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Transportation and Telecommunications Committee
February 01, 2010

[LB723 LB735 LB787 LB811]

The Committee on Transportation and Telecommunications met at 1:30 p.m., Monday, February 1, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB723, LB811, LB735, and LB787. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Galen Hadley; Scott Lautenbaugh; and LeRoy Louden. Senators absent: Charlie Janssen. []

SENATOR FISHER: (Recorder malfunction)...and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer, I am Chair of the committee and I'm the Senator from the 43rd District here in Nebraska. I'd like to introduce to you the committee members that are present currently. On my far right is Senator Tim Gay, he is from Papillion, Nebraska. Next we have the Vice Chair of the committee, Senator Arnie Stuthman, he is from Platte Center. On my immediate right is our committee counsel, Mr. Dustin Vaughan. On my immediate left is our committee clerk, Miss Laurie Vollertsen. Next we have Senator Scott Lautenbaugh from Omaha; Senator Galen Hadley from Kearney and Senator LeRoy Louden, who is from Ellsworth. You will see senators coming and going; we have bills to introduce in other committees, so please don't take offense if we are getting up and having to leave during a hearing. Our pages this year for the committee are Lisa Cook from Omaha and Tony Pastrana who is from Fort Collins, Colorado. And they will distribute any materials that you may have for the committee when you come forward to testify. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. I would ask that you fill out the yellow sign-in sheets that are on the on-deck table so it's ready to hand in when you testify. We use a computerized transcription program and so it's very important that you do follow those directions on the sign-in sheet and you will need to hand that sheet to our committee clerk before you sit down to testify, please. For the record, at the beginning of your testimony, I ask that you please spell your name for the record and that you keep your testimony concise and try not to repeat what someone else may have already covered in their testimony. I don't plan to use the light system today, but I do reserve the right to cut someone off if they are going a little long on their testimony. So please try and keep your testimony limited to three to five minutes tops. If you do not want to testify, but you do want to voice your support or your opposition to the bill, you can indicate so at the on-deck table; there is a sheet that's provided there and that will become part of the official record of the hearing. If you want to be listed on the committee statement however, you must complete the yellow sign-in sheet, come forward, even if you just state your name and your position on the bill. And that's so you can be listed on the committee statement that is public record for all senators to have. If you don't choose to testify, you can still submit any written comments and those will be read into the official record. At this time I would ask that you please turn off your cell phones. I don't allow

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cell phones on in this committee and that means no texting either. So please turn those off. I'd like to announce we've been joined by Senator Kathy Campbell of Lincoln. And at this time I will open the hearing on LB723 and, Mr. Vaughan, would you give the opening. Welcome. [LB723]

DUSTY VAUGHAN: Thanks, Senator Fischer and members of the committee. For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB723 strikes the requirement from...that the Telecommunications Relay System surcharge be remitted on a monthly basis. The relay system is a program administered by the Public Service Commission that provides service to deaf and hard of hearing individuals that...so they may engage in communications with a hearing person. The program is funded through a monthly surcharge that's paid by all wire line and wireless subscribers in the state. The surcharge is currently at 3 cents so it is a very small surcharge. Current law requires that all telecommunications carriers to remit the surcharge on a monthly basis to the commission. Some of the smaller carriers with only a handful of customers currently are remitting what amounts to a few dollars a month to the commission which, obviously, doesn't make for an efficient process. So LB723 strikes the monthly remittance requirement. This change will allow the commission the flexibility to determine the timing of the surcharges collection based on the individual carrier situation. And that concludes my testimony. [LB723]

SENATOR FISCHER: Thank you, Mr. Vaughan. Questions? Thank you very much. Would the first proponent please step forward. Good afternoon, Commissioner. [LB723]

