

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

FRIESEN: OK. Welcome, everyone, to this afternoon's public hearing of the Transportation and Telecommunications Committee. I'm Curt Friesen from Henderson, Chairperson of the Committee, I represent District 34. A few procedural items. Please silence all cell phones and other electronic devices. We will 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. There's chairs up there, we have on deck, so when the next testifier is needed, he's up front and ready to go. If you will be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. 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, 10 copies are needed. One of the pages could help you with that, if you need some. When you begin your testimony, it's very important that you clearly state and spell your first and last names slowly for the record. If you happen to forget to do this, I will stop you and ask you to do so. Please be concise in your testimony. Try not to repeat things. The acoustics in this room are very challenging, so make sure you speak directly and clearly into the microphone. We will use the light system in this committee. Beginning with the green light, you have five minutes for your testimony. The yellow light indicates there's one minute left. When the red light comes on, time is up and you need to wrap up your testimony. Committee counsel Mike Hybl on my right. Sally Schultz, the committee clerk. And the pages, Sophia and Joseph, are here to help us today, so thank you for being here. And we'll start with introductions on my right.

HUGHES: Senator Dan Hughes, District 44, eight counties in southwest Nebraska.

BOSTELMAN: Bruce Bostelman, District 23: Saunders, Butler, Colfax Counties.

ALBRECHT: Joni Albrecht, District 17: Wayne, Thurston, Dakota and a few-- and Dixon County.

GEIST: Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

MOSER: Mike Moser, District 22: Platte County and most of Stanton County.

M. CAVANAUGH: Machaela Cavanaugh, District 6: west-central Omaha, Douglas County.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

FRIESEN: Senator DeBoer might join us at some point during the hearing. She may be in another committee. With that, we will open the hearing on LB761 and welcome Senator Dorn.

DORN: Thank you. Senator Friesen and members of the Transportation and Tele-- Telecommunications Committee, for the record, my name is Myron Dorn, M-y-r-o-n D-o-r-n, and I represent District 30. I appear before you today to introduce LB761, which creates the Precision Agriculture Infrastructure Act. As an agricultural state, Nebraska is a leader in research, development, agriculture practices and superior agriculture products, but we are in danger of losing that status. The industry is changing globally due to consumer demand and society's perceptions of how their food is grown. If we maintain the status quo and don't adopt-- adapt to these changes, we will be stepping-- will be the stepping stone for other states, businesses and universities to lead the conversation and dictate us how the industry will develop. LB761 is a nudge in the right direction for Nebraska to continue its domination in the agriculture industry. Through, through the Precision Agriculture Infrastructure Fund, we will incentivize our producers to adopt critical tools that will give them the ability to leverage their data and substantiate what we already know: that they produce our food, fuel and fiber in a sustainable and human way-- humane way. The bill requests \$10 million in ARPA funds for a grant administered by the Department of Economic Development for the advancement of precision agriculture. Half the funds will be offered to precision, precision agriculture network providers to connect on-farm structures with sys-- symmetrical speeds of at least 50 megabytes delivery. While this committee and the Legislature have settled on 100/20 required speeds for residential and commercial broadband Internet services, that speed is not necessary for many Internet applications. The other half will be directed towards producers, co-ops and agronomists to adapt practices that promote traceability, soil health, water efficiencies or autonomous solutions. These practices could include blockchain or other traceability solutions, autonomous machine, machinery such as grain cart strutters, precision drone scouting or scouting robots, soil moisture probes, soil amendments or water efficiency seeds. I was a supporter of the Broadband bid-- Bridge Program that came out of this committee and was passed unanimously by the body. And while I think the program is going to make great progress on rural broadband issues our state faces, we've already seen the Public Service Commission focus their initial grant awards on networks within towns where the most people can be served. While that is admirable, admirable and a needed goal, it does not promote the necessary focus we need in our state's number one industry. That is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

why LB761 is a complement to the Bridge Program and continue its furtherance of ensuring that our rural residents have the same opportunities and resources that our, as our urban folks have. Maintaining the status quo will continue to yield the same results that we have now seen over decades: less economic opportunities, less farms and ultimately our rural towns growing old and dying off. We need to reverse the trend with thinking outside the box, and I think this bill can help start the conversation on putting our rural communities back on a path to success and self-sustainability. Thank you, and I'd be happy to answer any questions. And I do want to mention, and I think we've passed it out also, there is an amendment that we are adding to this which provides a definition of "farm site" which is already define, defined in the statutes, and "underserved areas of the state", which is also defined in there. So it kind of clarifies that part of the bill or whatever so.

FRIESEN: OK, thank you, Senator Dorn. Any questions from the committee? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. You're asking for ARPA funds for this?

DORN: Yes.

BOSTELMAN: How does this fit within ARPA?

DORN: This is part of what has been in the rural area directly affected by COVID, and this is to help enlist and get more information and data out that, not only can this help on the farms, but this can help many of the rural places as they connect with the Internet for schools and stuff like that.

BOSTELMAN: OK. All right, thank you.

FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, are you gonna stick around for closing?

DORN: We're planning on it. We have another bill in committee. If we need to, we'll leave. But right now, we're planning on it.

FRIESEN: All right, thank you. Proponents for LB761.

JULIE BUSHELL: Chairman Friesen and members of the Transportation and Telecommunications Committee, thank you for the opportunity to be here this afternoon. My name is Julie Bushell, spelled J-u-l-i-e B-u-s-h-e-l-l, I'm the president of Paige Wireless. Paige Wireless

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

believes connectivity is the foundation to putting the power in the hands of the individuals, communities and the ag producers that we serve. We see the grants outlined in LB761 as the foundation to accelerate precision agriculture and putting that power back in the hands of our producers. Over the last three years, Paige has constructed North America's first statewide LoRaWAN network. We have covered the state with a network that connects cropland, livestock operations, villages and rural businesses. We know through our on-ground experience that connectivity is crucial to create operational efficiencies, retain the next generation of ag leaders and to empower producers and Nebraska to tell our story of global agricultural leadership. Over the last few years, we have worked with stakeholders in the ag industry and supply chain, from seed companies to large retailers. They have all made clear that they favor data-backed, verified information, are willing to pay a premium on products that are grown in a sustainable and humane way. Here in Nebraska, that is what we do. But without sufficient producer-owned data to back that assertion, our ag products may lose market share and take a backseat to those that can substantiate their farming practices. Since the advent of COVID pandemic, rural broadband has been a loud topic both across the nation and here in the state. However, precision ag connectivity has not. We believe LB761 is the first step in putting the spotlight on an issue that is central to the future of our state. It is my fear that if we don't address it, the federal government and other states that don't share our values will. For example, the FDA recently announced a pending ruling on blockchain-based food tracking that would decelerate adoption of precision ag tools and traceability. It's imperative we provide Nebraska producers, the connectivity producer-owned data and tools to compete in the marketplace. This grant program would allow companies like Paige Wireless to deploy on-farm broadband connectivity, allowing a producer to choose the technology that works for their operation. This could mean real-time video on a center pivot or on a livestock operations, connectivity for autonomous tractors or real-time drone scouting, all which lead to greater profits, premiums as seen in your handout. I'm aware of the 100/20 required broadband service levels in the federal ARPA guidelines, and at Paige Wireless, we can meet those speeds. However, symmetric speeds are imperative to precision agriculture. Upload speeds are just as important, if not more than download speeds. It's difficult to compare household broadband Internet to real world applications in the field. Precision agriculture is happening now all over the world. We have a once-in-a-lifetime opportunity to prioritize our largest economic driver in the state and secure our global leadership. For these

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

reasons, Paige Wireless supports LB761. Thank you for your consideration. Happy to answer any questions.

FRIESEN: Thank you, Ms. Bushell. Any questions from the committee? Senator DeBoer.

DeBOER: Thank you, Senator Friesen. So you said in your testimony just there that you can meet the 100/20, but because it's better to have the symmetrical, can you, can you kind of flesh that out for me?

JULIE BUSHELL: Sure.

DeBOER: So instead of doing the, the 100/20, you want to do a symmetrical, what does that mean technically? What does it mean for--

JULIE BUSHELL: Yeah, that means that we, we see in agriculture, specifically precision ag, you're actually uploading data more so or equal to how much you're downloading. And that is usually for real--time video that would allow a producer to see a hotspot in the field and take action right away. You may be uploading a prescription from your combine, and so while 100/20 is certainly admirable, I just don't think it's the perfect fit for precision agriculture. So if we're going to prioritize that connectivity, I think it should be exactly what precision ag requirements demand.

DeBOER: And that's 50/50 right now?

JULIE BUSHELL: Today, yes.

DeBOER: Does that-- is that going to move?

JULIE BUSHELL: It certainly could. I mean, as you see additional adoption of precision ag and digitization, we can see 100/100 requirements. Absolutely. Our goal is to provide cost-effective connectivity, and certainly let's get it to the producers that need it. I think the most innovative producers out there are looking for the solution today, 50/50 would allow us to spread the grant money out and hit more producers than just a handful.

DeBOER: What is the mechanism for delivery of your services when it's 50/50? And what might be the mechanism of the future? I'm just trying to-- are we talking about fiber? Are we not talking about fiber?

JULIE BUSHELL: Yeah--

DeBOER: What's the--

JULIE BUSHELL: --a fiber network, absolutely. So fiber capacity is certainly valuable, but on-farm connectivity requires a wireless connectivity, and it requires what I call mission-critical wireless connectivity. So that means your network is not going down, it is reliable and it allows producers to operate at all times. So this is hybrid. As far as I understand, the grant does allow fiber providers to apply. Our goal is to leverage that fiber and take it to the last mile, or sometimes the last 10 miles down the dirt road to the field.

DeBOER: I sometimes call it the "last inch" because it's no longer just the last mile, you [INAUDIBLE].

JULIE BUSHELL: Absolutely. Yeah.

DeBOER: All right, thank you.

FRIESEN: Thank you, Senator DeBoer. Senator Moser.

MOSER: So your interest in this bill is to be a, an Internet service provider? I mean, get connectivity for people in agricultural situations, or for that matter, anybody in lesser populated areas?

JULIE BUSHELL: That's correct.

MOSER: And you are not a provider of software or anything, you're just just providing the connectivity part of it?

JULIE BUSHELL: We do provide software as well. Our LoRaWAN network is a network that supports sensors and the Internet of Things, which is deployed across the state. We do have a software application where producers can see the data coming off of sensors.

MOSER: But if a resident wanted to use your company to get Internet connectivity, connect to the Internet--

JULIE BUSHELL: Yes.

MOSER: --they don't have to buy your software in order to do that?

JULIE BUSHELL: No, no. Not at all. That's correct. We like to describe what we do is wireless fiber. So anywhere you need backhaul, we can deliver. We specialize in precision agriculture and rural communities, we work with utilities in rural communities. So really mission-critical applications.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

MOSER: So you're looking to get grant funding from this to help you put your network together, right?

JULIE BUSHELL: That's correct. We're looking for a grant funding to expand how many producers and on-farm structures we can service across the state.

MOSER: And the wireless connectivity at the actual farm, does the ag producer buy some equipment to connect to your equipment or is it all your equipment that they rent?

JULIE BUSHELL: That's a great question. It would be a subscription fee, just as if you're buying Internet service. So we deploy, own, operate and service our hardware.

MOSER: So they, they would pay you a monthly fee to use your software?

JULIE BUSHELL: Our broadband connectivity. So essentially the bandwidth.

MOSER: Oh, just connectivity. But, but your, your precision agriculture software, that's a separate?

JULIE BUSHELL: Yeah, that's totally separate. So this grant would allow for what we call the BigPipe, but wireless. So they could connect any technology on the farm, it certainly is not Paige Wireless technology.

MOSER: What's the range of your wireless hub or whatever that you're going to put in? I mean, are they good for five miles, 10 miles?

JULIE BUSHELL: Yeah, we can do 10, 20, sometimes we see 30 miles. That all depends on terrain and fiber access, of course.

MOSER: Are they omnidirectional or are they--

JULIE BUSHELL: Omnidirectional.

MOSER: So you don't have to focus on that particular point to make it work?

JULIE BUSHELL: That's correct, yes.

MOSER: What do you anticipate the cost of this being? Do you think you're going to be competitive with other forms of Internet or--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

JULIE BUSHELL: Yeah, Senator, we have to be. We have to be competitive in the rural communities so that we can give them the tools to tell their story. And that's the reason we're requesting the grant, is it's obviously very hard to create the business case to get on the farm as one company. So we're hoping to leverage this to be extremely competitive so producers can adopt and connect all of their technologies and be more efficient.

MOSER: Are you using equipment that-- and you can refuse to answer any of these you want, don't worry about that. But are you using equipment that's readily available to every Internet provider or do you have proprietary equipment that you've had manufactured?

JULIE BUSHELL: So I actually am not a proponent of proprietary networks because I think that holds back technology adoption, specifically in agriculture. So we do use radios that are off the shelf. However, we are experts in designing them for precision agriculture and autonomy. We use a lot of Cisco gear that many don't use because it's very high priced. But again, I think it's needed for agriculture to deliver the bandwidth and the reliable networks that are required.

MOSER: Well, we have, you know, constant testimony from people in the far-flung parts of our state that they can't get the Internet connection that they want. And we're kind of led to believe by some that fiber is the only way to do it and that, you know, it's just not know-- we kind of get the impression it's never going to happen. So for you to come in and say, hey, this is what we're going to do, this is our, this is our focus, it's-- I would say refreshing. Interesting.

JULIE BUSHELL: Thank you.

MOSER: Thank you.

