard and will be coming like 911 video where people can send video images to the 911 center. We're already doing text to 911 and it goes on and on. And as you know, the state has taken the lead on pursuing Next Generation 911 technology and implementation in our state, so we're looking forward to that and hope we have the funding necessary on our end to do that. All this would increase 911 call processing efficiency and speed up public safety responses for Douglas County residents who are requesting public safety services. Ultimately, it isn't the 911 center that is going to get all these funds and be improved; ultimately, it's the citizens of Douglas County because what's going to result is improved services. Their calls are going to be answered faster by call operators and the responses will be faster by the technology that we employed. The impact of increasing 911 surcharges in the state would directly affect more than one-half million state residents as public safety responses in our county will be further expedited. Finally, any increase in the Nebraska 911 surcharge rates or amounts could be considered a user fee, not a general tax...goes on the general tax burden, because the people that are using the service are paying for it, and not generally across the board. And finally, it's not in my notes, but I'd like to say that this would serve to ultimately provide...help us provide better service to our residents. That's all I have. Any questions? [LB43]

SENATOR FRIESEN: Thank you, Mr. Sleeter. Any questions from the committee? Seeing none, thank you. [LB43]

DAVID SLEETER: Thank you. [LB43]

SENATOR FRIESEN: Welcome. [LB43]

LARRY DIX: Good afternoon, Senator Friesen, members of the committee, my name is Larry Dix, L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials here in support of LB43. When the NACO board discussed this and when we've been working over the last few years on Next Gen 911 and some of these things, we felt that this really is just good public policy. And we know there's some hurdles to overcome during the debate and I think we understand that. But all in all, we think that this is the right public policy. And when I've

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contacted executive directors--no, I've got plenty of time, from previous states, we think that...we just don't see this in other states for the most part, at least the ones I've contacted. Whatever that rate is, it is border to border in all the other states. So, with that I'm happy to answer any questions you may have. [LB43]

SENATOR FRIESEN: Thank you, Mr. Dix. Any questions from the committee? Seeing none, thank you. Any other proponents wish to testify? Seeing none, is there any who wish to testify in opposition to LB43? Seeing none, anyone wish to testify in a neutral capacity on LB43? Seeing none, Senator Hilkeemann waives closing. So we'll close the hearing on LB43. Next up we'll have LB612 with Senator Wayne. Welcome. [LB43]

SENATOR WAYNE: (Exhibit 1) Welcome. Good afternoon, Chairman Friesen and members of the Agriculture Committee (sic). My name is Justine Wayne... [LB612]

SENATOR HUGHES: Transportation and Telecommunications Committee. [LB612]

SENATOR WAYNE: Yeah, I had Agriculture earlier, sorry. It does say that. It's been a...and then I went back to mine...it's been a long day. Today is Senator Groene day in Urban Affairs. (Laughter) My name is Justin Wayne, spelled J-u-s-t-i-n, Wayne, W-a-y-n-e, and I represent Legislative District 13 which is north Omaha and northeast Douglas County. LB612 is known as Kari Law. It will mandate organizations, maintain phone systems with outside access, removal of all prefixes, digits, and codes necessary for contact in emergency services. This bill is named in honor of Kari Rene Dunn, a woman who was stabbed 21 times in a motel by her estranged husband as children hid on the floor on the other side of the door, frantically calling and unsuccessfully attempting to call local police. As you might expect, the prefixes in the system placed in the hotel, especially during the time a crisis or urgency, can impede one's ability of getting a hold of emergency services. The circumstances of this event took place in Texas and the Legislature quickly acted. On May 15, 2015, Governor Abbott signed a similar version to this bill into law. 911 access should not and the ability to easily access it should not be a controversial one. The fact of the matter is, is in our offices in this building, if we were to have an emergency and we had a visitor in there, if something were to happen and they dialed 911, they would not reach somebody. They may not know where a panic button is; they may not know if one exists, but they would get on a phone and dial 911 and we could have a severe problem because they would have to dial 9-9-1-1. This is something that we need to deal with as a legislature just for the simple fact that it's a safety issue and it's something that we can do. The introduction of this bill is not to add more regulations to hotel providers, but we should have some kind of standard to make sure if you're operating these type of telephone systems, there should be a way to make sure that 911 is dialed for the youngest child to the oldest person making sure they can be easily accessed. What I've also passed out is a letter from Verizon, and

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you'll hear testimony from other telecommunication organizations, we're all saying the same thing, that the way this bill is currently written, and we've been working on an amendment, but I spent the last 30 days reading Mason's Manual of rules, that's a joke, but didn't go over very well. But no, we've been working on an amendment and it's just been a communication, but we do agree that we are not trying to overburden some of the telecommunication industry. We think it's the owners' job to make sure that they can provide easy access to 911. So I will continue to work with Verizon. I do agree with, if not all the changes on their letter, the same as the neutral testimony who will come later on. We are working together, we just haven't been able to craft the amendment. The industry supports this. Local people support this. You should be able to pick up your phone, no matter where you are, and dial 911 to know that somebody is there to help you. And with that, I will submit that this committee please allow this legislation to move forward so we can have a floor debate on this very issue that's important to all of us. [LB612]

SENATOR FRIESEN: (Exhibits 3 and 4) Thank you, Senator Wayne. If this would have been Ag Committee, Mason's Rules might have worked, but not here. (Laughter) Any questions from the committee? Seeing none, thank you. Those wishing to testify in favor of LB612 please come forward. Seeing none, those who wish to testify in opposition to LB612? Seeing none, anyone wish to testify in a neutral capacity on LB612? In the meantime, we do have a letter from Nathan Leach and Michael Bagley in a neutral capacity. Welcome. [LB612]

ERIC CARSTENSON: Thank you. My name is Eric Carstenson, I'm president of the Nebraska Telecommunications Association. And I'm in that enviable position of being neutral testimony on your last bill. I thought it would be important to come before you and tell you why we're neutral. When the bill was introduced, we saw several problems with the legislation and we visited with Senator Wayne; and he has been very gracious and willing to sit down and work and here's the problem. We've, as an industry, have tried several different solutions. And each time we'd craft one solution, well, and then as things happen, something would be wrong on the other side. And we just haven't had time to come to a good solution. That's my offer, we'd like to work with Senator Wayne, this committee, to develop a good solution to this problem. [LB612]

SENATOR FRIESEN: Thank you for your testimony. Any questions from the committee? Seeing none, thank you. [LB612]

ERIC CARSTENSON: Thank you. [LB612]

SENATOR FRIESEN: (Exhibit 2) We do have one letter as proponent from Tim Schram, Chair of the Nebraska Public Service Commission. Any other testimony, neutral? [LB612]

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JASON BROMM: (Exhibit 1) Thank you, Mr. Chairman and committee. You know, it's rare that Eric and I are always on the same side; glad that we are this time. On behalf of the Nebraska Cable Communication Association, my name is Jason Bromm, J-a-s-o-n B-r-o-m-m. I won't belabor you with the letter that we put together, but there's four components that we want to talk about with Senator Wayne. I just caught him in the hall and let him know that we were going to try and work on some of this with him after the hearing. And with that I'd close my testimony and take any questions. [LB612]

SENATOR FRIESEN: Thank you, Mr. Bromm. Any questions from the committee? Seeing none, thank you for your testimony. Any others wish to testify in a neutral capacity? Seeing none, Senator Wayne, would you wish to close? Senator Wayne waives closing. We'll close the hearing on LB612 and we'll close the hearings for today. [LB612]