JERRY VAP: (Exhibit 2) Good afternoon, Senator. Chairperson Fischer, members of the Transportation and Telecommunications Committee, I am Jerry Vap, J-e-r-r-y V-a-p. I'm the chairman of the Nebraska Public Service Commission, representing the Fifth District. I'm here today in support of LB723. The Telecommunications Relay System, or TRS for short, allows individuals who are deaf, hard of hearing, or speech impaired to place and receive telephone calls. The commission administers the relay system and the TRS Fund. Every carrier providing telephone service collects a TRS surcharge from each subscriber and remits it to the commission. Currently, the TRS statutes require that all carriers remit the surcharge to the commission on a monthly basis. However, some carriers collect only a small amount on a monthly basis, making the cost of remitting the surcharge to the carrier and the commission higher than the amount being remitted. Several carriers remit less than \$3 a month; some as little as 3 cents a month. LB723 would simply remove the requirement that the carriers remit monthly from the statute and give the commission the ability to establish more flexible and cost-effective remittance rules that allow for quarterly and annual remittance. LB723 gives the commission the ability to be more efficient, cost-effective and responsive to the needs of the carriers we regulate. Thank you for your attention this afternoon and I urge your support of LB723. If you have any questions, I'd be happy to answer them. [LB723]

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SENATOR FISCHER: (Exhibit 1) Thank you, Commissioner Vap. On the handout you provided us with carrier name and the surcharge revenues, that yearly revenue that's collected? [LB723]

JERRY VAP: This is monthly. [LB723]

SENATOR FISCHER: Monthly. [LB723]

JERRY VAP: Yes. Example, Comtech 21, LLC has... [LB723]

SENATOR FISCHER: Three cents. [LB723]

JERRY VAP: ...one customer in the state and they remit 3 cents a month. I would suggest that's not cost-effective for them, even on a yearly basis, hardly, to remit 36 cents at the end of the year. [LB723]

SENATOR FISCHER: Thank you. Other questions? Senator Louden. [LB723]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Yes, Mr. Vap, I see where you've taken out that they would pay monthly or something. Now if we take that completely out of there, would that be problematic that they will come up and they don't know how often they're supposed to pay or...do you think you can do that with your regulations? [LB723]

JERRY VAP: We can write the rule that says that carriers that have a certain, say, level of customers, for example, if they have 10,000 customers or less, we could change that to a quarterly or a yearly or even semiannual and write the rule that would reflect that or somewhere in between there on that number of customers. But it's costing the commission a lot of money to process every month a 3 cent remittance. [LB723]

SENATOR LOUDEN: Well, yeah, I understand that when you get down, like some of them, what, 34 cents or something like that, that's...yeah, I have no problem with that. I'm just concerned is will we run into another problem here. Should you have it in statute that under certain number of lines would pay, or something like that, should that be in statute so...you going to be able to control that with your regulations? [LB723]

JERRY VAP: We can control that. I don't think you would want to put figures like that in a statute. It would just, at some point in time, we'd be back asking for it to be changed again...as technology changes and things happen. But I...it can easily be handled through the rules that we put out for this program. [LB723]

SENATOR LOUDEN: Okay. You're not advocating any authority with this bill? [LB723]

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JERRY VAP: No. No. We would...actually we would gain some by being allowed to create a different system than what we already have. [LB723]

SENATOR LOUDEN: Yeah, well I just don't see that in the statutes where you're allowed to do anything; I just...it's now you're now going to collect the bills once a month and that's what I was kind of concerned about. Thank you. [LB723]

JERRY VAP: Thank you. [LB723]

SENATOR FISCHER: Thank you, Senator Louden. Senator Stuthman. [LB723]

SENATOR STUTHMAN: Thank you, Senator Fischer. Commissioner Vap, can you tell me how many total dollars are in this fund at the present time? [LB723]

JERRY VAP: I cannot. There's a lot less than there was back in November because the Legislature took some of it out of that fund. I really...I could get that figure for you, but I don't have it off the top of my head. [LB723]

SENATOR STUTHMAN: Yeah, that was a concern of mine, you know, you know, does this fund continually build without, you know, out the use of the money or, you know, I support this legislation. [LB723]

JERRY VAP: We did have a surplus. I will have to tell you that as a result of losing some of that surplus, we are seriously considering raising that surcharge here within the next month or two. We'll have to hold a hearing on what we'll set that surcharge at. Currently it's 3 cents a month; it has been as high as 5 cents in the past and depending on what the expenditures appear to be and...because they vary from month to month, because we buy a lot of equipment for the hard-of-hearing people, telephone systems and CapTel phones that the fund pays for the people that need them. And that varies from month to month. But we're...projections right now is we may have to go up to 4 cents a month possibly at the beginning of July. [LB723]