FRIESEN: Thank you, Senator Moser. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Thank you, Ms. Bushell for being here today. Few questions for clarification from my point. Are you-- is this grant program going to be to connect to a home or a business with fiber?

JULIE BUSHELL: It is not to connect the home. It could certainly be to connect the ag business, but the focus is to connect the, what I would call structures on the farm. That could be a tractor, a center pivot system, anything that's producing data that cannot be connected-- or we don't typically see connected today.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

BOSTELMAN: So you're not providing broadband to the home or business?

JULIE BUSHELL: That is correct.

BOSTELMAN: Who does that?

JULIE BUSHELL: Well, fiber providers in-- with this grant or today?

BOSTELMAN: Well, no, I'm-- so I understand your system. So your system is self-standing at the home or business, we'll say they connect out wireless, correct?

JULIE BUSHELL: Yes, and we are capable of delivering to the home and business.

BOSTELMAN: But your, your-- the purpose of this, sorry. The purpose of this is not to do that fiber connection, it's just wireless. So the other question I have, on the fiscal note it says that ARPA funds can only be used for 100/20. How do we address that? How do you propose to address that?

JULIE BUSHELL: That's a great question. I am hopeful we're able to set a standard first within Nebraska and our state of how important symmetric speeds are for precision agriculture. As far as how it pertains to ARPA funding, I don't know. I would have to ask [INAUDIBLE].

BOSTELMAN: No, that's fine. And that's fine. I appreciate it. I mean, that's just something I read in the fiscal note. So it's like, OK, it's something we got to consider.

JULIE BUSHELL: Absolutely.

BOSTELMAN: The other thing is, is it-- and I don't think it really applies because, in a sense it does, and I appreciate where the technology you're talking about doing. I think we've had some information on it before. But this committee and our broad-- Rural Broadband Taskforce has been 100/100 standard to be out there and connect. Now in order to connect all the pieces on the farm together is where you're at with this--

JULIE BUSHELL: Correct.

BOSTELMAN: --portion of it. So we still need-- this really doesn't compete with the Bridge Act or, or with any of the other funding, any

other broadband opportunities in the state, I mean, that we're working on right now.

JULIE BUSHELL: I agree. I think it's a great complement.

BOSTELMAN: So are you partnering with certain providers?

JULIE BUSHELL: We do. We partner with many fiber providers across the state, and we actually become customers of rural wireless Internet service providers.

BOSTELMAN: So and, and then part of that, you would probably run into potential overbuild. Someone could overbuild you if you're providing less than the 100/120-- 100/20, not 100/100. 100/20 on a wireless system.

JULIE BUSHELL: I hope they overbuild us.

BOSTELMAN: OK, thank you. I appreciate it.

JULIE BUSHELL: Absolutley.

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Senator Moser.

MOSER: So the question I asked you, and then the question that Senator Bostelman asked, seems like the answers were different. So you're not really in the business of providing Internet for farms and ranches just for general purposes?

JULIE BUSHELL: We--

MOSER: You're not going to be in an Internet provider for somebody that lives far out in the hinterlands somewhere. You're primarily-- once they get somebody else's connectivity, you're going to help them connect everything into that?

JULIE BUSHELL: Typically, the farms we work with don't have the connectivity to the home or the business as well, and they do ask us to help. The reason the focus on this grant is when you connect things on the farm, such as the combine, center pivot, et cetera, you're producing a lot of data and that begins to develop a business case for fiber providers to get closer to that dirt road and to the farm. We absolutely can be the Internet service provider. Our niche and where

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

we specialize has always been in mobility applications, on-farm connectivity, you name it. Honestly, the home is the easy part. It's connecting moving objects in the midst of harvest that's the difficult part.

MOSER: Well, we always hear that when the home is 40 miles from the nearest fiber--

JULIE BUSHELL: Yeah.

MOSER: --that it's difficult for them to get--

JULIE BUSHELL: No doubt.

MOSER: --Internet.

JULIE BUSHELL: In that instance, yes, it certainly is.

MOSER: And you're going to help provide that?

JULIE BUSHELL: Yes.

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? So I know you are more of-- it's not time-sensitive data, but you will be deploying some fiber to get it to your collection sites, or would you not?

JULIE BUSHELL: So this grant would be for broadband, so this would be real-time data. The LoRaWAN Network is deployed today, it's-- the state is covered, so I don't see us using this grant to deploy additional LoRaWAN connectivity.

FRIESEN: So again, and I think Senator Bostelman maybe asked the question, but if you're in some areas, would you be working together with providers that have broadband there already?

JULIE BUSHELL: Yes.

FRIESEN: So you'd just be putting up towers and they would-- you would use their fiber network to get the data collected back?

JULIE BUSHELL: Yes, that's correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

FRIESEN: And if you needed to deploy some fiber, you would in order to reach those areas where you can electronically gather it or wirelessly?

JULIE BUSHELL: We would partner with a fiber provider. We won't be installing fiber ourselves. So I think what we have done well across the state is work with the fiber providers in the area to become a customer of theirs, to make the business case to get to our wireless network where we're deployed on a tower or a grain bin.

FRIESEN: So this is mainly to collect the wireless-- wirelessly collect data, whether it's from machines or field sensors--

JULIE BUSHELL: Correct.

FRIESEN: --things like that?

JULIE BUSHELL: That's correct.

FRIESEN: OK. Thank you. Senator Geist.

GEIST: One quick question, and you did talk about how that-- you're omnidirectional and that you can go up to 30 miles with your, your wireless. Is that line of sight?

JULIE BUSHELL: In this instance, 30 miles, yes.

GEIST: OK.

JULIE BUSHELL: That would be.

GEIST: OK.

JULIE BUSHELL: The LoRaWAN network is not.

GEIST: Right.

JULIE BUSHELL: But for broadband and to deliver 50/50, yes, line of sight is usually required.

GEIST: OK.

FRIESEN: Thank you, Senator Geist. Seeing no other questions, thank you for your testimony.

JULIE BUSHELL: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

FRIESEN: Welcome, Mr. Hunnicutt.

BRANDON HUNNICUTT: Thank you, Chairman Friesen. So good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Brandon Hunnicutt, and it's spelled B-r-a-n-d-o-n H-u-n-n-i-c-u-t-t, and I farm with my dad and brother near Giltner. I'm a past president of the Nebraska Corn Growers Association, and here today on behalf of the Ag Leaders Working Group testifying in support of LB761. The Ag Leaders Working Group consists of the Nebraska Cattlemen, Nebraska Corn Growers Association, Nebraska Farm Bureau, Nebraska Pork Producers Association, Nebraska Soybean Association, Nebraska State Dairy Association and Nebraska Wheat Growers Association. The associations I represent today appreciate Senator Dorn's introduction of LB761 that would establish a Precision Agriculture Infrastructure Grant within the Department of Economic Development. Nebraska's farmers and ranchers continue to advance production efficiency. This has been accomplished with the adoption of a number of technologies of which precision innovations and sensors have been at the forefront. What we see is limiting even greater use is connectivity, an issue that our associations have testified on and relayed on several occasions. Keeping in mind that the connectivity is not just to our residences, but the need is also to fields, facilities and rangeland. Additionally, efficiency has been accomplished with the continual focus on our natural resources, including both soil health and water. Public and private industries continually innovate products, sensors and management tools that farmers and ranchers can utilize, but these come at a cost. LB761 would continue to advance the usage of these various innovations through grants, thus increasing our efficiency and reducing our footprint. As an example, on our farms, we utilize irrigation management tools and sensors. We currently are running center, center irrigation pivots, and each one has a management system on them. They range from being able to monitor the movement and location of the pivot in the field to being able to fully control the pivot completely from our phones. We also have integrated different soil moisture sensors to help monitor what is going on below ground. Eventually, these sensors will be able to completely automate the irrigation suite-- sequence based off of soil water percentage, evapotranspiration, crop water use and projected rainfall. Being able to utilize these technologies has reduced our water usage by two to five acre inches of water per year. We are decreasing our water usage and increasing efficiency. While water, water savings and ultimately less driving to the pivot seem relatively small, the positive environmental impact over millions of irrigated acres would be very

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

impactful. Without connectivity, this will not be possible. In closing, we again appreciate Senator Dorn's introduction of LB761 and the committee's consideration of advancing the legislation. I'd be happy to answer any questions you may have.

FRIESEN: Thank you, Mr. Hunnicutt. Any questions from the committee? So would you, for instance, on your farm, I know there's fiber in your area already, so this would allow some towers to be put up and then your sensors would send that data to the fiber Internet that you have and you can accumulate that work with those sensors. Does that summarize it?

BRANDON HUNNICUTT: Yeah, that would summarize. And I think that's a very important point that Julie made, was that the upload is the bigger issue, to be able to upload that data. And as we see more sensors deployed out in the field, whatever that is, soil, soil sensors, crop sensors, we're having more-- more data generated and trying to get that up. I'll use an example, is we had a drone that we used for a while and we figured out at one point it was quicker for us, before we had fiber installed in our area, it was quicker for us to take the data and stick it on a USB drive, drive it to San Francisco, have them analyze the data and drive back than what it was for us to try to upload it from home. And that just, you know, we're talking 48 hours round trip, and it was quicker to do it that way than what we had for current Internet speeds. And that was just one drone deployed on, at that time, 640 acres is that, that amount of data.

FRIESEN: So what other, you know, we've always talked a lot about agricultural sensors. And you are, I think, involved heavily with the National Corn Growers, and there's the movement to document and verify the carbon footprint of agriculture, so to speak. Does that help play into some of that?

BRANDON HUNNICUTT: I believe eventually it will. As we develop, as we're at the very beginning stages of understanding carbon and how to, how to measure it and really verify that data as we deploy the next stage, whatever that is sensorwise, and being able to monitor that, that will give us those capabilities. So as from a farmer standpoint, being able to verify carbon would be another revenue stream, not just for us, but also for the state, for, for businesses within, within the state. And that becomes a very major, major proponent.

FRIESEN: You grow some very specific crops too. Do you have to, I guess, document more things with popcorn, for instance, whatever. Is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

that-- if you want to get into blockchain and everything else, does that, would this play into that?

BRANDON HUNNICUTT: You know, I could see the potential role of that. So we do grow popcorn that has it-- it can go overseas or can be used here in Nebraska. And we had an incident one year where-- we have, we have to document everything, you know, herbicide usage, fertilizer usage, moisture at harvest. And there was one little, and it happened to be off of our field. They pulled it all the way back to our field for full disclosure, as there was one little soybean seed in a bag that showed up over in Japan. And they tracked it all the way back to our field to determine that we had not completely cleaned the combines properly. Well, this would allow that information to travel faster to be able to document that on a, on a better, better scale.

FRIESEN: Any other questions from committee? Senator Bostelman.

BOSTELMAN: Thank you. Thank you, Mr. Hunnicutt, for being here. Do you see this strictly as a wireless system that collects data for your farm business and not necessarily a satellite or a fiber connection?

BRANDON HUNNICUTT: Yes, I think there's two different scenarios here. We'd have the satellite data that there will be some of that, that, that information that will be provided or gathered by satellites. But when we have to go, that's sent back to us and then we make the decisions based off of that and have to verify that data. That's when we start talking into wireless and being able to generate it, not just on the fiber runway, on the field, so to speak.

BOSTELMAN: OK, thank you.

FRIESEN: Thank you, Senator Bostelman. Seeing no other questions, thank you for your testimony.

BRANDON HUNNICUTT: Thank you very much.

FRIESEN: Any other proponents for LB761? Seeing none, anyone wish to testify in opposition to LB761?

TIP O'NEILL: Senator Friesen, members of the committee, I think I'll be on front page when I start. My name is Tip O'Neill, that's spelled T-i-p O-'-N-e-i-l-l, I'm the president of the Nebraska Telecommunications Association. The NTA is a trade association that represents a majority of companies that provide landline voice and broadband telecommunications services to Nebraskans across the state. We oppose the introduced version of LB761. This bill creates a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

different standard of adequate broadband speed for grants than the standard adopted in the Broadband Bridge Act, passed by the Legislature and approved by the Governor during the 2021 session. In that bill, grants for building out broadband are only approved if speeds of 100 download and 100 upload are achieved for the project in unserved and underserved areas. And unserved, is, is defined as 25/3, underserved defined as a 100/20. LB761 would allow the approval of grants for lower speeds of 50 up and 50 down for this program. We believe this is inconsistent with the standard currently utilized by the Public Service Commission in approving broadband grants. We also believe that the PSC and not the Department of Economic Development should be the governmental entity that administers any broadband grant program created for the utilization of federal ARPA funds. It's also interesting to note that the ARPA capital fund Treasury guidance for broadband projects. That guidance requires service that reliably meets or exceeds symmetrical download and upload speeds of 100 Mbps. It would be impractical because-- if, if it would be impractical because of geography, topography or excessive cost for a broadband infrastructure project to be designed to deliver services at such a speed, the project must be designed so that it reliably meets or exceeds 100 Mbps download, and between 20 and 100 upload, and would be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds. There is no mention of a 50/50 standard. Finally, there is no clawback provision in the bill if the applicant fails to meet even the 50/50 speed standard required to receive this grant. This is an integral provision in broad-- in the Broadband Bridge Act passed last year. You know that this, this grant can be used for poor service, in our opinion, to residential areas. It specifically delineates the grants can be used to provide service to farm offices. In most situations that I am aware of, the farm office is in the farmer's home, so there could be a direct competition there. And if services provided to the home with, with state or federal money, then there ought to be, we believe, 100/100 service provided. I'd be happy to answer any questions you might have.

FRIESEN: Thank you, Mr. O'Neill. Senator DeBoer.

