

FRIESEN [00:00:01] OK. Welcome, everyone, this afternoon to the Transportation and Telecommunications Committee. I'm Curt Friesen, from Henderson, District 34, the Chair. Begin with a few procedural items. I'd ask that you please silence all your cell phones and other electronic devices. We'll be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We have kind of an on-deck chair up here so that you can be ready when the next testifier's turn comes to testify. If you will test-- be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the hand-- give the completed testifier sheet to the page when you sit down to testify. Handouts are not required; but if you do have a handout, we need ten copies. One of the pages will assist you if you need help. When you begin your testimony, it's important that you clearly state and spell your first and last names for the record. If you forget this, I will stop you and ask you to do that. Please keep your testimony concise and try not to repeat what already has been covered. We will be using the light system today. The green light, you will have four minutes; the amber light will come on and then you have one minute left. And then when the red light comes on, it's time to wrap things up. Those not wishing to testify may sign in on a pink sheet by the door to indicate their support or opposition to a bill. Staff on my right is Tip O'Neill, the committee clerk-- or committee counsel. And committee clerk is Sally Schultz, to my rear there and to the left. Pages are Alyssa and Preston, and thank you for helping today. And with that, I will let the committee introduce, themselves starting with Senator Bostelman to my right.

BOSTELMAN [00:01:48] Bruce Bostelman, District 23, Saunders, Butler, and Colfax Counties.

ALBRECHT [00:01:52] Good afternoon. Senator Joni Albrecht from northeast Nebraska, Wayne, Thurston, and Dakota Counties.

GEIST [00:01:57] Suzanne Geist, District 25, which is the east side of Lancaster County, includes Lincoln, Walton, and Waverly.

DeBOER [00:02:05] I'm Wendy DeBoer. My district is 10; it's northwest Omaha, Bennington, and surrounding areas.

HILGERS [00:02:11] Mike Hilgers, District 21, northwest Lincoln and Lancaster County.

CAVANAUGH [00:02:15] Macheala Cavanaugh, District 6, west-central Omaha, Douglas County.

HUGHES [00:02:21] Dan Hughes, District 44, ten counties in southwest Nebraska.

GEIST [00:02:24] Thank you. And with that, we will open the hearing with LB270. Senator Friesen.

FRIESEN [00:02:33] Thank you, Chairman Geist. Senator Geist, members of the committee, my name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I'm the introducer of LB270. This bill was introduced on behalf of Department of Motor Vehicles and amends and revises and harmonizes statutes that DMV administers. The bill amends implemented-- implementation dates, updates provisions relating to electronic certificate of title for vehicles and motorboats, updates provisions regarding previously salvaged titles, changes provisions about the type of vehicle that may tow historical trailers, and allows certain types of evidence for the issuance of titles for manufactured homes. It also eliminates federal references, allows the issuance of temporary stickers for persons who apply for specialty license plates, changes sections relating to electronic issuance of operator's license and state ID cards, and amends the section regarding point assessment procedures for drunk driving convictions. This is an annual update bill from DMV. Director Lahm is here to explain the details and I would defer questions about those details to her. Appreciate your support and ask you to advance this bill to General File. Thank you, Chairman.

GEIST [00:03:48] Thank you, Senator Friesen. Are there any questions on the committee? Seeing none.

RHONDA LAHM [00:04:04] Good afternoon, Senator Geist and members of the Transportation and Telecommunications committee. I'm am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director of the Department of Motor Vehicles. I'm appearing before you today to offer testimony in support of LB270. I would like to thank Senator Friesen for introducing LB270 on behalf of the department. LB270 is a comprehensive harmonization bill to address a number of motor vehicle-related statutes and to eliminate the need for redundant rules and regulations. While many of the sections in this bill tidy up language modifying dates by which the department must meet certain criteria, others are more impactful. For example, Section 35 would allow individuals who hold a driver, Class O, or motorcycle license and are between the ages of 21 and 72 to renew two consecutive renewal periods, or once every 15 years, on-line before doing so in person. Currently it is one time or once every ten years. Likewise, anyone age 21 or older who holds a state identification card would only be required to renew in person once every 16 years. These changes provide a more convenient service to our customers and frees up resources to focus on other customer needs. When an individual is registering or titling a trailer, motorboat, or motor vehicle, this bill would allow an individual, on or before January 1 of 2021, to provide a name as it appears in the owner's operator's license or state identification card DMV record as an additional option to full legal name. This allows DMV systems to communicate with one another, furthering our modernization efforts. Also in regards to titling, the bill would authorize the establishment of a process by which the seller of a vehicle or motorboat may request the department to update the electronic certificate-of-title record to reflect such sale if the purchaser has not done so within 30 days of the sale. This creates a customer service process which can

assist the seller in resolving legal issues or other situations when they occur. The department would only do so upon receiving satisfactory evidence of the sale. Relative to registrations, the bill would authorize the department to revoke a certificate of registration if it has been issued improperly. Currently this is only allowed when a registration is deemed to have been issued illegally. This will assist our customers to correct inadvertent errors and bring the registration statutes in line with those of the titling statutes. Currently a vehicle over seven years old which has been involved in a collision is not required to be designated salvage. The language removes the arbitrary time frame from determination of a salvage designation. Related to the salvage title topic, this bill would allow a single title to be issued for vehicles which have been rebuilt or reconstructed. In such circumstances, following inspection, the county treasurer would issue a previously salvaged title. This change would remove the burdensome and annoying process for customers and the county treasurer where a salvage title is issued and immediately replaced with a previously salvaged title. The bill contains a number of other measures to improve customer convenience. Historical-plated motor vehicles would now be allowed to be-- to tow historical-plated trailers. This is something not allowed under the current statute. Additionally, it would make it easier for an individual to apply for a certificate of title for a manufactured home, allowing the applicant to provide alternative documentation. This legislation would authorize the department to issue temporary license plates to customers who have ordered specialty license plates while the application is pending, thus reducing-- reducing waste. Currently a standard plate is issued and then returned when the specialty plate is received. The department will design and provide these temporary plates at no cost to the customer or the county treasurer. This change will be implemented on or before January 1 of 2021. LB270 includes a clarification of existing statute. It will ensure the department's record accurately-- accurately reflects that of the-- of the court order in the event of a drunk driving conviction. An adjustment to remove the requirement for low-speed, three-wheeled vehicles to comply with the Federal Motor Vehicle Safety Standards will allow the eTuk vehicles to operate legally. Operating this type of vehicle was originally approved by the Legislature in 2018. Lastly, if enacted, the bill would facilitate the removal of redundant rules and regulations in areas such as certification of third-party testers, testing of CDL drivers, and motorboat titling. While not requiring the removal of these rules and regulations, it would amend the language to allow the department to issue rules and regulations only when it's felt necessary, rather than requiring it to do so. Chairman Geist, I urge your support of LB270, and the committee, and the advancement to General File. At this time, I'd be happy to answer any questions the committee may have.

GEIST [00:08:48] Thank you, Director Lahm. Are there are any questions by the committee? Seeing none, thank you very much. Anyone else wish to testify as a proponent?

LOY TODD [00:09:22] Sorry. I thought I would be up later than this. Yeah. My name is Loy Todd; that's L-o-y T-o-d-d. I'm the president of the Nebraska New Car and Truck Dealers Association, testifying in favor of this legislation. We-- we're generally supportive of all the kinds of cleanup things the department does, and we are in this case. One of the things that we noticed in the-- in the bill was the opportunity to correct mistakes, and for many years we have

been seeking an opportunity to let the department do that upon satisfactory proof. One of the things that happens to us is that occasionally one of my dealers will take a trade-in vehicle that has a lien on it and they can't find the lienholder. Some people go out of business or there's transactions that change things, that kind of thing, and we simply can't locate the lienholder. Under current law there's only two things that we can find to do. One is to sue in district court and take a default judgment, which is not easy to do simply because of the expense and you've got to hire a lawyer and you've got to go through the time on it. And the other opportunity is under a different statute. If you wait ten years, then you can go through the same-- a similar type of process where you can ask the department to remove the lien. What we're asking in the amendments, and I've furnished those together with my sign-in sheet and I've furnished them to counsel previously, that's simply the opportunity that if we can't locate the lienholder, then we notify the department of our efforts. We give them a sworn affidavit or whatever in that regard saying we can't find them. The department then sends out a notice to the last known address of that lienholder. If they don't get a response within 30 days, then they can remove the lien and clear the title so that we can go on with the transaction. We have cleared this with the Nebraska Bankers Association. They've agreed and helped us to draft the amendment. The amendment that we submitted is-- has been drafted by the Bill Drafters and we would appreciate the opportunity to ride along with this effort in order to correct this deficiency in Nebraska law. Thank you.

GEIST [00:11:35] Thank you. Any questions from the committee? Yes, Senator Bostelman.

BOSTELMAN [00:11:39] Just a question on the mailing of the-- that you just mentioned. That could be by regular mail or certified return receipt?

LOY TODD [00:11:47] I think the statute that's presented now calls for just regular mail. If someone wants something enhanced, the one thing we want to be careful about is not require a signature because we can't find them. And so a return receipt or whatever, we're-- we're fine with anything that happens, but I didn't see a specific requirement for that or enhanced mailing.

BOSTELMAN [00:12:13] OK. Thank you.

GEIST [00:12:15] Thank you, Senator Bostelman. Any other questions on the committee? Seeing none, thank you for your testimony.

LOY TODD [00:12:24] Thank you.

GEIST [00:12:24] Any other proponents? OK, we'll move on to opponents. Any opponents on LB270? Good afternoon.

JOE KOHOUT [00:12:48] Good afternoon, Chairwoman Geist and members of the Transportation and Telecommunications Committee. My name is Joe Kohout, K-o-h-o-u-t, and I

appear before you today in opposition to LB270 on behalf of our client, Insurance Auto Auctions, Incorporated. Insurance Auto Auctions is a leading auto auction company selling all kinds of cars, trucks, SUVs, and motorcycles. They combine live auctions with live Internet bidding to well-drivable vehicles, lightly damaged and repairable vehicles, theft-recovered vehicles, parts vehicles, and donation vehicles at over 150 auction centers across the United States. Their Nebraska facility is located in Springfield. IAA has concerns with Section 10, and Section 10 only, of LB270. Nebraska law currently requires that vehicles less than eight years old, or those older vehicles which the value is at least \$11,500 before the damage, be branded with a salvage title if the damage to the vehicle exceeds 75 percent of the fair market value. Older-model vehicles that have a lower retail value are not required to have a salvage title. A majority of states provide exemption from salvage designation on vehicle titles based on age and/or damage threshold. I am providing you a list of those states in the handout I have just passed around. The current seven-year-plus, high-value salvage rule recognizes that newer vehicles, with their higher fair market values, will still-- will have significant damage if the cost of repairs exceeds 75 percent of the preaccident fair market value of the vehicle. In contrast, older vehicles, even when roadworthy, would meet the salvage definition because their repair cost for minor damages can easily approach 75 percent of the low fair market value. LB270 changes the law by eliminating the seven-year-plus-- seven-year-plus, high-value salvage requirement. Under the bill, every vehicle with an estimate repair cost of 75 percent or more of the retail value will be classified as salvage, regardless of whether the damage is structural, cosmetic, or even if the vehicle remains roadworthy. I have passed around a document provided by IAA that shows the value of the top ten models sold. You will note that it would take very little to get to that 75 percent number on-- based on several of those model values. It is our opinion that the bill will harm consumers by needlessly requiring a salvage designation on their vehicle title, insurers by decreasing the sales proceeds of the vehicles sold, and vehicle rebuilders by increasing their costs. Today the average vehicle on the road is more than 11 years old. The unintended, anticonsumer consequences of LB270 will be especially apparent with older model vehicles. An owner of an older model vehicle will face the burden and expense of anti-theft examination in order to obtain a title, which title will be branded. When the consumer sells the vehicle, the amount the consumer receives for the car will be significantly reduced simply because LB270 requires that such vehicles be branded with a salvage designation. Likewise, insurance company recoveries for the sale of vehicles will be reduced and this will act as an insurance rate cost driver that could result in higher insurance cost for consumers. Vehicle rebuilders will face additional costs and delays related to an anti-theft examination which is not well justified for those older vehicles. This being said, I would encourage the committee to remove Section 10 from the bill and set it aside for negotiations to occur to see if we can find a common ground between IAA, the department, and your office. I would note that these large types of bills, cleanup or omnibus bills, are usually designed to bring forth concepts where there is agreement between all parties on language and concepts. I think it is clear that there is not agreement on this particular section. We commit to negotiate in good faith on this language. Thank you, Chairwoman Geist and members. I would try to-- I would be happy to try to answer any questions you might have.

GEIST [00:16:23] Thank you, Mr. Kohout. Are there any questions on the committee? Yes, Senator Albrecht.

ALBRECHT [00:16:33] Thank you, Chair. So, Mr. Kohout, does your organization have an idea of what kind of number they would put on a salvage title?

JOE KOHOUT [00:16:40] I think we would prefer, frankly, to leave the current statute the way it is.

ALBRECHT [00:16:47] Just the way it is.

JOE KOHOUT [00:16:49] Just the way it is, and if-- and if we need to look at different options, we'd be happy to try to do that.

ALBRECHT [00:16:54] Thank you.

GEIST [00:16:58] Any other questions on the committee? Yes, Senator Bostelman.

BOSTELMAN [00:17:02] Thank you, Chairwoman Geist. You may or may not know this, but do you have an opinion or a comment as to why you think that was changed? Is there something specific within the industry that would have caused this change?

JOE KOHOUT [00:17:15] I am not aware, Senator.

BOSTELMAN [00:17:17] OK. Thank you.

GEIST [00:17:20] Any other questions on this side of the aisle? No? OK. Thank you, Mr. Kohout.

JOE KOHOUT [00:17:29] Thank you.

GEIST [00:17:29] Any other proponents-- I'm sorry, opponents to the bill?

COLEEN NIELSEN [00:17:43] Thank you.

GEIST [00:17:43] Good afternoon.

COLEEN NIELSEN [00:17:43] Good afternoon, Vice Chairman Geist, members of the Transportation and Telecommunications Committee. My name's Coleen Nielsen; that's spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Insurance Information Service. That's an association of property casualty insurers doing business in Nebraska. And I'm

here testifying in opposition to LB220, specifically to Section 10 as well. I think that-- that the previous testifier, Mr. Kohout, has really set out what the problem is. The bill eliminates the distinction between late-model vehicles and older vehicles in determining whether the vehicle should be classified as salvage. So this only occurs in total-loss cases. And to-- to your question, Senator Bostelman, I think I was actually around when this late-model language was negotiated, at least at some point. And the reason that there was a seven-year threshold was because it was felt that newer cars, it takes-- well, it takes a lot more damage to a newer car to be-- so that it's-- so-- to be declared salvage than it does to an older car. So for example, in Nebraska, I mean, we have a lot of hail, and so there could be people with older cars that are damaged and consequently would have to get a salvage title under this bill, whereas before they do not have to. And so I think it was felt that it was an issue of fairness and that people with older cars and arguably lower incomes would be most affected unless there was a threshold. So as Mr. Kohout said, we'd probably prefer that it remain the same, but we are committed to work with the department to see if we could come to some compromise in this particular section going forward. And so I'd be happy to answer any questions.

GEIST [00:19:39] Thank you. Are there any questions on the-- on the committee? Yes, Senator Bostelman.

BOSTELMAN [00:19:45] Thank you, Chairwoman-- Vice Chairwoman Geist. Guess my question would be are we talking-- is it more-- is the concern more on the seven years or is it more, the concern, on the 75 percent? Is 50 percent--

COLEEN NIELSEN [00:19:56] Oh.

BOSTELMAN [00:19:56] --a number that you're-- that would be more, you know, agreeable as far as your-- who you represent?

COLEEN NIELSEN [00:20:06] No, I-- no, I think that they're happy with the 75 percent portion of that. Where our problem was, was with changing it to all vehicles at 75 percent retail value being damaged, that all those vehicles would have to get a salvage title. That's what-- that's our concern.

BOSTELMAN [00:20:27] OK. Thank you.

GEIST [00:20:28] Any other questions? I do have a question.

COLEEN NIELSEN [00:20:32] Yes.

GEIST [00:20:32] On those titles at that-- let's say they were all old and new. Assuming this were in place, is there anything on that title that would designate whether the-- the damage is cosmetic or whether it's mechanical, or is it just a salvage title? Does that cover everything?

COLEEN NIELSEN [00:20:51] The salvage title-- well, I think generally a salvage title covers everything, although the law does say that a definition of salvage is to restore the vehicle to a condition for legal operation, so not necessarily cosmetic. But sometimes I think that many times people are given total-loss settlements and, as a result, go and get a salvage title for the vehicle. I think that's what's happening.

GEIST [00:21:21] Such as hail, like you mentioned earlier. OK. OK.

COLEEN NIELSEN [00:21:24] Right, um-hum.

GEIST [00:21:24] Thank you. Any other questions? Thank you for your testimony.

COLEEN NIELSEN [00:21:30] Thank you.

GEIST [00:21:31] Any more proponents? I'm sorry, opponents. I keep going back to the positive. Sorry. Opponents. Afternoon, Justin.

JUSTIN BRADY [00:21:47] Good afternoon. Senator Geist and members of the committee, my name is Justin Brady; that's J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the American Property Casualty Insurance Association in opposition to LB270. Again, Section 10 is the only section of the bill that they have opposition to. We've talked briefly to the department and indicated that we'd like to sit down and see if we can figure something out. To your question, Senator Bostelman, yeah, I think that something out is the years. I mean, do we keep it this current seven? You know, can we go to ten? I just-- or 12? Whatever. I mean, is there a line that both parties could agree on as far as sitting down? I won't regurgitate the reasons that you've heard from the previous two testifiers as to why that is that we have the concerns and I'll just stop there and see if you have any questions.

GEIST [00:22:39] Thank you. Any questions? Yes, Senator Albrecht.

ALBRECHT [00:22:42] Thank you. Mr. Brady, is this the first year that this has come up or has it come up in previous years to have it changed?

JUSTIN BRADY [00:22:50] It's the first year that I recall it coming up, I mean, as far as recently, as opposed to going back, like Ms. Nielsen talked about, you know, when it was originally negotiated at the seven-year mark but--

ALBRECHT [00:23:01] OK. Thank you.

GEIST [00:23:03] Thank you. Any other questions? Seeing none, thank you for your testimony.

JUSTIN BRADY [00:23:07] Thank you.

GEIST [00:23:09] Any more opponents? Seeing none, anyone to testify in the neutral capacity?
Good afternoon.

RAY COLAS [00:23:31] Chairwoman, members of the committee, my name is Ray Colas, R-a-y C-o-l-a-s. I'm here to testify neutral and provide information based on some of the questions asked and the statements made. LKQ Corporation is the nation's largest distributor of automotive after-market and recycled car parts. We have six operations here in the state. We have a total of about 140 employees with a payroll of roughly \$5.5 million. Now some of the statements that were made and questions asked dealt with why this model year exemption may exist. Well, one thing I want to provide you with information on is that a clean-title vehicle is worth more than a salvage-title vehicle. So clean-title vehicle is meant to provide a consumer with information as to the true history of that vehicle. If a vehicle has been involved in an accident and that vehicle is processed as a total loss, you should have the right to have that information. So I wanted to make sure that we provided clarification on that aspect. As it applies to the concerns that the insurers raised, if it's an older-model vehicle and that consumer may not-- or that vehicle may have had only sustained cosmetic damage, I think you can fix that issue if you were to remove the 75 percent threshold and allow the insurer the discretion to repair that vehicle if it only sustained cosmetic damage versus structural or mechanical damage. Therefore, if an insurer were to process a total-loss claim, then that vehicle would have to be declared salvage irrespective of the level of damage. If their concern or their interest is to repair that vehicle, allow them that opportunity to repair the vehicle. But once they pay out that claim, it should receive a salvage title vehicle-- a salvage title. And this-- maybe a consumer is going to purchase that vehicle down the road. They should know the true history of that vehicle so they pay the right amount of money for that used vehicle. We would be more than happy to work with the department on any compromises that may need-- may need to be made to this bill. And again, we're neutral currently.

GEIST [00:25:47] Thank you. Any-- any questions from the committee? Seeing none, thank you for your testimony.

RAY COLAS [00:25:56] You're welcome.

GEIST [00:25:56] Anyone else wishing to testify in the neutral capacity? Seeing none, Senator Friesen, you're welcome to close.

FRIESEN [00:26:10] Thank you, Vice Chairman Geist. One of the things on the salvage title-- and I'll-- I'll relay an experience I had in Lincoln here my first or second year here. I had about a one-year-old vehicle and a young man ran a stoplight-- a stoplight and T-boned me right in the side and the vehicle had about 50 to 60 percent damage. So we took it to a body shop; we got it fixed up. But when I wanted to trade that vehicle in, they discounted it about \$10,000 because of

Carfax. So whether the title shows salvage or not, these days there is a loss on those vehicles whether or not you have a salvage title. And the insurance company isn't going to reimburse you for that loss. But when Carfax says your car has been in a major accident, they don't care whether it was totaled out or not; it discounts that vehicle. So there's a lot of things in play here and I-- I'm not saying I'm on one side or the other of this, but there-- the issue is, is there-- there is a dollar loss to a vehicle whether or not it has a salvage title. But I do think people need to know, I guess, that it's been in an accident. But it does get discounted in price even though it's been fixed up back to factory specs and somebody has to eat that. And I know insurance companies don't cover it because we went through that process. So otherwise, I think I'm done. If you have any questions, I'd be-- try to-- glad to answer them.

GEIST [00:27:39] Thank you. Does the committee have any questions? Yes, Senator Hilgers.

HILGERS [00:27:45] Thank you, Vice Chair Geist. Senator Friesen, do you have any comment on the other proposed amendment? Is that a friendly amendment that was-- Mr. Todd referenced earlier?

FRIESEN [00:27:53] Yeah, I have-- I have no problem. We'll look at that and we'll work with-- with any of the parties to try and bring resolution to it.

HILGERS [00:28:03] Thank you.

GEIST [00:28:05] Thank you, Senator Hilgers. Anyone else? Any other questions? Seeing none, that closes the hearing on LB270. When you are ready, Senator Hil-- I'm sorry. Senator Friesen, you are welcome to open on LB184.

FRIESEN [00:28:36] Thank you, Vice Chairman Geist. Members of the committee, my name is Curt Friesen, spelled C-u-r-t F-r-i-e-s-e-n, and I appear today to introduce LB184. LB184 modernizes Nebraska telecommunications statutes to allow for greater investment by wireless communications providers. I can tell you that we've been working on this bill for three years and Nebraska is losing ground to other states and cities. For example, Denver and Des Moines are well ahead of Omaha and Lincoln in the deployment of new technologies commonly referred to as small cells. Small cells can expand coverage and deliver the benefits of fifth-generation, or 5G, wireless service in Nebraska. Next-generation 5G on small cells containing antennas, radio, and sporting equipment that can attach to existing structures like utility poles, streetlights and traffic lights, they're barely visible to the public. The aesthetics are much better than having a macro cell tower, which can be 300 feet or taller, and small cells are typically the size of a small shoebox. LB184 provides wireless service infrastructure and infrastructure providers the right to place facilities in the right-of-way. It allows small wireless facilities siting as permitted uses and allows a reasonable time for application review by the appropriate city, county, or state department. The bill also allows small cell providers to submit a single application for a batch of small wireless facilities in order to speed up the permitting process. LB184 preserves local

government control by giving those entities the authority to deny an application that does not meet building, electrical, health, safety, and public right-of-way use permit requirements. It also ensures that local governments are fairly compensated through reasonable and nondiscriminatory fees for permit applications and annual rates that are cost based and consistent. The FCC issued an order in January that determined small cell deployment is essential for the nation's competitive future and set out rules for that deployment. The order provides that cities may only charge maximum of \$270 per attachment. It is my understanding that the city of Lincoln charges almost \$2,000 per attachment. The proposal-- the proponents of this bill have been working with interested parties during the last three years. I'm pleased to report that OPPD, NPPD, and the rural electric companies are no longer opposed to the bill because of those negotiations. I call on other opponents to work with us as we try to hammer out compromises. This issue is too important for us to fall further behind other states in deployment of small cell technology. I'd be happy to answer any questions you may have. Thank you.

GEIST [00:31:17] Thank you, Senator Friesen. Are there any questions from the committee? Yes, Senator Albrecht.

ALBRECHT [00:31:24] Thank you, Senator Geist. Senator Friesen, I am new to this committee, so I wanted to ask you today about the FCC and what it's come out with. Does that mirror this particular bill?

FRIESEN [00:31:38] No, it doesn't. And there will be a gentleman behind me that can talk more about the FCC rule and/or the guidance that it provides. So I think if you save your questions for him, he'd do a better job of answering that.

ALBRECHT [00:31:49] Maybe I'll just wait and listen and then ask later if I have more. Thank you.

GEIST [00:31:54] Anyone else from the committee? Seeing none, thank you, Senator Friesen. The first proponent. Good afternoon.

DAVID TATE [00:32:05] Good afternoon. Thank you. Good afternoon, Vice Chair Geist. Members of the committee, my name is David Tate, D-a-v-i-d T-a-t-e, and I am the vice president associate general counsel for AT&T and I am here today on behalf of AT&T in strong support of LB184. This is an absolutely critical bill because it will encourage significant investment in the state of Nebraska and it will encourage the rapid deployment of advanced wireless technology and lead the way, pave the way for next-generation 5G technology. And that's absolutely critical because that will allow Nebraska communities to continue to be relevant and-- and competitive in-- in this 21st century. Now this technology is sweeping the country, and with it legislation has been sweeping the country in order to open the door for this technology to go forward. For example, over 20 states have already passed bills much like the bill in front of

you in order to open the way. And in this session, this year, we anticipate up to 12 other states, including Nebraska, will be considering this type of bill in order to open up the technology. Now this bill before you is a balanced bill. It seeks to balance two important things: one, the immediate need for providers to deploy rapidly in a streamlined manner this technology, balanced with the importance of local authorities to protect their public right-of-ways, to protect the health, safety, and welfare of their citizens, and to protect the aesthetics of their community. And this has been a balanced bill throughout the states, and today you're looking at a negotiated bill, as has already been mentioned. We've already had an opportunity, and the language is in that bill, to negotiate with the power-- with public power, with the Department of Transportation, with the university systems and other stakeholders, and we continue to negotiate today with the municipalities and with cable. In fact, we've met several times with the municipalities. We anticipate that at any time we're hoping to see a red line and comments from the municipalities. We've worked with municipalities in all 20 states and in-- in most of those they become neutral and in all of those we've been able to work with them to come to a reasonable understanding and compromise in order to reach that balance. We've also worked with the cable companies and we've worked with the cable companies in-- in all 20 states. And-- and we have addressed already in the bill the-- the four issues or areas that they have been concerned about in each of the states. That is already in the bill, and we'll continue to talk with them as well. Now I want to spend the rest of my time to talk about the FCC order because, as-- as you've already mentioned, Senator Albrecht, the FCC did issue its declaratory ruling and report and order. It just became effective January 14. And in that, they addressed the-- the deployment of small cell technology and they-- they-- they addressed rates and they addressed aesthetics and they-- permitting and streamlining and shot clocks. They addressed those things. So why, if they addressed those things, do we need a bill here in Nebraska and in 11 other states this year and-- and the 20 states that have already gotten there? Well, with my time, I can-- I'm going to tell you one very important reason-- there's others-- and I'll give you one example. Here's the reason: because we need consistent and clear rates, terms, and conditions that will apply across the state to all of the municipalities rather than being-- having to go city by city by city to deal with interpretations of the FCC order that will just slow down the deployment. And let me give you just one example. In paragraph 79 of the FCC order, the FCC sets a-- a presumptively reasonable rate. It's already been mentioned by Senator Friesen, \$270. They say if-- if cities-- if you charge this much or less, then we're going to presume that that's reasonable under Section 253 and 332 of the federal act. So-- so they give them that, then what they do is they drop a footnote, and it's footnote 233, and in that footnote they say, but some cities could come forward and say that their reasonable approximation of costs are higher than that-- that presumption of reasonableness that we just told you in the paragraph 79, and then they quickly, in the next paragraph, say, but this isn't going to happen very often, this is just going to be a few cities, we think, because that reasonable presumption is-- is very high. It's a higher end of what the-- what the rate should be. Now here's our concern. Our concern is that so many of the cities are going to consider themselves footnote 233 cities that they're going to say that we believe that we can show that our reasonable approximation of costs are higher than that presumptively reasonable rate. And so what will happen is that becomes a recipe for litigation because in

every city where we go into and they say, ah, we're one of those footnote 233 cities, let's prove up the rates, we end up having a rate case and possible litigation, and that's exactly what we want to avoid and that's just one example. And I know I'm out of time, and I thank you for your time today and I'm here to answer your questions if you have any. Thank you.

GEIST [00:37:57] Thank you for your testimony. Are there any questions on the committee? Senator Albrecht.

ALBRECHT [00:38:04] OK. Again, Mr. Tate, thank you for your testimony, but I am new at this.

DAVID TATE [00:38:09] Yes.

ALBRECHT [00:38:09] So I need a little bit of history before I can wrap my head around it all. So obviously the FCC is just putting out some basic parameters, but our state in this bill is trying to lay out the fee structure for all municipalities, correct?

DAVID TATE [00:38:30] That's correct.

ALBRECHT [00:38:31] Why would they exclude the colleges and campuses and that sort of thing in our bill?

DAVID TATE [00:38:36] Well, frankly, Senator Albrecht, it's a negotiated bill and-- and those that perhaps the industry would prefer to have in the bill and it apply to, they've come to us to negotiate that. And so it is a negotiated bill and there's arguments on the other side that perhaps those that are excluded should be in the bill, but-- but there are nuances that would make it different. The FCC would say that, you know, that-- that authorities-- and it-- and it defines it very broadly.

ALBRECHT [00:39:06] OK. And then has AT&T been in the cities of Lincoln and Omaha for some time negotiating these small cells already?