SENATOR STUTHMAN: So, Commissioner Vap, because the state because of its financial problems has raided, excuse the word, taken some of the money out of that fund, it's going...could come down to that the consumer, the producer, the individuals may have to make up for that in additional tax, correct? [LB723]

JERRY VAP: Well, it's a surcharge, it's not a tax, so. [LB723]

SENATOR STUTHMAN: Yes, the surcharge, yes. So. [LB723]

JERRY VAP: That's a very good possibility at least for this particular program. [LB723]

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SENATOR STUTHMAN: Okay. Thank you. [LB723]

JERRY VAP: Uh-huh. [LB723]

SENATOR FISCHER: Other questions? I see none. Thank you, Commissioner. [LB723]

JERRY VAP: Thank you. [LB723]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Are there any opponents to the bill? Anyone wishing to testify in a neutral capacity? I see none. I will waive closing and we will close the hearing on LB723. I will open the hearing on LB811. Mr. Vaughn, will you give us the opening please. [LB723]

DUSTY VAUGHAN: Absolutely, Senator Fischer. And members of the committee, once again, for the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. The committee actually introduced this bill. It was introduced on behalf of the Public Service Commission. The bill changes the appeal process for our commission decision. Prior to 2000, statutory law required appeals from the PSC...from a PSC order to be filed with the Nebraska Court of Appeals. Over the course of several bills between 2000 and 2003, the procedure was changed to follow the Administrative Procedure Act which requires judicial review to be initially conducted in the district court of the county where the action took place. This change in law has proved time consuming and costly for the commission and participants of the process. LB811 will streamline the process by bypassing the district court and giving original jurisdiction back to the Court of Appeals. The bill also states an appeal from a commission order shall trigger an automatic stay of enforcement from that order. And with that I will conclude my lengthy testimony, Senator. [LB811]

SENATOR FISCHER: Thank you, Mr. Vaughan. Questions? Thank you very much. First proponent for the bill? Welcome, Commissioner. [LB811]

JERRY VAP: (Exhibit 3) Thank you. Good afternoon, Chair Fischer and members of the Transportation and Telecommunications Committee. I am Commissioner Jerry Vap, Chair of the Public Service Commission representing the Fifth District. And I am here today to testify in support of LB811. The commission has a broad spectrum of regulatory authority including telecommunications, transportation, grain warehouses and grain dealers, natural gas, manufactured housing and recreational vehicles. Additionally, the commission administers the Enhanced Wireless 911 Service Fund and the Nebraska Universal Service Fund. LB811 directs appeals from the decisions of the commission to be filed with the Court of Appeals rather than pursuant to the Administrative Procedure Act which requires appeals to be filed in district court. Prior to LB187 in 2003, appeals from the orders of the commission were appealed to the Court of Appeals. The change was sought in an attempt to avoid the automatic stay of orders