DeBOER: Thank you, Senator Friesen. Thank you, Mr. O'Neill, for your testimony today. If we were to sort of write this in a slightly different way so that it was clear that these are the additional precision ag kind of situations we're dealing with and not getting it to the home, would your association be more comfortable then?

TIP O'NEILL: We'd be more comfortable. We still think there's an issue with using federal ARPA money to do that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

DeBOER: So the--

TIP O'NEILL: I think you'd have to make-- I think clearly you could use general funds to do it.

DeBOER: OK, so there might be some, and I just don't have the Treasury guidelines well enough to know about that piece. But as far as the clawback, I think that makes sense. And I don't know between the PSC and the DED, but, but the biggest piece, which would be whether or not you're actually going to the house, that's, that's really the objection that, that is kind of the crux of it for you?

TIP O'NEILL: Well, I think that and the speeds required to get, get money. I mean, we made a determination that, that we weren't going to pay for projects unless a speed of 100/100 was achieved when we passed LB388 last year.

DeBOER: Agreed. And that was a big step we made, and I'm glad we made it. But this seems like this is a separate kind of thing that's not quite, it's not quite apples to apples. So if it was truly not apples to apples and it was a separate thing to, to sort of deploy things within the, the farm itself, would, would you all be more amenable?

TIP O'NEILL: I, I probably can't answer that with talking to my members about it.

DeBOER: OK, thank you.

TIP O'NEILL: I mean, I just, I don't know.

DeBOER: Yeah, yeah. Thank you.

FRIESEN: Thank you, Senator DeBoer. Any questions from the committee? We word it a little bit differently, I mean, from what I heard from the supporting testimony, they were more than willing to work with providers for the fiber backhaul. They didn't want to put out any fiber. They just-- this money was going to be used for the electronic equipment that collected data to put on your fiber. Would that-- if that was spelled out more clearly, would that be--

TIP O'NEILL: I'd have to go back to, to my-- and I guess the question is, is if this is something that the Legislature believes is worth doing, then there certainly could be general funding to do it.

FRIESEN: Well, I--

TIP O'NEILL: There's nothing that would prohibit us from doing it.

FRIESEN: --I guess I'm pointing to the fact that I think that from the telecommunications companies, you have a company here that wants to use your fiber and wants to be a customer. Their grant is, mainly what they're after is collecting data and putting it onto your system. And so, I mean, I would assume that you would be more than happy to partner with them if they need--

TIP O'NEILL: I mean, if--

FRIESEN: --fiber to a tower, somewhere, your companies would be supplying that backhaul.

TIP O'NEILL: Yeah, if the, if the grant was for software, I think it's different than the grant being for broadband service.

FRIESEN: It's worded a little different.

TIP O'NEILL: Yeah.

FRIESEN: But I mean, if we-- if those things could be corrected, then it would be always in partnership with someone, whether it's even to get out some more fiber in the backhaul.

TIP O'NEILL: Sure.

FRIESEN: And they partnered with you to get it done with your companies. Would that be more in line with what you would--

TIP O'NEILL: I'm-- I'm guessing so, but I couldn't say for sure until I talked to the companies.

FRIESEN: We like putting you on the spot.

TIP O'NEILL: And that's fine. That's why I get paid.

FRIESEN: Senator Bostelman.

BOSTELMAN: Thank you. Thank you, Mr. O'Neill, for coming back and being back in form. I appreciate it. On page, and you don't have the bill--

TIP O'NEILL: Yeah, I do.

BOSTELMAN: Do you have the bill?

TIP O'NEILL: Sure.

BOSTELMAN: So what I hear-- two things I hear. If you go to page 2, line 10, paragraph (4), talk about provider and broadband service, that's kind of what Chairman Friesen is speaking about. That's really part of the opposition there, is it's a broadband-- competition in broadband that fits into what we have now where he identified or defined that broadband services. But this doesn't fit within that, and is that fair? Would you--

TIP O'NEILL: I mean, we, you know, because broadband can be delivered over so many different types of systems.

BOSTELMAN: Sure.

TIP O'NEILL: It-- a provider, you know, it could be cable, could be DSL, could be wired, wireless.

BOSTELMAN: Right.

TIP O'NEILL: So, so there's not much-- there's not a difference. It may be-- the only difference may be the ability to achieve certain speeds.

BOSTELMAN: Well that is the second question. But I think what Chairman Friesen was getting at, I hear his comments with that is that we're not-- we may not be specifically talking about a service provider, more so a software functioning from that house out to where it, it, it actually takes one of your customers, if you will, and provides that link to that ag equipment, that barn, those places out there. We're talking more on those lines than we are actual broadband, as we would state in paragraph (4) on page 2. I think there's a-- we're looking at a different, different term or a different, perhaps a different, different function, if you will. And then the other, the other, the other one is exactly what you said, if it meets 100/100 then that would, that portion of it that would take away your opposition potentially to it as well.

TIP O'NEILL: Absolutely.

BOSTELMAN: OK, thank you.

FRIESEN: Thank you, Senator Bostelman. Senator Moser.

MOSER: So could your member firms apply for a grant under this program, if it's approved?

TIP O'NEILL: Yes, we could.

MOSER: But you--

TIP O'NEILL: Because I have--

MOSER: --has to be the same.

TIP O'NEILL: I have competitive companies that provide wireless service. They provide wired service, but they also have, have subsidiaries that provide wireless service. I could see if, if you can get the same grant for providing 50/50 service as opposed to 100/100 service, may --there may be somebody who would choose that option.

MOSER: But your main objection is the fact that the speeds are not the same in this grant versus the other ones we've approved in the past?

TIP O'NEILL: Right. We made a determination last year in LB388 that we would adopt the 100/100 standard for companies that were going to build out broadband with state money.

MOSER: Would this--

TIP O'NEILL: And that's really the issue. They can build out 50/50, if they don't get the grant. I mean, there's, there's no question you can provide any level of service you want.

MOSER: Are you saying that you-- well, I'm not, I'm not an attorney, so I guess I'm getting into dangerous territory. But if we were to pass this bill and allow 50/50, would we be in effect voiding the bill that we passed before? I mean, do we put all language in there that says--

TIP O'NEILL: Not necessarily.

MOSER: --that you'd put language in there that says-- that repeals all statute that is not in--

TIP O'NEILL: Yeah, no, I

MOSER: --agreement with this?

TIP O'NEILL: It would, it would not, in my opinion, but I'd have to-- I have to see the, see the language. I think your bigger, bigger problem might be if you're using ARPA money, that the ARPA process allows for ARPA to, to claw back that money from the state. Not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

necessarily from the company, but from the state, if you are using it for purposes that are not in conformance with the--

MOSEER: And the ARPA standards are 100/100?

TIP O'NEILL: 100/100 they prefer, but they will allow 100/20 because of geographic or topographic issues. Yes.

MOSEER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Senator DeBoer.

DeBOER: Sorry, one more quick question. So it seems like maybe we have some inartful drafting partially here in, in what they're trying to do, that it's kind of crossing over into your area. But they don't maybe necessarily intend to do that. So can you imagine a circumstance in which we don't call it broadband, we call it "squirrels" or something? I don't know what we call it. And then--

TIP O'NEILL: I would have to depend upon your very talented legal counsel to come up with that definition that we can review.

DeBOER: OK. All right. So you'll work with us, is what you're saying?

TIP O'NEILL: Yeah, sure.

DeBOER: All right, thanks.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? Seeing none, thank you, Mr. O'Neill.

TIP O'NEILL: Thank you, Senator.

FRIESEN: Any other opponents to LB761? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Dorn, you may come up to close. We one online comment in support, one online comment in neutral.

DORN: Well, thank you. Thank you for letting me bring this bill, number one, and thank you for many of the questions. It's sometimes interesting to sit in other committees, and I call it, have the perspective of what you guys deal with on a regular basis and we don't. Or whatever. So, yeah, I-- very enjoyable to listen to a lot of the questions. When they brought this bill to me, my main thought, or what I really wanted to accomplish with it is, I call it, Senator Hughes, Senator Bostelman, Senator Friesen out in the farming

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

community, there is a distinct need for, I call it, more availability, more of a need for the Internet, the wireless service, all of the technology that we have. And it's going more that way every day. So it-- my concept was, how can we help them and how can we get more of that out there so that we make that available to farmers? We make that useful, useful. When you talk about ARPA funding, yes, it is the 100/20 or whatever. But some of the guidelines in ARPA and I, when you sit on Appropriations, you read a lot of different reasonings. Some of those are sustainability. There's also the part about, you know, our carbon credits and all of that. You could fit some of this in there. That's a stretch, but you could, cause some of them have or whatever. But thank you. We'll work with you, we'll visit with you. Really enjoyable to listen to some of the comments and some of the questions that enlightens me quite a bit. So thank you.

FRIESEN: Thank you, Senator Dorn, and appreciate your working with the best committee out there. That will close the hearing on LB761.

DORN: Thank you very much.

GEIST: Good afternoon, Senator Friesen. We'll now open on LB1208.

FRIESEN: I think that's-- OK. Senator Geist, members of the Transportation and Telecommunications Committee, for the record, my name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, representing District 34 and introducing LB1208. LB1208 would adopt the Broadband Pole Replacement Act. The bill proposes that the Legislature create a fund of \$15 million utilizing the Federal American Rescue Plan Act, which would be administered by the Nebraska Public Service Commission to provide pole replacement grants, which would further enable the efficient buildout of broadband services. The act provides that the pole replacement, the leasor [SIC] or-- the lesser of \$5000 or 50 percent of the total amount spent for the cost to replace a pole could be awarded. The act also allows a reimbursement of 100 percent of the documented administrative expenses incurred by an applicant limited to not more than 5 percent of eligible pole replacement costs. I do have a proposed amendment to offer, it's AM1723. The amendment provides a definition of "facilities", and it provides grants shall be only made for pole replacement to providers who demonstrate that they will offer affordable broadband to homes in the area in which the funding is requested and prohibits funding when the applicant is the pole owner. The amendment also strikes subdivision, subdivision (7) in Section 4 of the bill. Those that follow me will explain the amendment and the bill in greater detail. As we continue to look for ways to incent and deploy broadband across all areas of Nebraska, I believe that LB1208

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

is another option we should review and consider, and thank you for your attention. I'd be happy to take any questions.

GEIST: Thank you very much. Are there any questions from the committee? Yes, Senator Albrecht.

ALBRECHT: Thank you, Vice Chair Geist, and thank you for bringing this bill. Can you just give me an idea of how many poles must need to be replaced in the state of Nebraska with the fiscal note that I see on this. Can you just help me understand?

FRIESEN: You know, if you-- it just depends on the on the rural electrics out there. There are some companies, I think, who have a lot of poles that could be replaced that won't meet the height requirements, those types of things. So when you go to hang a fiber cable underneath them, they're not tall enough They need to be replaced. So it's not as though the poles are all deficient, it's some might not be tall enough to accept that cable underneath them and still maintain the ground to wire clearance that they need. So it varies all across the state. I couldn't tell you how many poles are needed. Somebody else might be able to answer that question.

ALBRECHT: OK, I'll ask. Thank you.

GEIST: Yes, Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairwoman Geist. Do you see this, Senator Friesen, do you see this as replacing existing poles to provide additional attachments? Or is this poles that are needing to be replaced anyway, that they're-- the end of their life, three-fourths of the way through the life cycle of that pole?

FRIESEN: Could be all of the above. It could be poles that are no longer able to sustain the weight of that extra cable, or it could be they're too short, don't meet the engineering standards to hold up that, that fiber. So it could be poles that are just structurally deficient and unable to withstand it and need replacing.

BOSTELMAN: And this would, is this general funds or is this ARPA?

FRIESEN: ARPA.

BOSTELMAN: OK, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

GEIST: Any other questions? I do have one real quick, and I can probably ask who is behind you, but you might know. What is an average cost per pole?

FRIESEN: If I recall right when I've had to replace one for some reason or another, they were about \$1,000. But I don't know for sure.

GEIST: OK, thank you. Are there any proponents to LB1208?

JUSTIN BRADY: Senator Geist and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y, I appear before you today as the registered lobbyist for the Nebraska Internet and Television Association in support of LB1208. The cable industry as you know, have heard over the years, employs a large number of individuals in Nebraska and help with the dispensing of broadband. One of their largest costs that they have is they look at expanding broadband is pole cost and the replacement. You all have heard many bills whether that, we've dealt with the 5G, we dealt with other pole, we, you know, attachment issues and replacement issues. This is a concept that I know Charter, I know some other cable companies looked at, that Texas has looked at doing or has proposed. I shouldn't say proposed, has actually moved forward with setting aside \$75 million of their ARPA money to go for pole replacement. So that's that concept that came out of Texas to say, how do we address this? In essence, it fits not only on the broadband, which fits under the ARPA money, it fits with the Governor and others have said on ARPA money of let's make it a one-time cost, not an ongoing program. And so that's, that's the attempt that's being done here. Senator Geist, to your question, I asked the same question. People, what's, you know, what's it cost to replace a pole? Obviously, it varies. I figured it must be about \$10,000 since they said you get \$5,000 or you get half the cost of the pole, and the bill says \$5,000. But I'm guessing that's just an average on that. But with that, I'll try to answer any other questions.

GEIST: Yes, Senator Albrecht.

ALBRECHT: Thank you. So I guess another question I would have if ARPA funds, which is basically the people's money, will be replacing these poles, will the, the person whose poles they're replacing, are they going to let the Internet or broadband provider hook on for zero fee?