DAVID TATE [00:39:15] We-- we have been talking with-- with the cities. We have not deployed and we-- and we can't deploy under the rates that are currently being-- that are currently in place for others and that-- that are being proposed now.

ALBRECHT [00:39:28] So you haven't negotiated at all, your company?

DAVID TATE [00:39:30] We-- AT&T is-- is open to negotiations and-- and has tried those negotiations.

ALBRECHT [00:39:36] Open, but you haven't agreed on anything?

DAVID TATE [00:39:38] There is no agreement with AT&T and under the current rates, in terms of the bill-- of the ordinances, we-- we couldn't deploy.

ALBRECHT [00:39:47] OK. So the fees that are within this bill are acceptable to your company?

DAVID TATE [00:39:52] Yes, they are.

ALBRECHT [00:39:57] Thank you.

DAVID TATE [00:39:59] Thank you, Senator.

GEIST [00:39:58] Thank you, Senator Albrecht. Yes, Senator Hilgers. I'll get back to you, Senator Bostelman.

HILGERS [00:40:02] Thank you, Vice Chair Geist. Thank you, Mr. Tate, for being here. I appreciate it. You said that you had one example of why we still need state action in light of the FCC order, but you implied that-- or stated, I guess, that there were some others.

DAVID TATE [00:40:12] There-- there--

HILGERS [00:40:12] Would you mind giving me some other reasons?

DAVID TATE [00:40:13] Yes, thank you, Senator Hilgers, there are. Just another quick example, in paragraph 105 of the FCC order, the FCC provides shot clocks, which means that the deadlines for and the length of time that a city can review an application-- and it gives two of these deadlines. One is a 60-day deadline, or shot clock, in order for them to review what we call a collocation, which means actually putting up a small cell on an existing pole. So it's 60 days. The pole is already there and they're just putting up the small cell. That's 60 days and they say then also you've got 90 days-- you've got 30 extra days-- if you're putting up a new pole along with that small cell. So they put that in there and-- but then a few paragraphs later in 117 they say, you know, we're not going to provide the deemed-approved mechanism. Instead, if you have-- if-- if a city is ignoring you, instead, you would need to go to federal court. Now let me explain deemed approved. Deemed approved just means if you get to the 60 days, or the 90 days, and a city is ignoring you, just-- just not giving you either an approve or a deny, they're just ignoring you, then a deemed approved means if they're just going to ignore you, then it's deemed approved and you can start deploying and-- but-- but what the-- what the FCC says is, well, instead of that, you can go to federal court. But you can see the problem with that because, once again, we're not talking about cities that are working with the providers, who are trying, who may need a few extra days. It's not that. This is for cities who just are recalcitrant and-- and may just be-- yes. Yes, Senator.

HILGERS [00:41:57] Well, just to clarify that point, I-- maybe I heard two separate things. Does the FCC order say either deemed approved or go to court? Does it--

DAVID TATE [00:42:04] No, I'm sorry, I was not clear enough, Senator. They-- they do not provide deemed approved.

HILGERS [00:42:11] They do not, OK.

DAVID TATE [00:42:11] They do not. They say go to federal court in that and that's-- but-- but that's a real concern for the industry because-- not for that the cities that-- that are working with us, but for cities, again, that will just ignore, it simply-- without a deemed-approved mechanism, it will force providers and cities into federal court and that's why we need the deemed approved. Now being a balanced bill, though, what the-- what the providers have said is we would like a deemed approved but we are willing to go to 90 days even for collocation. So although the FCC order says, cities, you have 60 days, the-- the industry in the bill is saying we will-- we will agree to 90 days, 30 extra days for every collocation, but-- but if you continue to ignore us, even for that 90 days, we need to be able to get out there and deploy based on all of the protections of the bill because, remember, the bill provides significant protections that-- that legally we must comply with. They're throughout the bill and I could mention them, but-- but even doing a deemed approved, the cities and the constituents and the citizens are protected

HILGERS [00:43:23] Are-- are there-- thank you for that. Are there-- there may be other places you-- do you have another example of one? I have paragraph 105, footnote 233. Any other examples of the FCC order that are incomplete, as it were, that would require or would be valuable state action here?

DAVID TATE [00:43:37] Yes, Senator, there would be another one and it sort of is similar to the situation that I just described and that's what is called permitted use. The FCC does not allow or it doesn't provide for permitted use. What it does say is that, you know, it-- within this 60 days, and of course the bill-- our bill provides 90, but in 60 days all of the inspections-- you can send it to zoning, you can send it over there, you can do all of these things, but you've got to do it in the-- in this period of time. But what's-- what's really needed in order, practically speaking, for that to happen and is not in the FCC order is this concept of let's all agree about what the size of the small cell is, the height of the pole, let's-- let's all agree on what those parameters should be, and then if we bring in a small cell or a pole that meets those, then you still get to review it, city, but it's a permitted use. It doesn't go to your whole zoning and go through that whole thing because, remember, we've already agreed to that within the statute and, therefore, it is a permitted use to go through without going through zoning. Again, it would still go through a permitting process. It would still have 60 days, or in our case 90 days, to review it, but it-- it would go-- it would go as a permitted use. And that's something the FCC does not allow us but it does-- it is something that we need and frankly is available in the other state bills. And the other things that I've mentioned are available in the other 20 states as well.

HILGERS [00:45:05] Thank you. Vice Chair, I just have a couple more questions if that's OK. One question was on the-- the footnote 233 that you mentioned.

DAVID TATE [00:45:10] Yes.

HILGERS [00:45:10] I certainly take your point. I think it's a valid one that-- the idea that-- that you would be forced to maybe litigate this city by city could be burdensome and-- and deter maybe or slow the rollout of this. At the same time, I think someone might say, well, look, if-- what if our cost-- I mean it might be a very valuable exception in the FCC order to say that municipalities have certain hard costs that go along with this. What data do you have, or other information do you have, to give the committee some comfort that by doing this bill or having this restriction, that we're not eliminating maybe what might be a valuable exception, while understanding that-- I understand what you're trying to do has value, and I certainly understand and appreciate that--

DAVID TATE [00:45:47] Sure.

HILGERS [00:45:47] --but on that point in particular, that it's not sweeping too broad.

DAVID TATE [00:45:50] Thank you, Senator. Yes. If you look across the states to begin with, where the states have-- have passed legislation, you're going to see significantly lower-- pretty much in all of the states, significantly lower right-of-way fees, like \$20 for a right-of-way, and in some there it's \$250. The-- the highest ones really are-- that have these bills are-- for the most part, are \$250 that would be in Utah, \$250 in Texas, a couple of others. But that's really what the FCC did is it took some of the highest and said we're going to go with that, we're going to assume that everyone has these higher, so you could go up to that amount. So it's taking the highest. Now to your point, Senator, what if there may be some? Well, what we found, and we found this in other states, is if you actually do, you know, look at the-- look at the actual land, and we're really just talking about air space, that's what they're paying for is the right-of-way air space on the pole. And so if you actually do the analysis, as-- as we have, it is-- it comes to much lower than that. We can-- we can show you the-- from other states how that's-- that's been done. But it is significantly lower. Now again, on a cost base, that-- the FCC in-- in paragraph 73 rejected the market-based analysis because there was two schools of thought. One was we ought to do it on the market, how much we could-- you know, we could sort of sell this for. And-- and you may hear that at times, well, we could sell this for more. The-- the-- the FCC specifically rejected that and said, no, it's not based on how much you could sell it to, it's how much are your cost, and so that has to be the basis for it. And when you look at it, just the cost, it's significantly lower than what the presumptive reasonable rate is.

HILGERS [00:47:35] Two brief questions remaining and then I'll-- I'll-- I'll stop. One is-- is a two-part question, so maybe I cheated, three questions: 1(a) would be, do we have any federal

preemption concerns given in light of the FCC ruling? And secondly, 1(b) would be --would be, if so, are there any areas in LB184 that might implicate preemption or would be in conflict with what the FCC did in their rulemaking?

DAVID TATE [00:47:57] Well, thank you, Senator. And in-- in-- in paragraph 147, one of the last paragraphs of the-- of the-- of the order, the FCC specifically said that this order is independent and additional to the state. In other words, these are the guidelines; this is what you've got to do. But if a state wants to do more, actually, if you wanted to do a shorter shot clock, that would be OK. Here, to be a balanced bill, we've said a longer shot clock, but under the FCC we could do a shorter shot clock and they could-- the states can-- can provide terms and conditions that-- that differ in that sense from the-- from the FCC. So-- so in that sense, I don't think there's a pre-emption issue.

HILGERS [00:48:46] Thank you very much. My last question is just I understand that there's currently ongoing litigation. There was a motion-- there was an attempt to stay the FCC rule. I understand that that motion was denied.

DAVID TATE [00:48:56] That's right.

HILGERS [00:48:56] Could you just give us a brief from public materials what the update is on the-- currently on the litigation?

DAVID TATE [00:49:01] Right. Well, at this point the-- the litigation is going for the most part into the Ninth Circuit. There-- there was some trying to stay in the D.C. Circuit and the Tenth Circuit. It looks like that is all going to be coming into the Ninth Circuit because of a-- of an earlier filed, similar litigation. The FCC has asked for that to be delayed until-- for-- for them to consider-- to do a reconsideration. So we're still waiting on that, but ultimately it's going to go into the Ninth Circuit, we anticipate, and-- and then I am not aware of an actual schedule that's been issued. It may be-- some others may know. I have not seen an actual schedule since it's been moved into the Ninth Circuit.

HILGERS [00:49:40] So was there-- did you say the FCC might ask for reconsideration of-- was there an order to stay this or was-- my understanding, there was not an order to stay the FCC.

DAVID TATE [00:49:48] There-- there is-- the order to stay was denied.

HILGERS [00:49:51] OK.

DAVID TATE [00:49:51] The order to stay, it was denied, just be clear on that, but-- so stayed, but then it was-- was moved into the Ninth Circuit but there-- the FCC was still talking about-- asking for time to reconsider.

HILGERS [00:50:03] OK, thank you very much, Mr. Tate.

DAVID TATE [00:50:04] Thank you.

GEIST [00:50:05] Thank you, Senator Hilgers. Senator Bostelman, did you have a question?

BOSTELMAN [00:50:08] Thank you, Vice Woman-- Chairwoman Geist. Thank you, Mr. Tate, for being here today, for testimony. One question: On the FCC side of things, could you explain to me that process? Did-- did all-- who all had-- I would assume there was a hearing, there was opportunity to provide comments to the FCC prior to the ruling come out. Could you explain that process to me a little?

DAVID TATE [00:50:31] Certainly, Senator. Yes, there was significant opportunity for comments and comments from all the providers, the industry; certainly cities in your state also commented on it. So there was a significant and long period from which they-- they took comments and then from those comments, like fairly normal rulemaking, then they came out with-- with the-- the order.

BOSTELMAN [00:50:56] So would it be fair to say that all stakeholders, I would say, had the opportunity to-- to comment on this and to provide their input?

DAVID TATE [00:51:04] Without a doubt, Senator, a full opportunity to be heard.

BOSTELMAN [00:51:08] Another question I guess I'd have is-- I kind of go back to-- I think what Senator Albrecht was talking about is what the FCC rule is and what is in the bill here now, and there's differences potentially in-- say in the size of the antenna where this is larger than what the FCC said is-- are there other areas specific to this? One-- one-- you know, and let me go to one area, and specific what we saw, let's say, in the One Call network when we-- One Call, we had that in-- in this committee during the last biennium and there was a significant challenge with the-- with the cities that to-- to reach the shot clock on getting all the utilities marked because when the-- when the-- when the provider or when the-- the company came in that was going to do the excavation-- Allo, I think it was-- they had a very large volume of requests that come in at one time, and so it was really hard for the-- the utility then to get out there and mark them in a timely manner. So do you see-- I guess my question really is, if-- if that same thing could happen again with the shot clock on these, with 60 or 90 days, if-- if-- if a company came in and-- and provided a request for a large number, there is no way that that utility, their city, whoever it is, would have the opportunity respond to it. What is the-- what is the-- what's the options that are there so we don't go into litigation or automatically, you know, say you can go out and go ahead and install these because you haven't responded to us in a timely manner?

DAVID TATE [00:52:53] This is a very good question, Senator, and one that we have dealt with in-- in each of the states because it's a-- it's a legitimate question. If we get overwhelmed, what--

what do we do? And-- and in each state, we have negotiated with the municipalities relief valves, basically, is when we get in that position, what-- what do we do? And-- and that's been a negotiation and we are very willing to talk with the cities here. We haven't heard back in terms of a red line at this point. We're waiting for comments back, but that is something that we recognize. And in-- in cities that are working with us, remember, on the deemed approved, it goes to cities that just ignore us. They don't approve. They don't deny. They just don't do anything. But a city that's-- that's wanting to work with us, right-- already in the bill, there's an opportunity on an agreement for a 30-day extension. But certainly there are different mechanisms that we can talk with about, you know, are-- are there concerns about, you know, size of city, the amount that can come in at one time. You know, those kinds of things we can certainly talk through.

BOSTELMAN [00:53:59] OK. Thank you.

DAVID TATE [00:54:00] Yes.

GEIST [00:54:02] Any other-- Senator Hughes.

HUGHES [00:54:04] Thank you. Thank you, Mr. Tate, for coming today. So in the past we've heard comments about how large the antenna, radio, whatever it is on the pole, can-- I'm assuming the technology is-- is improving and that-- those sizes are coming down. So what-- what sizes would AT&T be hanging on poles today?

DAVID TATE [00:54:24] Well, of course, the-- the bill allows for 6 cubic feet for the antenna and 28 cubic feet for the-- the-- the rest of the ancillary equipment. And that sounds like a lot, but-- but recall that that is allowing for that-- you know, for a-- more, frankly, than we would be putting up right now. And it allows for, you know, additional radios as 5G comes out. And so I didn't bring pictures. I think some of the others in the industry may have pictures or may have been brought to you but-- but you'll see usually it is a-- it's a very slim canister most-- most often and then a radio. So the entire 6 cubic feet and 28 cubic feet is rarely used, but it needs to be there in case for-- for reasons. And-- and-- and by the way, technology is a little different or-- or the-- or the way they're put together is different by provider, and so it's trying to allow for all of that.

HUGHES [00:55:23] So I guess you're saying there's not a universal component? Every-- every company has a different--

DAVID TATE [00:55:30] Everybody will have an antenna. Everybody will have a radio. Some work with different vendors for it, so it's going to look a little different. But-- but generally when you see it, you're going to see some type of canister antenna, usually at the top, and you'll see a radio or two down towards the middle, but those may look a little different depending on which vendor you're using.

HUGHES [00:55:54] OK, then one last question, if I might. What-- you-- you mentioned that several of the surrounding states around Nebraska have already adopted this.

DAVID TATE [00:56:08] Yes.

HUGHES [00:56:10] What's different about those states than Nebraska? I mean, why-- why-- what's the hang-up here?

DAVID TATE [00:56:13] I-- Senator, I-- I don't see anything different in terms of citizens wanting to have technology, depending on the state to provide the opportunity to get to 5G. I don't-- the only difference is that those states have-- have from a statewide basis opened that door for them to do that. And that's exactly what we're asking for here. But those states have taken a jump at opening up that right now, the 20 states and the others that are looking at it.

HUGHES [00:56:38] OK. Thank you, Mr. Tate.

GEIST [00:56:42] Any other questions from the committee? Yes, Senator Albrecht.

ALBRECHT [00:56:43] Thank you for allowing me a few more questions. OK, I know we-- we're probably talking big-city stuff here for Omaha and Lincoln or wherever the large number of people are. But you talk about how if people just-- other municipalities just don't want to talk to you.

DAVID TATE [00:57:02] Um-hum.

ALBRECHT [00:57:03] And so this particular bill would kick in. But if you go out to the rural areas of Nebraska, and they're not talking to you because obviously you'd have to bring fiber in, would you be willing to bring the fiber in to allow the 5G to come in?

DAVID TATE [00:57:16] Well, what I-- what I think this bill is going to do, Senator, is it's going to open the door for the first question which is-- the first question is, can we bring the-- the small cells there, and this allows us to do that in a streamlined process. So the threshold question is, is there a need for small cells? And there will be a need for small cells where there is a capacity issue. This doesn't bring coverage; it brings capacity. So if there's some density there in a-- in a rural area, then a provider is going to need to get out there. And at the point that they need to get out there, they're also going to need to have the backhaul fiber. So if we come to that threshold question, yes, we need to have small cells, we have a bill that allows us to get there in a streamlined and reasonable rate way, then we would get out there and then certainly we would have to have the fiber.

ALBRECHT [00:58:09] So how many actual cells can go on one pole?

DAVID TATE [00:58:16] The-- Senator--

ALBRECHT [00:58:18] Different companies, do you have two or three on one particular-- because I've-- I've heard from some of them that they have-- they'll put in their own pole or they'll, you know, erect a brand-new one with a nice base. How many people can go on that one pole?

DAVID TATE [00:58:31] Right now, my understanding as a lawyer, not an engineer, is that generally speaking there's going to be one small cell and radio, one provider per pole. Now that having said, that's really a technology issue and an engineering issue. If more can go on there from an engineering, there's-- there's, you know, not a problem in terms of the-- of the signal, then certainly that may be something that happens in the future. Today, generally, and speaking for AT&T, ours generally goes on-- just one on a pole. But you had a good question in terms of, well, does that mean we're going to have to put up a bunch more poles? Well, the great thing about this bill, Senator, is it allows the-- the local authorities to be able to look at that and-- and-- and, you know, go through the permitting process. And we're only going to want to put up a pole frankly when it's absolutely necessary. It's less expensive for us to collocate on what something is there instead of putting a pole in. So when we can, at least speaking for AT&T, when we can, we're going to put it on something that's existing. And when we feel like we need a new pole, we're going to be going through that full review with the cities.

ALBRECHT [00:59:43] OK, and just one more quick question. How many poles will-- will you need in, say, the city of Lincoln to get the kind of coverage you want to be able to deliver to the public?

DAVID TATE [00:59:52] Senator, I wish I could-- I could answer that directly. For one thing, I just-- I don't know. Honestly, I just don't know. But also, from a competitive standpoint, we really wouldn't be able to answer what our-- our build plans are at this point in a public setting.

ALBRECHT [01:00:10] Thank you.

GEIST [01:00:10] Any other questions from the committee? I do have one.

DAVID TATE [01:00:16] Yes, Senator.

GEIST [01:00:16] And I've probably asked half of the people sitting in this room this question, and that is about right-of-way fees. Can you explain to me how they're applied with small cell--

DAVID TATE [01:00:29] How--

GEIST [01:00:29] --in this bill?

DAVID TATE [01:00:30] In this bill-- in this bill, the right-of-way for-- for a provider that is already paying occupancy tax under 86-704, then paying that occupancy tax actually gives them the right to be in the right-of-way. Now that is not the case for-- for a provider necessarily that is not paying occupancy tax. But again, on the occupancy tax, it would go up to 6.25 percent. The wireless carriers that have not been deploying, for example, AT&T, we have been paying that 6.25 occupancy tax for the right and-- which gives us the right to be in the right-of-way. But we are not using the right-of-way for that because we haven't yet deployed. But that right is already there because we're sort of paying in advance for it through the occupancy tax.

GEIST [01:01:19] OK. Thank you. Are there any other questions? Seeing none, thank you for your testimony.

DAVID TATE [01:01:25] Thank you, Senators. Thank you, Committee.

GEIST [01:01:26] Next proponent.

PATRICK FUCIK [01:01:34] Good afternoon, Madam Chair. Patrick Fucik with Sprint. It's Patrick, P-a-t-r-i-c-k, Fucik, F-u-c-i-k, and thank you for the opportunity to be before you this morning and-- or afternoon and provide testimony in support of LB184 on behalf of Sprint. As I mentioned, I was up here last week and had an opportunity to meet some folks on the committee and have a brief discussion about the bill and I look forward to meeting the rest of the committee and-- and discussing this issue as we go forward. I know Senator Friesen. I'd like to thank him for his effort on this issue as well. Obviously, it's been a couple of years, three years now, as he said, so maybe this will be the charm and we'll get it through. We're definitely open to working with the groups that Senator Friesen has started a dialogue with and continuing to work with all the parties and the members of the committee. Like other colleagues in my-- in the industry that you're going to hear from, and I'll try not to be repetitive, you know, we cover multiple states. And as Mr. Tate pointed out, each state obviously is unique in its particular statutes that are in place now and how we deploy our-- our small cells or-- or macro towers. The small cell phenomena is something that's only come around the last three years. So just by proof of the fact that, as we pointed out, 21 states have enacted legislation in just three years to help us deploy this new technology in a way that our customers, your constituents, are demanding, I think shows proof that there's really a need because 5G is really what we're all talking about, the next big wave, the next revolution in the industry. And there's no question that we don't want to-- I think I've showed some of you all a map, and we'll be happy to provide that to you all, showing those 21 states that have adopted them today. And you can see obviously Nebraska is somewhat in a little bit of a doughnut hole and what-- what the concern is moving forward, if you all weren't able to enact this, then you would continue to fall behind, as we've talked about. That-- that's really a concern. I can speak from just Sprint's perspective with regard to what we've done in the state of Nebraska. We have less than 30 small cells deployed in the state. You take a state like Kansas to-- your neighboring state, a pretty close neighbor, I should say. We have got over 50, and so it's more than twice what we've deployed here in

Nebraska. And I think we started out to deploy a certain amount but, again, ran into some larger fees and, therefore, we-- we kind of drew back. I mean obviously the-- the reason that we're deploying these in the Lincolns and Omaha, the more densely populated areas, are because of the fact that that's where the customer need is. Whether it's just, you know, consumers, business, government, and so forth, we have got to supply the demand for our product that is ever increasing. I mean there's more and more data usage in those urban areas, and-- and so there's no question that we've got to do that. So we've entered into some agreements and we're-- you know, I think you look at it at a volume basis. Some of those agreements may have to be done early on and maybe a price that we didn't want to pay to get that initial testing the product, testing how it works and how they all work with our macro towers and so forth. But as we move forward, we know that we're not going to do it at the same rates because, again, we're seeing this trend where states are passing legislation that is I think beneficial to both the industry as well as the cities because they're getting revenues now that they weren't before for this deployment. So that's helpful to the cities and I think it's important for the carriers to have that statewide systematic, you know, approach that's consistent whether you're in a small town or in a larger metropolitan area of the state. So it's really important I think to have that-- that-- that-- that overall approach that allows us to come in and be-- and know what we're getting into in each state-- in each city, rather, with regards to the time that we have to apply and so forth. Madam Chair, I'd best-- just say that I think it's really important that if Nebraska doesn't pass this, it will definitely-- you know, it'll be detrimental. And I think, again, as a-- as a company that has deployed some, I think we will see more deployment as we move forward with a more favorable treatment to the carriers. So I would be happy to answer any questions at the appropriate time. Thank you.

GEIST [01:05:29] Thank you. With that, any questions? Senator Albrecht.

ALBRECHT [01:05:34] Thank you, Chair. You say you have 30 small cells already in the state of Nebraska?

PATRICK FUCIK [01:05:40] Almost 30, yes, ma'am.

ALBRECHT [01:05:42] And like I asked the previous gentleman, have you negotiated contracts, say, in Lincoln at this point?

PATRICK FUCIK [01:05:48] I don't know the exact details of those-- those contracts, I mean, whether they're for multiple-- usually what we do is we'll go in and test, like if there are three or four, we'll say-- we'll enter into a contract for three or four at whatever rate that is and deploy those as a test, kind of, of the market.

ALBRECHT [01:06:02] So do you feel like with this FCC ruling coming down on January 14 that you could possibly go back and renegotiate a contract with these, whether it be Lincoln or Omaha wherever it is that you'd like to be?

PATRICK FUCIK [01:06:16] It's possible. I think we look at the FCC order as-- as guidelines, kind of guardrails on how-- because again, a lot of states have already adopted, you know, what do we do with those states. And-- and as-- as Mr. Tate pointed out, there's some major points in the bills that were passing, as opposed to FCC order, regarding pre-- deemed approved and permitted use and so forth, so those-- those items are in the bill. We'd have to negotiate those. But I think you're referring to the fee, I assume?

ALBRECHT [01:06:43] That's what I'm-- I see that \$270 was dropped, \$270.

PATRICK FUCIK [01:06:46] Correct.

ALBRECHT [01:06:46] What does \$270 do you for your company when you want to come in here and say put in ten on-- on next [INAUDIBLE]

PATRICK FUCIK [01:06:55] Well, it's-- it's-- thank you, Senator. It's obviously a more favorable rate than we've seen some cities charge us. I mean I can give you examples across the country where there's-- you've heard probably this as well here in Nebraska, \$2,000, \$5,000, \$4,000. It's just cost prohibitive for us to do that. You know, if we can put in-- if we put in one at \$2,000 to test it out, or two or three, we're obviously going to put a lot more in at \$270, so you have a situation where you've got that one city-- you know, the capital is limited. So if you were going to try to put a couple in that city at that rate, that's all you could do. If you would-- you had a lower rate, you could obviously deploy a lot more. So could we go back and negotiate with them? I would think we could. And a lot of those contracts might have a change of law provision in it as well so that if the law changed, now the new rate is whatever that comes to, \$270 or something less, then we could adjust those contracts to reflect that, so--

ALBRECHT [01:07:44] I appreciate your--

PATRICK FUCIK [01:07:45] Sure.

ALBRECHT [01:07:46] Thank you.

PATRICK FUCIK [01:07:46] Thank you.

GEIST [01:07:47] Yes, Senator DeBoer.

DeBOER [01:07:48] I'm trying to wrap my head-- thank you for testifying. I'm trying wrap my head around the kind of capacity. So this is not about adding coverage but about capacity. About what capacity can one small cell handle?

PATRICK FUCIK [01:08:03] It's a great question, Senator. Thank you. As I think we've talked about, Senator Hughes asked about the technology changing, it is. I mean it's changing just like our cell phones are, you know, on a regular basis. So-- and not being an engineer, I couldn't give you real specifics, but obviously their-- the equipment is getting a bit smaller and their-- be able to propagate a signal is a little bit further. So in a given city block, you might have one or two at the most. I mean for Sprint's perspective, we're able to connect to our backhaul with our-- without-- without necessarily having to have fiber in the ground, because we have microwave backhaul with Spectrum. So each business is going to operate a little bit differently on what they need, as far as how many they need in proximity to each other to make a network, and then connect back to our larger backhaul or in-- into the network. So I've heard anywhere from 300 feet to a quarter mile in a given-- in a given small cell. It just depends I think on the equipment and the antenna type and the height of-- of the pole, obviously.

DeBOER [01:08:57] OK. And then-- and you may not have the answer to this question, but about how many customers can be served at a given time by a small cell unit? So, you know, you put six on Memorial Stadium during game day in Nebraska. Is that enough or do you need 500? You know, just like the sense of what-- what we're talking about in terms of capacity here.

PATRICK FUCIK [01:09:20] Yeah. I-- I guess a good example would be like the Super Bowl. You know, like last year, in-- when it was in Houston, we had to go there and deploy a lot more small cells and the city was-- they had passed a law there in Texas. And so it was open to us to allow us to come in put in-- we put up some poles of our own and then the other ones were attachments. So I can't remember how many we put there, like 30 or 40 just to deal with the capacity of that crowd, because everyone, again, is streaming the videos and pictures and so forth. So that might-- and I don't know if those are all permanent because like a lot of times we'll have what we call-- if you have a big rodeo, for example, I know you have a big one here in Nebraska, we might bring in what we call cell towers on wheels, or COWs, to handle that capacity. That's basically what this premise is. It's taking those but making them, you know, permanent for those local-- those jurisdictions in there to handle the capacity. So some of those you can do through a DA system, a distributed antenna system in the stadium itself, and then some might be complemented with a small cell deployment around the parking lots and the area around the stadium so-- but I don't have a-- know exactly how many customers per--

DeBOER [01:10:18] No, I mean, 30 or 40 for a Super Bowl gives me a general idea.

PATRICK FUCIK [01:10:22] Yeah, exactly, right.

DeBOER [01:10:23] OK, thanks.

PATRICK FUCIK [01:10:23] Sure.

GEIST [01:10:25] Thank you, Senator DeBoer. Any other questions? Of course I--

PATRICK FUCIK [01:10:28] Thank you very much, appreciate it.

GEIST [01:10:30] --do have one.

PATRICK FUCIK [01:10:30] Oh, I'm sorry. Go ahead. Yes.

GEIST [01:10:30] Hold it, hold it.

PATRICK FUCIK [01:10:31] Yes, ma'am.

GEIST [01:10:31] And I want to go back to the beginning of your testimony because this is another question that I've had, probably asked several people here as well. There are a number of exemptions in this bill, and you talked about wanting to have a consistent and clear guideline. So with the exemptions that are here, how do we actually attain those guidelines being consistent? How do you plan to deploy this with that [INAUDIBLE]

PATRICK FUCIK [01:10:59] Well, sure. It's a good question because I mean we've run into the situation in a lot of different states who did-- Missouri is a great example of this, passed that last year; it was a two-year effort. But we exempted municipally owned utilities, which is my understanding here in Nebraska-- I'm not as familiar with it as obviously you and others are. But there is a concern about how we handle those. So it's my understanding that-- that the major utilities are exempted so you wouldn't be able go on those poles. But within the city of Lincoln and Omaha, for example, we'd be able to obviously go on light poles or city-owned facilities. So by exempting certain poles through municipally owned utilities or whatnot, we would be-- still have other things that we could go on as far as deploying our network. So it didn't-- doesn't exempt everybody. There's still-- that's why I think we're supporting the bill, because it allows us certain facilities that we can place our small cell devices on and even erect new poles if we need to, so street lights, city-owned poles and so forth. So I don't see that the exemptions take away our ability to really still have opportunity to deploy in-- in the state.

GEIST [01:11:58] OK. Thank you.