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entered in communications orders during a time when several disputes arose between two Omaha telecommunications carriers. However, it has resulted in a significant time delays for all parties that come before the commission and an increased cost for those parties. As a constitutional agency, the commission often acts in a judicial capacity in which cases are contested with both sides of the issues presented by sophisticated parties represented by legal counsel. The issues presented to the commission are industry specific and technical in nature. The additional appellate review by the district court results in an increased and unnecessary burden on the courts, additional costs to the parties, and significant delay. The vast majority of the appeals from the commission orders are filed in the Lancaster County District Court. The records from these appeals are typically large and the subject matter is highly technical. Returning to the original method of appeals would lessen the burden on the court and reduce the costs for the parties involved. In certain areas of the commission's regulatory authority, the review by the district court appears unnecessary and the delay caused results in significant hardships for claimants. For example, with respect to claims filed against grain proceeds and grain warehouse bonds resulting from the commission's decision to close a warehouse, the Grain Warehouse Act specifically allows either the commission to conduct the hearing and determine claims or to commence a suit in district court for the benefit of claimants. See Nebraska Revised Statute Section 88-547. It would appear that the Grain Act places the commission and the district court on equal footing with respect to the claims process. If that is the case, it seems redundant to require review of the commission's order determining claims by the district court. Additionally, with respect to the most recent grain warehouse claims hearing and subsequent appeal, claimants have had to wait almost a year and a half for payment and all payments have not been made as one appeal still remains. If the appeal would have been filed with the Court of Appeals rather than district court, it would have eliminated seven months from the process. The problem is compounded by the fact that an appeal by one claimant can prevent payment to all other claimants pending the resolution of the appeal. In addition, the additional delay resulting in natural gas rate cases is also problematic. Interim rates are implemented during the pendency of a rate case and are subject to refund based on final rates. Typically no refunds are made until the final rates are determined after resolution of any appeal. The longer period of time that passes between the date that interim rates are instituted and final rates are determined makes it more difficult to ensure that the appropriate people are receiving any refunds or adjustments. The commission is looking for ways to increase efficiencies and decrease costs for all parties that come before the commission. Returning to the previous appeal process can accomplish that goal. LB811 was drafted to return the relevant statutes to the form they were in prior to the enactment of LB187. The commission understands that there are improvements that can be made to the former process for appeal of our orders. It is my understanding that representatives of some of the regulated industries will follow me with suggestions for amendments to the bill. The commission has had the opportunity to review some of the proposed amendments. We would agree that these suggestions should be strongly considered for adoption. I ask for your support for

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LB811. The commission welcomes the opportunity to work with you and other interested parties on any amendments necessary to improve the bill. I am available for any questions. [LB811]

SENATOR FISCHER: Thank you, Commissioner. Your testimony that you handed out is only two pages? So I missed the entire middle part of your testimony. If you could get the committee a full copy of it, that would be helpful when we have our discussions. [LB811]

JERRY VAP: We will see that that happens. [LB811]

SENATOR FISCHER: Any questions? Must be a very easily understood bill. I'm glad we introduced it. Thank you, Commissioner. [LB811]

JERRY VAP: Thank you. [LB811]

SENATOR FISCHER: Are there other proponents? Good afternoon. [LB811]

JACK SHULTZ: (Exhibit 4) Good afternoon. Chairman Fischer, members of the committee, my name is Jack Shultz, last name spelled S-h-u-l-t-z. I'm appearing in support of LB811. And I have some recommendations for amendment to the bill. I serve as general counsel to the Nebraska Telecommunications Association. I also have practiced before the commission for in excess of 30 years involving transportation matters, natural gas matters, and have a great familiarity with the commission and the appeal process. This bill would, in essence, return the appeal process to what it once was. And it's particularly critical as was pointed out in the introduction, as well as the last supporter, particularly when rates are involved, time is critical. And it is very important that decisions get reached in a timely manner. My experience before the commission tells me that very few cases get resolved at the district court level. If there is an appeal from the commission decision, it generally finds its way to the Supreme Court sooner or later. So, skipping that interim process of the district court will expedite the decision process and I think that's good for all parties. The amendments that are addressed in the handout that I gave you, basically, are what I would, more or less, consider practitioners' recommendations for lack of a better description--filling in and clarifying what this...how this appeal process would work. Specifically, it would be my recommendation that the commission orders not be automatically stayed, but go into effect initially and then could be stayed under the amendment proposed here either by the Court of Appeals or by asking the commission for a stay of that order, so. I think that's a better process; similar to what the process is now. Also, occasionally the commission gets motions for reconsideration asking them to reconsider their decision. Currently, those must be filed within ten days after its order and the appeal process says the appeal must be filed within 30 days. That presents a real crunch period, about 20 days, basically, for a motion to be filed, heard, and ruled on. So that's a problem

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that's been an issue for some period of time. We also identified the standard of review to de novo on the record which is what it is now on appeals to the district court. And finally, there was a reference in setting the docket fee for appeal, the reference to 33-103 is done only for purposes of setting the amount of the docket fee so that anyone wishing to appeal can go to that statute and find out what the appeal cost is. And those are my comments. If there are questions, I'd be more than happy to respond. [LB811]

SENATOR FISCHER: Thank you, Mr. Shultz. Are there questions? Thank you. I appreciate you bringing forward your suggested changes to the bill. [LB811]

JACK SHULTZ: Thank you very much. [LB811]