JUSTIN BRADY: I guess that would be more-- so since most of the poles are owned either by cities or public power, that would be more of a question for them. But as I understand in this bill, Senator, it says

if you get money for a pole replacement, they cannot then factor in moving forward in the rates that pole. So if I have to go pay for it as a company today and go pay the \$15,000, obviously I as that company put \$15,000 into the calculation and say when I charge you 100 bucks a month for Internet, that's calculated in there. If you're given the money to replace the poles, you cannot calculate that into your rate then. So it's an attempt to try to say no, if we're going to use the public money, you can't turn around and then charge the public in essence or somebody again on the end for it.

ALBRECHT: OK, thanks.

GEIST: Yes, Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairman-- Chairwoman Geist. So is there a reason for it? Is there, is there-- are we at a point where poles, there's not the funds to replace these poles so we can move ahead?

JUSTIN BRADY: Well, I think there's funds from the private sector side and from public utilities' side. But I think what's happening is so public utilities will have their poles. If whether the cable company comes in or a phone company comes in or, you know, a wireless company comes in and says, we want to attach to your pole, they may say it's not sturdy enough, it's not fit enough, so it needs to be replaced. That cost then is, as I understand, it is typically negotiated, but more so borne by the person who's saying we want to attach to your pole. So that's-- so there's funding there, just it's whether or not you use the private and public sector, use that money to fund poles, or you can use the ARPA money and then they can use that additional money to expand broadband.

BOSTELMAN: So is there anything and, and I don't remember reading through the bill, is there anything in here that talks about-- well, it does talk about timeframes, so shot clock is on. If you want this pole replaced and then you're on a public power service, if it's REA, LES, OPPD, whoever it might be has that, how does that work as far as timing to coordinate that? Because I'm kind of curious.

JUSTIN BRADY: Well, I would say, you know, a lot of the timeframes in here, I know were discussed because of the federal deadline of saying, we have to get rid of the money. I mean, the money comes from the feds. We have four years till that money has to be obligated and another additional year for it to actually be spent. So I mean, the timeline was more so to say, how do we make sure this moves along,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

because we don't want money sitting there at the end that gets clawed back and goes back.

BOSTELMAN: Understand, but what's going to be-- perhaps there needs to be amendment to the bill that says that if these poles are gonna be replaced, there has to be some cooperation between whoever it is wants the pole replaced and whoever owns the existing pole.

JUSTIN BRADY: And I would agree, Senator. And I, what I would say is that that has to take place originally before someone would come say, hey, now we want the money out of this program to replace that pole.

BOSTELMAN: OK, thank you.

GEIST: Any additional questions? Yes, Senator Moser.

MOSER: So would this cover only replacing poles that need to be replaced or could it be new poles in new areas?

JUSTIN BRADY: I suppose it could be new poles as well. I mean, how we've discussed a lot of it is as far as the replacement poles, but could be additional poles if it was needed to go out to, like you had talked in the previous bill, you know, if you had to go out 40 acre or 40 miles to somebody's house and help run that line, those obviously would be new poles in that case.

MOSER: How would the PSC prioritize who they give this money to? I mean, would they give it more to public power companies that want poles or would they give it to for-profit companies that want to provide Internet or--

JUSTIN BRADY: Well, they, they have to give it to the pole owner. And typically, most of those poles are owned by the public entity. I would see the priority going that you have-- as all the other bills you have looked at and passed, start with the priority should be given to the unserved area. If there is an unserved area that we're having new poles or additional poles would provide broadband, I would see that as the priority over-- and then next, the underserved and then come back to the served.

MOSER: But that's not written into the bill that--

JUSTIN BRADY: Well, it talks about some unserved, but it doesn't-- I don't think it lays it out, necessarily, that clearly. I mean, obviously PSC could adopt that, but yes, that would be something that could be added.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

MOSEER: So that would be rules and regs they'd have to write.

JUSTIN BRADY: Yes.

MOSEER: OK, thank you.

GEIST: I have a question for you. So the ARPA funding is, it would be a finite pool of money. You couldn't invest that and just live off the residual to--

JUSTIN BRADY: You cannot. It's that, I don't know how many of you, if any of you, have ever seen the movie Brewster's Millions, as I keep referring to this, the ARPA money, it's this individual gets like \$20 million from a rich uncle. He has to spend it all in 30 days, can't have anything left, and then gets more. And so I always picture the ARPA like this, is at the end of this timeframe, we have to have no money left.

GEIST: All right. Yes, Senator Albrecht.

ALBRECHT: Just one last question. So did you happen to help write this?

JUSTIN BRADY: I did not, no. This--

ALBRECHT: So you didn't-- so, so on page 6, on the question I had, it does say "A pole owner providing such assistance may require reimbursement from the broadband provider of its actual and reasonable administrative expenses, which shall not exceed five percent of the eligible pole replacement cost." And again, we're going to underserved areas and where they actually have the lowest-- so I'll read through this a little bit more, but I can't see where we're going to put out \$15 million, and I don't know if that's just a high number. And if we, if we land somewhere in the middle, it would be great. But \$15 million is a lot when we've been talking about poles in this committee for a long time. I just can't imagine that we have \$15 million worth of poles to be put up to, to make everybody happy. And I can't imagine that the poles are so important in a city area as much as on the outskirts of, of the big city. So that's just my kind of thought process and wondering why would we-- we should be there to assist in the broadband deployment. So that's why I have to think this through just a little bit.

JUSTIN BRADY: OK.

ALBRECHT: Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

GEIST: Any additional questions? Yes, Senator Moser.

MOSER: Along the question of Senator Albrecht's, they're \$5,000 a pole, be 3,000 poles. Is there a need for 3,000 poles?

JUSTIN BRADY: I guess from my standpoint--

MOSER: Or are we going to be driving down the interstate, there's going to be a pole farm.

JUSTIN BRADY: Could be a pole every-- yeah.

MOSER: Pole farm with 500 poles in the field.

JUSTIN BRADY: You know, I, I don't know the answer of how-- I did in all honesty ask as I was sitting back here, sent a text, and I didn't get the answer of, one, what is the average cost; and two, how many poles are there? The two questions you guys, you two are answered-- asking, I've asked. I don't have the answer for you just yet, but I will get it for you.

MOSER: OK, thank you.

GEIST: Senator Cavanaugh, did you have a question?

M. CAVANAUGH: Thank you. And it's about 33 poles per county, so 3,000 poles. But this is going to be the most important question of the day, who in your scenario is the dad from Seventh Heaven in Brewster's Millions?

JUSTIN BRADY: I don't have any idea.

M. CAVANAUGH: All right, can you get back to me on that?

JUSTIN BRADY: Yes.

M. CAVANAUGH: Thank you.

GEIST: Any additional questions? Thank you for your testimony.

JUSTIN BRADY: Thank you.

GEIST: Any other proponents? Proponents? Any opponents to LB1208? Good afternoon.

PATRICK HANRAHAN: Good afternoon. Senator Geist, Senator Friesen, members of the committee, my name is Patrick Hanrahan, P-a-t--r-i-c-k

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

H-a-n-r-a-h-a-n, and I'm the general manager for retail services at Nebraska Public Power District. I'm testifying today in opposition to LB1208 on behalf of NPPD and the Nebraska Power Association, which represents all of the 161 public power utilities in the state. NPPD and the NPA recognize that access to broadband service in Nebraska is critical for economic development, healthcare, education and precision agriculture. NPPD and the NPA are fully supportive of expanding broadband deployment in Nebraska, excuse me. Public power utilities have a long history of working with communication providers to accommodate joint-use attachments. We have and always will allow for pole attachments in a fair, reasonable and nondiscriminatory manner while protecting the safety, reliability and affordability of electric service for Nebraskans. As the electric system owners and operators, public power utilities are responsible for the safety, integrity and reliability of our infrastructure systems, which includes all the attachments on our poles. Poles are installed to specific standards to ensure safety and reliability for the delivery of electricity to customers. Public power utilities strive to accommodate all joint-use attachment requests and considers the needs of attaching entities when making pole investment decisions. However, there are physical and practical limitations to the amount of communications equipment that can be accommodated safely on any-- safely on any particular pole. NPP-- NPPD and the NPA are encouraged by the interest in initiatives to extend broadband throughout Nebraska, but there are provisions and language in LB1208 that raise significant concerns to the electric utility pole owners. There are requirements and timelines within this bill that, in many instances, may not be feasible for electric utility pole owners and risk shifting costs from private for-profit communication providers to public power electric ratepayers. The requirements and standards that are imposed on pole owners seeking reimbursement in this bill, either as applicants or through costs that could be passed on to communication providers, are far more onerous and limiting than those imposed on the communication providers themselves. There is also a concern that this bill provides the ability for the Public Service Commission to alter the rules of the program, which could further impact utility pole owners and potentially shift costs-- additional costs to electric ratepayers. We are not opposed to state or federal funds being available to offset the very real cost of replacing poles to accommodate additional communications equipment. Affordability of service is critical, and every penny of a broadband fund should go to supporting the infrastructure, speed and reliability needs of the customers. We are adamantly opposed to the provis-- the additional provisions in the bill that would burden electric providers with difficult timelines and

result in the shifting of costs to electric ratepayers. The pendulum should not swing so far as to require electric consumers to subsidize private for-profit telecommunication companies. Nebraska's public power utilities do work closely with communication providers to best accommodate joint-use attachments while maintaining the safe, reliable electric energy supply system. We respectfully request that you not support legislation that would compromise the safety, reliability and affordability of our electric system in order to offset costs for private for-profit communication companies. Thank you for the opportunity to express our concerns with LB1208. I'd be happy to take any questions.

GEIST: Thank you. Are there any questions? Senator DeBoer.

DeBOER: Thank you, Vice Chair Geist. Thank you for your testimony. So you're not opposed to the idea of we give you some money to replace your poles?

PATRICK HANRAHAN: Correct.

DeBOER: So that, that far we're good.

PATRICK HANRAHAN: Correct.

DeBOER: It's the way in which we're setting it up here that you have some concerns about.

PATRICK HANRAHAN: Absolutely. The, the restrictions within this bill, it really favors private for-profit and it really eliminates any public-private partnerships that occur out there every day that we really are encouraged by.

DeBOER: Can you can you be specific about that, sorry? I'm not as caught up as--

PATRICK HANRAHAN: Sure.

DeBOER: --on this one as I want to be. Like, in what way does it discourage those public-private partnerships?

PATRICK HANRAHAN: In Section 7 [SIC] of the bill, you'll see as a pole owner, if we wanted to apply in the original language, if we wanted to apply as a full owner, if we had a partnership with a, with a fiber company and we were going to extend fiber to a certain part of our system and then allow a private company come in, a communications provider come in and they could extend to end-use customers within

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

that area then. The, in the original bill the, the requirements of a pole owner in that case are so onerous, there would be no way we would be able to accomplish those or even desire to go after that.

DeBOER: Because it will be onerous because-- sorry, connect the dots for me.

PATRICK HANRAHAN: Sure. Oh.

DeBOER: Why, why, why is that onerous?

PATRICK HANRAHAN: There's, there's so many requirements in Section 7 [SIC] in the orig-- in the, in the original language. And then in the amended language, it's completely restricted for pole owners or any communication providers in partnership with pole owners to receive funding. So when I say restrictive in the original language--

DeBOER: So help me out because Sec-- I do have the right bill? It looks like I only have Section 6 is the last section of the bill. So what page are you looking on or--

PATRICK HANRAHAN: I hope I-- page-- let me make sure I have the right one. Section 7 [SIC] was on page 7--

DeBOER: Oh, you mean the number (7), not Section 7. That's under number (7) under Section 4? Is that right?

PATRICK HANRAHAN: You may be correct. Number (7).

DeBOER: OK. Yes, sorry.

PATRICK HANRAHAN: I'm sorry. My apologies.

DeBOER: That's my fault. Not that's my fault. I was, I was just confused. OK, so as a condition of receiving an award of the program reimbursement, an applicant that is a pole, pole owner shall and that (a) (b) (c)--

PATRICK HANRAHAN: The rest of those apply too, correct.

DeBOER: --through (e) are the ones that you're concerned. OK.

PATRICK HANRAHAN: Correct.

DeBOER: Thank you.

PATRICK HANRAHAN: You're welcome.

GEIST: Yes, Senator Bostelman.

BOSTELMAN: Thanks, Vice Chairwoman Geist. To follow up with the question Senator DeBoer had with this, on page 7, starting on line 7, which is 7 through-- and listed several of the things that you object to. It reads to me in here, and are you reading it different, as a condition of receiving an award of the program reimbursement, an applicant that is a pole owner shall. So does that, does that mean to you that the person requesting, in other words, if it's someone who wants to attach to a pole, are they the grant recipient or is a pole owner? If it's the pole owner, say it's a city that owns the pole, they say, we don't agree to these, then you don't get the grant, that doesn't apply?

PATRICK HANRAHAN: The way that we've interpreted this, Senator Bostelman, is if the pole owner is requesting reimbursement.

BOSTELMAN: Right. So if you're the pole owner and if you don't agree with these, then you don't get the grant, then it doesn't affect you.

PATRICK HANRAHAN: Well, I guess, I guess the way we've interpreted it, if they, if a communications provider requests the funds, then they're going to ask us, we're going to work with them to replace the poles, they would receive the funding and then, and then pay us--

BOSTELMAN: OK.

PATRICK HANRAHAN: --whatever we bill them.

BOSTELMAN: So that pole, who would own that pole, if that happens? Would it be that, say, if it's a cable company, the cable company owned that pole or does that revert back to--

PATRICK HANRAHAN: No, the owners would still retain ownership. It would be what we refer to as make-ready work.

BOSTELMAN: OK, thank you.