PATRICK FUCIK [01:12:00] OK. Thank you.

GEIST [01:12:01] Any other questions from the committee? Thank you.

PATRICK FUCIK [01:12:05] Thank you very much.

GEIST [01:12:16] Good afternoon.

STEPHANIE CASSIOPPI [01:12:18] Good afternoon. My name is Stephanie Cassioppi, C-a-s-s-i-o-p-p-i. I represent U.S. Cellular as the director of state legislative and regulatory affairs. On behalf of U.S. Cellular, I am here today to support LB184. I think what makes U.S. Cellular a little bit different from some of my other colleagues here today is that we have not only a focus on Lincoln and Omaha-- Omaha, the urban areas of the state, but we also have a more rural focus than some of them do, at least as part of our business model. In fact, we're one of the very few wireless carriers within the state to regularly participate in the Nebraska Public Service Commission's broadband grant program. And through that program, we've been able to build many macro towers in rural areas of the state and bring voice and broadband service to those underserved or unserved areas. So we're proud of that. And with that, even with that rural focus, we do believe that the small cell bill is important. It's important for the entire state of Nebraska. And I want to make a couple of points. One, it-- the small cells are not going to replace the macro cell network. We're always going to have the macro cells. But what they do is they augment the macro cells. You'll see them more in the-- in the-- in the urban areas, at least initially. The proliferation will be greater because the-- the concentration of people and the concentration of use will be greater. But there are many applications in the rural areas as well, some that we've heard of already throughout some of our more-- more rural areas in other states, for example, highways or a small town. A small town might have a downtown area that gets a significant amount of use or growing, is growing perhaps, and maybe that macro tower is a little bit outside of town. Small cell might be a great-- one or two small cells might be a great option as opposed to building a macro tower in that town, cost efficient, easier to deploy, quicker to deploy if this bill goes through. One other thing I wanted to mention, I think it was Senator Albrecht, you talked about the rates. If there's a proliferation of high rates in the urban areas, a lot of the carriers will go to the urban areas first because that's where the demand is right now. We have limited capital resources and I can tell you that the urban-- the rural areas will lose out. If they go to the urban areas first, then there won't be enough money left to go to these applications in the more rural areas that might not be as beneficial financially. So a couple other examples that rural areas and small cells might have-- have a good application: office parks, agricultural co-op facilities. I've heard of areas where many workers come together to these co-ops and the coverage isn't great. That's a perfect example. Sports arenas, lakes, leisure areas, recreational areas, small downtowns, things like that, again, they're-- they're out there and we've been approached in some-- in other states about these potential, viable-- viable alternatives to macro towers. The other thing I wanted to mention is when I knew I was coming out here, I checked with my engineers at U.S. Cellular that actually handle the small cell deployments throughout our 23-state network. I said, well, what's going on, where you finding-- you know, where are you deploying? And they're like, we are so busy with states that are welcoming to us because we just don't have the resources, the capital, the time, or the manpower to deal with areas that are not. So on behalf of U.S. Cellular and on behalf of the residents of Nebraska that I think want to welcome us, I hope you do and support LB184. Thank you. I'd be happy to answer any questions.

GEIST [01:16:18] Thank you. Thank you. Are there any questions? Yes, Senator Bostelman.

BOSTELMAN [01:16:22] Thank you, Senator Geist. Thank you, Ms. Cassioppi, for being here. Can you tell me when 5G will actually be out?

STEPHANIE CASSIOPPI [01:16:29] I am not an engineer. My engineers tell me that at least for fixed wireless applications, which is different than mobile wireless, there are trials going on now. For-- for mobile wireless, handsets are not out yet, maybe a year, but you have to deploy it on the network. Right now small cells-- the small cells that are being deployed are predominantly for 4G LTE capacity and coverage issues. 5G will be deployed and-- in the next couple of years.

BOSTELMAN [01:17:01] Is part of the challenge between the providers the-- their ability or not to stream broadband information? I'm not just talking about telephone connectivity, phone connectivity, but doing the connectivity with-- with, you know, television, internet, whatever it might be. Do you think-- is there a-- is that part of the push back that we're seeing in Nebraska, more of a turf area?

STEPHANIE CASSIOPPI [01:17:32] Likely, yes.

BOSTELMAN [01:17:36] OK. All right. Thank you.

GEIST [01:17:39] Questions? Any other questions? Seeing none, thank you--

STEPHANIE CASSIOPPI [01:17:43] Thank you.

GEIST [01:17:43] --for your testimony.

MICHAEL BAGLEY [01:17:54] Hi. My name is Michael Bagley, M-i-c-h-a-e-l B-a-g-l-e-y. I appreciate the opportunity, Vice Chair Geist, to appear before you today. I am with Verizon. We are the largest wireless provider in Nebraska. And I'll try not to be too repetitive of my colleagues, but to the question that was just asked, when you get to 5G, you'll get speeds that are close to cable speeds. You'll have, in terms of the bandwidth, like going from four-lane highway to a ten-lane highway and ten-lane speed, so really it's about speed and-- and-- and that opens up a lot of possibilities with data. The concern we have and the reason we want to pass this bill particularly, LB184, is that we don't want-- we want Nebraska to be on par and on pace with the other states around it. So I had one of my-- my chief engineer here last week to meet with several of you and we wanted to show you some of the pictures of the designs we're using for the 5G. As my colleague before me he just was pointing out, we're still setting the table for 5G. We're still in the process of, you know, working out the designs. We had some international protocols we had to work out on what 5G could do, but the framework of predictability that we'll have on a state-by-state basis and not conflict with the FCC will really give us the ability to really invest tremendous capital into this state and other states, so millions of dollars there. Right now, my engineers tell me that just based on the state laws that have

passed around Nebraska, you're about two years behind. It takes them about two years to gear up. So I showed you all some designs of some of the poles because we have deployed small cells in Lincoln, we've deployed some small cells in Omaha. Those were 4G-designed small cells. 5G uses a different-- a spectrum called millimeter wave spectrum, so there's going to be a little difference. So for example, in Denver, Colorado, we reached agreement with the city council there to do a 4G-5G design, the point being that even after these state laws pass, we continue to work with cities. They approve the designs of the pole. I think one senator asked, are we all going to have a different type? That depends on what we coordinate with the city, and same thing with aesthetics. We want to make sure that if we go into the Haymarket area, we respect the historic values there, same thing with Omaha. Cities can still turn down permits. We just want reasonable costs simply because if we put all the capital in one area, we won't have money to put into other parts of the state. We want to expedite the process and we want access to the right-of-way. To Senator Geist's question, we want to pay for that access to the right-of-way. We want to make sure that the cities are held harmless. If we do any harm to the right-of-way, we want to make sure that cities are justly compensated for that. But that's a cost-based approach. If we put in a pole, we pay for that. We put in new poles sometimes and build a new structure and the city gets the benefit from that. We also pay this occupation tax which is about 6 percent, 6 to 6.2 percent, in both Lincoln and Omaha for our revenues. To Senator Albrecht's question about agreements, Verizon has an agreement with the city of Lincoln. Verizon has an agreement with the city of Omaha. That agreement that we have with Lincoln I think created some of the confusion. We-- we signed an agreement with Lincoln for \$1,995 per pole at the time. Part of the-- the issue there is the culture of our network folks. They're used to working with city-specific goals. They work with each city and they've been working with them for macro towers. With 5G, we're trying to do a nationwide rollout. The only country that's probably ahead of us right now is South Korea. To do that, we only have X amount of capital we can put in a state. Now we want to go as many places in Nebraska as we can. We could put all the money in Lincoln, but that's not money we can put other places. And we're already working to try to do that in other cities in the state. Columbus, Nebraska, for example, wants us to pay \$3,000 per attachment. We told Columbus we can't do it at that rate. OK? So now Omaha is-- we actually started in Lincoln before Omaha. We're moving faster in Omaha now because we have a lease agreement with them and OPPD where we pay \$16 per pole attachment. We pay \$5 million in the right-of-way in Omaha in addition to the occupation tax. But the point of it is, is a reasonable fee allows us to get more capital to the state. Some-- some folks have said, well, how do we know you're going to get 5G to the rural areas? I can tell you that we will get 5G everywhere we can as soon as we can. There are definitely rural applications and for-- definitely benefits for farmers with all the new sensing technology and all of that, remote diagnostics for health. There are a lot of capabilities. But we have to start somewhere. When we started with 3G, we started in the cities, then we went to other places, same thing with 4G. So we're going to continue to do that. And I see my time is-- is that up or is that almost up?

GEIST [01:22:59] You've got one minute.

MICHAEL BAGLEY [01:23:00] OK, so in the last minute I just wanted to mention to, Senator Bostelman, your question about what happens if they get too many applications, we'll work with the city on that. So for example, in some states, like in Colorado, we do batched applications. If-- if each small cell design is the same, we'll send the city 20 at a time, it helps them with the review process. Let's say they find two they don't like. We have an agreement saying they don't start back over. The 18 that they're OK with, they-- they're fine. Then we'll go back to the other two. We will continue to work with the city to address those issues. If they come to us and say, look, we need more time, all that, we work with them. And I wanted to just mention that point. Let's see, did-- you had-- did you get your answer-- Senator DeBoer, did you get your question answered on capacity? Because I just wanted make sure that you know that what we're doing is we have to design what we call RF specifications, radio frequency specifications, and we have to go into the area and then try to make the design of the attachments as-- and look at the obstacles and-- and other factors in that area to do the design, but we try-- I would say between 2 million to 3 million feet, I think one of my colleagues said. But again, we are still working so-- now if we got this [REORDER MALFUNCTION] we could sit down and start working those things out, as we're doing right now in Missouri, as we're doing right now in Iowa, as we're doing in Minnesota. We need a predictable framework. It's the main benefit of this bill. And so I'll close there and answer any questions you have.

GEIST [01:24:28] Thank you. Are there any questions from the committee? Now of course I have one.

MICHAEL BAGLEY [01:24:36] Oh, thank you.

GEIST [01:24:36] Just a minute. I know you got excited maybe nobody was going to ask you a question, but I do have a question and I don't think anybody's asked this and I don't know the answer, therefore, you get to be the lucky one. So if 5G is still in the future, I'm assuming that when we get it, that there is a lot that's been done, I hope, about security on 5G.

MICHAEL BAGLEY [01:25:05] Absolutely.

GEIST [01:25:05] Is that the case?

MICHAEL BAGLEY [01:25:07] Yeah, that's the case in our existing network. But just speaking for Verizon, we've done trials in certain cities, so we did some-- some trials in Denver, done trials in Sacramento, Los Angeles. So we can go someplace, we know what we need to do, but the security of the network is definitely a top priority, and not only that, privacy for you as a customer, protecting your privacy. That will never go away, OK, because that's part of the covenant we have with you in our relationship. So they're testing all the security issues as well. And we will make-- that will be a priority, so-- as well as protecting the infrastructure.

GEIST [01:25:45] A high priority.

MICHAEL BAGLEY [01:25:46] A very high priority--

GEIST [01:25:48] OK.

MICHAEL BAGLEY [01:25:48] --the right thing to do.

GEIST [01:25:49] Thank you.

MICHAEL BAGLEY [01:25:50] Thank you.

GEIST [01:25:52] Any other questions?

MICHAEL BAGLEY [01:25:53] Senator Hilgers, I'm disappointed.

GEIST [01:25:57] Thank you for your testimony. Next proponent.

STACEY BRIGGS [01:26:15] Good afternoon.

GEIST [01:26:17] Good afternoon.

STACEY BRIGGS [01:26:17] Chairman Friesen, members of the committee, my name is Stacey Briggs, S-t-a-c-e-y B-r-i-g-g-s. I am senior manager of state legislative affairs for T-Mobile USA. I submit this testimony in support of LB184. We join the industry, the CTIA, and other stakeholders in support of the measure because it does establish a critically important framework for the state of Nebraska to pave the way for the deployment of the new technologies in next-generation wireless facilities. Without repeating everything that everybody has already said, I did want to note that T-Mobile does provide wireless communication services throughout the state of Nebraska, and increasingly in many instances many folks are relying only on mobile for their broadband service, so it becomes even more critical in-- in the marketplace to have mobile-- state-of-the-art mobile services. The transformation takes place-- ever-growing demands and expectations of our network, as evidenced by significant year-over-year increasing-- increases in data usage, and that increases two and threefold every year, how much data folks are using out there, the Super Bowl being one of them. Just yesterday we announced that the data usage was twice as much as last year just for that single event. So it's interesting. People are streaming video and taking up-- taking up all the capacity. I also wanted to note that in order to support the next-generation of wireless facilities, we will maintain the macro tower network. That is not going away. This is not like other generations of-- of wireless infrastructure. Once we went from 1G to 2G to 3G to 4G, this 4G LTE network is out there, already deployed on the macro towers. That is not going away. We are simply adding facilities to the existing network to-- to add capacity and in some places coverage. See if there's anything

else I wanted to mention. Included in my testimony are some pictures of some small cells, T-Mobile small cells, and you can see in some pictures you can hardly even tell they're there. They do attach to poles and light fixtures and are designed to be stealth-- stealthy and we will work with the local governments to help design that. Much of my testimony has already been-- has already been said but I did want to mention, as you've hopefully heard, that T-Mobile and Sprint have agreed to merge, which is wonderful for-- for T-Mobile and Sprint customers. The combination will be a huge win for American consumers, accelerating 5G innovation and increasing competition across the country, including rural Nebraska. More information is available on our website, Allfor5G, and that website is regularly updated. The combined company will be called T-Mobile and we will strive to deliver the country's first and best nationwide 5G network with both the breadth and depth needed to drive innovation and keep America competitive on a global level. And Nebraska will not be left behind in that. The new T-Mobile will be positioned to deploy network in the critical first few years of 5G innovation, which we are in right now, driving a giant wave of U.S. innovation and disruption that will benefit consumers with lower prices, better service, and increased competition. With greater network scale and resources, the combined company will supercharge our T-Mobile disruptive, proconsumer, uncarrier strategy and we will deliver an incredible set of innovative service offerings to consumers and businesses at lower prices. I don't know if you have questions for me about that, but I did want to make sure that you knew that we were-- we were combining with Sprint and we will be the new T-Mobile. I appreciate the opportunity to testify today in support of LB184 and encourage the committee to move forward with this important legislation. The adoption of streamlined siting and land use policies will support the capital investment that-- necessary to deploy next-generation wireless networks in Nebraska.

GEIST [01:30:51] Thank you for your testimony. Are there any questions from the committee? Seeing none, appreciate it.

STACEY BRIGGS [01:30:58] Thank you.

COBY MACH [01:31:09] Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h. I'm here today on behalf of the Lincoln Independent Business Association supporting LB184. In light of the previous testimony, I'll shorten mine a whole lot. Wireless companies, as you are well aware, have to negotiate with individual cities and municipalities to pay varying fees to access rights-of-way to attach these small cells. The annual small cell fee in Lincoln is \$1,995 dollars per device. In comparison, the fees attached for small cells in Des Moines, Denver, Kansas City, are under \$250. In August of last year, 2018, Lincoln made the national news. Verizon had singled out Lincoln in a letter to the Federal Communications Commission as a city where they would no longer deploy small cells because of the exorbitant fees. When fees or licenses-- we believe when fees or licenses become so extreme that businesses cannot operate or provide services, we think change is needed. In fact, the state of Nebraska controls a lot of fees, licenses, taxes and so on. I'll give you one very quick example. If you want to get an SDL liquor license-- they're issued by the dozens by the state every day because of small events across

our state. If you want an SDL liquor license in the city of Lincoln, the charge is \$80. That is twice what the state charges. The city of Lincoln also charges an additional \$75 to take a class in order to get that SDL liquor license. Eighty dollars and \$75 for most events is not a big deal. However, if the city of Lincoln were to charge \$5,000, then change would be needed. Again, when fees or licenses become so extreme that businesses cannot operate or provide a public service, we think change is needed and we would encourage you to support LB184. Thank you.

GEIST [01:33:24] Thank you, Mr. Mach. Any questions from the committee? Thank you for your testimony. Next proponent.

ARTURO CHANG [01:33:33] Good afternoon.

GEIST [01:33:37] Good afternoon.

ARTURO CHANG [01:33:40] Vice Chair-- Vice Chair Geist and members of the committee, my name is Arturo Chang, spelled A-r-t-u-r-o, Chang, C-h-a-n-g, and I'm here on behalf of the Wireless Infrastructure Association, testifying in support of LB184. A little bit about WIA, we are-- we are the principal trade association that represents the companies that manage, design, build, and operate wireless infrastructure in the U.S. and across the world. Our members include infrastructure providers, carriers, and consulting firms, essentially the ecosystem that you need to deploy infrastructure in the ground. I think much of my testimony has also already been said, but I will keep it-- I will make four short points and provide some statistics and metrics that I think you will find interesting for Nebraska. First, 5G services and-- and 5G services and advanced wireless services is estimated to bring \$1.5 billion to Nebraska's GDP and create at least 9,000 jobs throughout the state. Certainly this is investment and capital that all Nebraskans would benefit from. The second part is interesting because we talk a lot about the demand. You-- you will not be surprised to hear that demand of wireless services continues to increase year after year. And so we are now in a-- in a pivotal point where over 50 percent of Nebraskan households have-- have ditched their old phones and rely exclusively on-- on-- on wireless services. That trend is also consistent across the country where more than 50 percent of American households also have ditched their-- their old lines for wireless cell phones. That means that your-- that device is a lifeline of communications for public services, for public assistance. It's also a way-- it's also the way you communicate with your friends and family. It is virtually the only way you communicate with the world. The third point I'd like to discuss, and much of this was already brought up, but it is about the FCC order, and hopefully my colleagues did a good job of laying the foundation for why they-- why we still need LB184, but I'll focus on three quick points. I think the first one has to do with the fixed cap fee and I think hopefully we explained to you why having one number that applies throughout the state is far more beneficial in terms of deployment. Second, the deemed granted/approved that was discussed earlier, this is critical for deployment. It gets us the predictability of when an application will be approved. Now I want to make a couple of points about deemed granted. First, deemed granted does not prohibit a municipality or --or a locality from approving or denying an application. It is a remedy

that is working well across all the other 21 states that has been enacted. So we certainly-- it's-- it would not be an issue of first impression here in Nebraska. And lastly, on-- on the FCC point, LB184 is a framework that is done the Nebraska way. It includes many Nebraska-specific provisions that the FCC order simply could not address, including provisions for the Department of Transportation, maintenance process, make-ready work, safety compliance, and others. My fourth and last point, with the passage of LB184, Nebraska will join 21 other states, including neighbors Colorado, Iowa, Kansas, and Missouri, that have enacted similar legislation. As you may-- as you may-- as you just heard from Verizon, you-- Nebraska is already a couple of years behind and we hope that you-- that LB184 is passed to address this issue. Thank you again, Vice Chairman Geist and members of the committee, and I'd be happy to answer any questions.

GEIST [01:37:29] Any questions on the committee? Yes, Senator Bostelman.

BOSTELMAN [01:37:35] Thank you, Senator Geist. Question on-- there's 20, maybe 12 more states looking-- there's 20 with small cell legislation, 12 looking at it, so a little over half the states. What's-- are there major obstacles in those other states that are not considering at all small cell legislation? What-- why not?

ARTURO CHANG [01:38:01] It's a great question. I think we're-- I think that right now we're focused on the states that are considering it, the stake in our bandwidth, and make sure that we can get those states on board. But I couldn't tell you why those other states are not considering it.

BOSTELMAN [01:38:13] So when the-- when-- when 5G comes out, then will there be a replacement of the existing infrastructure? As far as the devices on poles and that, will those be changed out, it's my understanding, or-- or is it the same?

ARTURO CHANG [01:38:26] The-- the framework that you have in front of you allows us to densify our networks right now for 4G and LTE, but it also gives us a framework for 5G deployment as well.

BOSTELMAN [01:38:36] OK. Thank you.

ARTURO CHANG [01:38:37] Thank you.

GEIST [01:38:40] I do have a question for you. You were talking about the fixed costs that are within the bill and-- and I've been thinking about that and I-- is-- what if a city or a municipality has a cost that there is a fixed cost in the bill but it costs the city or municipality more than the cost that exists in the bill? Is there a remedy for that? Is there-- is there ability for negotiation with that or is that-- does the city or muni-- municipality just have to eat that cost? Go ahead.

ARTURO CHANG [01:39:15] I think if you-- I think as someone testified earlier, if you look at the big spectrum of what the other states have charged and are charging, this is an item that the FCC looked at and they established a presume-- you know, a presumable fee. Then the question becomes, why is it more than that? I would think that the-- we think that the fees are in this bill-- it's a negotiated bill. as many discussed, and-- and within the fees appropriate to address that remedy.

GEIST [01:39:45] OK. But-- but is there a remedy if there-- if that cost is higher? Is-- or are you-- you're just assuming that the cost wouldn't be because this is what everyone's agreed to?

ARTURO CHANG [01:39:56] Understanding is there's no flexibility on the bill for that, but there are other provisions where we can work on.

GEIST [01:40:01] OK. OK. Thank you. Any other questions? Thank you.

ARTURO CHANG [01:40:07] Thank you.

BETH COOLEY [01:40:11] Good afternoon.

GEIST [01:40:12] Afternoon.

BETH COOLEY [01:40:13] My name is Beth Cooley, B-e-t-h C-o-o-l-e-y. I apologize for my voice. I have the telecom flu that apparently is going around. I am here today in support of LB184 on behalf of CTIA. I am the senior director of state legislative affairs at CTIA and we are the trade association for the wireless communications industry, so I represent the wireless carriers, the handset devices, app companies, and some of their suppliers as well. Obviously we've already had a lot of great discussion on what this bill does, so I will not be repetitive. I know you don't want to hear this voice that long anyway, so I just want to clean up a few things if I could. I kind of want to talk about why are we doing this bill, why do we need this bill. I've been working on this issue for three years. As we've talked about, 21 states have passed similar legislation with about a dozen states considering or soon to be considering this year. But why are we doing this? The capacity and congestion on our networks today is immense. I'm waiting to see the Super Bowl figures. They're going to be astounding. We already heard some from T-Mobile. But you have to remember people-- you can make a phone call from your device but a lot of folks are no longer doing that. And so the congestion on our networks is-- is growing, insatiable appetite for data. So small cells help accommodate that demand today. But then it also is going to get us to 5G, and I think it's important to remember that this is an economic development issue, 5G, and small cells are an important component of that. According to Accenture, 5G is going to create 3 million new jobs nationally, \$275 billion, with a "b," in new wireless investment-- and that's private money, that is not taxpayer money-- and contribute \$500 billion to the U.S. GDP over the next seven years. And that is not just a national number. We can home in on Nebraska here, and Lincoln, for example. We're talking about over 2,600

jobs created via 5G here, over \$230 million in estimated network investment, and \$434 million in estimated GDP growth. That's with 5G here in Lincoln presuming we have the proper regulatory framework in place. Now I've heard a lot of talk about sort of, you know, what this bill does, what this bill doesn't. And as we've worked on legislation across the 21 states, it's important to note that they are all different pieces of legislation because they keep in mind the various local dynamics, the needs, the characters of community. But every bill in the 21 states addresses three principles, and that's true with LB184: reasonable fees, predictable processes and timelines, and access to the right-of-way. So that is a product of over three years. And of course, we welcome continued discussions with all industry-- all industry and other stakeholders so that we can move forward with LB184. Now to ensure that Nebraska realizes these benefits of 5G, we strongly encourage and support the passage of LB184 and I would welcome any questions at the appropriate time. Thank you so much.

GEIST [01:43:19] Thank you. Any questions from the committee? Senator Albrecht.

ALBRECHT [01:43:24] OK. Thank you. Ms. Cooley, I just-- in reading through this bill, and when I get to-- since you're-- you're with all of the trades, correct, all the people who spoke before you? So on Section 40, when it talks about the Small Wireless Facilities Deployment Act does not apply to the University of Nebraska system, the Nebraska state college systems, the community college system, and all campus, area, and properties of such systems, so I know it's a negotiating tool. I get all that. But would they-- would you think that they would fall into some of the same type of pricing, or is it really-- do we even need to have that in there? If we do, shouldn't they comply with certain standards as everybody else has to?

BETH COOLEY [01:44:16] Senator, it's a great question and-- and you're right. It was a negotiating tool because we obviously wanted the university's support, or at least neutrality, on the bill. We think there is a lot of great benefits that small cells will provide to campuses, of course. That's where a lot of people congregate. And I'm hopeful that in private negotiations with my members, with the university, that they would agree to similar timelines and fees so that we can get those benefits to those-- those college students, absolutely. But to your point, it was a-- a-- a negotiated element to hopefully move-- advance the bill and move it forward.

ALBRECHT [01:44:48] Because I guess in talking to a lot of the different folks that you represent, it was evident to me that-- I kept asking, well, why don't you just go to the universities? But they weren't really saying that they would-- would or wouldn't. But obviously that would be one of the main reasons that we would have to have this extended service for all the folks that come to, say, a Nebraska football game or a Wayne State football game or whatever they want to say. But it just kind of popped out to me like, so what if the pricing is significantly more instead of less? So that's where I'm kind of looking at that for more answers.

BETH COOLEY [01:45:27] Well, and, Senator, we're happy to follow up with you off line to discuss the specifics of-- of why we had to take them out of the bill, if you like.

ALBRECHT [01:45:40] [INAUDIBLE]

BETH COOLEY [01:45:40] OK.

GEIST [01:45:40] Thank you, Senator. Albrecht. Any other questions? Seeing none, thank you.

BETH COOLEY [01:45:45] Thank you.

GEIST [01:45:46] Next proponent.

ERIC CARSTENSON [01:45:54] Senator Geist and members of the Transportation and Telecommunications Committee, my name is Eric Carstenson. That's E-r-i-c; Carstenson is C-a-r-s-t-e-n-s-o-n. I'm president of the Nebraska Telecommunications Association. We're a trade association that represents the majority of the companies that provide landline voice and broadband telecommunications throughout Nebraska. As I move down the line, everybody else said everything that I could have possibly explained to you, but I will-- I will point out one interesting anomaly. With that statement that I just made that I'm here to support this legislation, I now have the unique position of having taken every possible position on this bill. Two years ago, we testified in the negative because there was an occupation tax disparity. That was cured. In the amendment you looked at last year we were neutral, and I'm before you today to support the bill. Therefore, we believe this policy is-- is beneficial to the state to streamline development of this robust and evolving technology. All of our neighboring states and 23 states throughout the nation have passed legislation like this. I know there are ongoing negotiations going on right now. We'd like to contribute going forward. With that, that concludes my testimony.

GEIST [01:47:18] Thank you, Mr. Carstenson. Any questions from the committee? Seeing none, thank you very much. Any other proponents? Good afternoon.

MARY RIDDER [01:47:40] Afternoon. Vice Chair Geist and members of the Transportation and Telecom Committee, I am Commissioner Mary Ridder, M-a-r-y R-i-d-d-e-r, chair of the Nebraska Public Service Commission, representing the 5th District of Nebraska which is central and western Nebraska. I'm here today on behalf of the commission to express support for LB184. And I do have something different to talk to you about that I don't think I've heard earlier. Pursuant to the 911 Service System Act, the Legislature has designated the Public Service Commission as the statewide coordinating authority for the 911 service system in Nebraska. As you know, under the act, the commission has responsibility for planning, implementation, and deployment of Nebraska's 911 system to ensure that coordinated 911 service is provided to all state residents at a consistent level of service in a cost-effective manner. At present, over 78 percent of calls to 911 in our state are made using wireless telephones, a percentage which has increased with each passing year. Therefore, it is critical that wireless bandwidth is available when a caller needs to reach 911 in an emergency. LB184 would help assure the consistent

availability of 911 service in Nebraska by encouraging the installation of small, mostly unobtrusive wireless communication facilities on new and existing pole structures such as street lights, utility poles, traffic signals, and signs. This would improve wireless network capacity, reliability, and connectivity in areas with high demand such as congested urban areas. More network capacity would mean fewer dead spots, more bandwidth to help ensure that Nebraskans can reach 911 in an emergency. Small cell technology may also have the potential to more accurately determine a 911's caller location. The commission recognizes and understands the legitimate concerns of municipalities and other local governments regarding the approval and compensation provisions included in the bill as currently drafted. We would urge this committee to carefully consider and address those concerns as this legislation proceeds. However, the commission is in support of this bill because of its potential to improve the availability of broadband and enhance mobile communications including 911 service throughout our state. We appreciate the work of Senator Friesen and his staff and thank the committee for its-- for your time and attention this afternoon, and I'll be happy to answer any questions if I can.

GEIST [01:50:30] Thank you, Commissioner Ridder.

MARY RIDDER [01:50:32] No problem.

GEIST [01:50:32] Any questions from-- Senator Bostelman.

BOSTELMAN [01:50:35] Thank you, Senator Geist. Thank you for being here, Commissioner. This is going to be a-- a question others I wouldn't ask, but how do you affect-- how do you think this may or may not affect the work that the Broadband Task Force is doing now?

MARY RIDDER [01:50:49] I think it's hand-in-glove.

BOSTELMAN [01:50:54] OK. Thank you.

GEIST [01:50:55] Thank you. Any other questions? Seeing none, thank you for your testimony.

MARY RIDDER [01:50:59] Thank you.

GEIST [01:51:01] Any other proponents? Seeing none, any opponents? Good afternoon.