SENATOR FISCHER: Next proponent please. Are there any other proponents for the bill? Are there any opponents to the bill? Good afternoon. [LB811]

JOHN LINDSAY: Thank you, Madam Chairwoman, members of the committee. For the record my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Natural Gas Association. One of the comments made by Mr. Shultz was that this would return the process to what it was prior to early 2001, 2002, somewhere in that area. What's critical to the natural gas industry is that we didn't have cases at the Public Service Commission then, because since then, the Nebraska Natural Gas Act, which provided for state regulation of natural gas, was adopted. So the system under which we have worked and under which we're still kind of ironing out or still looking at how that Natural Gas Act works never operated under the old system. It's always been under this appeal process. Given that, and I understand some of the comments that are made that we need to get it done quickly. I would suggest that it's more important to get it done right than to get it done quickly when we're talking about appeals. When you talk about a rate case that can go to what the issues are, whether the ratepayer is paying a reasonable amount, on the other side, whether that...that industry which...whose prices are set by the commission have enough to...do what they need to do to operate as a business. So it's important that the rates get set correctly. And having oversight from, as in our current appeal process, we want to be careful about when we make that kind of a change. Two primary concerns that we have: one is the standard of review. Mr. Shultz touched on this a little bit. Under current law it is a de novo review and what that means, a de novo review means that the court will look at the evidence, they take all the evidence that was presented to the commission, look at that and come to their own conclusion. So you truly have a second set of eyes looking at the evidence and coming to that conclusion. The...under the bill, and I believe the amendment may touch on this, but under the bill, that would change to what's known as an arbitrary and capricious standard under which the court would not look at the evidence other than to ask, did the commission act in an arbitrary and capricious manner? Much more deferential to the commission than would be the de novo. So it's a significant change when we talk about changing that standard of review. And that is a concern to the natural gas industry. The

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second issue, and I think we have to understand that telecom statutes are very different from natural gas statutes. I believe, more often the case in the telecom area, that those cases that would be appealed would be cases between, maybe, two different carriers, two different telecom companies. About the only cases you have that would be appealed in a natural gas side are rate cases where the company is seeking to have its rates established. So there's a little difference how they affect the two different industries. Included in the Natural Gas Act is the existence of a public advocate who also has the ability to file...to prosecute an appeal. And actually, Mr. Shultz's firm represents the public advocates office and in his...and in that capacity they would have the ability to determine whether to appeal or not a particular case. So it's not totally in the natural gas company's purview as to whether an appeal gets prosecuted at all. That public advocate does not exist on the telecom side, so you don't have that issue out there. In that...and the point being, that there are two different industries, primarily, there are others, actually, a whole host of them that the Public Service Commission does regulate, but those are two...probably the two largest. And they...but they're different. I think that needs to be taken into consideration as the bill moves forward. The second major issue is concerned with time lines; and again, I think Mr. Shultz touched on this. But to reiterate, one of our concerns on the time lines that now exists is that you have ten days under commission rules to file a request for reconsideration. You have 30 days under statute within which to file an appeal. So if you have a reconsideration that is a meritorious request for reconsideration; there may be something that wants to get done, the commission may end up losing jurisdiction because the appeal has to be filed within 30 days. Once an appeal is filed, the commission loses jurisdiction to act and that moves then over to the courts. That is something that the industry would like to see. Take a look at those so that there's a more manageable time line for those appeals. And finally, the...all of that within what is required in the Natural Gas Act, that it take place within the 270-day limit overall for natural gas filings. With that...we are opposed to the bill in its current form. But with that having been stated, we too would like to consider...to continue working with the committee and with interested parties to see if we can...if the concerns can be addressed that we have. [LB811]

SENATOR FISCHER: Thank you, Mr. Lindsay. Are there questions? You mentioned, Senator, that the Public Service Commission could lose jurisdiction and that was one of your concerns with the time line as it's presented in the proposed bill. Has that ever happened in the past? [LB811]

JOHN LINDSAY: Oh, I would guess yes. And it's not...when I talk about losing jurisdiction, it's just a part of the appellate process. Any lower court would lose jurisdiction on an appeal, it's just...I cannot point to a specific case, but I believe it has happened. [LB811]