GEIST: Any additional questions.

DeBOER: Wait, I--

GEIST: Senator Moser, then I'll come back to you, Senator DeBoer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

MOSER: Thank you. So you're going to own the pole, and then can you rent space on that pole subsequently and collect rent to other providers to put equipment on that pole?

PATRICK HANRAHAN: Senator, if there's sufficient space and clearance to accommodate additional attachments, potentially, yes.

MOSER: You're testifying, though, in favor of the bill.

PATRICK HANRAHAN: Opposition to the bill.

MOSER: In opposition, I'm sorry. So you would just as soon it not happen?

PATRICK HANRAHAN: Again, we're not opposed to a fund for pole replacement. What we're opposed to is, is the, the opportunity to shift cost to electric ratepayers based on a lot of the restrictions that are in here. There's a limit on the administrative costs that a pole owner can, can recuperate on here. That, that's one concern. The other would be that the, the authority given to the Public Service Commission to potentially change the rules down the road.

MOSER: How would you fix the bill so that you'd be happy with it?

PATRICK HANRAHAN: Honestly, if you, if you took all the references to any pole owners out, if it were, if it were just a program between a recipient and the program administrator, the PSC, regardless of ownership or anything else. If it were just a program between a recipient and the PSC, that would be fine.

MOSER: OK, thank you.

GEIST: Senator DeBoer.

DeBOER: Yes, sorry. So when you were talking to Senator Bostelman, it sounds like how you're reading this is that you would be required through no fault of your own to suddenly meet these conditions under number (7). Is that right? Is that a concern you have?

PATRICK HANRAHAN: No. Only if, only if we, as the pole owners were submitting for reimbursement under this. So if we wanted to install fiber to get to a rural substation, let's say.

DeBOER: So if you request the grant, then you say the, the, the conditions of that grant are problematic, is that right?

PATRICK HANRAHAN: Correct. The way we've interpreted that section.

DeBOER: So doesn't that make it unworkable? I mean, so your objection is it's unworkable rather than-- I'm just trying to get to the, what the objection is.

PATRICK HANRAHAN: Sure. It seems like a double standard for communications provider versus a pole owner.

DeBOER: OK. So idea of a grant program, great?

PATRICK HANRAHAN: Sure.

DeBOER: If the standard were the same between private entities and the pole owner--

PATRICK HANRAHAN: Better.

DeBOER: Better. OK. All right, thank you.

PATRICK HANRAHAN: You're welcome. Thank you.

GEIST: Are there any additional questions? Seeing none, thank you for your testimony.

PATRICK HANRAHAN: Thank you.

GEIST: Any other opponents? Yeah.

KENT ROBERT: Good afternoon, Senator Geist, members of the Telecommunications and-- Transportation Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here today in opposition of the LB1208 on behalf of AT&T. I really don't have a lot to add other than what they-- we agree with the NPA. We believe that pole replacement, well, it is. It is a legitimate cost for the deployment of broadband already, and you can apply for funds from the PSC through the Broadband Act that we've put money into. And so this means to us that it's kind of a double-dipping type of situation. It, it does favor one type of telecommunications infrastructure over another, and it incentivizes companies to use a less-rel-- reliable and less-protected infrastructure. As, as a matter of record, AT&T does not own poles in Nebraska, but we own millions of poles across the country. And when we see these bills, we usually just don't think it's a very good policy in any way, shape or form. And we really agree that there's a little confusion on who would have to-- I mean, anytime you see "pole owner shall", that makes us nervous, even though it does say if an applicant

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

that is a pole owner. That means it does say we applied, then we'd have to do these things. I think somewhere along the line, it could-- because we wouldn't necessarily be the ones applying for the pole replacement, it would be the service it wants to add on to our pole that's too small. We want to go taller, we'd say you'd have to apply for the pole replacement grant. And then it says "pole owner shall". So while I think it's a little unclear right there, that's where one of our biggest con-- at a minimum, we want sub (7), most of that removed out of the bill.

GEIST: Any questions from the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairwoman Geist. Do you see this as the attaching entity forcing the utility to replace the pole?

KENT ROBERT: It sure could be.

BOSTELMAN: Sorry?

KENT ROBERT: It sure could be, yes.

BOSTELMAN: So as I was reading on page 6, and it looks like this gives my opportunity and it really starts on line 14 down through line 22, it kind of talks to me like there may be an agreement, not so much as a forced replacement.

KENT ROBERT: If we can come to an agreement. I think there's often can be no middle ground and then it ends up somebody is making somebody do something else. It also doesn't really specify who pays for the other half of the cost of the pole replacement. There's the dollar-- does say \$5,000 max or the lesser of 50 percent of the cost of the pole.

BOSTELMAN: Thank you.

GEIST: Any other questions from the committee? Seeing none, thank you for your testimony. Any other opponents? Anyone who wants to testify in the neutral capacity? Seeing none, Senator Friesen, you're welcome to close.

FRIESEN: Thank you, Vice Chair Geist. I guess this program is still voluntary, you have to apply. We're not making you take this money and replace poles. There is an amendment, though, that was attached, and maybe no one else saw that, and that did take away some of those requirements and change that. So I guess I just want to make you aware that there is an amendment that addressed some of the issues, at least that I've heard. Currently, even in the Broadband Bridge Program, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

mean, the power industry basically forces the private telecommunications providers to replace poles. That's been some of the fight on pole attachments, is if the power industry says the pole isn't strong enough then the private industry had to replace the pole. If it wasn't tall enough, they had to replace the pole. And they have to do the whole cost. So I mean, I guess I can-- we can work on language here, but I'm not sure quite what the opposition is here because it is just doing those poles, I think, that could possibly carry broadband cables. And it's still a cramped application you have to apply for. So if you don't want to be a part of it, don't join. And we will work with others to clarify things if we need to. But I do think this is maybe a small thing that we can do to help get broadband out there. And I appreciate the fact that ARPA funds are going to actual infrastructure. I-- we could have worded it even more broadly to just replace deficient poles in the area. I think it's a good place for, for ARPA money to go in infrastructure, what I understand as infrastructure: roads, bridges, electrical system, upgrade that. So with that, I'd be glad to answer any other questions and appreciate your support on this bill down the road.

GEIST: Any questions? Seeing none, that will close the hearing on LB1208. And now, Senator Friesen, you may open on LB1234. I couldn't resist so.

FRIESEN: Thank you, Senator Geist, members of the committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, representing District 34, introducing LB1234. LB1234 would create an expedited process for telecommunications carriers to obtain a permit to place telecommunications facilities across railroad tracks. Current law provides the following. The telecommunications company wishing to cross railroad right-of-way must request permission to place such facilities. This involves filling-- filing an application with the railroad, along with engineering specifications. Once received by the railroad, the two may then enter into a wire-crossing agreement. If the two parties are unable to reach an agreement 60 days after the application is filed, either party may petition the Public Service Commission for a hearing on any disputed terms of the proposed agreement. The PSC must hold a hearing within 60 days of receipt of the petition and render a decision 30 days after the hearing. Within 15 days of the decision, the parties must file a conforming wire-crossing agreement. The PSC has another 15 days to accept or reject the agreement. If the PSC fails to act within this 15-day period, the agreement shall be deemed approved. If the PSC finds the agreement does not conform to the original order, the parties, parties must amend and refile the agreement. The telecommunications company

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

additionally shall pay the railroad the standard one-time crossing fee of \$1,250 per crossing, plus reimburse the railroad for any actual flagging expenses involved in placing that facility. LB1234 makes one change in this process. When the initial completed crossing application is filed with the railroad by the telecommunications company, if the railroad fails to respond within 30 days after receiving the application, the telecommunications company may directly petition the PSC to enter an order for the expedited crossing permit. The PSC is to enter an order within 15 days. The order shall allow the placement of the telecommunications facility in a manner that is not unreasonable or against the public interest, and must account for safety, engineering and access requirements of the railroad. I'm sure there's others behind me who will give more clarity to this, but I'd be glad to answer any questions if you have any.

GEIST: Are there any questions from the committee? Seeing none, are there proponents for LB1234? Good afternoon.

TIP O'NEILL: Vice Chairperson Geist, members of the committee, my name is Tip O'Neill, spelled T-i-p O-'-N-e-i-l-l. I'm president of the Nebraska Telecommunications Association. We're a trade association that represents companies that provide a lot of telecommunications services in Nebraska. We support the introduced version of LB1234. Nebraska, because of its variable weather conditions, has a construction season that generally runs anywhere from seven to 10 months. We know the deployment of broadband in rural areas of the state, if they're, if they're recipients of grants for those projects, will need to be completed within the timeframe established by the state and federal programs. Delays in materials caused by supply chain interruptions and workforce issues exacerbated by COVID are undesirable but understandable. However, projects delayed because of lack of responsiveness to completed applications for crossing rights-of-way of railroads are less understandable and more frustrating. We believe LB1234 will increase the responsiveness of those companies to our applications. We have tight windows for action going forward. For the most part, active railroads in Nebraska have been good partners. However, there have been too many times when project completions have been delayed, and we believe LB1234 will provide us a tool to assist us in completing our work. I'd be happy to answer any of your questions.

GEIST: Would you tell us a little bit about that delay problem?

TIP O'NEILL: Well, I think one of the one of the issues has been a company that no longer regularly runs trains, still has tracks that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

you have to, have to get an easement to cross. And in, in, in a lot of situations, they were just not responding at all to applications by telecommunications companies that needed to cross those tracks to get projects done.

GEIST: And are those state entities? Are they federal entities?

TIP O'NEILL: They're private, privately owned companies? Yeah.

GEIST: OK. Yes, Senator Moser.

MOSER: So are the problems more with the smaller railroads, branch railroads, or are they also problems with the big two or three national railroads?

TIP O'NEILL: You know, I would say that the bigger problems are with, with the short-line railroads that maybe don't have as much staff to take it on. I think both Burlington and Union Pacific have, have improved their, their processes for, for crossings. It still takes a lot of time and it's, and it's expensive. Senator Deb Fischer, when she was here, put in a kind of a cap and, and provided the current process that we have. And I think, I think, you know, the more, the more mechanized the process is, the more you can do it online, that sort of stuff, the better off we all are. It just makes things faster so.

MOSER: Thank you.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairwoman Geist. Mr. O'Neill, do you, out of the organization, do you have an idea like how many times, you know, how many applications there are in the year? Are we talking hundreds? Are we talking thousands?

TIP O'NEILL: I, I, we-- I have never surveyed for that information, so I don't know.

BOSTELMAN: Thank you.

GEIST: Any additional questions? Seeing none, thank you for your testimony.

TIP O'NEILL: Thank you.

GEIST: The next proponent.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

DAN WATERMEIER: Good afternoon, Vice Chair Geist, Transportation and Telecommunications Committee. My name is Commissioner Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, I'm chair of the Public Service Commission and here to testify in support of LB1234. Railroad right-of-ways have become an obstacle to telecommunications carriers who wish to deploy broadband. While railroads are limited in the amount that they are allowed to charge to cross a right-of-way, it appears that the language in the statute today is insufficient to prevent the imposition of additional fees and requirements from being levied in the process. Carriers also are experiencing delays due to the negotiation required for access to the right-of-way. In 2016, we opened a docket, C-4807, looking at ways to accelerate the deployment of broadband and held a workshop on this topic. A lot of the discussion during that workshop centered on the very issue that this bill attempts to address today, where, where crossing railroad rights of ways can be a major stumbling block to getting broadband deployment in a timely fashion. We appreciate the process, the process that the language of this bill envisions, and it will create a better process for granting access to these rights of ways. Our only lone suggestion for modification would be to extend the time the commission is required to enter an order from 15 days to 21 days to ensure that the commission is able to enter an order as required in the bill. Other than that minor issue, we appreciate the bill and think it is a good step towards accelerating the deployment of broadband. Thank you for your time, I would try to answer any questions.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairman Geist. Commissioner Watermeier, can you tell me about how many of these applications--

DAN WATERMEIER: We haven't had one, because it takes too long.

BOSTELMAN: Sorry?

DAN WATERMEIER: We haven't had one.

BOSTELMAN: OK, thank you.

GEIST: Any additional questions? Yes, Senator Moser.

MOSER: But this wouldn't affect the gas company or power company or somebody when they want to cross the railroad right-of-way. This is only telecommunications?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

DAN WATERMEIER: Yes, I think Senator Friesen addressed it just specifically to telecom.

MOSER: Why would that be that we would limit it to telecom?

DAN WATERMEIER: Well, it's a good question, but I assume the process is different for the natural gas world and the electric world as well.

MOSER: Well, the railroads own the right-of-way, and it's theirs to do with what they want. And we're just pesky little flies buzzing around bothering them when they're trying to haul coal or whatever they're trying to do.

DAN WATERMEIER: Yeah.

MOSER: Thank you.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you. Let me rephrase my question. I probably didn't ask it in the right context. Have you had complaints or have you had other activities specifically to telecommunications crossing into on-rail-- railroads? Is that something that you have had come before the PSC? Is that something that you deal with currently?

DAN WATERMEIER: We've had them come but not make the application to where it triggers our process in the-- they've done their negotiations behind the scenes themselves. We think we have the authority, but this actually expedites it. Very clearly after the 30 days, if there's no response, the applicant can come to us then and ask for an expedited pro--

BOSTELMAN: And have you had a few or many? Do you think? Have you, I mean, do you have a better feel for what this-- for, you know, what the issue is out there, potentially could be? Especially since we're going to-- there's can be hundreds of millions of dollars coming into the state for broadband deployment, so this could become a pretty active process.