LASH CHAFFIN [01:51:37] Senator-- Senator Geist, members of the Transportation Committee, thank you for allowing me to talk a little bit about the city's positions on small cells. And my name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, and I'm a staff member at the League of Nebraska Municipalities. And following me will be several cities who wanted to talk specifically about their experiences in the deployment of-- of small cells. And I'm going to hit a few points and-- and I would encourage you to ask those cities very specific questions. These are cities-- this isn't a theoretical analysis of what's going on in Nebraska. This is what's happening today. And there

are cities who are working directly with wireless companies to deploy this technology. And that's my-- my first point is-- is that really there is no reason to pass a bill at this time. Small cell is being deployed in Nebraska at a very robust rate. Companies can line up all they want and say we're not doing it, but quite frankly there's 144 in place in Omaha today and there's more in the pipeline. There's 28 in Lincoln today and more in the pipeline. Somebody is installing these, so the-- the free market is working. Somebody is installing small cell pursuant to existing arm's-length agreements with city governments in Omaha, Lincoln, and now I'm finding there's smatter-- smattering of them all across the state. There's one in Wayne; there-- there's four or five in Grand Island. They-- they exist in the state already so the-- there's-- this premise that you have to have this law in order to deploy it is just a false narrative. And then-- then secondly, this concept of if you want to be the first to have 5G you have to have this law, like I went through the press releases of-- of the major cell phone companies and found out where their plans are to deploy the first 5G. It-- obviously it's not going to be Nebraska. However, I-- the 17 cities listed, 8 of those cities are in states without small cell laws, so clearly it's not a requirement to get 5G. The-- so there's-- there's a little bit of-- of incongruity in-- in kind of who's going to get 5G and why we have to have this law in order to move forward. Quite frankly, Nebraskans want this technology. We want all of the wireless technology. The cities in Nebraska are not going to be difficult to work with. You know, arm's-length transactions are not going to be difficult transactions. This is something leaders in Nebraska want. Then-- then also, you know, I've heard reference to the over 20 states, so there's a big movement. What that means is there's 30 states, almost 30-- there's not 30 states. There's, I think, 28 states who don't have small cell laws in place. The-- you know, it's almost like there-- there's a perception that Nebraska is an outlier, that we're-- we're out in the wilderness on this and we don't understand what's going on. Quite frankly, the-- the League of Nebraska Municipalities and most of the major cities have been heavily involved in the FCC action. Several of the cities are named litigants in the-- in the actions against the FCC. Numerous Nebraska cities commented at the FCC. We hosted a-- a breakfast with one of the FCC commissioners. We're actively involved in this technology now. We're not out in the wilderness doing something different than the other states. We're doing exactly what 28 other states are doing. The-- you know, we don't have-- exist in a-- in a-- in a vacuum. The League, we-- we talk constantly with other state leagues about what's going on and this issue comes up all the time and our positions have not been inconsistent with-- with the majority of the other states across the country. This is-- so we're not-- we're not really out there on our own. We're basically doing what most of-- most of the country is doing. Then-- then also I think there's-- there's a bit of a misperception of what is a small cell and-- and the-- the companies have done a great job of explaining it. It-- I think small cell is essentially a densification tool where signal already exists. It isn't a magic pill to give wireless service where it doesn't exist. It needs some form of backhaul to-- to get to it and-- and, you know, probably fiber. There might be other tools. But once the backhaul-- so basically you have to have good service to start with in order to enhance it. The-- and again, there are other-- there are other needs across the state with wireless technology, and we-- we're fully supportive of working on the next bill, Broadband Task Force, all of the above to work on it. But also the appearance is-- is a-- a bit of an issue as well. I keep hearing the size of a small shoebox. Twenty-eight cubic

feet is not the size of a small shoebox. I'll tell you what, if 20-- if the shoebox was codified in this law, this would be a much different discussion. The-- but-- you know, and I've heard that, well, not every-- every unit will have 28 cubic foot of-- of-- of apparatus underneath it. True, but that's-- that's not helpful if you happen to be the shopping mall where the 28 foot of apparatus is directly in front of your sign. This is-- this is an issue. This is-- cities need to be involved. Cities need to be regulatory. Cities-- this is public right-of-way. These are taxpayer-- taxpayer dollars at work. These are ratepayer dollars at work. This is-- this is something that cities need to be involved in. The-- you know, the appearance is-- it's great that-- I'm glad that-- that there are attractive ones. This bill applies to all companies. Yeah, AT&T may have a great-looking small cell, but my cousin Jim under-- in theory could put up a small cell tower under this law. There's nothing prohibiting him from doing that. Jim-- Jim may not-- may not make it look nice, so it applies to everybody. But-- but hopefully ask the-- ask the cities behind me lots of questions because there are a lot of issues with this bill, including the-- ask-- ask about the fees. This fee is-- the fee issue is not nearly as simple as-- as it's been laid out at this point. But thank you. I'll certainly answer any questions.

GEIST [01:57:37] Thank you, Mr. Chaffin. Any-- yeah. Just a minute. Senator Hilgers. I'll go to this side.

HILGERS [01:57:44] Thank you, Vice Chair Geist. Thank you for being here today. I appreciate your testimony. I wanted to-- just a couple brief questions. One is your-- your cousin Jim example that you just used--

LASH CHAFFIN [01:57:50] Yes.

HILGERS [01:57:53] --a minute ago. I understand the bill at least that they-- the cities would still retain the right to deny permits. So is that-- is your point-- is your point that he could put it up and the cities would not have the ability to deny that permit or what--

LASH CHAFFIN [01:58:05] That is exactly my point. There-- there is a- in the bill there-- there is a section dealing with denial. And-- and I've-- I've heard over and over that, OK, the cities can just deny it. The reasons it states-- the denial process is not open-ended with some exceptions. The denial process is basically a grant of authority. It lists specific reasons when you can deny, and the reasons for denial are, you know, more construction related, construction management. They're not-- for instance, if someone said, oh, please-- if a city said, please paint it green to match the back of the building next to it, I don't think anywhere in that list of denial-- I could not find a denial reason that would justify the city saying you have-- the city-- but if the company said, no, we're not going to do it, there's no reason to deny it under that list of denial reasons. It's construction codes, things like that.

HILGERS [01:59:02] Which section are you referring to?

LASH CHAFFIN [01:59:04] Oh, I don't have it in front of me but it's on-- it's on the back of my handout. It lists the section where the denial is specifically.

HILGERS [01:59:09] I'll-- I'll look at that. I want-- for the-- the-- you noted there are eight-- eight cities I think you listed or-- or cited that are in states that don't have such a law. Do you recall any of those, what those cities were?

LASH CHAFFIN [01:59:19] The ones that don't have a law? The California cities, there's no such law, and-- and Nevada doesn't have a law. There-- there are other states. Then interestingly, several the cities where the rollout is planned are cities in Texas. Texas is a city where-- a state where there is a state law but it's in intense litigation right now. Texas has a-- has a constitutional provision, not unlike we have in Nebraska, where you-- you basically-- you can't give public money to private entities. And several of the Texas cities, including some of those where the 5G rollout is intended, are arguing that this is below market value for our right-of-way, thus, we're giving taxpayer resources to a private company and we can't constitutionally do that. And so-- so even the-- the ones that-- in the states where there are small cell laws, at least in Texas, it's being heavily litigated, and it's a similar lawsuit in Ohio as well.

HILGERS [02:00:18] Has the League done an analysis or-- or is there an analysis that you're aware of that does an analysis of whatever applicable constitutional provision that you referenced a second ago in our [INAUDIBLE]

LASH CHAFFIN [02:00:26] Well-- well, the Nebraska-- the Nebraska Constitution prohibits giving the credit of the state and through a series of laws, through a series of Supreme Court cases, including-- the big one being Chase v. Douglas County, and, man, that's a dry case, what-- what that has-- if you-- if you need to sleep some night, read Chase v. Douglas County. What that case goes-- what it says is essentially political subdivisions can't give money to a public entity, thus, the passage of essentially the constitutional amendment that led to LB840. LB840 is where-- where cities and-- and villages can actually recruit and give money for economic development. But that was a result of a constitutional change.

HILGERS [02:01:13] So there is a consti-- I'm sorry, I was-- if you're-- if you're comfortable having an analysis, having the dialogue now, I'm happy to have it but-- so there are-- you're saying that there was a-- what I just took from you was, hey, there's a provision on the Nebraska Constitution that might prohibit this, but then there-- after this Chase decision, there was a constitutional amendment that allows it.

LASH CHAFFIN [02:01:33] It-- it--

HILGERS [02:01:33] So it'll-- today is it-- I mean I'm not asking you necessarily from your legal perspective unless there has been-- unless the League is prepared to take a position at the

moment. Is it-- is-- but do you understand that this LB184 if enacted would run afoul of some constitutional provision currently existing in the Nebraska [INADUIBLE]

LASH CHAFFIN [02:01:49] It-- it could. It could.

HILGERS [02:01:51] And which one would that be?

LASH CHAFFIN [02:01:52] And it would be-- I can get you the number but it-- I think would be the credit of the state and the-- the-- the constitutional provision that allows it is you have to-- it has a series of conditions in order to allow it. What has to happen is a vote of the people in the city or village where you're going to allow it, so it has to be given to a public vote. And then prior to any money being given to a private entity, it has to-- there has to be a comp-- sorry. It has to-- there be has to be a plan in place before the vote, and there's multiple hearings on the plan. So just giving money to a private entity in Nebraska is-- is-- there's a lot of hoops you have to jump through. It's not-- it's not automatic. So I think there's a good argument that this-- this in theory-- anything less than market value, because there is a market value. Cable companies pay it; gas company pays it. The telephone company, they've established a market value for being along the right-of-way and anything less than that might in fact run afoul of that constitutional provision.

HILGERS [02:02:51] If-- if there's an-- I would-- I'd be interested in seeing--

LASH CHAFFIN [02:02:53] Sure.

HILGERS [02:02:54] --an analysis if you wouldn't mind providing it to the committee.

LASH CHAFFIN [02:02:55] Yes.

HILGERS [02:02:55] My last set of questions only just relates to your point of the 20 or 30 states I guess that you referenced that don't have such a law. I do see on the map that was given to us from W-- WIA that that most of the states that-- not all, but most do, are sort of in the Central Time Zone corridor, and it seems to me that the point of-- that the carriers are making is not that (a) we'll ever have to-- like we have to have this law in order to ever do it, (a), ever have 5G in here in Nebraska, because obviously they certainly do, but that it's a matter of capital allocation in that it certainly would be understandable to me that even without a law, that a carrier might go to Los Angeles or some very large urban center where there's a lot of customers. But it seems to me that the data in the-- at least the states that have done this, are all in-- not all, mostly in more lightly populated states. In other words, it seems to me, and I want-- I would like to get your response on this-- seems to me that these states are trying to make it easier to deploy capital because I think it would-- it's saying the reason these state-- these companies aren't going to deploy everywhere all at once right away.

LASH CHAFFIN [02:04:03] Absolutely. I think that's-- there may-- there may be truth to that and that's the exact map that I got my-- my-- my data from. There-- and there tends to be a cluster directly south of here and in the Midwest of states that have-- and-- and a lot of those states adopted them very quickly and quite frankly, when you talk to the staff at their state municipal leagues, they're a little-- they're not-- they're not so happy with the results and-- but-- but that-- the state laws are the state laws. And we do regularly talk to other state leagues including the people on this-- this discussion. There-- there-- there may be some argument that capital will be deployed, but that argument is going to hold true whether the state law is there or not. Then also it-- it's a little frustrating when at least two companies stepped forward and said, oh, we told the city we had an arm's-length negotiation, but now we didn't really mean it. They-- you know, there there's an implication here that some of the agreements in place-- I mean, that makes it very difficult to-- to trust a company at this point. I guess I hadn't really heard that until today. When someone comes forth and said we-- they told the city three years ago you're-- this is an arm's-- arm's-length transaction and now we're going to try to undercut it with-- with state law, I mean, that makes it hard to trust that they're going to deploy the capital at all. And-- and then furthermore, you know, in Nebraska, when we do allocate taxpayer resources to economic development, we typically provide that-- we typically expect performance guarantees. We want a number of jobs. We want a guaranteed amount of capital. We put thresholds in. Whether we do, you know, TIF, LB840, Advantage Act, in theory, we have an expectation for whatever the law is allowing us to give. In this case, really, potentially, we're giving resources with the-- a vague promise that rural Nebraska will be served. The-- now, again, if-- if companies would come forward with some firm accounting that that could be provable and transparent, you know, again, this becomes a different discussion. But-- but, you know, our members have much higher expectations. Cities in Nebraska have much higher expectations when they start to, you know, work on taxpayer resources.

HILGERS [02:06:30] Thank you. I don't have any other questions, but if you do have a legal analysis, or someone on your team does, I would-- I would enjoy seeing it. Thank you.

LASH CHAFFIN [02:06:36] Yes. I'll-- I'll share what we have.

GEIST [02:06:39] Senator Bostelman, did you have a question?

BOSTELMAN [02:06:41] Thank you, Senator Geist. Yeah. Could you speak to the differences in the permitting process in the different cities across the state, or the application process? As we hear from the proponents is, is it's scattered, it's different, you know, it's difficult. Could you speak to that?

LASH CHAFFIN [02:07:02] I think I can, but I think you'd probably be better asking the cities of-- I'm going to be followed by the cities of Omaha, Lincoln, Papillion, and-- and they're all in the process of-- of dealing with small cell applications, either existing agreements or applications for agreements, and I think maybe they could give you a little more detail on what their process is

and why it might be different than somebody else's, or it might be identical. I'm-- I'm not entirely sure.

BOSTELMAN [02:07:30] So as we look across the state to the communities and that, you touched on this earlier a little bit about the telecoms and that having fees-- right-of-way agreements, fees, and those type of things structured. Are they the same cross the state or for--

LASH CHAFFIN [02:07:46] They're-- they are not the same across the state.

BOSTELMAN [02:07:48] So how are those done?

LASH CHAFFIN [02:07:49] They're negotiated individually with-- with each city. And-- and they do-- for the most part, they're similar. But cities do have unique-- well, with one big difference. On the natural gas franchise, there are-- some cities have natural gas franchises where the city is required to move the natural gas facilities if there's a disruption in an excavation. Some of the franchises are the opposite. The natural gas company is required to pay for their own movement of the facilities. So there are differences. And then accordingly, the rates of compensation might be different. I mean there's-- there's tradeoffs that are made in these-- in various entities, But for hundreds of years, companies have been coming to cities and successfully negotiating for agreements. If it doesn't seem to be a burden for them, it's a little interesting that it's now suddenly a burden for-- for one industry.

BOSTELMAN [02:08:49] I think the comment that we received from them, though, is just the cost is where they're at. So it's that negotiation for that fee to have that attachment or that right-of-way, whatever it might be, is-- is really what I heard before from the testifiers before us that [INAUDIBLE]

LASH CHAFFIN [02:09:03] And I would encourage you to ask the cities how they derive their costs and what their thought process-- process is.

BOSTELMAN [02:09:09] OK. Thank you.

GEIST [02:09:11] Any other questions? Yes, Senator Hughes.

HUGHES [02:09:14] Thank you. So how do we-- how do you rec-- or explain to me why the ruling from the federal government limited the-- or a-- put a suggested cap on the pole attachment fee because there's what--

LASH CHAFFIN [02:09:30] The--

HUGHES [02:09:30] [INAUDIBLE]

LASH CHAFFIN [02:09:30] Well, I-- I think that's-- that's-- that's a very spot-on question, Senator. And in the-- the FCC ruling-- it was in my notes. I just didn't get to it. That was-- that was-- that was the work of tens of thousands of comments. And-- and the FCC-- and interestingly, I-- the-- the cell phone companies are now fighting it, as are the cities and other-- the right-of-way authorities are fighting it as well. But the-- the language-- the language in this bill does not mirror the FCC law. And the FCC law is the law of the land. As of a couple weeks ago, it is-- it is the law of the land. Cities, power districts, any-- anybody with a pole has to follow the FCC law. And the-- the language on-- and following me will be David Young, and I'll give you a little brief discussion, but he can discuss it in a lot more detail. The FCC fee language is-- is a little more open-ended than it is in this bill, but there are some requirements on it and-- and-- and I think David-- David actually was the vice chairperson of-- of the FCC-- well, don't want to steal his resume, but he was the vice chairperson of a committee appointed by the FCC to deal with local ordinances, which included fees, as well as model state laws so he can-- in great detail he can discuss that issue.

HUGHES [02:10:59] So who ultimately pays the fee, whatever it is? Whether it's the FCC recommendation or-- or the \$1,995 that Lincoln wants to charge, who-- who ultimately pays that fee?

LASH CHAFFIN [02:11:10] Well, as you know, ultimately the customers will-- will pay the fee, or the rate pay-- or the shareholders, one or the other. The-- the question-- the tricky question becomes, what if this fee doesn't meet the costs or expectations of the right-of-way authority? At that point, either the ratepayers or the taxpayers will be subsidizing some portion of that fee.

HUGHES [02:11:33] But does not the-- the right-of-way has no expense to the city. That's something that's been granted to them. Is that correct?

LASH CHAFFIN [02:11:41] Well, in-- in part, and that's a-- that's a whole nother hour of discussion, right-of-way history, but not entirely true. It is-- it is something that in current-- the way platting is done now, it's essentially something that the city just makes part of the new development process. Historically, some cities existed in Nebraska prior to-- you know, Nebraska City, DuBois, places like that, they existed prior to Nebraska even being a state, and-- and there were a number of different ways that right-of-way was obtained once they became a-- well, Papillion is a good example. Papillion predates the state. You know, they might have seven or eight different forms of right-of-way, and each one's got its own little conditions. So not all-- not all right-of-way is uniform, but so-- but there-- but-- but it is-- it's a taxpayer asset and-- and there-- there are-- there are expenses in-- in maintaining it and keeping the-- the records intact and it's-- it's--

HUGHES [02:12:49] OK. Thank you.

LASH CHAFFIN [02:12:49] --it's a much more complex question that--

HUGHES [02:12:51] Thank you. Then just a couple more questions, if I might. So we hear a lot about being competitive. You know, in Nebraska we-- we have a record low unemployment. You know, we need more workers here, so how-- how can we compete with these high pole attachment fees that are ultimately paid by the consumer where we're competing against the Denvers, the Kansas Cities, the Des Moineses that are charging nothing for that? You know, if you-- if you translate that back to the consumer, how-- how are we being competitive?

LASH CHAFFIN [02:13:23] Well, like, I guess the question is, you know, and-- is clearly they're being deployed in Nebraska at a robust rate, so that threshold of fees must not be met. The marketplace-- in Nebraska, we're-- we're free market. The free market clearly isn't slowing down the deployment of-- of the cells-- of the small cells in Nebraska at this point. So the fee structure-- and then interestingly in the Texas lawsuit, and-- and again, this is-- this is just a side issue, but as-- their-- their-- basically their lawsuit-- a lot of their lawsuit is over the concept are-- are the fees correctly set, are they too low for what Texas municipalities expect. As part of that, real-- realtors are starting to come forward with a special-- OK, special experts are coming in saying, this is what we value-- this is what we value accessing the right-of-way at. And-- and the-- the expert that I read, that he had introduced his evidence into the Texas lawsuit, his-- he said basically all right-of-way anywhere-- and Texas is not unlike Nebraska. There's rural Texas; there's urban Texas. The-- the right-of-way in Texas, under his opinion as-- as an expert, at a minimum is worth \$1,500 a node, and-- \$1,500 to \$2,500, and in urban, densified areas, as much as \$13,000. So the-- the market value, which is different than cost, but-- but this is-- this is going to become an issue. So just throwing out it's too expensive-- you know, and \$2,000 versus \$250 on 30 nodes in a multimillion dollar company does not seem like a lot of money.

HUGHES [02:15:06] OK. My-- my last point is the-- the handout that you have, and this is more for my-- my fellow committee members, the picture of the lady standing inside the box, I'm assuming that must be 28 cubic feet that she's--

LASH CHAFFIN [02:15:17] It's a little less than 28 cubic feet. That was from a California lawsuit.

HUGHES [02:15:21] OK, I-- from-- from my previous life, you know, when you talked about cubic feet, I tend to think of a cubic yard of concrete.

LASH CHAFFIN [02:15:28] Sure, yeah.

HUGHES [02:15:28] One cubic yard, that's three feet by three feet by three feet. That looks like a much bigger box, or the-- the lady inside that box is disproportionate. But for my-- for my colleagues, three feet by three feet by three feet is a cubic yard, or 27 cubic feet, a little smaller than the 28 but it's not that big of an area. Thank you, Mr. Chaffin.

LASH CHAFFIN [02:15:50] Thank you.

GEIST [02:15:52] Thank you. Any other questions by the committee? Seeing none, thank you for your testimony.

LASH CHAFFIN [02:16:15] Yeah.

DAVID YOUNG [02:16:16] Vice Chair Geist, members of the committee, my name is David Young, D-a-v-i-d Y-o-u-n-g, and I work for the city of Lincoln. I've heard this several times today, so I'll take it the other direction. I'm not an attorney. I am a network engineer. The testimony that you've been given, I'm not going to read it to you verbatim. I would say, Senator De Boer and Senator Albrecht, welcome to the party. This has been three years in-- under discussion, and I'd like to take you back and provide a little bit of history. In 19-- or 2017, we had LBe89. Many members came up and this committee was told that small cells are going to bridge the rural broadband divide. As a network engineer, I will tell you that is not the case. In large parts of our state, we do not have 4G. 5G, the wavelengths used are shorter distance. It is not going to cover the rural parts of our state and it does not address you-- address the core issue of lack of fiber availability in large portions of our state. So that's one myth I would like to bust today. In 2017, or-- yeah, it was 2017, we called this AM1116. And again, we were told under AM1116 that small cells would not be deployed in Nebraska without statewide legislation. I would love to walk around the city of Lincoln, maybe on a warmer day, and show you all the small cells that are in the immediate vicinity of the State Capitol. Happy to walk around show you that and I'm sure my friends in Omaha would also take you around and show you the small cells that have been deployed since AM1116 was not passed. So today we're at LB184, and previous presenters have said this is a negotiated bill. I find that very interesting, if negotiated means getting exempted out of the bill. So if we're to negotiate, we're now going to exempt out public power for the largest percentage of the state, we're going to exempt out the university, we're going to exempt out private infrastructure in the right-of-way, and we're also going to exempt out community colleges. The FCC order that's been cited so many times today does not exempt any of those. So if we were to pass LB184 as it's written today, I don't believe it would stand up against the FCC order. I would-- I believe we would be in direct conflict because the way the-- the FCC order is written, it says it does not supersede state law but you must comply with the FCC order. So I'd be very interested to have that conversation about whether or not, if we exempt it under state law, does it still have to comply with the FCC order. A few other things. The FCC, whether we agree with the order or not, is made up of experts whose sole job is to look at wireline and wireless technologies. The order that they created set up a completely different national shot clock, and it's designed to be used across the nation. Why are we not mirroring that here in Nebraska if our stated goal is consistency? The FCC order addresses permit fees and it says they shall be cost based with a presumed cap. Why are we not using the same approach in LB184? The attachment rates, the FCC, the BDAC committee that I served on had an entire committee called rates and fees, and they came up with a number and that number was a presumed cap, but they realize that in large municipal areas the cost recovery

model needs to be considered when setting the rate. Why are we not looking at that in LB184? The decorative pole schemas, the historic pole schemas, those things are different in LB184. It's a big issue I think we should look at. The definitions are different in LB184. It is the driest committee that you could serve on, was the definitions committee of the FCC BDAC, but it's really important that we are consistent with our definitions across the nation of what is wireless equipment, what's included in that 28 cubic feet. A few other things that I would like to mention that have been stated today which I think bear a little important discussion, \$2,000 a pole. Lincoln's been accused of-- of holding back Nebraska with \$2,000 a pole. It's interesting that if you look at what \$2,000 a pole really costs, so if you were to deploy 50,000 poles across the state of Nebraska, cover every inch of it at \$2,000 a pole, that would be one one-thousandth of 1 percent of the industry revenue. Let me say that again: one one-thousandth of 1 percent. The issues that we're talking about today are not about price, and I'll get into why that's important. Deemed approved for permits, what is really being said is that the city cannot say no; they cannot go to a zoning process special for residential neighborhoods.

GEIST [02:21:53] Mr. Young--

DAVID YOUNG [02:21:54] You--

GEIST [02:21:54] --you'll need to wrap it up.

DAVID YOUNG [02:21:55] Oh, thank you. So very quickly, the deemed approved for permits is very important. You've got five carriers that are going to deploy in a neighborhood. Five times 28 cubic feet, that's a lot. And lastly, this is about the historic management of the right-of-way. You really don't want to create a special class of user in the right-of-way. The right-of-way is designed for vehicular traffic and all utilities.

GEIST [02:22:16] Thank you. Thank you for your testimony. Any questions from the committee? Senator Cavanaugh.

CAVANAUGH [02:22:25] Thank you, Mr. Young, for coming out and testifying. I'd just like to hear, if you wouldn't mind, finishing your thought about the cities not being able to refuse.

DAVID YOUNG [02:22:37] So permitted use, right? So you go in and you apply for a permit. You're only allowed to select from the four or five items in the bill to say no. You cannot kick it to a zoning review. So zoning, generally business districts, downtown districts, historic districts-- districts and residential districts are very different. So if it's a permitted use, you get an automatic approval in 90 days under LB184 and you move forward. The FCC was pushed very hard to request permitted use and an automatic approval. And even those experts said no. This is a life and safety issue. If you've got five carriers on one block putting 28 cubic foot in front of people's yards with no restriction on the amount of wattage that they're putting out on those antennas, this is a problem, and if the city-- you're not allowed to-- to decline that permit for

those reasons specifically. They're excluded. I don't believe we should go with permitted use either.

CAVANAUGH [02:23:39] Thank you.

GEIST [02:23:42] Senator DeBoer.

DeBOER [02:23:45] So-- there. So I, too, have started to wonder as I've been-- I got my calculator out-- doing the math on some of this. If you think it's not about the money, and I think others will disagree with you--

DAVID YOUNG [02:24:03] Sure.

DeBOER [02:24:04] --but what-- what do you think is the reason that-- that we're here today basically?

DAVID YOUNG [02:24:11] I think there's a couple of issues at play here. The wireless industry, many of who members--agencies here served with us on the BDAC, are really looking at the best interest of the stockholders of their company to deploy this technology. I agree. I think that's very important for them to do. The reason this bill has been pushed back for the last three years is because on the public side we have a responsibility to manage the right-of-way for everybody, and creating a special class of user that has special permitting processes and submarket rates is basically the public subsidizing and picking winners and losers in the technology battle that we have here in Nebraska. We want to make it equal for everybody. So I would argue the price is not the driving issue. Some of these things, like permitted use and a consistent process, are more important and those things are covered by the FCC order today.

DeBOER [02:25:07] So what does it take for you to sort of change your mind and think, OK, this bill might be OK?

DAVID YOUNG [02:25:13] So the FCC BDAC created a state model code. There were 30 industry experts who worked on that for over a year and a half and over 200 industry partners were brought in, industry and academic partners, to look at that state model code. If you took the language out of that and started putting it into LB184, I think you'd get a much better product.

DeBOER [02:25:35] OK, so we're going to, you know, redefine historic poles and some things like that with some other terms. I imagine that that's not going to draw a lot of push back, mostly because, as you say, that would be incredibly boring to work on in the first place. But, I mean, isn't this-- if we add a-- you know, the-- we've heard a lot about the denials and the-- the possibilities you can deny for any one of these reasons. If we add a sort of larger designation or

some-- some more reasons, would that get to the-- the concerns that you have about, you know, what the right-of-way-- protecting the right-of-way and the rights to the right-of-way?

DAVID YOUNG [02:26:17] I think we can get there with a bill. The question is, should we? We have federal law now that covers all of the proposed industry issues. Do we want to pass a law in Nebraska that is different from federal law? That is a question. And I think more importantly, if we are going to pick winners and losers in the technology arena, if we are going to prioritize wireless service over fiberoptic-based service or wireline service, what are we getting in return? Are we getting a guaranteed commitment, ironclad in this law, that rural Nebraska will be served? I don't see it. Are we getting a minimum deployment commitment that X number of antennas will be deployed in the first two years like they did in California in many-- in many of their cities? I don't see it. So why are we passing this law? So I-- I'm willing to and I think we can get to a law that meets the obligations that we're looking for. We just haven't seen the willingness to have those discussions yet.

GEIST [02:27:26] Senator Hilgers.

HILGERS [02:27:26] Thank you, Vice Chair. Thank you, Mr. Young, for coming back today. I have two sets of questions. One is, could you update the committee-- I think one of your predecessor testifiers invited us to ask this question. Can-- can you update the committee on how many current agreements the city of Lincoln has?

DAVID YOUNG [02:27:40] We have three agreements and we're negotiating with a fourth currently.

HILGERS [02:27:43] And how many sites would those agreements cover?

DAVID YOUNG [02:27:45] So the way our agreements in Lincoln are structured, it covers all 25,000 poles, so you have the right to choose any of the 25,000 poles that we have and select your own.

HILGERS [02:27:58] Oh, sorry, I-- go ahead and finish.

DAVID YOUNG [02:27:58] No. So it's-- it's--

HILGERS [02:28:00] Sorry.

DAVID YOUNG [02:28:00] The concept is considered a master license agreement, so if the city owns it, you have the right to use it. We have a preapproved pole. You submit your application, we give you a permit in ten days if you have all the engineering completed, and then you can begin construction.

HILGERS [02:28:12] And then how many are deployed currently?

DAVID YOUNG [02:28:15] We have 28 deployed in the field. Most of those were constructed last year.

HILGERS [02:28:20] OK. So I-- a couple of years ago-- well, let me take a step back. So, yeah, I've heard two sort of different theories of the case. One theory of the case is, look, we're companies, we have limit-- we have a lot of resources but we have limited resources, where are we going to deploy that capital, is it going to go to California and L.A., is it going to go to Miami, or is it going to go to Nebraska? The other theory of the case is, wait a second, this-- to cover Nebraska, it's one-- point one of point one of point one percent of some industrywide revenue, that's ridiculous, they got more money than they know what to do with, they should-- they'll put it here no matter what we do. We could all decide for ourselves which one we think is more plausible, but I prefer to look at the data. And the-- and the data at least that we have over the last two years, and I'm-- I'm going from two data points that are conversations you and I have had, when I look at the committee testimony from last-- two years ago, in February of 2017 I asked the same-- similar questions that I'm asking you here today, and at that time the city of Lincoln had two attachments deployed and there were about 118 sites that Verizon had apparently identified as plausible sites for themselves. There were some other agreements that were in the works and the testimony at the time was that there would take 400 to 6-- 600 small cells to deploy to cover the city of Lincoln. Now maybe some of those data points are slightly off. I'm just going from your testimony from two years ago.