SENATOR FISCHER: Make something up. If it's happened in the past, what are the problems associated with that? [LB811]

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JOHN LINDSAY: Well, the problem is the time lines...about whether the commission could actually act...take place...take that reconsideration action within that...what is left of that 20-day period. If there is...commission sets rates at \$1 instead of...we think they should be at \$1.10 because they forgot some items. And commission looks at it and says, you know what, we did forget a couple of items, should be about \$1.05. So we file our reconsideration during that first ten days, as required by commission rules. Commission goes through its process; they only have 20 days to go through that process. At some point, to protect ourselves, we have to file that appeal to make sure that we get review. Once we file that review...that appeal, then no longer can the commission act on that reconsideration because it has now moved to a different forum. And it's just a time line issue. [LB811]

SENATOR FISCHER: How often does the Public Service Commission deal with proposed rate changes from the gas companies? Is this a frequent process you go through? [LB811]

JOHN LINDSAY: It's a big problem when we do, but it happens... [LB811]

SENATOR FISCHER: So in other words, it's not frequent because you don't want a big problem with it, right? [LB811]

JOHN LINDSAY: It's actually...I think there's some question about how...what that frequency is, whether it should be more of an annual thing where you have smaller increases or whether it should be a every two, three, four years, but that would result in larger increases, stable rates for a longer time, that's part of the balancing act. There are two, I believe, two rate cases going right now, I believe SourceGas and Black Hills both have rate cases pending at this time. I don't believe Northwest Public Energy has one pending at this time. And as...under the Natural Gas Act, there's different ways to do it. There's...you can have some negotiated rate cases that then go to the commission, but I believe there are two now. It's...there have not, under the act, there have not been...I think the act was adopted in 2003, maybe, roughly. And there have probably been ten or less rate cases, I would guess. When they do happen, they're big events, I mean, there are a lot to them. Commission has to put in a lot of work; both sides put in a lot of dollars. So they are significant cases when they do occur. [LB811]

SENATOR FISCHER: When you said there was a 270-day limit for gas filings, can you explain that to me? [LB811]

JOHN LINDSAY: That's from the time that the rate case is filed to when the rate case should be completed. That it's to stop those cases from dragging on indefinitely; that there's a time frame or a window within which those take place. [LB811]

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SENATOR FISCHER: Can there be extensions made for those? Do you know if that's happened? [LB811]

JOHN LINDSAY: I don't know. I don't know off the top of my head. I could find that...find that out and get that to you. [LB811]

SENATOR FISCHER: Other questions? I see none. Thank you very much. Are there other opponents to the bill? Any other opponents? Anyone wishing to testify in the neutral capacity? I see none. I will close...waive closing and close the hearing on LB811 and open the hearing on LB735 and, Senator Gay, would you like to open please. Good afternoon. [LB811]

SENATOR GAY: Good afternoon, Senator Fischer, members of the committee. I'm here to introduce LB735, it's known as the Kelsey Smith Act. And I brought this bill because of important it is to get information to law enforcement. And you're going to hear, in a minute, a case where...tragic case, but you learn something and maybe some good can come of it. But part of the reason, too, I wanted to introduce this is cell phones become more and more common for kids carrying cell phones. My own personal experience with a daughter who now can't leave without one. And more and more these kids, you know, they're attached to them. But anyway, the good of this, it's also a safety tool. In many times you get on the side of the road or things can happen. With technology a cell phone can be a very good thing. So what LB735 does...and Miss Smith's mother is here to testify, but this attempts to remedy a situation involving...and you're going to hear about it, a young woman in a tragic case. But this bill makes sure that a cell phone company or the wireless carrier can give law enforcement information about where a person is located, based on where that cell phone is located. So with technology, we can now pinpoint things, of course, and this will help enhance that ability. The information would only be given to law enforcement when there was a situation that involved the risk or threat of death or serious physical harm. The bill makes sure that in those emergency situations, the phone company can immediately turn the information over without having to go through legal or compliance checks. And you will hear why that is so important. Again that's going to enhance, what I think, will enhance public safety. In order to ensure the immediate call location information, the phone company is held harmless if they provide the information in good faith under this act. I do want to clarify though, on page 3, Section 5, it refers to contact information of the wireless carrier company. This is not their customers, this is the company; and if you have questions, I think there's a representative also from one of the telephone carriers who will, maybe, spell this out. So a few people I know, as we've talked and discussed this bill, have kind of misread that. But I want to be very clear, this isn't where you can go out and get everybody's information. This is information from the company. But anyway, I'll keep it quick. That's...it's a simple bill, I think, simple as bills can be. I know there's always what seems simple and maybe isn't, but after you hear some of the testimony, if there's anything else we can clarify, I'll be back to clarify that. So in the interest of time