DAN WATERMEIER: I think it's good timing as far as, yeah, we're going to be looking at a lot more dollars floating in. I can't give you a metric as far as the number of applications that may have been slowed down that we've actually seen in our site, but we have heard of-- we know in conversations with the telecoms, we've heard it quite a bit that it's a longstanding issue. And it has gotten better even, but

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

it's still an issue and we know that it's going to really get busy now.

BOSTELMAN: Thank you.

GEIST: Yes, Senator Albrecht.

ALBRECHT: So thank you, Chair Geist. So when you have a complaint, let's say, that they can't get a hold of somebody, certainly the Public Service Commission has contact information. Because a lot of times maybe the telecom folks are probably, maybe not getting a hold of the right person or is, is it could-- could it be, I should ask you, a situation where they just have sent the information to the wrong place? Or when would they come to you and say, we need your help?

DAN WATERMEIER: Well, I think they could do that, but we just haven't seen it yet to that point. And we know there are some abandoned lines out there yet, though. And to answer your question, Senator, I can't, I can't answer that right now, but I'll get back to you if there is a data file on that file.

ALBRECHT: So I'm just wondering why the bill is written if, if no one can actually tell us that there has actually been cases that people cannot get across or do what they need to do.

DAN WATERMEIER: The way it stands now, we haven't seen the application--

ALBRECHT: You haven't seen any.

DAN WATERMEIER: --that Senator Fish-- Fischer had adjusted here seven or eight, nine, 10 years ago.

ALBRECHT: OK, thank you.

GEIST: Any additional questions? Saying none, thank you.

DAN WATERMEIER: All right. Thank you.

GEIST: Another proponent? How about an opponent? Anyone in opposition to LB1234? Anyone here to testify in the neutral capacity? Good afternoon.

JIM HILD: Good afternoon, Vice Chair Geist and members of the committee. My name is Jim Hild, J-i-m H-i-l-d, I am the director of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

real estate utilities and contracts for the Union Pacific Railroad. I'm here today to respectfully provide testimony on LB1234 in a neutral position. Thank you for the opportunity to speak about LB1234 and expediting authorization for telecommunications infrastructure to cross railroad rights of way. Union Pacific Railroad supports expansion of broadband services to the communities and citizens of the State of Nebraska. In fact, Union Pacific considers telecommunication part-- providers as our partners, since expansion of broadband services benefits not only citizens and communities all across Nebraska, especially in the rural areas. It also benefits efficient and safe rail operations. Union Pacific Railroad's real estate department handles thousands of utility crossing requests every year across our 23-state system. We have online application process that gives applicants a good and efficient system to send information to Union Pacific regarding proposed crossings, and Union Pacific Railroad has significant resources in place to review the applications and issue license agreements and permits in a timely manner. Each and every time an application is submitted, an immediate response is electronically sent back to the entity submitting the application, acknowledging receipt of the application, and providing an overview of the review process. Beyond that, Union Pacific Railroad has a team of civil engineers who are trained to review engineering designs and provide vital feedback on proposed utility installations. This engineering review process confirms that installation of any utility follows the American Railway Engineering and Maintenance-of-Way Association guidelines. Safe installations, safe operations and the ability to expand rail operations on existing right-of-way are critical components for us to consider when utilities are being installed under, over or alongside railroad tracks. Union Pacific also recognizes the importance of telecommunication carriers' construction schedules and their ability to install safely and in a timely manner. If there ever is a concern regarding timely responsiveness, there is currently a remedy provided, provided for in the Statute 86-164 subpart (1). Additionally, our highest concern is that the proposed new language included on page 2, lines 15 through 29, seems to clearly contemplate a scenario under which the commission could issue a permit granting the carrier the authority to place a line, wire or cable across the railroad right-of-way. This scenario could bypass the current engineering review process completed by the railroad and allow or permit an installation of a line, wire or cable anywhere within railroad rights of way and not fully take into consideration safe installation, safe operation and the ability of the railroad to expand operations. Safety is Union Pacific's number one priority. As a company, we continuously look for innovative approaches to enhance the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

safety of our employees, communities and the customers we serve. We invest significant resources in training, research and development and public education, all with the goal of increasing rail safety awareness. If the committee chooses to move forward with LB1234, we would ask the committee to consider a slight change to the language on page 2, line 25. We would suggest adding directly after "railroad right-of-way" the following additional language: within a public roadway crossing. Public roadway crossings may already have utility corridors established that have been reviewed by railroad engineers and determined to not interfere with safe rail operations. Union Pacific Railroad would prefer to be at the table of negotiations with any utility who wishes to use railroad rights of way for utility installations. However, if for some reason a proposed installation goes to the commission, this language could change, could help ease the concern of an installation that does not follow the current railroad review process. Safety can only be advanced by the industries' people developing new processes and technology. Thank you for your time and I'd be happy to answer any questions the committee might have.

GEIST: Thank you for your testimony. Senator Moser has a question.

MOSER: So the railroad probably has its own utilities on its right-of-way?

JIM HILD: We do. Yes.

MOSER: Do some telecommunications companies use your right-of-way to put their lines on too, or just your own uses?

JIM HILD: We do agreements with a number of telecommunications companies where they may cross us perpendicular crossing or longitudinal.

MOSER: Yeah. Because, you know, in some cases, the railroad line might be the most expeditious connection where they want to go and from where you are.

JIM HILD: Correct.

MOSER: What happens when, say they bore a line underneath your mainline and then through time and vibration and all that, that line breaks? Are you responsible for that or does the telecommunication company have to replace the repair of the break?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

JIM HILD: Through our standard agreements there is a maintenance process for them. If there's an issue with that line, they have the opportunity to go out and maintain that line. There's a notification process to us so that we can properly establish any safety procedures flagging, but it would be the responsibility of that-- whoever owns that line to go out and perform the work.

MOSER: Typically, do you use conduit to protect those?

JIM HILD: Yes.

MOSER: So they can repair it more quickly if something goes wrong?

JIM HILD: Yes.

MOSER: If they were doing horizontal boring, could they drag something in there and cause you a lot of grief?

JIM HILD: They could. I mean, that's part of our safety process where we want to go out and, you know, we do the call before you dig, make sure that there's nothing out there before someone is going to be boring under the tracks.

MOSER: If you had somebody who was putting the utility other than telecommunications, let's say a water line or sewer line or something, they could be doing enough physical disruption to the, the foundation of the track that they could cause you problems?

JIM HILD: Correct, and that's part of that engineering review process, depending on what commodity, if it's, if it's natural gas or water, there's a certain criteria in the engineering designs that they have to meet, you know, to go underneath the tracks.

MOSER: Does the railroad have some sovereign immunity to people wanting to cross their lines, or do you have to allow them to?

JIM HILD: We, we don't, I mean, we want to review that, whatever utility wants to install, and we don't want to oppose that because we understand that, you know, our, our corridors are uninterrupted for miles and miles. So I mean, there has to be, there has to be that partnership.

MOSER: Some way to get across it.

JIM HILD: Yes. We just want it done in a safe and efficient manner.

MOSER: Thank you.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairwoman Geist. And thank you, Mr. Hild, for being here. I have a question. On your testimony, you say "within a public roadway crossing". Could you tell me what that means? Does that mean in a city? Does that mean that a county road? Does that mean dirt? I mean, could you further define what that is?

JIM HILD: Yes, it could mean all of the above. County road to state highway, interstate. And we, we pointed that out because those corridors many times are very active with utilities already. And therefore, we may have already reviewed what's there. We may have a better idea what's there, and we probably don't have any sort of railroad structure within that public right-of-way. So we think that those are corridors that have more opportunity than, let's say, in a rural area where there's a perpendicular or longitudinal crossing.

BOSTELMAN: With, as we're seeing in the broadband deployment nationwide and you're going to see it more and more all the time, I think part of this bill is just to try to prepare us to get ready for that. What are you seeing from your end as far as what the UP is doing to prepare for that? You're going to potentially get a lot more requests.

JIM HILD: Yes.

BOSTELMAN: How are you going to address that?

JIM HILD: We're prepared for an uptick in requests for broadband and really for all utility infrastructure to be added. We have a number of different online applications, one that is not known a lot to the public, but we have a nonintrusive survey application where a utility could go out and start doing their survey work in advance of drawing engineering designs and sending those to us. And we have typically a seven to 10-day turnaround on those nonintrusive survey permits.

BOSTELMAN: And what we heard was not a large issue, it didn't seem like, on some of our major lines, perhaps UP, but there are others. And your Public Service Commission comment, is there something else within that? If it's not the-- within a public roadway crossing, do you think the Public Service Commission has ability to levy a fee, a fine per day? Some incentive to-- if it's a smaller line to, to get along and move along the project, because we've got a lot of fiber to get in the ground and get deployed across the state?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

JIM HILD: Yeah, we would, we would-- that communicate-- we would want that communication first. You know, we would want to be at that, at the table to have that communication and do whatever we can to expedite that utility installation. But are you talking about like some sort of a fee that the railroad would pay daily if--

BOSTELMAN: So, yeah. So if there is a timeframe in there, which is in here, and you miss that, so you're at the 16th, 17th, 18th day, \$5,000 a day, \$10,000 a day, whatever it might be, fee that the railroad if it-- again, if UP is doing the job it is, I don't know, maybe you'd have that. But maybe we have some, some other rail lines out there that are a problem that we see consistently. Do you think the PSC has that authority, that ability-- I would say the authority to do that?

JIM HILD: I don't know if they would have the authority. I mean, we would, we would certainly want to avoid that at all costs.

BOSTELMAN: OK, thank you.

GEIST: Any additional questions by the committee? Seeing none, thank you for your testimony.

JIM HILD: Thank you.

GEIST: Anyone else in the neutral capacity? Good afternoon.

JEFF DAVIS: Good afternoon, Vice Chair Geist and members of the committee. Jeff Davis, J-e-f-f D-a-v-i-s, appearing on behalf of BNSF Railway to testify in the neutral on LB1234. BNSF supports rural broadband development. We know it's a necessity. That's why BNSF and all the Class 1 large railroads have put their application process online. You can see ours at railpermitting.com. When someone applies, our system automatically tells the applicant whether their application is complete, provides a tracking number, and the applicant can track the right-of-way permit application online or by calling in. Last year we processed more than 2,000 right-of-way permits nationwide and our average turnaround time from when the application was submitted online until it was actually signed and they sent in a check was approximately 60 days. BNSF is doing what we can to make the process easier and more user-friendly. We know there's an uptick coming, but the process exists for a reason. It's to prevent derailments, it's public safety. In addition to disrupting interstate commerce, you know, the real concern is that for our employees and the entire community, a fully loaded grain train can weigh more than-- as almost as much as 20 million pounds. A fully loaded coal train can weigh

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

almost 40 million pounds. Railroads are the largest, safest hauler of hazardous materials, and it takes more than a mile to stop a fully loaded freight train. We haul chlorine for water treatment plants, fertilizer and ethanol for farmers, crude oil, nuclear payloads, many other hazardous and toxically inhalable substances. We do it better, we do it more safely than anyone else. But these risks involved are why we have a more deliberate process for people to work with. We ask people working in our right-of-way to complete an online safety course. Pursuant to FRA regulations, we ask people to submit three dimensional CAD drawings of everything they're installing and where it will be installed. Good three dimensional CAD drawings are the number one thing an applicant do-- can do to speed up their application. We ask people to buy railway protective insurance, a special policy that normally costs about a thousand dollars and protects the railroad in the event of an accident. These policies protect us, so we don't have to sue anyone to indemnify us if the applicant causes a right-of-way accident. Another FRA safety regulation requires anyone doing work within 25 feet of our tracks to have flaggers as long as they are working inside that right-of-way. These steps are not cheap, but they are necessary. BNSF owns more than 1,400 miles of track in Nebraska. Last year, we had 59 applications for permits to put fiber in our right-of-way. Fifty were completed, three are inactive or withdrawn and six are still in process. Those were all submitted near the end of last year. We are moving our permits. In conclusion, BNSF is committed to being a good neighbor. As the individual who's been appearing in front of this committee and in front of the Public Service Commission for the last 11 years now, I can personally tell you that I'm committed to being a good neighbor and that BNSF is committed to being a good neighbor. I've never gotten one call from the Public Service Commission on this issue. If any of you committee members or any of those listening here today have a problem, even if it's not BNSF's right-of-way, please let us know. We want to help. We want to take care of it. Madam Vice Chairman, that concludes my testimony. Appreciate the time. Happy to answer questions.

GEIST: Thank you for your testimony. Are there any questions from the committee? I don't see any, except I have just a question about the same scenario that the gentleman before you testified about kind of going around the-- bypassing the current engineering review process. Do you see that your process put in place already would keep that from happening by, by this different review by the PSC?

JEFF DAVIS: What the-- our--

GEIST: Do you understand my question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

JEFF DAVIS: I think so, and I may rephrase it a little bit.

GEIST: OK.

JEFF DAVIS: But you know, our engineering process that we employ ensures that, you know, we're getting the three dimensional CAD drawings, so we know who owns everything in our right-of-way. We know the size of conduit, we know where it's located, we know everything. And so we will have someone there on site to inspect when they are doing that installation to make sure that what they are doing matches with everything they have represented to us in the application process. And you know, you know, we're, we're trying to make this as expeditious for people as possible.

GEIST: Do you foresee, though, as moving forward that as more requests come in with this, all this money and deployment of rural broadband, that that average 60 days might get a little bit longer?

JEFF DAVIS: Not really, because we're, we're already experiencing the uptick. So we have already ramped up, and you're just now seeing the benefits of our online application process and everything that, you know, we're doing. We're-- we use, we use outside contractors a lot to supervise the, the installation.