DAVID YOUNG [02:29:31] Sure.

HILGERS [02:29:33] It seems to me that in two years, 20-- roughly 20 or so have been-- actually have been deployed supports the theory of the case-- the first theory the case that these costs are to-- are prohibit-- not maybe prohibitive that they couldn't pay for it, but these companies are not deploying to Lincoln. And you can decide-- we can all decide why that is, whether it's the cost, as Senator DeBoer was referencing or that other testifiers have referenced, or not. But it does seem like the deployment is very, very slow in Lincoln. So how would you respond to that data point which is we've added just over 20 in two years? We need 400 to cover the whole city. How are we going to get there under the current regime?

DAVID YOUNG [02:30:15] Two things. If and when anybody wants take a walk around, we will look at the small cells and where they're located. The places that those small cells are located are in the hardest areas of the city to construct in. The cost is not the issue. We permitted the first 28 locations in 2016 and it's taken that long to just do the construction. It's really been an issue dealing with building in a downtown that's 100 years old and you don't know exactly what's underneath the pavement in some of these areas. I think that does lend credit to the discussion that you're saying that fees may be prohibitive. We're open to the discussion. We now are

required to deal with the FCC order, and so with no change in state law we will be having those discussions.

HILGERS [02:31:02] Let me ask you-- I appreciate that, Mr. Young. Did--

DAVID YOUNG [02:31:05] Sure.

HILGERS [02:31:05] Another point you made, I just want to give you the opportunity to respond.

DAVID YOUNG [02:31:09] Thank you.

HILGERS [02:31:09] Mr. Tate, earlier I asked him a series of questions regarding the FCC order. I think that's an important data point we didn't have two years ago. And a couple of the points that he referenced-- that he-- in his view, he thought the FCC order did not address which-- which would help justify LB184. One of them was deemed-admitted shot clock provision. Would you care to respond to that?

DAVID YOUNG [02:31:30] So this would be the-- one of those special protections that the industry is asking for to make them above and beyond other users of the public right-of-way. No user in the right-of-way gets deemed approved, period, not the water company, not the electric company, even though the city of Lincoln owns the electric company. Nobody gets deemed approved because there are engineering issues at stake, life and safety issues. If we deem approved a permit and it crosses a natural gas forced main easement and we missed that, whose fault is that? Well, you deemed approved it, right? That's the problem. So nobody gets deemed approved. You have to go through the process. Having-- go ahead.

HILGERS [02:32:10] What-- roughly how long in other contexts does it take to go through the permitting process? Or maybe for the-- the 24 that-- or 28 you referenced before, how long does--

DAVID YOUNG [02:32:19] So we generally approve small cell permits in ten days. Our regular right-of-way construction permits are approved in two business days. It's all electronic in Lincoln. We invested in that system. You e-mail in your permit application. You set up your account. It's charged to your credit card. You move on. It's a very straightforward process. By ordinance it's not-- we're not allowed to take more than 90 days now in the city of Lincoln.

HILGERS [02:32:40] So you raised-- you said-- mentioned a point, and I-- I apologize. I might have a couple of additional questions, but I do appreciate the dialogue, Mr. Young.

DAVID YOUNG [02:32:49] Sure.

HILGERS [02:32:49] You-- you raised a point which I-- which struck me as an important one, which is this idea that there is no other permitting process that is deemed admitted. On the same token, it sounds like they-- you can't go past 90 days anyway.

DAVID YOUNG [02:33:01] Right.

HILGERS [02:33:01] So are there any instances, if LB184 were to pass, that you-- we would put-- if you can't go past 90 days anyway, then what-- is there a realistic harm of having a permit deemed admitted past the 90 days if ord-- if under ordinance we can't do it regardless?

DAVID YOUNG [02:33:19] So-- so two things. Number one, I personally-- the city of Lincoln very much supports this technology and all technology for delivering broadband. I want to be very clear about that. Secondly, the state model code has language which if incorporated into the bill, LB184, would be significantly beneficial for all of us. And you would look at it and it's a much more detailed look at what deemed approved should be. If you were to pass the 90-day mark today, under the city's model-- the city's code, the city of Lincoln's code, then you would go to district court to get your approved language. You'd be required to do that.

HILGERS [02:33:57] Thank you. And then back to-- to the questions regarding the FCC order, on Mr. Tate's point regarding the idea that municipalities will just fight them on-- on the footnote F-- or footnote 233 question of-- of, well, our costs are higher than whatever the threshold was set in the FCC ruling. Any response to that?

DAVID YOUNG [02:34:18] I think the FCC made that ruling very clear because of the research of the Rates and Fees Committee. I think-- and-- and I don't remember the number exactly, how many cities we have in Nebraska. How many of those would charge-- challenge the FCC ruling of \$270? Probably very, very few when you think about it.

HILGERS [02:34:38] Well, wouldn't it work the other way? Wouldn't they just say it's going to cost you \$5,000 and-- and then it would put it on-- the burden on the wireless company to file a lawsuit?

DAVID YOUNG [02:34:46] The way the order is written, the-- the city has to actually provide the support-- supporting evidence for how they came up with their fee.

HILGERS [02:34:53] Right. But I guess they wouldn't be-- I guess my point is, is you could have that district court fight in court. That doesn't require the city to sue the FCC; it would just be the wireless company suing the city for--

DAVID YOUNG [02:35:04] Uh-huh, I agree.

HILGERS [02:35:05] I do want to just briefly touch base on another issue that was raised a couple years ago that I-- which you didn't touch on much, but I-- I think you've got some knowledge on, which is this idea of-- and you-- I think you did briefly mention, which is the idea of disparate treatment between fiberoptic providers and wireless providers. And that, as I understand it, is the difference between a franchise fee, on the one hand, for cable companies, and the lack of such a fee for wireless companies. Can you speak a little bit to that point?

DAVID YOUNG [02:35:36] So the issue-- and as you know, Senator, I will talk about this ad nauseam-- is how do you pay for the cost of acquiring and maintaining the right-of-way. So the city of Lincoln spends \$160 million a year doing maintenance on roads, acquiring right-of-way, building right-of-way, and it charges fees to the water department, the sewer department, all of those different departments who deploy assets in the right-of-way, to recover a percentage of that cost. The largest percentage of that cost is borne by the taxpayer. So the challenge is, if we are creating a separate strategy for wireless providers and saying, if you're a wireless provider, you don't have to pay your fair share to occupy the right-of-way, we're saying specifically it can only be \$270, or-- or \$20, what-- whatever it is this year, that is creating a special class of user. And so if you don't like this issue for the last three years, wait until we see what happens after we pass a version of this law as it's written and other carriers-- a natural gas company comes in and says, well, the wireless company gets to not pay right-of-way access fees, why should we, or the cable company or the phone company. That's the same challenge. The premise that-- and I can have this conversation with Senator Hughes. I have a presentation that goes back 200 years, the history of public right-of-way in the United States. It's really dry. But the premise is the-- the government identifies space in-- in the public commons and everybody gets to use it, but everybody uses it equally. And this goes back to old English law. What the carriers are asking for, I-- I am empathetic. They-- they would like a special classification to use the public right-of-way. That's a challenge because it puts everybody else at a disadvantage who uses the public right-of-way now.

HILGERS [02:37:27] Thank you very much.

DAVID YOUNG [02:37:29] I appreciate it.

GEIST [02:37:31] Any questions? Yes, Senator Bostelman.

BOSTELMAN [02:37:32] Thank you, Senator Geist. My question is pretty straightforward. I want to know what those right-of-way fees are by the different ones, if you could provide that to the committee at some-- so I understand we're talking about disparity of that. I don't know what they are so--

DAVID YOUNG [02:37:46] Um-hum.

BOSTELMAN [02:37:46] --if you could provide that, I'd appreciate it.

DAVID YOUNG [02:37:47] I-- I can provide you written documentation, if you'd like, and a description of all those, Senator Bostelman.

BOSTELMAN [02:37:51] That would be fine. Thank you.

DAVID YOUNG [02:37:51] Thank you.

GEIST [02:37:53] Would you make that available to the entire committee, please?

DAVID YOUNG [02:37:56] Of course, Senator.

GEIST [02:37:56] Thank you. Any other questions? Yes, Senator DeBoer.

DeBOER [02:38:02] I'm sorry. While we're talking about the right-of-way just now, are any of those other utilities, etcetera, that have current franchise fees, etcetera, for the right-of-way-- it seems to me that those are mostly buried underground. Are there some that are not that would be attachments similar to this one? In other words, how-- how closely does the analogy work on those other types of utilities and their sort of incursion into the right-of-way?

DAVID YOUNG [02:38:39] So the argument that's been made is underground utilities should bear more-- a larger percentage of the cost than overhead utilities, correct? And-- and some of the carriers will argue that the size of a shoebox is 28 cubic feet. So natural gas mains, water mains, the distribution portion of the plant, a lot of it is underground. But at certain intervals in the right-of-way they all have above-ground equipment, so this ancillary equipment argument is very important for cities. Where do you put-- and-- and you don't see them. They blend into the background in a lot of cases, these aboveground natural gas main tap stations and aboveground you've seen the J-hook that comes out of the right-of-way. That's the water blow-off valve. The carriers are asking for 28 cubic feet of ancillary equipment, with several exceptions to that calculation, I might add, that are not consistent with what the FCC has in its order, and then 6 cubic feet for a total of 34 cubic feet. The challenge is it's not one carrier, it's five carriers, so when you look at, that's 140 cubic feet on the ground. Where's that equipment going to be placed? In the areas with the same high topography. So some landowners are going to be inordinately impacted by this equipment because carrier A, B, and C want to be there, so now you have not one but three 28 cubic feet pieces of equipment in your yard and that's significant. So as was mentioned by my colleague earlier, if we were actually talking about a shoebox and it said one cubic foot, I think we'd be having a different conversation, but we're not.

DeBOER [02:40:26] Thank you.

GEIST [02:40:26] Thank you

DAVID YOUNG [02:40:27] Thank you, Senator.

GEIST [02:40:28] I do have a question if I'm not stepping on anyone. How close together would those boxes be in the-- in the-- in the right-of-way? Not the-- not the ones that are the same carry-- are different carriers, but for a single carrier, how close are those in the right-of-way?

DAVID YOUNG [02:40:53] I respect my colleagues-- all of my colleagues' answers earlier. This is a really difficult question to ask because it goes to terrain, topography, the number of obstructions in the right-of-way, the frequencies that they're broadcasting. The general rule of thumb is a good small cell with fiber backhaul, so fiber connected to that small cell, can carry 3,000 concurrent users and cover in general three quarters of a square mile-- or three quarters of a mile in radius.

GEIST [02:41:24] OK.

DAVID YOUNG [02:41:24] That is the general calculation accepted by the industry. That is with 4G frequencies; 5G frequencies, which are higher frequencies, will go shorter distances but will handle more users. My partner from Verizon talked about going from a four-lane highway to a ten-lane highway. That is correct, but then you'll only be getting 300-500 feet. That's the difference.

GEIST [02:41:52] OK.

DAVID YOUNG [02:41:52] So the-- the distance limitation on an average city block is 300-500 linear feet long. You will generally have two to four in a corridor, multiple blocks long, per carrier.

GEIST [02:42:04] OK. Thank you. That-- that helps. Any other questions? Thank you for your testimony.

DAVID YOUNG [02:42:11] Senators, thank you.

GEIST [02:42:13] Any other opponents?

JULIA PLUCKER [02:42:29] Good afternoon, Vice Chair Geist and members of the committee. My name is Julia Plucker, J-u-l-i-a P-l-u-c-k-e-r. I am the executive director and registered lobbyist for the Nebraska Cable Communications Association. We're here testifying in opposition to LB184 as it's currently written. The association is the primary trade association for the cable broadband industry in Nebraska. The companies and affiliate members of the NCCA include Fortune 500 companies and community-based independent operators that provide video, broadband, and competitive voice services to Nebraska residences, businesses, and public entities. In Nebraska alone, the economic impact of the cable industry is over \$2 billion, employing over 1,500 individuals, resulting in nearly five-- 15,000 direct and indirect jobs. We

provide state-of-the-art cable television subscriptions to over 51 million American consumers nationally. As connectivity and customer service companies, the cable industry understands the desire to expand access to new products and services. In a highly competitive marketplace, cable has and continues to pioneer new innovations to meet and exceed our customers' needs. I'm going to take 20 seconds to brag about some of our companies. Cox is pioneering smart city applications that combine people, connected devices, data, and processes to improve city operations and the citizen experience. In addition, they're deploying Gigablast, one-gig Internet speeds across its footprint, including Nebraska. Charter Communications recently launched Spectrum Mobile, bringing additional competition to the wireless marketplace in the 41 states they serve, now offers Spectrum Internet Gig across the entire footprint in Nebraska and is conducting trials of fixed wireless access technologies using 3.5 gigahertz spectrum to provide cost-effective, faster connectivity to rural areas. Cable ONE offers GigaONE, a gigabyte con-- gigabit connection using DOCSIS 3.0 across northeast Nebraska. And Eagle Communications is pushing fiber deeper into its network, increasing speed and reliability in the network. Recent investments include the completion of a fiber ring throughout its footprint in the Platte Valley for reliability and extending fiber to commercial businesses who need those speeds. As you consider bills like LB184 to accelerate and deploy new technologies, we ask that you focus on the big picture and competitive principles across the industry, including the existing regulatory and tax landscape, and not put your thumb on the scale in favor of one technology over the other. Unfortunately, LB184 as written gives a significant regulatory and tax advantage to the wireless industry over other providers. A number of other states have passed this kind of legislation and also includes language to provide some sort of regulatory par-- parity. Examples include Florida, Missouri, and North Carolina. Although the words differ state to state, these bills all include provisions that would, and I'm going to talk about our four points, ensure that strand-mounted-device wireless equipment would not be subject to a new permitting and fee regime. Cable broadband providers already pay franchise fees and we should not be forced to pay again. Number two: ensures that a new expedited process does not include a blanket authorization for the provision of voice, data, or video service. Everyone should play by the same rules. Number three: ensure that cable broadband providers cannot be required to obtain additional authorizations or pay additional fees in addition to the franchise fee for the provision of broadband service. And number four: limit the expedited permitting process to the small cell device itself, the radio, and certain related equipment. The expedited process should not change the rules for the underlying networks. Those rules already exist and those who wish to install small cells on their networks or those for other companies should follow them. To achieve prove true parity, we also should evaluate the taxes and fees paid by different types of companies offering similar services. For instance, cable providers are subject to franchise fees, pole attachment fees, state and local taxes, while satellite and over-the-top services like Netflix, Hulu, and DIRECTV only pay sales taxes. This is fundamentally unfair and anticompetitive. We welcome the opportunity to have a discussion on how to achieve true parity that treats all services alike. For these reasons, we're opposed to the bill in its current form. However, we have specific recommendations that I just discussed that would help level the playing field for all video service providers. To that end, I believe our members have been in contact with a number

of the committee, as well as Chairman Friesen, and it looks like we are going to sit down and discuss these specific ideas and specific language. Thank you, and I'd be happy to answer any questions.

GEIST [02:47:32] Thank you for your testimony. Are there any questions by the committee?
Senator Bostelman.

BOSTELMAN [02:47:37] Thank you, Senator Geist. For my own benefit, could you explain the difference between the occupational taxes that our wireless companies pay and your franchise fees the cables pay?

JULIA PLUCKER [02:47:51] It-- I'm not the best person to answer that question but I'm going to take a stab at what I know, and then I can get you further information from our member companies. We pay franchise fees for the cable service and we also pay occupation fees for the phone service, so we pay both of those. That's the extent of what I know. I don't know the amounts that we pay at-- at this time but I can get you more information.

BOSTELMAN [02:48:14] Sure. The other question, since other states are-- have agreed, I guess you kind of laid out the-- the objections the cable has right now with as it is now. Could you go into a little bit more specifics on that for me since one of them you mentioned was Missouri and I think they've already agreed.

JULIA PLUCKER [02:48:34] Right.

BOSTELMAN [02:48:34] What's the difference there?

JULIA PLUCKER [02:48:35] We have been able to come to language difference. I think the difference between what was negotiated there and what is currently introduced here is that specific language. This is-- these are very specific technical issues and they also have far-reaching consequences throughout the United States. So when we-- when we negotiate something in Nebraska or Missouri, how they did there, it will affect the other areas that we work in. So being able to sit down and have our corporate counsels go through the language, basically go through the legislation line by line, I'm hoping we can come to the same language and agreements that we have in those other states where we were able to agree. I just don't think that process has occurred yet in Nebraska. We did not-- I did not represent the cable industry last session so I can't speak to the previous negotiations, but I feel confident that we'll have a productive conversation when we sit down.

BOSTELMAN [02:49:39] So-- and kind of as I asked one of the pro-- the wireless providers before, this is a bit of a turf battle, do you agree?

JULIA PLUCKER [02:49:46] I think it's a turf battle in that you should look at the overall parity, what we are paying. We are offering the same competitive services as well and I think all of that should be taken into account.

BOSTELMAN [02:49:58] OK. Thank you.

GEIST [02:49:59] Thank you. Any other questions? Seeing none, thank you for your testimony.

JULIA PLUCKER [02:50:07] Thank you.

GEIST [02:50:07] Any other opponents?

KARLA RUPIPER [02:50:23] Good afternoon. My name is Karla Rupiper, that's K-a-r-l-a R-u-p-i-p-e-r, and I'm the city attorney for the city of Papillion, Nebraska, and I am testifying on behalf of the city in opposition to LB184. I've heard a lot of information here today. I will tell you that I probably-- well, first of all, let me tell you I'm an attorney. I am not a network engineer and I'm not a planning expert. I do have others on our city staff. It's not a large city staff as you would see in the very large cities. We are a city of the first class, but we do have some professionals on staff and I rely upon them very heavily. But I think I probably represent a lot of cities that are now facing the FCC order. Being a city in Sarpy County, my guess, speculation on my part, is that beyond Omaha and Lincoln, Sarpy County, as being one of the most growing and developing communities in the state, is probably the next horizon for small cell deployment. And we have just very recently been contacted by small cell companies and so for the first time we will be looking at entering into some of the master lease agreements that you've heard reference to, which is specific to the small cell attachments. So we have yet to do that. We-- we do not have any existing small cell-- cells in our community at this time but I do anticipate that that will be the case and they'll probably come on to us in batches, as-- as we've heard. I have been very-- I have been following the issue of LB389 over the last couple of years. I've been working with the League of Municipalities. From the very beginning, the last two sessions, we have been asking for, as cities and the-- and the League, to work with the small cell companies to look at a model, something that we can all agree on or certain terms that we can agree on. Just two weeks ago, I had a small cell representative in my office and we talked about why is it that we cannot get these companies to sit down and-- and let's talk about it. And it became very clear that was not going to happen. I walked away very disappointed. We-- as a city, we are very excited to be able to be on, you know, on a track where we-- we do welcome and want small cell deployment in our community for our citizens. And we try to be friendly to commercial groups that come to us, but we do feel very strongly that it is our responsibility, one that we take very seriously, to manage and to control our right-of-way. And we do view, as I have provided various sections of the-- of the bill, LB184, whether I'm talking to a city engineer or to a planner, they see numerous provisions that they're frankly quite aghast because it would eliminate the city's ability to manage our right-of-way. We're-- we are looking for an expedited way of making things happen for small cell. We'd like that to happen but it's not-- it should not be at the cost of

the city's ability to manage its right-of-ways. I've heard that this is a balanced bill, that somehow this will come to the benefit of the cities in terms of revenue. From my standpoint, we are simply attempting to recoup our own personnel expenses. I think I heard that, you know, the cities-- you know, that the companies are only paying for airspace. Well, that is not true. The cities are required to pay the personnel costs to be able to review the multiple applications that come along and you have to have personnel that have the training to be able to do that. So those reviews are not free and, to be honest, it's our position that we believe the city would be-- actually be subsidizing this industry at the expense of-- of the others, too, in terms of we would not be able to-- we would not be treating this industry in the same way that we've treated every other industry that goes into our right-of-way. We would indeed be creating a special class. I wanted to address-- I believe there was some discussion, Senator Hilgers, with regard to credit of the state in the State Constitution. And my recollection-- I haven't had a chance to look it up, but my recollection is that's Article XIII, Section 2 [SIC]. And I just happen to know about that because-- and I see my light is on, sorry, or yellow-- because just recently our city has had several private companies come to us about using for private purpose the city's right-of-way, which is-- we consider to be our taxpayers' resource.

GEIST [02:56:23] Ms.--

KARLA RUIPIER [02:56:23] And we had to be--

GEIST [02:56:25] Your light is red.

KARLA RUIPIER [02:56:26] Oh, I'm sorry. I'm seeing yellow and red, really sorry.

GEIST [02:56:29] I know they're all three it but--

KARLA RUIPIER [02:56:29] OK.

GEIST [02:56:30] --that means it's red.

KARLA RUIPIER [02:56:31] OK. I'll-- I'll leave it there. But we had to make very special research and-- and arrangements in order to accommodate. And again, we attempt to accommodate, but that's not a freebie. That is a resource that belongs to the taxpayers.

GEIST [02:56:47] Thank you. Thank you for your testimony. Any questions? Yes, Senator Albrecht.

ALBRECHT [02:56:55] Thank you, Vice Chair. Well, good afternoon. Thanks for waiting around to talk about this. You know, when I think of the cities and the municipalities and the franchise agreements that you have with the cable companies, and I'm excited to be able to-- to take a look at some of those to find out, because in this bill when it talks about \$250 per pole for

access to the right-of-way and then an additional \$20 dollars per pole per year in that right-- right-of-way to come with-- with the agreement. So you have water, electricity, natural gas, cable. What other kind of utilities have you negotiated with?

KARLA RUIPHER [02:57:44] Well, to be honest, I don't have the full list of everyone who's in the right-of-way. It's--

ALBRECHT [02:57:51] Would-- would those fees be somewhat in line with what they're asking for in this bill?

KARLA RUIPHER [02:57:56] Not to my knowledge, no; to my knowledge, no.

ALBRECHT [02:58:00] Do you have any idea what they charge per right-of-way?

KARLA RUIPHER [02:58:03] Well, and again, we haven't started any small cell deployment specifically, so--

ALBRECHT [02:58:08] But I mean those other utilities.

KARLA RUIPHER [02:58:09] The other utilities? If they are generating a service in which there is a gross revenue that can be calculated, then for the city of Papillion, it is 5 percent of gross revenue and that number has been established and there for a very long time. I-- I can't tell you how far back. Many of the cities are at 5 percent. I believe there are some that may by special vote of-- of the elect-- the electorate, they may have slightly bumped that up.

ALBRECHT [02:58:40] And how--

KARLA RUIPHER [02:58:40] And otherwise, they're on a rental--

ALBRECHT [02:58:43] Through the city.

KARLA RUIPHER [02:58:43] --per-linear-foot basis if they don't generate a gross revenue.

ALBRECHT [02:58:49] So how do you feel about the FCC rule that did come down with the \$270 fee?

KARLA RUIPHER [02:58:55] And so we are currently looking at that. Frankly, right now we, and I believe many other cities, are scrambling just to get our-- we are in the process of doing code amendments that will comply with the FCC order. We want to comply with that. We think that the rates that were the presumed reasonable rate set forth by the FCC, that that sounds reasonable to us but frankly we're still evaluating if that's where it should be. You know, again, we've never had a specific fee for-- for this.

ALBRECHT [02:59:28] So the city of Papillion has no small cells right now.

KARLA RUIPER [02:59:31] That's correct.

ALBRECHT [02:59:34] Interesting.

KARLA RUIPER [02:59:34] In fact, we're-- we're also-- in the past we've had a wireless tower and it's just wireless communications ordinance which has included small cell, at least the words "small cell." And we realize, especially under the FCC order, we now need to amend our ordinance and to basically pull that out and treat that in a different way so that it does meet with FCC order.

ALBRECHT [03:00:06] Very good. Thank you.

KARLA RUIPER [03:00:06] You're welcome.

GEIST [03:00:07] Any other questions from the committee? Seeing none, thank you for your testimony. I would ask a show of hands of how many additional testifiers there will be both in the opponent and neutral capacity. OK. I would like to just do an executive order here and take about a five-minute break so the committee can just take-- get a drink, be at ease for just about five minutes, and we'll come right back and we'll get to you first.

[03:00:39] BREAK

GEIST [00:10:00] [RECORDER MALFUNCTION] repeat some things that we've already heard. We appreciate you coming here and we appreciate your testimony, but the hearing-- we would just like to hear-- if you have something to add that maybe has not been said that would be specifically helpful, we'd appreciate to hear that. And with that, we'll go ahead and let you begin.

TOM MUMGAARD [00:10:24] Good afternoon. My name is Tom Mumgaard, T-o-m M-u-m-g-a-a-r-d. I'm a city councilman for the city of Papillion and I'm going-- hope to present a point of view that has not been represented so far. I'm here representing the city of Papillion and the United Cities of Sarpy County. That's the five cities of Sarpy County and the almost \$100,000-- 100,000 residents of those cities and their elected officials. The cities in Sarpy County have for many years been among the fastest growing areas in Nebraska. That growth includes commercial, industrial, residential activity, and because of that growth, the elected officials of those cities have gained great-- a bit of experience in balancing the interests of the activities of those different kinds of activities, the interests of those activities, including balancing the use of the public areas such as the public right-of-ways. So we're not strangers to any conflict that those different type of activities can create. We're not strangers to the balance that's required to provide our residences with the services that they demand while protecting the high

quality of the life that they want. We accomplish that balance regularly. The elected officials accomplish that, as can be seen by these seemingly never-ending number of people and businesses that want to move into Sarpy County. Well, those desired services obviously include wireless services. Our citizens are no different than anybody else. They want that. And so I'm not here in any way opposing 5G, the advancement of 5G cell wireless. That would be silly to pretend that we could stop the expanding technology. I come to you today simply saying that LB184 is not the way to balance the interests of the small cell wireless industry with the needs of the residents of a city. LB184 has-- has many, many defects, but I'll just speak to just one that hits me personally. It removes local elected officials from any significant regulatory authority over small cell wireless. It effectively says local elected officials are incapable of making the decisions that must be made to advance that technology. It says local regulation of this technology will be a hindrance. That word has been used repeatedly. You've heard from the proponents that local regulation is and will be a hindrance. Well, I think it's an irrefutable-- irrefutable-- incontrovertible that harm can occur from unregulated technology such as this. Now I've provided you today with photographs from areas that does not have regulation of this technology, and it shows the negative and bizarre impact an unregulated small cell industry can have on people who are trying to live their lives in the city. Now no person paying attention I think can say that this-- that an unregulated industry such as this will only bring good things to people. LB184 does indeed mean that I and the other mayors and council members that are elected by the voters of Nebraska are incapable of properly balancing the interests of small cell companies and their residents. It removes us from a significant part of the picture. For example, it expressly says the wireless company does not have to follow all zoning laws, does not have to follow the rules other utilities follow to use the public's land, including the right-of-way. It does not have to in any way take into account the property rights and the quality of life of the people who live near where the unregulated company thinks it has-- should locate equipment to make the most money. Now my city and many other cities in Nebraska have made significant investments of local tax monies in improving the public lands and surrounding areas trying to add to our citizens' lives. But LB184 says a cell company is free to jeopardize those investments by ignoring local zoning and public right-of-way laws. In short, it clearly says that these companies can ignore the ways locally elected officials build their cities and protect their residents. That's not the proper way to bring this technology to Nebraska. We must have collaboration between the industry and local elected officials. The regulatory process must include the elected officials who will daily see the negative impact of an unregulated world that can be described in LB184. Some of those pictures that I've showed you show the negative impact of an unregulated small cell industry. You must allow those local officials to balance the needs of that industry and the needs of the citizens. But this bill, which is really not to me about the fees, it's about managing the public's land and who does it. And harm can occur if this industry is left to its own desire-- own desires. Complaints will be made if this bill is adopted as law in Nebraska and this industry is given the free rein that it wants in the bill. If the LB184 is adopted, when people of Papillion come to me expressing disbelief that a cell company can put a refrigerator-sized, 28 cubic foot equipment in the right-of-way in front of their house, as happened elsewhere, I will be unable to help them. The only help I can give them is to tell them

to contact their state senator. The only thing I can tell them is the Nebraska Legislature, by adopting this bill, has said that the local elected officials that have been chosen to run their city are not-- are irrelevant and my constituents do not expect me to be irrelevant. You've heard from proponents saying today that the need to go to each city council and reach an agreement just slows down the placement of this technology. They're concerned that cities will get in the way of their choices. The bill effectively says that people like me that have been elected to make decisions on behalf of the local residents should get out of the way. Well, I don't think the law of Nebraska should be premised on a premise that says that local elected officials cannot make good decisions in the advancement of this technology and that the state of Nebraska has to step in and tell them and give that industry lack of regulation. Thank you. I ask simply that you kill LB184 and allow my residents and the residents of Sarpy County and throughout Nebraska to answer the questions that get raised by agreements they negotiate with these companies. We do not need-- they do not need it, my residents do not need it. Thank you very much.

GEIST [00:17:55] Thank you.

TOM MUMGAARD [00:17:56] I'll answer any questions.

GEIST [00:17:56] Thank you. Your time is up. Thank you. Any questions from the committee? Seeing none, thank you, Mr. Mumgaard. Next opponent.

ALAN THELEN [00:18:15] Good afternoon, Madam Vice Chair, members of the committee. My name is Alan Thelen. I'm with the Omaha City Attorney's Office. I'm here representing the city of Omaha today in opposition to--

GEIST [00:18:26] Excuse me, Mr. Thelen. Would you spell your name, please.