GEIST: That was going to be--

JEFF DAVIS: So we're not, so we're not sending our employees out and, and being short-staffed.

GEIST: OK, that's all I have. Any-- yes, Senator Bostelman.

BOSTELMAN: Thank you, Mr. Davis. Real quick, could you provide-- and I would ask the previous testifier if they would also, do the number of applications that exceed 30 days? I don't know if you know, because in here says this subsection: if the rail carrier does not respond to a completed crossing application within 30 days. So it sounds like you're doing them within a week or so. I don't know if you have anything [INAUDIBLE].

JEFF DAVIS: Actually, actually, our responses are immediate now. So once, once the application, the completed application is submitted, they get an instantaneous email back from the system.

BOSTELMAN: Right but--

JEFF DAVIS: So that, that response is coming instantly.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

BOSTELMAN: Right, but I think it's, it's the response to get the final action within 30 days. So if I apply an application, do you respond-- is the response back to them within 30 days to address their application? So if I, if I ask across this road, an application--

JEFF DAVIS: Right?

BOSTELMAN: So once that's been completed, my, in my mind, once I once I've applied--

JEFF DAVIS: Right?

BOSTELMAN: --30 days later, then what it's saying is you need to have a response. If not, then that's when this kicks in.

JEFF DAVIS: Right. I don't have an exact number on that. I can see if I can't get it for you in the next week.

BOSTELMAN: I would-- right, I would say, if it's Nebraska only.

JEFF DAVIS: Yes. Right.

BOSTELMAN: Anyway, thank you. Because it sounds like you don't. I'm just curious if this is really going to affect you. It's probably going to affect maybe some smaller lines, but not UP or BNSF is what I was-- kind of where I'm going. Thank you.

JEFF DAVIS: Thank you.

GEIST: Any additional questions? Seeing none, thank you for your testimony. Anyone else in the neutral capacity like to testify? Seeing none, Senator Friesen, you may close on LB1234.

FRIESEN: Thank you, Vice Chair Geist, members of the committee. I do think in visiting with Mr. Davis and some other railroads, some of them are doing it right. And so if you're doing it right, I don't think this impacts you at all. Some of the complaints that I had from some of the different companies out there was that they would send in an application and, first of all, they ignored it. And then all of a sudden they'd say, well, it's not complete. You forgot to cross a T or dot an I. So they'd have to send it back. And by the time they were threatening to go to the Public Service Commission, they'd finally say, oh yeah, OK, let's-- we'll approve it. And so it was a delay tactic from some. And I don't think it's from these guys. I don't think it's from BNSF or UP, I think they've got a process in place that immediately notifies you that your application came. Now my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

question would be that if the application wasn't complete, when is the follow-up to that? But I think there's other railroads, and when I was at least asking the different companies, they said it was some delay on all railroads. But again, I think these guys, some of them have put a process in place that's better. And when you talk about, you know, in the end, this application, it specifically says, "The expedited wire-crossing permit shall allow a telecommunications carrier to place a line, wire or cable across a railroad right-of-way in a manner that is not unreasonable or against the public interest, taking into account safety, engineering, and access requirements of the railroad carrier". So I think they still have to follow those guidelines. But the reason I didn't do any other, whether it's natural gas or water, is telecommunications cables do not to me, in my mind, pose a threat to railroad safety, where a natural gas line that breaks underneath railroad tracks or a water line breaks underneath railroad tracks, whole different issue. And so I think there is enough communications cables that have crossed the railroads already that everyone knows how easily and how safely these can be processed. It's not a giant engineering feat to get a plastic tube under the railroad. So with that, I think it was just with, with all the money out there and our shot clock giving companies 18 months to get these projects done. I think this expedites that process a little bit and helps get that underway. With that, I'd answer any questions you may have.

GEIST: Thank you. Are there any questions from the committee? Seeing none, that will close the hearing on LB1234.

FRIESEN: OK, with that, we'll open the hearing on LB916. Welcome, Senator Wayne.

WAYNE: Good afternoon, Chairman Friesen and member of the Telecommunications Committee, Telecommunications and Transportation Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. At this time, I'm just going to play their opening from last year. [LAUGHTER]

FRIESEN: Is it short?

WAYNE: Yes. I'm here today to introduce LB916, which would adopt the Rural Municipal Broadband Access Act. This is a bill that I will continue to bring back every year. And every year you IPP it, it just gives me more momentum to come back the next year. So at the core of this bill, it is just to make sure that we allow broadband to be built in our municipalities in the most efficient and best way. I can go

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

through the history and I will just go through it briefly that Speaker Kermit Brashear initially passed a prohibition on political subdivisions to provide broadband service, which he referred to as Internet-not-developed technology that has fully been proven. That's what he said in the record. And maybe at the time, that was the case. But ironically, it is not that anymore. He talked about the network would be overbuilt if we allow public political subdivisions to do so. And yet, 20 years later, the network is not even close to being built, let alone overbuilt. The arguments that he had back then are the same arguments we hear today regarding protectionism and making sure businesses have a monopoly in these areas. But at the end of the day, 26-- there are 26 states that are pulling back this type of prohibition, and 19 have just completely said, no, we're no longer doing this, what we do here in Nebraska. Some of the states that have loosened their-- or repealed these include Tennessee, Arkansas, Connecticut. Last year, Texas developed a task force, Louisiana developed one, North Carolina Legislature, to figure out how to get broadband access to everywhere in their states. So some of the communities that are doing this have some of the highest speeds in the cities. One of them is-- most of them are found in Tennessee, but the prices are very, very, very, very reasonable. Some of them as little as \$16. So again, I know this committee has heard me say it over and over again, and I'm not going to belabor the point. But at the end of the day, we as a state have got to decide whether this is a utility that is needed for every Nebraskan. And it isn't just needed when it's convenient, but needed throughout Nebraska when it's not convenient, to make sure that there is resiliency no different than we have in our electricity. Senator Bostelman has a bill on that that I'm supporting. The point of it is, is communities are suffering. And for six years, I have heard the same thing from the private sector about we are going to build out. We've allocated money, over a billion dollars in the last 10 years, and things haven't changed. But what has changed is prices have gone up. So now in order to build out these communities, it's going to cost even more. This bill is simple. It allows communities to go through a process in which if they deem that they are not being properly served, they can vote on it and provide it themselves. It's not complicated. I'm not going to belabor the point because I have a pretty good idea where this committee is, but I will continue to work it every year.

FRIESEN: Thank you, Senator Wayne. And Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you, Senator Wayne. I see that the fiscal note doesn't have any of the ARPA funds going towards this. And I assume because it's just authorization language. But did you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

consider bringing a bill that would appropriate ARPA funds to municipalities to do this?

WAYNE: That is a great question. No, I have not. And in fact, to this year, I will fight any ARPA dollars going to broadband, as we are going to get over \$555 million over the next two or three years dedicated to broadband from our infrastructure bill that was just passed through Congress. We will have plenty of money. The question is deployment, and a lot of us always talk about local control, except for when it comes to this issue. Why is local control OK for education? Why is local control OK for our electricity? Why is local control OK for our sewers? Those are all utilities that are much-needed in our communities. And I would venture to say broadband is too.

M. CAVANAUGH: And then the broadband bill that we passed last year, the \$20 million and that I think it was \$17 million of it was used, maybe. So there's some money left and we had a hearing earlier today for Senator Dorn that creates an Agriculture Infrastructure Grant Act. So I just wanted to, to share that with you as an opportunity that for you perhaps to further collaborate with another senator.

WAYNE: I will do that. I will-- he, he sits right next to me. We'll have that conversation tomorrow.

M. CAVANAUGH: Thank you.

FRIESEN: Thank you, Senator. Any other questions from the committee? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. So with this, Senator Wayne, do they pick a specific Internet provider or does the city itself then become the Internet provider?

WAYNE: They could do either or. The question that would-- what I would submit to you is that in the-- underneath LB916, they would have to hold a public hearing. And during that public hearing, it is intent they would get feedback on how they would provide that. And the key to this is it's not just a simple majority vote, it's a two-thirds vote. So, so it has to have a good plan on how-- what they're going to do. But I'm leaving that open to the local to decide that.

BOSTELMAN: So how would you address, I would say, multiple interests that may already be in that city. There may all be providers in that city that provide broadband. They come in and say, no, you can't do that because, you know, that's our responsibility. That's, that's what

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

we need to be doing or that's what we're going to be the doing. The city is now taking that business away from us.

WAYNE: Well, underneath LB916, if they were providing the services that meet the requirement, I would highly doubt the local officials would designate themselves as, as needing broadband. They're only going to designate themselves as needing broadband if they're not getting their needs met. There's no, there's no financial-- or there's no incentive for a city to become one and to carry that liability and construction liability unless it's not being done.

BOSTELMAN: There be an RFP or something they request for it?

WAYNE: Yeah, and I'm more than happy to, to flesh that out. I mean, we try to flesh out the, the process of having public hearings and going through a process to designate themselves as not having qualified broadband and then going through a process of starting that process. But I'm more than happy to spell out and be prescriptive as we need to.

BOSTELMAN: Do you see this fitting more into the infrastructure bill or-- and with funds coming out where the cities and counties are actually getting funding for broadband [INAUDIBLE]?

WAYNE: Yes. Yes, I think this could be a tool to enhance that.

BOSTELMAN: OK, thank you. Go ahead.

FRIESEN: Thank you, Senator Bostelman.

WAYNE: I'm just, with the amount of money that's coming in, granted, in two years there won't be a full buildout, and you obviously came in with me. But Senator DeBoer and Senator Cavanaugh on their, on their last term, this should be a different lookout on this committee. There should be a full blitz of broadband being done. And if not, then local should be able to step up. The local community should be able to step up and figure out how to do it.

BOSTELMAN: Part, part of my concern would be is that, say, Lincoln or Omaha or Grand Island or Hastings or Kearney does this and that and takes funding then away from Ulysses, Dwight, Brainard, the small towns because it's more bet-- the return on investment for that telecom, for the broadband provider is greater by providing the larger cities than this, than our small towns.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

WAYNE: My goal is for smaller cities. And if it's not spelled out, which I thought it was, I was looking at cities of primary class and first class and villages. But if not, we can, we can add those limitations.

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Senator Moser.

MOSER: Currently, cities can partner with an Internet provider to come up with some kind of a cooperative program, and the city can subsidize it if they want to reduce the cost of it, right?

WAYNE: They could.

MOSER: But in your bill, the city themselves could be the Internet provider.

WAYNE: Correct. I believe broadband is a utility.

MOSER: And but this would not be applicable to cities of the metropolitan class?

WAYNE: I-- that wasn't my intent. I don't remember looking through here earlier today, I don't remember limiting it to any-- to not having a metropolitan class. But to move this bill out of committee, I will amend it however it needs to. Now I wish I would have did my whole opening because I'm getting favorable questions right now. Really-- I'm really confused, really confused right now. [LAUGHTER] I'm not sure what's going on here.

MOSER: Don't get real excited.

WAYNE: OK, good. [LAUGHTER]

MOSER: We're just trying to be fair. Then we squash it.

WAYNE: I know, you'll exec tonight.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? So how do you, I mean, right now, the city could put out an RFP, partner with private industry and get their town built, couldn't they?

WAYNE: Correct. But the difference is any company coming in is doing it for a for-profit basis, right? And so what I always heard from you on public power is we don't want for-profit power companies. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

because this is a utility, I don't know if for-profit Internet providers is the best for rural Nebraska.

FRIESEN: Should we get into privatizing the electric industry?

WAYNE: You know what, I am--

FRIESEN: [INAUDIBLE]. Don't want to go there.

WAYNE: Well, no, no. We, we, we've-- I've been converted partially on public power. I do have an issue. Yes, generation, I'm OK with privatizing.

FRIESEN: I mean, so part of the challenge, too, is how do we get it outside the city limits? And so if we, you know, if I for one would let a city overbuild itself with power, with broadband, now I've taken the good customers away from a private industry who is expected to go out into those rural areas where you have one customer per three miles. And we're supposed to get broadband out there and be able to fund it. How do-- part of the process I envisioned is when you build out, you do whole exchanges, and we would force them to also do the rural areas along with getting the, the good business customers. And cities are more working inside their city limits, they don't want to go outside. And I don't blame them, it's not their jurisdiction, so to speak.

WAYNE: So we have taken the approach, we're starting with municipalities because that's what public power did. Then as they started seeing down the line generation was needed for the farmer down the line, they branched into opening up public power to others. Quite honestly, I didn't include counties because I'm still trying to get this to Urban Affairs. So I'm open to counties.

FRIESEN: All right, thank you. Senator DeBoer.

DeBOER: Thank you, Senator Wayne, for bringing this bill. So the history of the rollout for your sort of comp-- comparing to electricity. Is the, the rollout of telephone services, is that analogous in any way?

WAYNE: It is. There was problems with getting-- any basic utility like telephone, there was always a problem in rural Nebraska of getting to the farmer down the end of the line, right? The last mile. That's still the same problem in broadband.

DeBOER: But the, the telephone companies were for profit.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

WAYNE: But they were required to. As long as they accepted some federal dollars, they were required to provide last-mile services.

DeBOER: So--

WAYNE: Because we deemed that-- when I say we, federal, everywhere deemed that that important.

DeBOER: So, so was there a way to go about this that might do that, that they have to provide to an exchange or something like that? Might that be a way to do it instead?

WAYNE: We've tried the private sector forever. At some point we got to shake it up, and we've put in so many requirements as part of this bill as a feasibility study, and all of these things that have to happen to ensure that we're just not going out and creating companies from rural Nebraska that, that Ord doesn't create their own Internet or for-- just because they want to do it. So I think it's a little different in the sense of we've already provided them with over a billion dollars and Senator Bostelman still doesn't have Internet.