ALAN THELEN [00:18:29] Yes, I'm sorry, Alan, A-l-a-n, Thelen, T-h-e-l-e-n, here to represent Omaha in the opposition of LB184. It's not needed with the FCC order and it's one-sided and unfair to the residents of our cities. Now in Omaha's case, we are successfully rolling out small cell antennas. We have a-- a good template agreement that we are using. So we're rolling that out with the-- with the small cell providers on an agreement basis. We currently have agreements for-- for the installation of small cells with four pro-- four providers, and we're working on one for-- with the fifth. It's produced good results. As a result of these agreements, small cell antennas are being placed on existing streetlight poles in Omaha. We currently have 144 small cell antennas operating. We have another one that's in the works and we have about 20 that are being discussed informally right now. And maybe more instructive for you, we currently have zero applications pending under review, so we're pretty good at receive-- receiving these applications and having a quick turnaround on them. Like to say a couple of things about the FCC order that's been mentioned today. The FCC order really changes the landscape nationally, and more particularly, within this state. It already gives telecommunications companies substantial rights. The FCC did exhaustive research in this

process. It was a lengthy process-- process, a lengthy comment period. They received national surveys and data. They heard from experts. The result of all of that was the production of a 116-page order from the FCC. And this is full of findings and rules on small cell. Now presumably in producing this order, the FCC tried to balance the interests of telecommunication companies and local government and in doing that they arrived at what they characterize as reasonable fees, reasonable sizes for these antennas, reasonable time for cities to act on applications, and reasonable standards for aesthetic regulations. On the other hand, LB184 asks you now to recreate the wheel. They ask you to relook at all those issues that the FCC has already looked at and they ask-- in LB184 it asks you to create what we feel are unreasonable standards. And-- and more-- more particularly, the standards that are established in LB184 conflict with many of the standards that are in the FCC order. For example, the small of the small-- the size of the small wireless facility, in the FCC order, that's three cubic feet. This-- this LB184 would double that to six cubic feet. The-- the LB184 would also increase the height above that provided in the FCC order. It would put further restrictions on aesthetic design regulations, spacing of antennas. And more particularly, this legislative bill would drastically reduce the fees that would be paid both for applications and for annual fees to the cities. Now not only are those conflicts with the FCC order, but we believe that those also are examples of how one-sided this LB is. More specifically, Omaha would also specifically object to being forced to place this equipment on their own traffic signals. Traffic signals of course serve important public safety functions and according to our public works officials, placing these additional electronic attachments on or in our traffic signals would cause those signals to be compromised. By-- by forcing these-- this equipment onto the traffic poles, they could compromise the public safety functions of those installations. This is all about whether we're going to allow private parties to use public right-of-way without meaningful limits, without much say by cities and-- and our right-- our residents. Right-of-way is a finite resource, but this legislative bill would allow almost unlimited use. And we may indeed, if this is passed, find many of these providers that we've seen here today fighting each other for the limited space in our right-of-way. Someone has to police how that happens. This bill we suggest would eliminate the police. In Omaha, the free-market approach has worked. We-- we've entered into agreements. It's-- and we think that it's working better than having another level of government force this private use on our public right-of-way to the detriment of our residents who use, rely on, and enjoy our public rights-of-way. That concludes my testimony unless there are any further questions for me.

GEIST [00:23:41] Thank you for your testimony. Are there any questions from the committee? Seeing none, thank you.

ALAN THELEN [00:23:48] Thank you.

GEIST [00:23:49] Next opponent.

BRENT CLARK [00:23:59] I'm not sure if I should say good morning or good afternoon. It feels like we've been here for a while. My name is Brent Clark, B-r-e-n-t C-l-a-r-k. I'm currently the assistant city administrator for the city of Grand Island, soon to be the city administrator, March 1, when current, Marlan Ferguson, who sent you a letter in opposition of this, retires February 28. So I've also-- before being in the city of Grand Island, I was a zoning administrator in small communities, in Broken Bow and Dakota City, Nebraska, so have a little bit of experience in all size communities across the state. First off-- sorry about that. First off, good afternoon, Vice Chair Geist and members of the committee. Thanks for your painful experience here. I also am representing the Greater Nebraska Cities, which is a unified group in our area, which is Grand Island, Hastings, Holdrege, Kearney, which will be submitting a statement a few down the list here, Lexington, Minden, and Aurora. We are opposing the current legislative bill as proposed. What this really does is it takes away all local control. What we currently have is working. We currently have six small cells in Grand Island with a few more proposed. Right now we're working with U.S. Cellular, but we currently have Verizon serving the city of Grand Island, so it's working. Our fees are low. Currently, we have \$35 to \$50 is the-- is the fee, is the typical building permit fee for electrical code, and also it's \$6 per pole per year to have those pieces of equipment installed on the pole. Now there is a higher fee if there isn't an existing light pole that this can be hung on. And so if there is a light pole that needs to be installed, the city of Grand Island does install that pole and then charge the company labor and materials for that pole. A current concrete pole is \$3,800, and a fiberglass pole is \$2,400. And so the notion that it's outrageously expensive is-- is not true currently, at least in the city of Grand Island. Also, I would like to mention that the current law is working. We do, like I said, have roughly the six. We also do have multiple suppliers looking at coming into the market. Personally I do think that a ten-day review in order to get that time frame to answer, yes or no, for a small community is going to be difficult. Coming from, you know, a small town in Broken Bow or-- or Dakota City where it's only one person, typically one person wearing multiple hats, that ten days, it might not work. If you go on vacation, if you have a stack of permits in front of you, you might not get to this one in the ten-day time period to say yes or no. So please, please oppose this bill as written and let the current law stay in place. It is working. Also, the terms that they said that we can negotiate, if you do read the actual legislative bill as proposed, it says upon mutual agreement between the applicant and the authority may that be extended for the 30 days. And so that has to be mutually agreed upon, which may not always happen, of course, when working with multiple companies, as well as, you know, this will not bring fiber to small rural communities as mentioned. Being from a small community that did not have much fiber in Dakota City, you know, this isn't going to change anything over there. Now Broken Bow is different because there is a fiberoptic line that runs through the community on its way to Denver. And so, you know, that's a little different of a case. But I just want to urge you also, too, to oppose this. And also, the city of Grand Island has put on retainage Bob Duchon who is currently working as a consultant to update the city of Grand Island's codes to comply with the new FCC regulations. So a lot of larger communities, such as Grand Island, they're already starting the process to comply with FCC regulation so we do not need additional regulation from the state with this

legislative bill to dictate what happens in the city of Grand Island. And with that, I'll take any questions.

GEIST [00:28:47] Thank you. Thank you for your testimony. Any questions from the committee? Seeing none, thank you.

BRENT CLARK [00:28:52] Thank you for your time. Have a good night.

CHRIS DIBBERN [00:29:01] Good afternoon, Senators. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel for the Nebraska Municipal Power Pool, and we serve over 200 small towns in the region, and we're here opposed to LB184. The Power Pool is a Nebraska nonprofit in support of local government and utility measures. And there's one simple theme I want you to take away today, and that is that the FCC has acted and this committee doesn't need to do anything. The wireless industry elected to ask the FCC to intervene and the FCC has occupied the field. And, Senator Hilgers, you had a great question. I'll quote to you from what the FCC thinks they've done. The FCC ruling and order uses two sections of the Communication Act to preempt state and local laws and regulations. The commission noted that Section 253-- 253 provides that no state or local statute or regulation may prohibit interstate or interstate telecommunication services. They also discussed Section 332, a provision that you can't prohibit states-- that prohibits states and localities from discriminating against wireless service providers. The commission made it clear that it believes Congress drafted Section 253 and 332 broadly. The FCC offered several examples of its order interpreting those provisions broadly in favor of expanded commission authority, so the FCC thinks they have preempted. That is the answer for today. The FCC acted. The wireless industry asked for relief. The FCC has spoken. The notion that the industry thinks you need to work on this level is wrong. There is no reason that the Legislature jump to it now. No state has passed a measure after the FCC declaratory order and ruling went out. Does FCC put in-- you've already heard that they put in the federal shot clock, they put in the rates, they put in the terms, they put in the conditions, and I think the FCC might be surprised that the industry thought these were just guidelines. I think they celebrated these rules. It is a win for them initially. The-- I've sent around a packet of stories about the FCC measures and the battles of wireless services pitted against cities in the United States. These packets tell both sides of the story, so I didn't just put in the-- the-- the-- the cities' position. I put in that they felt cities were greedy and I put in that cities thought these were butt-ugly, so you see both sides of this. But Congress is still looking at this measure. The American Public Power Association is arguing that public power should be exempt, that-- that it wasn't under the FCC, so this issue is still being debated. This committee should not act. But we strongly agree with something that Senator Friesen is very supportive of: broadband-- broadband to rural services. We-- we don't think LB8-- LB184 is the answer. But we have seen that collaborative efforts have made a difference, and you've heard that, that they're better designs and installations. So the industry has won at the FCC level. We're going to follow that declaratory order. We-- it's the law. We-- this-- this bill is not needed this session. But I wanted to point out two things about the bill. On page 13, line 23-- and I think you would appreciate

this-- the Department of Transportation, Nebraska, cares about and can address, on line 23, they can address insurance, indemnification, liability, protection of the public safety, property interest issues, relocates. Those are all important pieces in managing a right-of-way. And how is it different that the Department of-- our Department of Transportation can address all those things, important things, but not cities and not cit-- for citizens? Think about that. They have excluded all those important-- those-- those things are back in for the Department of Roads [SIC]. But for cities, that can't talk about safety, insurance, indemnification, removal? There's also four different rates now in this bill. If they wanted uniformity or conformity, if you are the Department of Roads [SIC] the standard is reasonable fair, and discriminate-- and nondiscriminatory. If you're the University of Nebraska, you just get to negotiate. If you're large public power suppliers, you get to negotiate, but-- and if you're small cities, like my towns, you're under the FCC pole-- utility pole rules. So there is a lot of issues in the bill. And the last one is I think one of our-- one of our statements said-- is Section XIII, Article 2 [SIC] in the constitution that allowed local option already-- LB840-- and then also they allowed for opportunities-- economic development opportunities by-- by this vote of the people. Thank you.

GEIST [00:34:19] Thank you, Chris. I'm just going to clarify. That section is actually XIII, Section 3-- Article XIII, Section 3.

CHRIS DIBBERN [00:34:25] Thank you.

GEIST [00:34:26] Don't leave yet. Let me see if anyone has any questions of you. Any questions from the committee? Now you may leave.

CHRIS DIBBERN [00:34:33] Thank you.

GEIST [00:34:36] Thank you. Next opponent.

ERIC HELLRIEGEL [00:34:45] Good afternoon, Vice Chairman Geist, members of the Transportation and Telecommunications Committee. My name is Eric Hellriegel, E-r-i-c H-e-l-l-r-i-e-g-e-l. I'm the assistant city manager and the development services director for the city of Kearney. I am here today to provide testimony representing the greater Nebraska cities and the city of Kearney in objection to LB184. The major I guess leverage of-- of our opposition to this bill really boils down to right-of-way. And it's our ability in local government at this point to manage that right-of-way. Within the city of Kearney right-of-way, we maintain our water system, our sanitary sewer system, our stormwater infrastructure, telecommunications, natural gas, and electricity. Some of those things, in requiring to provide for our community, involve approvals from the Nebraska Department of Health and Human Services, the Nebraska Department of Environmental Quality, and the Environmental Protection Agency. So those are things that-- that we can't take lightly in providing public service for our community. The way that LB184 is drafted appears to be a state initiative that's meant to kind of tell local communities what's best for them. The purposeful use of city right-of-way is to locate and manage necessary infrastructure, to

allow the delivery of public services, and for public safety. Managing of right-of-ways currently is challenging. We have a lot of competing interests at this time and the bill provides no regulatory framework under LB184, only that will be burdensome for our communities, in our opinion. We have 222 references of right-of-way within our city code as it sits today, to give you an idea how involved that is. I have jurisdiction over a department that determines the species and types of trees that would go on the street right-of-way that may impact overhead power lines, to give you an idea of-- of the regulation that's in play to keep our community safe, as an example. There are-- one of the larger reasons that we get nervous about this legislation is the fact that we have no zoning control over this process. We have city staff which are professionals in their field. We have appointed planning commission members that juror over planning and zoning issues. We issue permits. We issue conditional use permits. There are things permitted by right within our code and we also have elected officials as-- as city council people. This particular legislation eliminates all three of those parts of our public process that works very well in our community. Anything that the small cell companies want to do at this time, based on-- on what's at play both from a federal and state law standpoint, can be done in many jurisdictions. They-- they are in Omaha, they're in Lincoln, they're in Grand Island, they're in Wayne, they're in other places. I have nothing in my code to prohibit them from coming to Kearney, Nebraska, at this time. But this legislation in my opinion is-- is-- is very-- it's very broad and it's very wide sweeping and it puts the jeopardy not only of our current infrastructure in jeopardy but also for any future infrastructure that we would look to maintain within our right-of-way. That is our greatest concern and that we provide for the public health and safety of our community and we take managing our right-of-way very seriously for the benefit of all of our residents. We-- we appreciate that there are folks that want to deploy 5G technology. We are in support of 5G technology. But this is not the Nebraska way. This is not the mechanism to bring this to our communities. I can't make that more clear. There are other ways to get this accomplished. There's nothing that's necessary today, per se. So we don't feel at this time that it's appropriate legislation to improve rural broadband, municipal broadband, however you want to call it, this technology to our communities. Thank you, Vice Chairman and committee members, for your service to our state. And I will take any questions you might have.

GEIST [00:39:08] Thank you. Thank you for your testimony. Are there any questions from the committee? Seeing none, thank you.

ERIC HELLRIEGEL [00:39:14] Thank you.

GEIST [00:39:15] Thank you for coming. Next opponent.

SHELLEY SAHLING-ZART [00:39:26] Thank you. Good afternoon, almost evening. Chair Friesen, Vice Chair Geist, members of the Transportation and Telecommunications Committee, for the record, my name is Shelley, S-h-e-l-l-e-y, Sahling-Zart, S, as in Sam, a-h-l-i-n-g, hyphen, Z, as in zoo, a-r-t. I am vice president and general counsel for Lincoln Electric System. I've been with LES for 30 years. And Lincoln Electric System serves the Lincoln area, Waverly, and some

of the surrounding area. Just for frame of reference for this bill, the city of Lincoln owns the streetlights in Lincoln. We manage them, we maintain them for the city. As far as Waverly, we serve Waverly under franchise and we own and-- and maintain the streetlights in Waverly, so this bill applies to us in a couple of different ways. Let me first start by saying you've heard today from several testifiers that 20 or 23 states have already adopted legislation. Well, I looked it up and I would submit to you that 33 states have legalized marijuana in some way, but I doubt that you're going to use that as your precedent. We also talk about wind energy a lot in the Natural Resources Committee and there are a lot of states that are ahead of us on wind energy, but we don't do public-- public policy by peer pressure. We do public policy by what makes sense, and that's what this bill is about. And from our standpoint, Lincoln Electric System is not opposed to small cells. We are supportive of small cells. We are helping get them deployed in the city of Lincoln now. This bill is about the public right-of-way and I think preserving the integrity of the public right-of-way and thinking about the property owners, who aren't being discussed at all, who are next to some of these rights-of-way. You know, you've heard about them already being deployed by voluntary agreements. I have Lincoln's signed agreement. Yes, they're charging \$1,900. Two parties agreed to that contract. It's right here. It was a negotiated agreement. Is the fee high? Could-- could they lower it? Sure. Those two parties could get together and try to work something out. They don't need legislation to do that. The statement of intent was interesting. It really doesn't mention small cells. It talks about the need for, I'm going to quote it: facilitating efficient and uniform statewide siting practice for-- practices for small wireless facilities, uniform. You've heard a lot about uniform today and the-- the proponents of this legislation told you it wasn't uniform, they told you they had exempted people out of here. They've exempted the public power districts, not all of public power. Lincoln Electric System is a public power utility. They have not exempted all of public power. But you know what? They did exempt them, but their concerns, NPPD's concerns about the bill, OPPD's concerns about the bill, the rural public power providers' concerns about the bill didn't go away. They have those concerns. They just wrote them out and under this bill they can negotiate individual agreements to address all of those concerns, like we were doing up until the FCC order went into effect. So I'm a utility-- we're a utility generating, transmitting, distributing electric-- electricity in the Lincoln area. NPPD, OPPD, and the others do the same thing. Why are we treated differently? It certainly doesn't give you uniformity, right? Give you a really good example, the city of Kearney. Kearney is a retail town served by NPPD. NPPD manages the streetlights in Kearney. So the streetlights in Kearney, if they would like to put small cells on the street light poles in Kearney, those will be negotiated through a pole attachment agreement with NPPD. NPPD will negotiate the rate for that. If they want to put those on in-- street lights in the city of Lincoln, it's a maximum rate of \$20. The FCC order sets a reasonable rate at \$20-- \$270. Yes, it can be lower, but the FCC order also says, but you can charge higher if you can establish that's your actual cost. No such provision in LB184 for proving up your actual costs-- it's capped at \$20. There are so many things I need to address. Make-ready-- make-ready costs in this bill, the electric utility will largely be the one doing the make-ready. There is power and fiber to these poles. It is not simply attaching a cable, like other companies do today. There is engineering work for load on the poles. There is electrical work that needs to be done. If we get a batch of several hundred of

these or 100 of these, yeah, you might be able to look at similar applications in 90 days; you cannot do the work on 100 poles in 60 days. There is also no provision in this bill for storm situations. If those small cells go down in a storm and are laying on the ground and are in the way for something, who do-- how-- what's the time frame for that? If there's damage to the right-of-way, if their facilities cause damage in the right-of-way, there's a provision that they have to repair that in a reasonable amount of time. We all have shot clocks. They get a reasonable amount of time. But there's no provision for the storm situation. The other thing this bill does is this bill puts small cells-- and I'm happy to help facilitate them, but it puts that work ahead of serving our customers. We have developers putting in new housing developments. We have commercial come-- we have new large businesses coming that are also coming for economic development that need electric service. We have to balance all that and process these make-ready applications in 60 days.

GEIST [00:45:02] Ms. Zart, your time is up.

SHELLEY SAHLING-ZART [00:45:03] Yep, I've got to wrap up-- my apologies-- but I hope you will consider the public policy you are thinking about. You are setting a major, major policy precedent. Thank you.

GEIST [00:45:14] Thank you. Are there any questions? None? I do have one. Would you-- you mentioned that LES controls the poles and the lights and that sets you apart. Is that why you are not exempt from this bill?

SHELLEY SAHLING-ZART [00:45:37] My hunch is we are not exempt because it would be difficult to exempt us without exempting the city of Lincoln, which I'm guessing they are not willing to do.

GEIST [00:45:48] OK.

SHELLEY SAHLING-ZART [00:45:49] But I still come back to if you're negotiating-- I mean they also talked about how, you know, if there's-- if you need an extension of time on applications, we'll negotiate that. There were several things that they noted, well, we're negotiating that with cities, we're negotiating, we'll have agreements for that. Well, if you're going to have agreements for all these other details, why don't you just start with one agreement that covers it all?

GEIST [00:46:14] And are you currently in negotiations with any other parties?

SHELLEY SAHLING-ZART [00:46:19] We are-- we are not. The city of Lincoln would be in negotiations for that because they own the streetlights in Lincoln. They would be controlling any negotiations for the attachments to streetlight poles. Nobody has approached us about any in Waverly to date and nobody has approached us for distribution poles. But I would note that we

would really like to see distribution poles for lots of safety reasons, not have small cells allowed on distribution. The bill doesn't allow it on transmission infrastructure of public power districts, but it doesn't exempt our transmission infrastructure either. Those are serious safety concerns.

GEIST [00:47:01] Thank you. Anyone else? Thank you for your testimony.

SHELLEY SAHLING-ZART [00:47:11] Thank you.

GEIST [00:47:11] Are there any other opponents? Anyone who wishes to testify in the neutral capacity?

ELLE HANSEN [00:47:32] Good evening, ladies and gentlemen. Elle Hansen, spelled E-I-I-e H-a-n-s-e-n. I'd like to approach the committee this evening. I had not planned on testifying. However, valid points raised by both proponents and opponents to this bill have become very clear in my mind and I think that some things needed to be pointed out. First, I would ask that the committee not advance this bill to the floor until a couple of-- a couple of conditions are met. And one would be-- thank you for bringing that up, Senator Geist-- that cities and municipalities not be handed an unfunded mandate if this bill were to pass. We're looking at massive corporations that are asking for the ability to conduct business. The cost of conducting that business ought not fall on the financial resources of-- of taxpayers or municipalities. Additionally, the safety concerns which have been raised could even present a danger to human life. So I would ask that the committee take initiative and responsibility to ensure that those who have raised concerns, that those concerns are provided adequate-- what's the word I'm looking for? -- that they're adequately addressed. And I would also ask that the committee require the major corporations that are asking for this legislation to be passed to sit down with entities who have come forward today in opposition and allow their voice as minorities really in this situation to be heard. That's all I have. Thank you.

GEIST [00:49:11] Thank you. Are there any questions from the committee? Seeing none, thank you for your testimony.

ELLE HANSEN [00:49:19] Thank you.

GEIST [00:49:19] Anyone else who would like to testify in the neutral capacity? Seeing none, Senator Friesen, you are welcome to close.

FRIESEN [00:49:35] I am very patient. Thank you, Vice Chairman Geist. First of all-- I have said this from the beginning three years ago-- this has nothing to do with rural broadband deployment or for small rural communities. This is not an issue, never has been, never will be. Small cells may eventually get to smaller communities, but they're meant for high-density, high-traffic areas. They will not be in Henderson. They will not be in Aurora. These are for high-density, high-use areas. And eventually, yes, they may end up in smaller communities, but

this is not any path forward for rural broadband whatsoever, never has been, again, never will be. You know, the shot clock is for application process only. The construction, it's a whole different thing. Everybody is going to go about that in a different way. You saw what-- the problems that happened with ALLO here in Lincoln. I don't think there's any shot clock on getting them constructed. Everybody is going to work through that process just like they did before. This is only the application process. The city at all times has control of every site. They can deny a site until that problem has been resolved and negotiate the settlement of how they're going to resolve that location. They have complete control of each and every one of those sites. You know, they talk about access to the right-of-way, so I would think a 6 percent occupation tax every year, pretty substantial access to the right-of-way. Now maybe if we want to give up the occupation tax and just charge for the-- what the right-of-way is worth, maybe the Public Service Commission could maybe set a fee of what that's worth. I don't know. But when you say that you're going to have an occupation tax of 6 percent, or that's your cap, that's a lot of revenue I think that's coming in that we're not talking about that comes in every year. This is just an application process for building these sites. But again, they're going to have an occupation tax on all the revenue that comes in because of this expansion. You know, I don't think we're giving anything to private companies. We talk about here you're going to give money to a private company, some of the testimony here. I don't-- you're giving them access in probably an equal way across the state. Last year, Lincoln's charging \$2,000. We already heard rumors of other cities wanting to charge up to \$5,000. This is a money issue. It's not a safety issue. There isn't a company in this world that would put their employees at risk to do anything. Access to the right-of-way is the fight here. Cable companies, they have one cable in the ground and yet they're charged an occupation tax and a franchise fee. I'd say they are being treated unfairly, but it's not access to the right-of-way because they still have just one strand in the ground. It's a money thing. It's a revenue issue. Customers are going to demand-- demand a quality service. And if they-- you know, again, there's a lot of things in this bill that talk about the quality of-- in historic areas they're going to have to meet some requirements. The cities do have some control. It's not as though they're just going to run wild and just build as they want. Omaha, your traffic signals issue, it's addressed in here. If there's any kind of a safety issue, site issue, any obstruction with traffic signals, it's addressed in this bill. You can knock that site out. They will find a different way to do it. LES, yes, you're treated differently. You're a part of the city and the city has shown that they can charge as much as they want. With that, I'd be glad to answer any questions.

GEIST [00:53:45] Thank you, Senator Friesen. Any questions from the committee? Seeing none, this ends the hearing on LB184. Oh, excuse me. I do need to read in the letters into the record. I do have the Department of Transportation in support and Nebraska Office of the CIO is also in support. Now this ends the hearing from LB184. No, that's all right, didn't have to do that.

FRIESEN [00:54:54] OK, we're-- how many-- how many people are going to testify on LB208? We may-- I think we may start limiting to three minutes, if that's OK. We're running a little long here but we'll-- we'll-- we'll be generous. If somebody has something to say, I can-- I can let that

slide, but let's try to-- let's try to shorten it up as best we can and not repeat. We'll be opening the hearing now on LB208. Welcome, Senator Walz.

WALZ [00:55:29] Thank you, Senator Chairman Friesen and members of the Transportation and Telecommunications Committee. I almost skipped down here, I was so excited. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I have the honor of representing District 15. As you know, I am here today to introduce LB208. LB208 is a reintroduction of LB1113 from last session with a few changes. The first change was based off an amendment to LB1113 strengthening the language to ensure that public entities cannot enter into governmental competition with private market. I would like to reiterate that it was not my intent in LB1113 to allow public entities to do so. The second change to the bill includes a definition of an Internet service provider. This bill takes public-private partnerships out from under the regulation of the Public-- Public Service Commission. This is an overly burdensome regulation that stifles the abilities for cities and municipalities to engage in this practice and slows down the much-needed expansion of rural broadband. Currently public-private partnerships are permitted but face heavy state restrictions by the Public Service Commission. The Public Service Commission sets the price and terms of dark fiber leases. Our goal is to allow a political subdivision, such as a city or a public power district, to lay the fiber infrastructure and partner with private companies providing the service without this unneeded governmental oversight. Receiving approval from the Public Service Commission can take a long time and the partnership may never come to fruition. From the city's point of view, this leads to uncertainty, uncertainty on the return of their investment. Therefore, local governments aren't investing in dark fiber. Meanwhile, private companies have no incentive to expand out to rural areas because of the same reason. This bill makes it easier for public entities and private companies to establish a mutually beneficial relationship for common good of all Nebraskans. Without the ability to do this, we are handicapping our rural communities by not giving them the tools they need to prosper and to expand into the 21st century. This is a detriment to our business owners who are unable to run credit cards because the connection is too slow. This is a detriment to our tourism industry if no one can get access to the Internet when they come here. This is a detriment to our shrinking communities who are seeing the flight of younger generations from their towns who never return because they don't have access to the same resources that larger communities do. This is a detriment to our children and those who are seeking greater educational attainment. I've heard stories of people sitting in the library parking lot at night to finish their degree because it's the only place in town that has reliable Internet, children who sit outside of school after hours on their laptops to complete their homework. Agriculture is our state's largest industry. Currently our farmers and ranchers are operating at a disadvantage compared to their counterparts in Iowa or Illinois. A strong broadband connection is needed in order for them to use satellite mapping to control fertilizer application, save on input cost, and increase yields. This is especially important with our current low commodity prices and high property taxes. It has become increasingly clear that affordable and reliable Internet access is no longer a luxury but a necessity. In practice, public-private partnerships have been shown to work. You can take a look at the handout I have given you, but you need not look further than the city of Lincoln. They were able to do this with

great effectiveness. With their project, the city of Lincoln went to the 80-- went from 82nd in the nation to number 2 in the nation in upload speeds and 6th in download speeds. This also expanded the number of providers in the city from its original two to ten providers, greatly increasing competition. This allowed not only more customers to have access to reliable high-speed Internet but provided them with lower rates and faster speeds. We have been waiting for rural broadband expansion for a long time. There is no reason we should wait any longer. I think all of you clearly understand this is a service that your constituents and the people of Nebraska desperately need. This bill moves one step towards that goal by removing the unneeded and unnecessary government oversight. Thank you so much for listening. I'd be happy to try and answer any questions if I can, but I assure you, there will be some people behind me who can answer them probably a lot better than I can. Thank you.

FRIESEN [01:00:57] Thank you, Senator Walz. Are there questions from the committee? Seeing none, thank you.

WALZ [01:01:03] Thank you.

FRIESEN [01:01:05] Proponents?

DAVID YOUNG [01:01:17] Senator Friesen, members of the committee, David Young, D-a-v-i-d Y-o-u-n-g, testifying on behalf of the city of Lincoln. Thank you for the opportunity. These comments are very short. Specifically, the intention of LB208 is to allow for the cheapest form of network construction to be a partnership. So what Lincoln did was we installed empty conduit and made space available to other carriers. This takes that model and applies it to fiber, so all of the municipal broadband exemptions are still-- remain in place. And what it says is that under dark fiber leasing, a city and a private partner can partner to cobuild a single cable. That would dramatically drive down the cost of building that cable and I think that this would benefit all of Nebraska. Many other states have this. In fact, 30 states have a public-private partnership model. I would encourage you to look at Alaska, Arkansas, Minnesota, and one more, North Carolina, because they have most recently adopted a provision like this that allows public-private partnerships specifically and solely for the deployment of dark fiber cables.

FRIESEN [01:02:37] Thank you.

DAVID YOUNG [01:02:37] It's been a long day.

FRIESEN [01:02:40] Are there any questions from the committee? Senator Albrecht.

ALBRECHT [01:02:45] Thank you, Chairman Friesen. Mr. Young, can you talk to me about when you lay this conduit or this fiber, does the cable company then rent that from you and pass it onto the consumer? Is that how you get the fiber out to the folks?

DAVID YOUNG [01:03:02] In Lincoln that is currently how we do it. And the reason that works in Lincoln is because of the high cost of constructing downtown. It's a very dense, old area. We took that model and applied it across the city on all of the arterial streets, so the main streets. And by putting in all of the conduit and manholes, it allows carriers to very quickly pull their own cable through. It works brilliantly in a dense, urban environment. But where it breaks down is when you're actually looking in a rural environment where the cost of putting in that conduit is too expensive. So what LB208 proposes is that instead of putting in the conduit, the city and the private entity would just share the cost of the fiber.

ALBRECHT [01:03:46] Thank you.

FRIESEN [01:03:46] Thank you, Senator Albrecht. Any other questions from the committee? Could you-- would you be willing to share with us the cost and what the restrictions are to get into your conduit? Is it unlimited access for anybody that wants in or what is the-- what is the charge? I guess if you could provide that maybe to the committee down the road of what you're actually getting in return for that access.

DAVID YOUNG [01:04:11] I'm happy to do that, Senator, and have those conversations either at length or just providing copies of all of the agreements that we have, either direction. Happy to do that.

FRIESEN [01:04:20] Thank you. Seeing no further questions, thank you for your testimony.

DAVID YOUNG [01:04:25] Thank you.

FRIESEN [01:04:26] Other proponents?

LASH CHAFFIN [01:04:38] Good afternoon, Senator Friesen, members the committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I am a representative of the League of Nebraska Municipalities and I am here to testify in favor of LB208. You know, I don't know what the answers are to get broadband to rural Nebraska, cities, villages, just any anything west of the urban areas, but we are open to all suggestions. And this is-- this is a suggestion and-- and we are open to it. It's quickly becoming winners and losers and I think all of Nebraska wants to be on the side of the winners. And if this is a conduit, if there's some ideas out there to get it rolling, then we are all in favor of that. And as David indicated earlier, cities do have fiber needs and-- and cities work in fiber on a regular basis. They don't lease it commercially but they-- they have communication systems for their water systems, they have-- you know, they have a variety of fiber needs already and there are-- there-- there may be private-public opportunities out there and I hope if they're out there, somebody can grab on them and make the best for their local community. Certainly answer any questions.

FRIESEN [01:05:53] Thank you, Mr. Chaffin. Any questions from the committee?

LASH CHAFFIN [01:05:57] Thank you.

FRIESEN [01:05:58] One question, I guess. Currently, could-- obviously you have some public-private partnerships now already. Well, you did the conduit so, I mean, the possibility is already there or--

LASH CHAFFIN [01:06:12] I think that's a good question. I'm not the person to ask. I don't know the legality real in great detail of the bill, but there are-- there are-- there are other-- there are some-- there actually are some city-private partnerships now and-- and I don't know how those were structured to begin with. There are smaller projects other than Lincoln in place if you had to serve a specific business and do things like that and I just don't-- I don't know the structure of those, Senator Friesen. And, you know, I think that would-- I think it's a-- that's a-- that's a genuinely needed dialogue that I-- that, you know, if you want to work with Senator Walz and yourself, but I'd like-- I'd be open to asking some questions on-- from some cities on how those work and how they were structured.

FRIESEN [01:06:55] Thank you. Thank you very much. Other proponents?

KRISTIN GOTTSCHALK [01:07:08] Senator Friesen, 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 government relations director and registered lobbyist for the Nebraska Rural Electric Association. We have 33 rural electric providers in this state who serve over 95,000 miles of distribution line for about 265,000 meters, so we are firmly in the rural areas of this state. Do want to thank Senator Walz for the introduction of LB208. In some ways we can look at broadband today being what electricity was in the 1930s. It's becoming a necessary component. It's a main-- it's major, or you could even say it's a main economic driver. It's a rapidly evolving technology. And this isn't about Facebook; it isn't about on-line video games. It's about competitiveness, cost savings, the ability to do business anywhere in this state. And overall, it's about equity and fairness. The electric industry is changing. We are looking at different ways to communicate with our infrastructure and our consumers and fiber is one of those tools. Public-private partnerships make sense. One could even argue that you could just completely eliminate the dark fiber statutes because we have the ability to do public-private partnerships. We already share our towers with telecommunications companies and Internet service providers to provide a needed service in the rural areas. And the electric utility fiber is just a small component, but we do need to be innovative and we need to be aggressive and we can't take any of these things off of the table. And one of the other things that we find-- and we don't want a different standard in rural Nebraska than we have in urban areas, and right now that's what we have. We have that digital divide where we're treated differently and we're given a standard that's just good enough for rural Nebraska. As we move forward and you look at the language of this bill, I strongly encourage you to-- to advance this legislation. But whatever you do, don't limit the definition of Internet service provider. We need to be sure that all of those that are providing

infrastructure out there, the wireless Internet service providers, the independent service providers, should all have access to these leases for dark fiber. Now the one thing that I do want to make abundantly clear is NREA members, your rural electric providers in Nebraska, do not want to be Internet service providers. Senator Walz put in her bill language that made that very, very clear. It's unnecessary since we don't have authority but we accept that. If that's what it takes to prove that we don't want to be in this business and we can advance this type of legislation, then so be it. It should be in the bill. There's a-- in the fiscal note it shows that there's \$24,000 in lost revenue. The important thing to remember is that that's going to be made up exponentially in economic development in rural areas if we can begin to bring fiber out. With that, I conclude.

FRIESEN [01:10:19] Thank you, Ms. Gottschalk. Any questions from the committee? One question I have. In your mind, should cities, or even the rural power districts, should they build an infrastructure network of fiber just so they can lease it out?

KRISTIN GOTTSCHALK [01:10:35] Exclusively to lease it out? I guess in-- in our organization that wouldn't be our purpose in putting fiber in place. It would be to serve our customers and to reach our substations but, in that process, that there is benefit in leasing it out.

FRIESEN [01:10:56] OK. Do you--

KRISTIN GOTTSCHALK [01:10:57] Don't think that's necessary.

FRIESEN [01:10:58] Do you have any fiber? Do the rural electrics have any fiber out there now?

KRISTIN GOTTSCHALK [01:11:00] We have some, actually, public-private partnerships going on now where they are leasing fiber; they're doing anchor tenancy with a telephone provider. There are some waiting to see what the-- what's going on here. But we have a limited amount of fiber on poles now, but that is changing quickly and we're going to see more and more.

FRIESEN [01:11:24] The-- the rural electrics have some fiber--

KRISTIN GOTTSCHALK [01:11:27] Yes.

FRIESEN [01:11:27] --hanging on poles currently?

KRISTIN GOTTSCHALK [01:11:28] Yes.

FRIESEN [01:11:29] And do you-- and you said you have some public-private partnerships already?

KRISTIN GOTTSCHALK [01:11:32] Well, and when I-- when I equate that to public-private partnership, you look at a rural electric provider working with their local telephone provider to install fiber to their substations and then having a requirement of that contract be that they-- that they branch off and serve additional customers, so not in the traditional sense that we're talking in this--

FRIESEN [01:11:55] Right.

KRISTIN GOTTSCHALK [01:11:55] --in this provision.

FRIESEN [01:11:56] OK. Thank you. Any other questions? None. Seeing none, thank you for your testimony.

JOHN HANSEN [01:12:16] Good evening, Mr. Chairman, members of the committee. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and I'm also their lobbyist. I'm struck that in the 29 years I've been doing this job, I don't ever remember, at least, having any hearings in this room before. So that is-- for me, someone who cares deeply about this institution and this building, I am really excited to be here. So with that, and speaking of my increasingly less reliable memory, I do remember a lot of the arguments and I remember a lot of the promises that were made when Nebraska Public Power District and Nebraska Farmers Union brought this similar issue to this committee a number of years ago. It's got to be over ten years. And we were pretty much assured that, not to worry, we're on the job, we're going to get infrastructure out there and it's not going to be long until that happens, and so we don't need to use the unused and underused portion of the infrastructure in the dark fiber that's already out there because we're-- we're going to get there without using it. And that hasn't happened. So when you just look at the track record, the track record is promises have been made but they have not been kept. And so the reason that we were on this bill from the beginning is-- is that public power is a unique-to-Nebraska institution that has served our state extremely well, and that it seems to us that it's a good idea to take advantage of the assets and the advantages that you already have. And so here, in the case of the telecommunications industry who says it's too expensive to build, why don't we take advantage of the underused and unused infrastructure we already have? That just seems to make good, common policy sense, good economic sense, and it seems like it ought to be fairly simple to move forward. So it will be interesting today to see whether or not those same companies are going to be opposed to Senator Walz's bill this time. But the need for rural Nebraska to get high-speed Internet access is not just social, it's not just medical, it's not just educational, it's not just how we run our-- our farms and businesses or how we connect to the international marketplace. It gets to the critical business of whether or not young people who are making the decisions about whether or not they're going to go back home to rural Nebraska, whether or not they have the things that they need to do that or not. The longer we delay, the more of those decisions will unfortunately be not to go back home. Thanks. Thank you, Senator Walz, for

bringing this bill. Thank you for your kind attention at this late hour. I'll be glad to answer any questions if you have any.

FRIESEN [01:15:36] Thank you, Mr. Hansen. Are there any questions from the committee? Seeing none--

JOHN HANSEN [01:15:41] Thank you.

FRIESEN [01:15:41] --thank you for your testimony.

ANSLEY MICK [01:15:53] Hello. Thank you, Chairman Friesen and members of the committee. My name is Ansley Mick, A-n-s-l-e-y M-i-c-k. I'm here on behalf of the Nebraska Farm Bureau testifying in support of LB208, Senator Walz's bill to increase broadband service by allowing political subdivisions, including public power districts, to lease fiber infrastructure to private-sector companies, private service providers. Every year the Nebraska Farm Bureau Board of Directors lays out our top five state-level priorities, and for several years, expanding statewide access to broadband services has been one of them. Farm Bureau policy explicitly supports the notion of allowing private companies to enter into lease agreements with public entities, specifically public power districts, to help move us forward. The ag sector is dynamic. I know you all know that. Modern farms and livestock operations routinely and increasingly rely on sophisticated technologies, most of which require capturing and transmitting data. Not only does this technology offer more efficiency, it allows farmers and ranchers to respond to increasing demands to know where food comes from, who's growing it, and how resources are being managed. As technology and service demands change, our policymaking and regulatory bodies should-- should have the flexibility to adapt and respond. Farm Bureau appreciates having agricultural and agribusiness representation on the Rural Broadband Task Force, which was created to research and make recommendations on deployment of rural broadband, including how public-private partnerships can be part of the solution, exactly what LB208 seeks to address. Given the importance of Internet access to agriculture and greater Nebraska as a whole, our members believe there is more a state can and needs to do to address the digital divide and thanks Senator Walz for bringing the bill and encourage the committee to pass it. Thanks for your time. I'd be happy to answer any questions.

FRIESEN [01:17:32] Thank you, Ms. Mick. Any questions from the committee? Seeing none, thank you for your testimony. Any other proponents? Seeing none, are there any opponents wish to testify? Welcome.

ANDY JADER [01:17:57] Good evening. My name is Andy Jader, A-n-d-y J-a-d-e-r. I guess I have to change my testimony. I was going to say "good afternoon," but I guess we're doing the evening thing now. I'm vice president/general manager of Nebraska Central Telephone Company, a rural communications company. We have 20 telephone exchanges, roughly 3,200 square miles. And our rural customer density is one per square mile. You guys know a little

about that, probably. So I'm pretty aware of the challenges for providing broadband in thinly populated rural markets. I'm here to express opposition on behalf of the Nebraska Telecom Association and the Nebraska advocacy group which is a group of 11 rural local exchange carriers. The Telecommunications Association would be in favor of some types of public-private partnerships. The partnerships shouldn't create an unfair competitive situation, create services that are sold below cost, or create a situation where cross-subsidies result in customers paying above the cost of power service and we're subsidizing a competitor with our power bills. That's why the industry opposes this legislation. A part of the bill exempts the rural wholesale from the Nebraska Public Service Commission's oversight of the costing, pricing structure of the dark fiber. So it looks to me like that points toward a direction that would allow selling or leasing dark fiber below the costs, so that could create the cross-subsidy that captive customers are paying. The Nebraska Internet Enhancement Fund, while it hasn't been perfect, it hasn't gone as far as we want to on getting broadband deployed, it's making progress. It provides the oversight for fair pricing and I believe eliminates any potential cross-subsidy. There are probably a number of ways that we could structure these partnerships, would work to the benefit of all the different companies. Right now my company, the company I work for is entering into-- what I would characterize as a public-private partnership with a Customer [SIC] Public Power District. Custer wanted fiber connectivity and broadband to their rural substations. We worked with them on the areas of their substations in our territory and we've put together a plan that Custer will pay a nominal fee to get broadband service via fiber to their substations in our territory. And along the way, when we complete that work, we're going to pick up other rural broadband customers along the way that, while we would get there with fiber eventually, they weren't on the near-term plan. I like that type of arrangement. It works for both of us. It helps our customers, their customers, and mutually benefits our companies. I think another way this could work is if we can get good access at reasonable prices to pole attachments where we need them. We haven't had a lot of interrelationships between our-- all of our power companies. I have seven of them in my territory. We do over \$200,000 a year in power usage and we sell them very few services.

FRIESEN [01:21:56] Could you wrap it up, please.

ANDY JADER [01:21:57] Sure. The Broadband Task Force that was-- Rural Broadband Task Force that was created by LB994 is studying the rural broadband issue. They're projected to have a report due at the end of the year. I think the-- the industry believes it would be prudent not to make any statute changes until the-- this report comes forth and they've been able to evaluate the public policy implications of what their recommendations are.

FRIESEN [01:22:29] OK.

ANDY JADER [01:22:29] That concludes my testimony.

FRIESEN [01:22:30] Thank you, Mr. Jader. Any questions from the committee? Does your-- does your company use any NUSF or USF funds?

ANDY JADER [01:22:39] Yes, we do. We use federal USF and state USF.

FRIESEN [01:22:45] OK. Any other questions from the committee? Seeing none, thank you for your testimony.

ANDY JADER [01:22:50] All right.

FRIESEN [01:23:00] Welcome.

JULIA PLUCKER [01:23:01] Good evening. My name is Julia Plucker, J-u-l-i-a, last name P-l-u-c-k-e-r, testifying in opposition to LB208 for the Nebraska Cable Communications Association. LB208 expands opportunities for public ownership of a broadband network. However, the legislation gives no protection for the current providers in the competitive market, protections from activity such as the new public-private entity coming into the market and picking off the high-paying customers of competitive provider, like the hospitals, universities, and financial institutions. There is no guarantee that the partnership would be open to all carriers, thereby creating winners and losers, nor is there protection that the investments made by current competitive companies will be recognized when setting a rate, as the PSC does for the market rate charge for dark fiber. We also don't understand why the legislation is necessary since public-private partnerships can and do happen under the current statutory framework. Furthermore, last year, the Rural Broadband Task Force was created to consider issues related to availability, adoption, and affordability of broadband services in rural areas of Nebraska and to make recommendations to the Legislature. We believe this issue should be considered by that task force and we should wait to hear recommendations, if any, that the task force has related to this issue. We are always willing to discuss these concepts, the concepts that are in the bill, and continuing connectivity for rural broadband access. Thank you.

FRIESEN [01:24:37] Thank you, Ms. Plucker. Any questions from the committee? Seeing none, thank you for your testimony. Any other opponents wish to testify? Seeing none, anyone wish to testify in a neutral capacity? Welcome.

MARY RIDDER [01:25:05] Thank you. Chairman Friesen, Transportation and Telecom Committee, my name is Mary Ridder, R-i-d-d-e-r. I am current chair of the Public Service Commission. I'm here to testify on LB208 in a neutral capacity, and my purpose today is informational. The current-- commission currently reviews and approves dark fiber agreements between public and private entities. As part of that process, there is a requirement that 50 percent of the market-based profit be deposited in the Nebraska Internet Enhancement Fund, known as NIEF. This bill removes the commission's approval process for agreements defined as a public-private partnership and also, for such agreements, the requirement that 50 percent of the lease proceeds are-- proceeds are remitted to the NIEF. As we see it, the current lease agreement contributing to the NIEF would be a public-private partnership as defined in Section

86-593. The commission has administered the Nebraska Internet Enhancement Fund since the inception of the program in 2001. NIEF provides funding at the community or county level for infrastructure projects intended to bring Internet and advanced telecommunications services where there is a need. NIEF grants are awarded to counties or municipalities and their industry partner to construct and operate the project at completion. The commission typically awards grants in the amount of \$50,000; however, larger grants-- larger projects of exceptional merit have also been awarded. There have been very few dark fiber leases filed with the commission and, as a result, very little funding for the NIEF grants. The commission has never denied approval for a lease agreement. There were several years during the life of the NIEF grant program there were no active dark fiber leases. Currently the commission has one such lease which provides funding to the NIEF. From that, the commission receives about \$24,000 annually which is deposited into the NIEF for grants and, therefore, that fiscal note. While it is small in comparison to the need, obviously, the NIEF has provided a benefit to Nebraska consumers. Over the life of the NIEF grant program, 16 grants, at a dollar amount of \$785,000, have been awarded to various communities, counties, and co-operative government groups, including counties of Cheyenne, my county, Custer County, Box Butte, where I once resided, Dawes, Nemaha, Harlan, Furnas, and Banner, the communities of Broadwater, Chappell, Dix, Bushnell, and Elsie, along with numerous communities included in the Nebraska cooperative government group, including Humphrey and my hometown of Schuyler. NIEF grant funds awarded to date total approximately \$785,000. Thank you, committee, for your time and attention and I'll try to answer any questions if you have any.

FRIESEN [01:28:07] Thank you, Ms. Ridder. Any questions? Senator Albrecht.

ALBRECHT [01:28:10] Thank you, Chairman Friesen. Can you tell me, Ms. Ridder, if those grants-- did those go to businesses or into the communities or--

MARY RIDDER [01:28:19] The grants went to a partnership between either that county or city and a provider who then build out services.

ALBRECHT [01:28:31] So would you say that individuals were also able to connect to that Internet or would it just be rural hospitals--

MARY RIDDER [01:28:36] My-- my under--

ALBRECHT [01:28:36] --schools, business? Do you have any idea?

MARY RIDDER [01:28:37] I'd have to guess. I believe that I've heard, particularly in the Hemingford, so northern Box Butte County, I believe, there were people that were picked up along the way, but I really don't know.

ALBRECHT [01:28:53] OK. Can we find out?

MARY RIDDER [01:28:52] We can find out we'll get that to you. You bet.

FRIESEN [01:28:54] Thank you, Senator Albrecht. Senator Cavanaugh.

CAVANAUGH [01:28:57] Thank you, Commissioner, for your testimony. If there-- are there any other concerns beyond the NIEF fund with-- for the Public Service Commission with this bill?

MARY RIDDER [01:29:09] No, we're neutral. We just wanted to bring information to you. We know it's a small fund.

CAVANAUGH [01:29:16] So if you had an opportunity now to say anything about the changing of-- of how it's being regulated, you-- you're neutral.

MARY RIDDER [01:29:24] We're neutral.

CAVANAUGH [01:29:25] OK. Thank you.

MARY RIDDER [01:29:26] You're welcome.

FRIESEN [01:29:27] Thank you, Senator Cavanaugh. Some of those funds were used to fund the Broadband Task Force. Is that correct?

MARY RIDDER [01:29:32] They were. The startup of the Nebraska Rural Broadband Task Force came from that one time.

FRIESEN [01:29:38] Do you have any insight into why there are just so few of dark fiber leases?

MARY RIDDER [01:29:43] I don't.

FRIESEN [01:29:45] Thank you. Seeing no other questions, thank you for your testimony.

MARY RIDDER [01:29:48] You're welcome.

FRIESEN [01:29:49] Any others wish to testify in a neutral capacity? Seeing none, Senator Walz, do have a letter of support from the Norfolk Area Chamber of Commerce, the Northeast Nebraska Public Power District. Go ahead. You may close.

WALZ [01:30:03] All right. Thank you, Chairman Friesen. And I know-- I also wanted to say, thanks to Chairman Friesen, we are currently working on this issue with the Rural Broadband Task Force to study how we can improve broadband in the state. And I also want to say that I appreciate your leadership on this issue. But this I feel does not mean that we can't take some

proactive steps right now. This is a proven method-- method that works and we should definitely be taking advantage of it. As it was stated before, in the early 19th century electricity was commonplace in cities, largely unavailable in rural areas where farmers and ranchers lived. In 1936, under the direction of Franklin-- Franklin Roosevelt and with the support of George W. Norris, the founder of Nebraska's nonpartisan Unicameral system, the Rural Electrification-- Electrification Act was passed. This help feed electrical distribution systems throughout rural areas of the United States, gave more Americans access to the technol-- technological advancements of the day, and provide a huge boon to local communities and economies. At that point, less than 2 percent of people in rural communities had access to electricity. Two decades later, the Rural Electrification Act was proposed because leaders knew that electricity was no longer a luxury for American families but a necess-- necessary component of modern infrastructure. Our goal as leaders-- as leaders we should be making goals and planning for the future and we should be growing all of Nebraska, including rural Nebraska. We have to take action to do this and this bill is a vital part of making that happen. Making sure that all Nebraskans have broadband service at affordable rate is crucial. I do want to be clear. I'm not trying to harm our companies that have provided services for decades. This bill will help those companies just as much as companies looking to expand. Great Plains in Dodge, Nebraska, has the opportunity to partner with their local government at a cheaper rate than their competitors because they already have the basic infrastructure in place. Before I close, I would just like to ask you to take a minute and think about how much revenue we have lost out on because of the lack of Internet services in rural Nebraska. How many educational opportunities have we lost? How many entrepreneurial opportunities have we lost? This is an economic development issue and every minute we waste by not moving forward on this issue hurts our state. I ask you to please consider moving this bill out onto the floor. Thank you.

FRIESEN [01:33:23] Thank you, Senator Walz. Are there any questions from the committee? Senator Cavanaugh.

CAVANAUGH [01:33:27] Thank you, Senator Walz. I'd just like to say I really appreciate the acknowledgement of George Norris in your remarks. I believe he's from Senator Hughes' district, if he were still alive today, and the importance of the history of our-- Nebraska being at the forefront of expanding electricity across the country with the TVA and George Norris and I look forward to us continuing to be innovators. Thank you.

FRIESEN [01:33:53] Thank you, Senator Cavanaugh. Thank you, Senator Walz.

WALZ [01:33:57] Thank you.

FRIESEN [01:33:58] With that, we will close the hearing on LB208. We will open the hearing on LB549. Welcome, Senator Brandt, to the evening session of Transportation and Telecommunications.

BRANDT [01:34:35] You ready?

FRIESEN [01:34:38] Go ahead.

BRANDT [01:34:38] Good evening, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, my name is Tom Brandt, T-o-m B-r-a-n-d-t. I represent Legislative District 32, Fillmore, Jefferson, Saline, Thayer, and southwestern Lancaster Counties. Before I begin my opening statements, I would like to say that I have fiberoptic cable buried on the highway right-of-way at the end of my lane for the past 15 years and I still have to use a DSL connection for Internet at home because we are unable to access the fiber. It is like having a Ferrari in your garage but you don't have the keys. I guess I should be happy with my Ford Pinto. OK. Not much of a laugh there. LB549 would change how broadband accessibility is mapped at the state level. Currently broadband accessibility is mapped at the census block level. This is problematic in our rural areas and paints an inaccurate picture as to who is currently being served and who is not. If a census block contains 100 households and one household has access to high-speed broadband, the other 99 are considered to have access. This is not an accurate way of collecting data. This bill would require that telecommunication services be tracked at the address or land parcel level. I would be willing to amend this bill in order to allow for collecting data used latitudinally and longitudinally, coordinates. This is the most accurate way to really know what areas do and do not have broadband access. Gathering accurate data is a first step in developing a strategy to close the widening digital divide in our state. Closing that divide is a big step toward revitalizing and invigorating our rural areas and communities. The Nebraska Universal Service Fund ranks in the top five in the nation for revenues collected while our state is ranked 40th in the nation for broadband access. We are lagging behind all of our neighboring states, excluding Wyoming. I want to be sensitive to the concerns of our Internet service providers and would be very willing to address whatever issues they have, such as allowing companies to submit the entire area where they have developed customer-accessible fiberoptic cables instead of producing a parcel-by-parcel listing. As far as paying for this, we need to look at the 911 Service System Fund. As of last Friday, \$12,558,000 was in the account, which the Public Service Commission could use to pay for this so that it will not come out of the General Fund. This is an amendment I will bring if needed to pay for this. You will hear from some of the largest providers testifying as opponents to this bill. They will say that we should wait for the FCC to do this. This was suggested in the early 2000s and we are still waiting. We cannot afford to wait another 20 years while Nebraskans lose out on opportunities afforded to neighboring states like Iowa, Kansas, and Colorado. LB549 is good policy and would go a long way toward helping our state identify the Nebraskans that do not have high-speed Internet access. This is generally identified as 25 megabits-per-second download speed and 3 upload. This bill is a first step in developing an accurate mapping system that will provide reliable and robust connectivity for all Nebraskans. I know there are a few people here who will testify that are passionate about this issue and have a lot of knowledge. I'm sure they will do a much better job of answering your questions and

clarifying parts of the bill. At this time I would be happy to answer any questions you may have and will try to answer them to the best of my ability.

FRIESEN [01:38:17] Thank you, Senator Brandt. Any questions from the committee? Senator Bostelman.

BOSTELMAN [01:38:22] Thank you, Senator Friesen. Thank you, Senator Brandt, for bringing the bill. My question to you is certificated and noncertificated carriers, providers, we statutorily probably have authority over the certificated ones, we don't over the noncertificated ones, so how do you propose that you're going to be able to, or we're going to be able to, get that information from them with your bill?

BRANDT [01:38:49] Well, I-- one of the testifiers after me will answer that question for you.

BOSTELMAN [01:38:54] OK.

FRIESEN [01:38:55] Thank you, Senator Bostelman. Any other questions from the committee? Senator Geist.

GEIST [01:38:59] Yes, thank you, Senator Brandt. I have a question about the-- we don't have a fiscal note on this and I understand that-- that you have a proposal of how to pay for it. But do you know roughly the cost?

BRANDT [01:39:12] The fiscal note that was in there was \$885,000.

GEIST [01:39:18] OK.

FRIESEN [01:39:18] Thank you, Senator Geist.

GEIST [01:39:23] Thank you.

FRIESEN [01:39:23] Seeing no other questions, thank you.

BRANDT [01:39:26] All right.

FRIESEN [01:39:27] Proponents wish to come forward and testify? Welcome.

CRYSTAL RHOADES [01:39:37] Hello. My name is Crystal, C-r-y-s-t-a-l, last name is Rhoades, R-h-o-a-d-e-s. I am a commissioner representing District 2 with the Nebraska Public Service Commission. I do want to make clear to the committee that I am testifying on behalf of my district. The commission will have neutral testimony. But there was some information very specific to what we've experienced in Omaha that I thought very relevant to share with you. GIS

plays a critical role in next-generation 911. It helps to determine which PSAP to route a 911 call to, based on the location of the calling device. It's also important for location validation prior to the caller making an emergency call, so it replaces E911, which is what we have right now. Geospatial call routing enables a much more accurate call routing compared to traditional E911 services. By reducing the amount of time that it takes to locate a caller who can't tell you their exact location, we will help to save lives and reduce damage to property. In 2016, the Nebraska Public Service Commission conducted a wireless routing test along the Nebraska-Iowa border. The outcome of that study was striking. Testing showed that 49 percent of the calls along the Nebraska-Iowa border were either incorrectly routed, which means that they went to the PSAP that they should not have gone to, someone else's PSAP, or they failed entirely. In Douglas County, since I've been on the commission and I was sworn in, in 2015, there have been three 911-related deaths in my county. In all three cases, there were dramatic delays in dispatching first responders because the call taker could not identify where the caller was. This is obviously an issue of public safety and of great importance. If they can't find you, they can't help you. As it relates to broadband deployment, roughly 99 percent of the state of Nebraska is considered rural, but only about 16 percent of the population lives in those rural areas. One of the major challenges that the commission has in deploying high-speed Internet and making sure that your constituents are being served is that we don't always necessarily have good information about where those lines are, and Senator Brandt talked a little bit about that. Having this information available to us would enhance our ability to deploy broadband more quickly and more efficiently, with far less confusion and much more targeted direction of that money. That is all I have. Thank you.

FRIESEN [01:42:56] Thank you, Ms. Rhoades. Any questions from the committee? Senator Bostelman.

BOSTELMAN [01:43:01] Thank you, Senator Chairman Friesen. I'll ask you the same question. I mean, I don't disagree with what you're saying and I don't disagree with where Senator Brandt is going. How are we going to collect that data from those noncertificated providers out there who don't have to respond to us?

CRYSTAL RHOADES [01:43:17] Well, I think that perhaps one of the things that could be done is that the civil penalty that the commission has jurisdiction over could be used. For the certificated carriers, which is going to be, frankly, most of the carriers that are operating in Nebraska, I think that they're going to want to comply. The bill as it's written now kind of only proposes that nuclear option to take away their certificate. So it may be-- it may be a better remedy to add in that civil penalty so that the commission has more latitude and also so that we have the ability to do sort of a graduated enforcement.

BOSTELMAN [01:43:54] OK. Thank you.

CRYSTAL RHOADES [01:43:54] Um-hum.

FRIESEN [01:43:55] Thank you, Senator Bostelman. Senator Geist.

GEIST [01:43:57] Thank you, Ms. Rhoades. I have a question about the fund, the 911 Fund. Currently what is that fund there for?

CRYSTAL RHOADES [01:44:08] The 911 Fund is there to support 911 services statewide. Currently the commission has that rate set at about 45 cents. It is capped in Douglas County at 50 cents, it is capped statewide at 70, so we're not at that cap yet. We do, in addition, have at this time a surplus. But in my mind, having this GIS data, we really can't ever have the level of service that our constituents deserve without having proper GIS data. We're just not going to be ever able to make next-generation 911 work the-- at the highest, you know, efficiency, best capacity, most reliability-- most reliable standards without having this data.

GEIST [01:44:57] Is some of that money dedicated to upgrading us to next-gen 911?

CRYSTAL RHOADES [01:45:03] Yes, it is.

GEIST [01:45:05] OK. Do you know how much?

CRYSTAL RHOADES [01:45:06] Well, pretty much all of it now.

GEIST [01:45:11] OK. Thank you.

CRYSTAL RHOADES [01:45:11] You're welcome.