DeBOER: It's true, he doesn't. So this is more like, you think this is more like what the point where the phone companies didn't get it done? I mean--

WAYNE: Yes.

DeBOER: --we, maybe we could set up a regulatory structure in which, and I'll probably get some death stares here for this. But maybe we could set up a regulatory structure where, you know, if you're going to do this, you have to go this last mile.

WAYNE: That's possible. I would explore that. I just think this is the-- from Nebraska's history, this has been the cleanest way of how we've shown utilities are important and there should be a public purpose, is by starting municipality and growing now. And so I'm just copying that playbook. I'm not-- I'm open to anything else, but this is just what we've done in Nebraska. When we deem a utility to be that important, we make them public.

DeBOER: What about the areas in your district that aren't fully served?

WAYNE: That's an interesting area of conversation because part of the grant application in the reference, and there was an objection saying that we were already served. I don't know how I feel about that,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

because I only have one service provider. I can-- I can't get, for the speed, I can't-- I don't have anywhere else. Now if I go six blocks, I could have two service providers, so I'm already locked into a monopoly, I feel anyway. So but there's huge underservice, and during the pandemic we literally had kids going to McDonald's and Burger King where they can get free Internet just to do their homework and go to school. And I live in Omaha.

DeBOER: Yeah, thank you.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee?

WAYNE: See that flickering? It's time for me to go.

FRIESEN: I will always, I will always just have one provider. I won't have a choice ever. But again, I understand where you're trying to go. And you know, fortunately, this is the last year that I might be here to IPP your bill.

WAYNE: You know, underneath my bill, I could probably get you two or three. Just give me a chance.

FRIESEN: Thank you, Senator Wayne.

WAYNE: I will waive closing at this point.

FRIESEN: OK.

WAYNE: I will waive closing.

FRIESEN: Proponents for LB916.

DANNY DeLONG: Chairman Friesen and members of the Transportation and Telecommunications Committee, it's good to be back here. I think I was here a week ago and, and appreciated your attention at that time. My name is Danny DeLong, D-a-n-n-y D-e-L-o-n-g, and I am an AARP Nebraska volunteer. AARP Nebraska, I think most of you know, but we will say it again, is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and to advocate for issues that matter most to Nebraska families, and especially those Nebraskans who are age 50-plus. On behalf of our approximately 185,000 members, AARP Nebraska supports LB916, which would modify Nebraska law with respect to the provision of municipal broadband under certain conditions. We're testifying here today because the availability, affordability and reliability of broadband Internet access services are essential to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

the health and quality of life of older persons. Unfortunately, the debate over municipal broadband has tended to evoke positions on the extremes. Those positions, which adamantly oppose public participation in running local broadband systems and those positions which perceived municipal broadband as a panacea for all deficiencies in broadband coverage or competition. We are not a proponent of either of those extremes. AARP Nebraska understands that competent management and local buy-in are both important criteria for a successful municipal broadband venture. In reality, neither public nor private providers have a 100 percent successful track record. Therefore, AARP believes that the public interest is not served by a blanket prohibition on municipal broadband. AARP Nebraska believes that LB916's limited rollback of Nebraska's blanket prohibition of municipal broadband will create new opportunities for broadband systems that are particularly responsive to local interests and needs. AARP fully supports the bill's requirement that there be careful vetting of a municipality's plan to establish a broadband system and the bill's requirement for clear evidence of support from the local community. The recently passed federal Infrastructure Investment and Jobs Act, IIJA, will infuse a large quantity of grant money into states' broadband programs. The-- I think we're slated for, I think, close to \$100 million. The IIJA permits participation by both private providers and nontraditional providers, such as nonprofits and municipalities. This opens up a new opportunity for municipalities and other governmental units to obtain funding, thereby reducing the burden on local taxpayers. In order to permit municipalities to apply on a timely basis for grants that Nebraska will be administering with this new federal funding, the process for vetting proposals and gaining public approval must not be more complex or timely than is required to achieve its legitimate objectives. Thank you to Senator Wayne for introducing LB916. AARP Nebraska encourages members of the Transportation and Telecommunications Committee to support the bill and advance it to General File. Thank you.

FRIESEN: Thank you, Mr. DeLong. Any questions from the committee? Seeing none, thank you for your testimony.

DANNY DeLONG: Thank you.

LASH CHAFFIN: Good afternoon, Senator Friesen, members of the Transportation and Telecommunications Committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, I represent the League of Nebraska Municipalities. I come before you today to testify in support of LB916. And probably in keeping with Senator Wayne's wishes, you could probably cut and paste my testimony from last year, maybe put an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

exclamation point behind it. But, but I know last year at one point I heard Senator Wayne refer to the concept as an out-of-the-box solution, but it's not that, it's not that cosmic of an idea. What we see is a lot of city public works and management staff often come, in Nebraska, come from surrounding states. And one of the first questions they often ask is there's parts of town that can't get the Internet, how do I set up my-- particularly if they're from Kansas or Colorado or Wyoming. They say, how do I get my municipal Internet set up? Well, it ain't gonna happen, and they're often surprised. And because in states like that, there, there-- they do provide municipal Internet service. I would not say it's widespread. It pops up in places where literally people can't get service and, and in South Dakota in particular, some of the city-owned systems where some of the first places that actually offered Internet at all. Of course, it was the old, you know, the kind that made the noise when you tried to get on, on the web. But literally they were, they were on the cutting edge of providing Internet services. And these, these were in fact municipalities. And so this is not uncommon, you know, across the country. It's, it's not widespread, but it is, it does happen. And, and there are synergies that, that take place. What do cities do? Well, they do a lot of stuff. But one of the things they do every day is they dig holes, they dig holes everywhere. They've got the wastewater guys digging holes. They got the water guys digging holes. They've got the electric guys digging holes. You know, in places, you know, places on the gas system, they're digging holes, you know? And so one of the major parts of this service is putting stuff in the ground. And that's, that's one of the things that cities do well. And, you know, if they can do it in South Dakota or Colorado, they can hire staff with the technical expertise to handle the stuff that, that works above the ground. But as a practical matter, there's synergies. Often when a city owns a gas system, and if it's a big enough city that has departments, it's the water department that runs the gas system. You think, oh, it's the electric department because that's their energy. No, it's the water department, because it's, it's core-- what the gas system is is something under the ground. And similarly with, with broadband services, what it is is this is something in a hole and we try to protect the hole. We try to make it work right. We try, we try to make sure it's a, it's a hole that provides services to the customers. So this is this idea is not that far out of the ordinary. And in, in respect to Senator Moser's question, it's not that simple just to call someone up and do it, do an arrangement. There are-- if you're, if you're in a situation like a Columbus where there's a lot of high desirability customers, that may be fairly easy. If you're in Ulysses or Lindsay, that might not be there. There are

legal barriers that you run into your-- and, and you're going to, you're going to start hitting pretty quickly. And it's just, just not that simple. And I think last week or the week before, the discussion of LB1101 with the, with the rural electric in south-central Nebraska, South Central Public Power District in the-- in Glenwood and the phone company in the Glenwood. I think that points out that it's just not that simple, because the same company at the same time is also trying to do similar projects in Superior, Nelson, and I think either Blue Hill or Red Cloud, somewhere else in that corridor down there. And, you know, and they're trying to do it right. So they're trying to dot all the Is and cross all the Ts. And it's just not that simple of a process to get done every day, even when they're working in concert with the city. So but again, this is, this is an idea that's had legs in other states, and I would encourage you to move Senator Wayne's bill forward. So I'd certainly answer any questions.

FRIESEN: Thank you, Mr. Chaffin. Any questions from the committee? Would the, would the cities, in order to facilitate broadband expansion, be willing to give up their franchise fees and occupation taxes to make it easier?

LASH CHAFFIN: The, well, that would be not-- no. And if I have a long answer for that-- I have a short answer and a long answer. The, the, the short answer is, is those fees are part of doing the business, and something along those lines would be included in a municipal service because those same expenses would be incurred by the city. It would just be through a, through an internal department and they would have to be costed out in some, some capacity. That's a, that's an outstanding question, I think. And, and--

FRIESEN: So what makes you think you can do it cheaper than a private industry?

LASH CHAFFIN: I'm not necessarily sure we could do it cheaper than a private industry.

FRIESEN: So have any cities tried to enter into an agreement with the private industry to get it out there? I mean, are there some have done that, I believe?

LASH CHAFFIN: They have. I think I'd have to see the agreements, but I do know there's a lot of cities asking to get it done. And I think that's, that needs to-- any barriers we can remove to that also, yeah, that needs to happen [INAUDIBLE].

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

FRIESEN: Seen a pretty long list of cities that are going to get high-speed broadband pretty quickl.,

LASH CHAFFIN: The ALLO buildouts and the, some of the other buildouts have been pretty aggressive in the last year.

FRIESEN: They're doing it without subsidy.

LASH CHAFFIN: Yes, they are. They are. They deserve a lot of credit for that too.

FRIESEN: Thank you, Mr. Chaffin. Seeing no other questions, thank you for your testimony.

LASH CHAFFIN: Thanks.

FRIESEN: Other proponents.

CHRIS DIBBERN: Good afternoon, Senator Friesen and members of the committee. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm the general counsel to the Nebraska Municipal Power Pool and also a registered lobbyist. I have a handout today to tell you who we are, where we are. And I flagged on page 9 our telecommunications position, which is consistent with this bill, LB916. We are very supportive of LB916. It has several protections that, that are focused on small towns. I know you asked a good question about north Omaha. It's not in the bill today. It says first class, second class and villages. So those are the kinds of communities that we work for. It supports broadband in rural, unserved and underserved areas. There's a definition of that. It references a vote of the people. That's a very difficult standard, and we've seen that in natural gas efforts. It has a sunset clause, so it's telling communities do this in the next decade. It has what Mr., Mr. O'Neill mentioned about you're supposed to build to 100 up and 100 down. And so it has the standard that you've put into, into the Broadband Bridge. And Senator Friesen and members of this committee, all of you have supported broadband in rural areas. You've talked about the need for high-speed Internet. I've heard you talk about it in your own communities, on your-- in your own farms. You're the experts on speeds and maps and what's needed in the state. And we're not that expert on it. But the broadband, broadband grants that you have just approved of over the last year have really told you there were needs out there and unserved areas, and I'm saying there still are more. So this bill is a tool, and I'm so glad Senator Wayne introduced it so that you have another tool to look at. And with that, I would answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

FRIESEN: Thank you, Ms. Dibbern. Any questions from the committee? Seeing none, thank you for your testimony. Any other proponents of LB916? Seeing none, anyone wish to testify in opposition?

TIP O'NEILL: Senator Friesen, members of the committee, my name is Tip O'Neill, that's spelled T-i-p O-'-N-e-i-l-l. I'm president of the Nebraska Telecommunications Association. We're a trade association that represents companies that provide telecommunications services to Nebraskans. We oppose the introduced version of LB916. I've also passed out a document entitled Government-Owned Networks Fail to Meet Expectations. That's just for your information. We have historically opposed public entry into what we believe is an appropriately competitive marketplace. Broadband, we believe, is nothing like a public utility. First, while almost 100 percent of citizens purchase water and electricity, the take rate for broadband services is significantly lower. Broadband infrastructure is expensive to build, complex to operate and in need of constant maintenance and expensive upgrades. And it can be delivered over multiple platforms: cable, DSL, fiber, fixed wireless, mobile and satellite. Second, there is no evidence that municipalities would have desire to serve areas where the most unserved citizens of Nebraska reside, that's outside the village or city limits. Public competition within those municipalities will make the private company business case for serving rural citizens even more difficult, even with subsidies for building broadband to them, we believe public-private partnerships where local governments can work with industry to improve service in cities and villages is the appropriate role for those municipalities. The private sector can be a willing partner and has skills in technological innovation and detecting and remediating cybersecurity risks, skills the municipalities don't necessarily possess. We do not need to burden municipalities with additional responsibilities when they struggle to maintain their core public infrastructure. Sewer and water systems, street maintenance and repair and other municipal priorities should be the focus of our cities and villages. Entry into a competitive marketplace should not be their priority. I'd be happy to answer any questions.

FRIESEN: Thank you, Mr. O'Neill. Any questions from the committee? Senator DeBoer.

DeBOER: So you said the take rate is much lower for broadband, but that's probably changing, right? The take rate when we have online school for kids, suddenly that starts to make it higher.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 15, 2022

TIP O'NEILL: It, it might increase the subscription, but it doesn't necessarily increase the percentage of households who purchase high-speed broadband. It's higher, it's higher than it was five years ago, certainly. But it's still not anywhere, I would guess the average in Nebraska is somewhere between 40 to 50 percent, but I need to, to verify that number.

DeBOER: If it went up, if it was 90 percent, something like that, would that be a time to start looking at something like this?

TIP O'NEILL: It could be. I'm still not sure that that's-- if there is, if there is sufficient service at affordable prices, I'm not sure I understand why the city would want to get in the business.

DeBOER: OK.

FRIESEN: Thank you, Senator DeBoer. Any questions from the committee? Seeing none, thank you for your testimony.

TIP O'NEILL: Thank you.

FRIESEN: Any other opposition to LB916? Seeing none, anyone who wish to testify in a neutral capacity? Seeing none. I think Senator Wayne waived closing. We have two online comments in support, four online comments in neutral. With that, we'll close the hearing on LB916. And we will be going into Exec Session, so we'd ask everyone to leave the room.