FRIESEN [01:45:11] Thank you, Senator Geist. Any other questions from the committee? So as a-- as a commissioner now, I mean, you oversee the use of the NUSF and USF funds that are currently distributed. So how is-- how are you going to-- how are you currently making sure that those census blocks get coverage when a company says they have it covered?

CRYSTAL RHOADES [01:45:33] Well, quite frankly, Senator Friesen, mostly I'm issuing dissents. I am actually a big supporter of NUSF. I really believe that it is vital to our economy. And because many of my family members live in rural Nebraska, I really do understand just how challenging it is for them to get high-quality service that they need. Part of the problem, in my view, and this is something that will not surprise my colleagues and something that I have harped on for a number of years, is that far too much, in my opinion, of the Universal Service Fund and the Nebraska Universal Service Fund is going to underwriting operational expenditures of the carriers. Right now, for the rate-of-return carriers, which represents the lion's share of our rural companies, 53 percent of the NUSF funding is going towards operational expenditures, and the rest is going towards capital expenditures, which is that building of that network and deploying new lines in new places. So in my view, we have to reduce that. Now

these companies are also getting support from the federal level, from the federal Universal Service Fund, to help with our operational expenses, and they also have their other sources of revenue related to their business.

FRIESEN [01:46:52] But how-- but how are you addressing the problem of census blocks that are not being covered if just one-- are you looking at that at all or is that just something there to deal with?

CRYSTAL RHOADES [01:47:00] Yes, it is something that we're looking at.

FRIESEN [01:47:02] OK. So when-- when we talk about cost of building a mapping program and mapping this, I mean, those costs will be ongoing because they'll have to be updated regularly. Is that correct?

CRYSTAL RHOADES [01:47:12] That is true.

FRIESEN [01:47:12] So we have not really addressed that cost yet, but it'll be an ongoing cost then after that.

CRYSTAL RHOADES [01:47:18] Yes.

FRIESEN [01:47:18] OK. Thank you, Commissioner Rhoades.

CRYSTAL RHOADES [01:47:22] Thank you.

JOHN HLADIK [01:47:37] Hello, Chairman Friesen and members of the committee. My name is John Hladik, that's J-o-h-n H-l-a-d-i-k, and I am testifying on behalf of the Center for Rural Affairs. I brought four documents to share. The first is a more complete explanation of the bill than what I am able to provide with my comments today. The second is a three-page compilation of news articles on this topic that have ran in just the last several months. The third is an article that ran in yesterday's Journal Star and other papers throughout the state, and the fourth is supportive testimony from AARP who was unable to remain at the hearing this evening. And with that, I want to turn our focus to what this bill is and what this bill is not. This is not a burdensome proposal. This bill would cost a provider absolutely nothing to comply. As the first paragraph on page 2 of the fiscal note very clearly states, this bill requires the commission to provide GIS processing assistance at no cost to any provider that requests it. This is also very clear in lines 21 through 29 on page 3 of the bill itself. This provision ensures that a provider is not responsible for any additional costs. Any costs are, instead, covered by the PSC or a third-party contractor. All a provider must do is provide a list of addresses and the speed and technology used to serve those addresses, all of which are protected and kept confidential. To emphasize, this is not a burden to the provider and the provider is not expected to incur any additional costs. As the fiscal note unfortunately shows, the PSC is the only entity here that will

bear any of those new costs. This is not a duplication of existing services. The current data we are using is incomplete and it grossly overestimates broadband coverage. That's the point of this bill. This proposal requests coverage data at the address level and it includes a mechanism for verification of that reported coverage. The point of the proposal is to generate, for the first time since 2015, accurate data that we can use to make informed and strategic decisions. This is also not an extraordinary concept. This approach has been successfully adopted in several states, including Nevada, Ohio, Michigan, Minnesota, and Kansas. There, complete data has enabled more informed decision making, strategic resource deployment, and targeted investment. We as a state suffer when our neighbors address the difficult challenges that we shy away from. Now Minnesota and Kansas are in a better position to recruit new businesses, improve health and education outcomes, and create new opportunities for rural residents, and Iowa may soon follow suit. I am not an expert, but it is difficult to understand why this proposal would be considered expensive, unworkable, or unnecessary here in Nebraska when we know it has proven to be successful in other states. This is also not a bill that ignores the responsibilities of the FCC. The fact is that the FCC is waiting for the states. The National Telecommunications and Information Administration has a mandate to incorporate third-party data sets as a way to improve their own mapping. That includes information received from states who have committed to gathering accurate and complete information. Further, neighboring states have decided not to wait for the FCC. When Kansas, Minnesota, and now Iowa improve mapping accuracy, they have a leg up when it comes to recruiting new residents and new businesses. Nebraska realizes no advantage by holding out for theoretical FCC action while our neighbors get a head start. Finally, there are areas where this proposal could be approved. For example, no other state has included an enforcement mechanism that would suspend or revoke a provider certificate of convenience and necessity. Instead, those states have handled it by including incentives to urge full compliance. That may be a better solution here. We also recognize many providers do an outstanding job of servicing subscribers with fiber-to-the-home technology. And because that technology is consistent and reliable, a full report of location and speed at each of those addresses may be unnecessary. It may be appropriate to create an exception for those exchange territories that are fully served, and we urge the committee to consider these alternatives and welcome any other amendments or additions that would help us achieve our shared goal. And with that, I'm happy to answer any questions.

FRIESEN [01:51:54] Thank you, Mr. Hladik. Any questions from the committee? Seeing none--

JOHN HLADIK [01:52:00] I would like to pretend for a moment that-- that you did ask these three questions that were asked earlier that I want to come back to. Is that OK?

FRIESEN [01:52:08] I-- we're a little short on time, but if you would want to submit that in writing to all of us--

JOHN HLADIK [01:52:12] I appreciate that. Thank you very much.

FRIESEN [01:52:14] --we would-- we would all be able to see it. Thank you. Welcome.

MARK METCALF [01:52:29] Good evening, Chairman Friesen and members of the committee. My name is Mark Metcalf; that's M-a-r-k M-e-t-c-a-l-f. Here's our situation. My wife Pat and I live about five miles northwest of Sutton, Nebraska, in a house we built ten years ago. We have landline service with Windstream and are paying for unlimited long distance which is bundled with broadband service. However, we're just outside Windstream's broadband service area. They've told us repeatedly that they will not expand their infrastructure such that we can get high-speed Internet at home. This is not to say we have no access whatsoever to the Internet. I do have a smart phone and Sutton's Public Library has broadband service. But these things are inadequate for our purposes. My wife teaches a yoga class in Sutton and communicating with her students on my smart phone is inefficient. To contact them efficiently, she needs to use the library's computers. That means a ten-mile drive to and from town, and the library's hours are limited. I'm retired but I occasionally submit written work for publication. This, too, requires that I drive to town to use Sutton Library's computers and on the library's schedule, not necessarily mine. And soon our bank will be charging us \$3 per month to send us our bank statements by snail mail. We're not comfortable using a smart phone to keep track of our financial records and we're not at all comfortable doing so on a public computer. How long before the firms that handle our investments and the companies that bill us adopt similar policies? People have been happy to tell us about the many options we have and about the various companies we can turn to for broadband service. It's not that expensive, they say. We understand all that. But we're not inclined to pay another provider for a service that we should be getting from Windstream right now. We may not be paying a huge sum for the service we're not getting, but we are paying for a service that we're not getting. This has been our situation for ten years. You cannot expect us to be satisfied with that. Obviously, rural Nebraska is sparsely populated and it is easy for many people to be indifferent about the quality of life in and around our small communities. I say this as one who grew up in Omaha. But rural Nebraska citizens deserve the same access to broadband service as any other Nebraskans enjoy. LB549 is an important step in the right direction. I'd be happy to address any questions but that will expend our-- extend our time here.

FRIESEN [01:55:22] Thank you, Mr. Metcalf. Any questions from the committee? What do you currently pay for service and what kind of service do you have?

MARK METCALF [01:55:30] I told you that that would extend our time. My wife would have to answer that question. She's our bill payer.

FRIESEN [01:55:36] Any other questions? Thank you, Mr. Metcalf.

LASH CHAFFIN [01:55:52] Hello. Chairperson Friesen, committee, my name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, represent the League of Nebraska Municipalities. And I would very quickly like to offer my support for this, for the concept. It's interesting. I do believe-- I want-- I want to give a big shout out to the Public Service Commission. They have been on the cutting edge of

trying to map broadband speed now for much longer than I've understood what it was. And I do remember my first conversation-- he probably doesn't remember it-- with-- with-- with Director Hybl when they were trying to calculate the user speed all across-- across the state. And I think people at the time didn't even really understand the concept of what they were being asked. And then-- and I guess I-- and I've kept in communication with this, but I didn't really understand how-- how sophisticated their mapping had become until a couple-- a year and a half ago when this committee held hearings across the-- across the state and-- and how quickly they could produce the data by census tract. Two thousand-- that was-- a year and a half ago, that was probably cutting edge and I give-- I give the PSC a lot of-- a lot of kudos for trying to stay ahead of this and actually staying ahead of it. The question, the next question is, though, even by the census tract information, a year and a half ago you could tell intuitively there were big gaps in that information. You know, I mean, people would come up: I'm a-- just the last testifier: I'm-- I'm a few feet out of the-- out of the area. You know, Senator-- Senator Brandt is literally walking distance out of the area. It's-- it's-- intuitively that doesn't get us to the place we need to be. And-- and I-- big support for the PSC getting us from 0 to 75 in a shockingly short time, but I think it's-- this-- the-- this is getting crucial enough. We need to be at 120 here, moving pretty quickly, to-- to stay-- stay up with-- with everybody else. But I'll certainly answer any questions.

FRIESEN [01:57:57] Thank you, Mr. Chaffin. Any questions from the committee? Seeing none--

LASH CHAFFIN [01:58:02] Thank you.

FRIESEN [01:58:14] Welcome.

KRISTIN GOTTSCHALK [01:58:14] Senator Friesen, members of the Transportation and Telecommunications committee, again, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k, government relations director, registered lobbyist for the Nebraska Rural Electric Association. I'm here today to testify in support of LB549. As so much was already said, so I don't want to repeat any information, as we know, we heard so much of the current information and the mapping that we have available is based on self-reporting from the FCC's Form 477. And I live in one of those census blocks that is considered to be 100 percent served. I am not served; in fact, my-- I just recently was able to get on a wireless Internet service provider, which cut in half the cost of my poor service on satellite, but I still don't have service that equates to anything in-- in the urban areas. And what we're finding here through this process, and you've heard before, is that incomplete and misleading information really leads to inaction on behalf of telecommunications committee-- or companies, and-- and not all, because when I was on my satellite Internet service provider, it came from a company almost 100 miles away from my home that provided that service to me. And they discontinued that service once they had reached all of their certificated customers in their areas. So it left me without service. I'm on a wireless coverage right now. That tower is eight miles away. So even though I'm-- I'm-- I'm guaranteed a certain amount of service, I'm not receiving that. But that information is not gathered anywhere and you don't have that to look at as we make decisions. So uniform

collection of information will facilitate deployment of broadband where it is needed, and it's going to allow us a better understanding of our needs and where our successes and failures have been as we've-- we've pushed to move broadband in Nebraska. The Rural Electric Association, along with NPPD and then Tri-State Electric G&T and other rural interest groups, decided we needed to have a better picture because that picture wasn't out there, and we started our own study to evaluate Internet speeds in rural areas, and it's a small study that we were doing through the University of Nebraska at Kearney. That information will be shared with the Rural Broadband Task Force, but that's important information that can support this process. So I do believe very strongly that this proposal supports the efforts of the Rural Broadband Task Force and-- and should be considered for advancement.

FRIESEN [02:01:01] Thank you, Ms. Gottschalk. Any questions from the committee? Would you agree with the statement that we could spend hundreds of millions of dollars in getting service out there because we know there's huge areas without service right now, and then we wouldn't even begin to touch the outliers that don't have service at all? Is that--

KRISTIN GOTTSCHALK [02:01:19] I would agree. But we can't look at that as a reason not to continue to move forward.

FRIESEN [02:01:24] I know but I'm-- you know, we look at the need and it is so big. I mean, there's huge areas that we know don't have service. And it is-- you know, I don't know what the estimates are in dollars but it's been staggering. And so even to just get the areas that we currently know-- and I know there's census blocks that are not covered. I get that. And we're just going to have to find a path forward where we can get the biggest bang for our buck because the needs are huge.

KRISTIN GOTTSCHALK [02:01:51] And it does kind of get back to my earlier testimony is that you really can't take anything off the table. And fiber to every home, that's-- that's the ultimate goal. But we know that that's not going to be a practical solution everywhere. But some solution has to be in place and there are a lot of gap fillers that can come into play, and that's Internet service providers, wireless Internet service providers, and small rural telephone companies that-- that can--

FRIESEN [02:02:16] I think that's one thing of the task force, it was supposed to look into, is what technology will serve-- you know, it's not going to be any one thing, I agree.

KRISTIN GOTTSCHALK [02:02:25] Absolutely.

FRIESEN [02:02:26] Thank you for your testimony.

KRISTIN GOTTSCHALK [02:02:27] Thank you.

FRIESEN [02:02:28] Others wishing to testify? Welcome.

ANSLEY MICK [02:02:42] Thank you. Thanks, Chairman Friesen and members of the committee. Once again, my name is Ansley Mick, A-n-s-l-e-y M-i-c-k, and I'm here on behalf of the Nebraska Farm Bureau testifying in support of LB549, Senator Brandt's bill to provide for creation and maintenance of a GIS map to paint a clearer picture of where broadband service is available. As mentioned previously, one of Nebraska Farm Bureau's top priorities is expanding statewide access to broadband services. In addition to supporting public-private partnerships, our organization believes the Public Service Commission should demand accountability and transparency to ensure any company receiving public assistance to enhance rural services is using those dollars judiciously and is, in fact, building out reliable broadband services in unserved and underserved parts of our state. I've described previously the importance of reliable broadband service to ag and rural communities. I just want to reiterate the Nebraska Farm Bureau's appreciation for ag's representation on the Rural Broadband Task Force. There was also a data subcommittee created on the task force which recognizes and is seeking to address inaccuracy and a lack of information when it comes to reporting and mapping access to broadband services. Many rural Nebraskans have been considered "served"-- like the record to reflect my air quotes-- may consider served by a broadband service provider simply because they live in a census block where someone has broadband access. Nebraska Farm Bureau, and I personally, have experienced firsthand how difficult it is to accurately measure the ability of our members and other rural Nebraskans to access a broadband connection. It's also difficult to challenge provider data and coverage maps, which are used to then determine where public dollars go. You might have heard today from a provider perspective. I would say that more accurate mapping could also address concerns about public dollars subsidizing service in areas which already have service. And we also think-- I know that a certificate of convenience was mentioned. In other states they're using-- the Public Service Commission, for instance, could use this as kind of an incentive. If you are providing information to the Public Service Commission, they'll know that there's service in that area. They won't look to use public dollars to subsidize service in that area. So I think that would be an incentive just for companies to turn over this information. I don't know that necessarily you need some sort of actual penalty or a revocation of the certificate. I think there is an incentive inherent in this to get people to turn over the data. While these are difficult issues, we're making progress and hope the Rural Broadband Task Force and the committee will consider Senator Brandt's proposal a part of a broader solution to address rural connectivity. Thank you, Senator Brandt, for bringing this bill, and we encourage the committee to advance LB549. Thanks for your time. I'd be happy to answer any questions.

FRIESEN [02:05:28] Thank you, Ms. Mick. Any questions from the committee? Seeing none, thank you for your testimony. Welcome.

JOHN HANSEN [02:05:40] Mr. Chairman, good evening again. For the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n, and I am still the president of Nebraska Farmers Union.

So as our organization tries to figure out what our top priorities are for our organization, this issue has been one of our top four issues for over 15 years. We just keep pushing. We just keep plodding. We just keep looking for creative ways forward. And one of the issues, you know, we have companies out there who sit on territories, have no real interest in investing, in developing. And when somebody else wants to kind of come into their area and do something, that's the only time they come to life. And it's not to do anything; it's just to defend their territory. We have some great companies in rural Nebraska who are smaller companies, a lot of them are cooperatives, who have already invested. They have great capacity. They buried the fiber a long time ago. They have better connectivity, and they have more capacity than I do here in Lincoln. Good for them. I wish we had more of those kinds of companies who actually were looking for things to do. Unfortunately, not all of them are there. Into the measurement business, thank you, Senator Brandt, for bringing this bill. It's an issue we've talked about for a long time and it's the-- the sort of mismeasurement of what it is that we actually have. So you can't really manage what you can't measure, right? It's a basic management principle. So where do we need to go? What do we need to do? I've used my farm as the example. I'm 12 miles from Tilden, 12 miles from Newman Grove. Both communities have high-speed Internet broadband. Both of them go about two, three miles outside of town, and that's about it. And then there's 18 miles of "good luck, buddy." That would be right where I'm at, right in the middle. And so our access has been pitiful, continues to be pitiful and yet, regardless of which side of the line I'd tell what the address is, well, I have coverage, except we don't. So if we're going to try to deploy and figure out where we need to fix, we need to know what we've actually got covered and what we don't. So I think that this is a good start, having a better idea of what actually does need to be covered. You've got to break it down into smaller units. This does that. This is a methodology option which I think makes a lot of sense and we are supportive of it, as we are just about all the things you could possibly do to try to put some get-along in this process, because we are-- time is not on our side. Thank you.

FRIESEN [02:08:35] Thank you, Mr. Hansen. Any questions from the committee? Seeing none, thank you for your testimony.

JOHN HANSEN [02:08:40] Thank you.

DAVID YOUNG [02:08:49] Chairman Friesen, members of committee. David Young, D-a-v-i-d Y-o-u-n-g. I will be very brief. I really appreciate Senator Brandt bringing this bill forward. This technology is used by many utility companies, gas companies, electric-- electric companies, water companies. We all use GIS information to track our assets. If you download Google Earth for free and draw your existing maps into it, you don't have to pay for the software. This really does help going forward for the state to make decisions about where public funding should be spent. In Lincoln, I know in Omaha, all of our asset maps are tracked in GIS and submitted to the city by private companies in GIS. We really support this as a commonsense approach. I respect and understand that there there's a fiscal note, that it's going to be a very difficult job for this committee to work on. I really appreciate it being brought forward and discussed.

FRIESEN [02:09:44] Thank you. Any questions from the committee? So if all of your assets are tracked already currently on GPS, then it's really easy to get permits issued for all kinds of things, correct?

DAVID YOUNG [02:09:56] And that's how we do actually speed up our permit process in Lincoln. All of the maps are submitted to us electronically and it is very beneficial across the board.

FRIESEN [02:10:04] Thank you. Any others wishing to testify? Seeing none, anybody wish to testify in opposition? Welcome.

ERIC CARSTENSON [02:10:26] Thank you and good evening. Senator Friesen members of the Transportation Committee, Telecommunications, my name is Eric Carstenson, E-r-i-c C-a-r-s-t-e-n-s-o-n, president and lobbyist for the Nebraska Telecommunications Association. I would like to add, as another matter of introduction, to be an active member of our association, you have to possess a certificate of convenience and necessity from the Nebraska Public Service Commission. I'll come back to that in just a moment. We oppose this bill for four reasons. Number one is the members' cost of complying with the requirements of it. I asked our members to take a read of the bill and give me their estimate of what it was going to cost their company. I didn't get a lot of response, but the one response I did get was a cost of \$10,000 to prepare their response and then a maintenance cost each year. That is an unfunded mandate. It's about the cost, by the way, for this rural company to lay a mile of fiber. Number two, there is an unfair treatment of regulated companies. As I said, every member, active member, has a certificate. We're under risk of losing our certificate if we don't comply with these mapping requirements. That's the same as a lawyer losing their license to practice law, as a nurse losing their license, or a teacher losing their certificate. It ends our business. I don't see a comparable penalty for a wireless Internet service provider, a point-to-point provider, or a cellular provider. All those entities would be free from the intensity of that penalty. Number three, this really needs to be a federal solution because only at the Congress and FCC level do they have the capacity to compel all the companies, especially cellular, to provide the kind of detailed maps that you're asking for here. If we don't do that, we're already guaranteed to not have a complete map, so we'll start out knowing that it's incomplete. And finally, number four, the Broadband Task Force is studying this issue. The LB994 passed last legislative session with 48 votes. And we required them to go ahead and spend money on the Broadband Task Force. It seems incongruent to also require the commission to spend money before we've studied and figured out if-- if or if not that's the right way to spend that money. Those are my four points and concludes my testimony.

FRIESEN [02:13:00] Thank you, Mr. Carstenson. Any questions from the committee? Senator Hilgers.

HILGERS [02:13:05] Briefly. Thank you, Mr. Carstenson, for being here. You're probably one of the last testifiers of the night, so I apologize to everyone for asking a question. I hear you on the-- on the revoking the certificate. That seems like an incredibly onerous and potentially devastating, as you mentioned, requirement, or, I guess, penalty for not doing this. At the same time, I appreciate and understand the immediacy, the concern for individuals who don't have broadband. And so the idea of continuing to study it and study it and then maybe do something at some point has less force, I think, in this-- in this context for me. The question I have for you and your members, and you've kind of touched on it, is what-- what would it-- what would a bill look like to help get your members in support of some-- what changes would need to be made to get your support to provide this information?

ERIC CARSTENSON [02:13:56] I think it-- and this is probably something that the task force probably needs to look at. But in order to really compel a cellular provider to give us the mapping that would make-- help us make reliable decisions, we're going to need federal authority; we're going to need federal direction. They-- I know the cellular industry in other states, like Kansas, was required to provide mapping information and we got shapefiles, or Kansas got shapefiles. Whereas they're useful, they're not down to the level that this legislation requires; it's not down to the specific "lat/long" level of accuracy. So I think we need federal authority.

HILGERS [02:14:39] Federal authority to do what, to [INAUDIBLE]

ERIC CARSTENSON [02:14:42] To compel-- to compel interstate companies to provide us that information.

HILGERS [02:14:45] To provide your client, your members the information. They don't have it--

ERIC CARSTENSON [02:14:49] Our members, if you pass this legislation, our members will be the first to comply.

HILGERS [02:14:55] So-- oh, so you're saying for it to be complete you would need--

ERIC CARSTENSON [02:14:58] I'm saying for the-- OK, Senator, perhaps I misunderstood your question at this late hour. Let me-- let me rephrase my answer. If this legislation passes, NTA members, under threat of losing their certificate, will comply. Frankly, if the Public Service Commission orders this kind of-- of mapping, we'll comply with that. We always comply with the Legislature and the commission's orders.

HILGERS [02:15:21] I guess my-- I'm sorry. My question-- and I apologize to the-- to everyone. But my question is not after I would-- I would assume that if the law passed, that there would be some compliance, if there wasn't a lawsuit of some kind, with whatever law that we would institute or enact. My question is, before the bill gets to the finish line, is there a change, a cost

reimbursement change of some kind that would get your members to say, let's do this, we're in support? That's my-- at this stage, not after the bill is enacted into law.

ERIC CARSTENSON [02:15:55] Well, each one of our companies, I know, knows exactly within their service territories where their facilities are. They've got to maintain them, so within the company we know where-- we know pretty much where those services are.

HILGERS [02:16:10] OK. Thank you.

FRIESEN [02:16:10] Thank you, Senator Hilgers. Any other questions from the committee? Seeing none, thank you.

ERIC CARSTENSON [02:16:17] Certainly.

JULIA PLUCKER [02:16:23] Good evening.

FRIESEN [02:16:25] Welcome.

JULIA PLUCKER [02:16:27] Julia Plucker, J-u-l-i-a P-l-u-c-k-e-r, here today in opposition of LB549 on behalf of the Nebraska Cable Communications Association. I'm in a real place of "no" today. Our member companies provide substantial data to the Federal Communications Commissions through our Form 477 reports. These reports contain robust information including, but not limited to, fixed broadband deployment, fixed broadband subscriptions, voice subscriptions, mobile broadband deployment, mobile broadband service availability, and mobile voice service. We believe this is critical and a sufficient amount of information for policymakers to make informed decisions. We would support the use of that data as it's currently reported. The granular information required in LB549 is not practical or efficient to the companies and would be challenging to provide. I'll skip the rest of it. If you have any questions, I'd be happy to answer those.

FRIESEN [02:17:31] Thank you, Ms. Plucker. Any other questions from the committee?

JULIA PLUCKER [02:17:33] Thank you.

FRIESEN [02:17:33] Seeing none, thank you. Any others wish to testify in opposition? Seeing none, anyone wish to testify in a neutral capacity?

MARY RIDDER [02:17:56] Senator Friesen, members of the committee, I'm Mary Ridder, spelled M-a-r-y R-i-d-d-e-r. I'm here to testify-- testify on LB549 in a neutral capacity and bring you some information and explain our fiscal note. We agree that having accurate data on the status of broadband deployment is incredibly important. I think everyone agrees on that. In 2010, the commission received a federal stimulus grant to collect, verify, and display broadband

availability in Nebraska. We collected and mapped broadband data on a semiannual basis for a period of five years. Through an RFP process, the commission hired a vendor to assist with the collection, verification, and mapping. Our fiscal note is based on the cost we incurred in that data collection effort. The information gathered by Nebraska and other states was enrolled up into the National Broadband Map. So we have some experience in this; however, even with the weight of the federal government behind us, the process was voluntary and many carriers were reluctant or refused to participate, despite the knowledge that federal or state universal service funding could be targeted to other carriers in areas where they directly compete. Some carriers that did participate were unwilling to provide us with more than just a simple shapefile, without any underlying data for verification. It was apparent that the data collection process had flaws. It overstated signal strength and coverage in rural areas and it understated coverage in census blocks where federal and state universal service support was needed. As written, LB549 would not make the data collection and mapping process enforceable relative to all broadband providers. The commission does not certificate wireless or fixed wireless providers and we are preempted from regulating wireless carriers in that manner-- manner by federal law. Accordingly, the data collection process would be effectively voluntary. The same would be true for broadband-only providers as we do not have the authority to certificate them. If an incumbent provider refused to provide data pursuant to LB549 and the commission revoked its certificate, that may be harmful to consumers in the areas where there is no alternative provider. As an alternative, civil penalties would be a more appropriate mechanism for enforcement. We believe the committee would want to make sure that the process is mandatory and enforceable for all providers. For informational purposes, as you may already be aware, the FCC recognizes that its National Broadband Map has problems; they've heard about that a lot. So it has committed publicly to improving its data collection and mapping efforts. FCC has sought comment on the collection of broadband data on a more granular level, including street segment and address point. Additionally, in the Consolidated Appropriations Act, Congress set aside \$7.5 million in funds for the Department of Commerce to work on the National Broadband Map. With respect to wireless data, the FCC is currently investigating the accuracy of the data submitted by the wireless carriers. FCC has also committed to having its vendor test and validate deployments of carriers that use federal funds to provide service. Not that we think the committee should necessarily wait on the federal government, but we thought you should be made aware of these efforts that are underway currently. I also want to mention before closing, some attention should be given to whether wireline and mobile wireless providers should be providing the same types of information and whether the data should reflect where a provider actually provides service, as opposed to where they offer service, because those are two different issues. I thank the committee for your time and attention today and I'll try to answer any questions you may have.

FRIESEN [02:22:05] Thank you, Commissioner Ridder.

MARY RIDDER [02:22:07] You're welcome.

FRIESEN [02:22:09] Senator Bostelman.

BOSTELMAN [02:22:09] Thank you, Chairman Friesen. Thank you, Commissioner--

MARY RIDDER [02:22:10] You're welcome.

BOSTELMAN [02:22:12] --again for being here. I want to go back to the question asked earlier, and I think you've kind of addressed it here already, is how do we enforce? And civil penalties was-- was-- was mentioned. Is that a tool that could be used or not? Do you--

MARY RIDDER [02:22:26] It could be used.

BOSTELMAN [02:22:30] For-- for the-- for all providers?

MARY RIDDER [02:22:34] We don't regulate wireless, so no.

BOSTELMAN [02:22:39] OK. Thank you.

FRIESEN [02:22:41] Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you for your testimony.

MARY RIDDER [02:22:47] You're welcome.

FRIESEN [02:22:49] Any others wish to testify in a neutral capacity? Seeing none, Senator Brandt, back to the hot seat.

BRANDT [02:23:00] This is the moment you've all been looking for, right here. [LAUGHTER] And I don't have anything really organized here, just jotted down some notes. Senator Bostelman, thank you for bringing that-- that point up on enforcement. I guess you heard we can do civil penalties on some of the providers, but I would lean toward incentives. And would it be all right if we talked to your office tomorrow about that, got together and-- OK, thank you. Senator Friesen, you brought up the cost of the mapping. The first year will be dramatically higher than after startup. In the fiscal note it estimated there would be one analyst on an annual basis to maintain this, so, and that-- that individual would work for the PSC. This will also help the Internet task force collect accurate data to help you identify your needs, so that would get us going there. Mr. Metcalf from Sutton, it sounds like he has the same kind of home Internet that I have at our house. And yesterday when we were home, we ran a test on our Internet. We pay for 1.5 on the download and yesterday it was 0.61 and our upload speed was 3.5, so that, I would guess, is probably in the-- in the same-- OK, he's telling me I got it backwards. And I guess the last point I want to make is-- is what this bill is about. It's about GIS mapping. And with that, if you have any questions, I'll try and answer.

FRIESEN [02:24:28] Any questions from the committee?

BRANDT [02:24:29] OK. Thank you.

FRIESEN [02:24:32] Seeing none, what-- what do you feel the options of-- are the odds of getting an A bill through the Legislature this year?

BRANDT [02:24:39] Well, it depends where the money comes from. We'll talk odds another time.

FRIESEN [02:24:45] Absolutely right.

BRANDT [02:24:45] Yeah.

FRIESEN [02:24:47] Thank you, Senator Brandt. With that, we have one letter of support from Northeast Nebraska Public Power District. And with that, we will close the hearing on LB549; we'll close the hearings for the day.