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I'll turn it over. Thank you, Senator Fischer. [LB735]

SENATOR FISCHER: Thank you, Senator Gay. Questions? Senator Louden. [LB735]

SENATOR LOUDEN: Yes, well, thank you, Senator Fischer. Well, Senator Gay, I think I understand this correctly, this is something that needs to be done, but I'm wondering in some of these areas that cell phone don't pick up off of that tower to pinpoint that. And that's because they haven't spent the money to do it. And part of it was, from what Commissioner Vap said awhile ago, there's plenty of money there because the state raided the funds. Why...are we getting the cart before the horse or do we need to beat the horse a little bit more or what...where are we at on that? I mean... [LB735]

SENATOR GAY: Exactly where we're at on that, Senator Louden, I'm not sure. I know what you're saying that in parts of the state we don't have full coverage, I don't think, where you can pinpoint exactly the location. In many parts of the state, I think we do. And I'm not...technically, I don't know exactly where those spots are, but I'm sure there's some zones where we can't do that. However, I think most of the state, as we go into the future, I forget the exact name for what you're saying, I think will be covered. That's the goal of the State Patrol and others, but I don't know the exact information. Maybe somebody behind me will know that, or I can get information on that. But you're talking in the more remote areas where it could be... [LB735]

SENATOR LOUDEN: Well, it isn't remote where we live. [LB735]

SENATOR GAY: Oh, okay. [LB735]

SENATOR LOUDEN: We have tower service, but if you have a problem, I'm sure out there they can't...all they know is which tower that that came off of. And that was the size of it. But there is evidently money available to do that and it isn't being spent. Now whether the wire carriers won't do it, or whether the Public Service Commission won't release the funds, I don't know where the problem is, but if there's money there and it isn't happening, I would like to know it. And that's the reason if we pass this legislation, will that make that go faster or will we run into problems that we...until we direct those communication carriers to do that? Is this legislation that's a little bit too soon? [LB735]

SENATOR GAY: No I don't think it's too soon. I think that would, probably, enhance that situation to happen. I think this could be one more beneficial use of that situation. I know in many parts of the state, they can do this. And I think they call it triangulation or...I don't know what it is, but where they can locate. Now even if we knew somewhere, a more general sense would be helpful. I don't know if it has to pinpoint down, and maybe someone behind me knows those questions. But I know where you're going. I think this would enhance that because it would be one more reason why we should go ahead and complete that project, I think, what you're talking about. Again, I'm not that familiar with

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that part of it. But maybe somebody behind me will know. [LB735]

SENATOR LOUDEN: Well, that's what the questions I'll have to ask, is if this is the legislation ahead of our technology, I guess. [LB735]

SENATOR GAY: Yeah, very good. And that you asked now maybe someone will have an answer to that. [LB735]

SENATOR LOUDEN: Okay, thank you. [LB735]

SENATOR GAY: Thank you, Senator. [LB735]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? Thank you, Senator Gay. [LB735]

SENATOR GAY: Thank you, Senator Fischer. [LB735]

SENATOR FISHER: First proponent to the bill, please. Good afternoon and welcome. [LB735]

MISSEY SMITH: Good afternoon and thank you for having me here. [LB735]

SENATOR FISCHER: Thank you for being here. [LB735]

MISSEY SMITH: (Exhibit 6) I want to thank you for letting me speak today and for considering such an important piece of legislation. My name is Missey Smith, I am the mother of Kelsey. She is the young lady that was taken from a Target store in Overland Park, Kansas, on June 2, 2007. Kelsey's body was recovered four days later on June 6, 2007. What does a parent go through when a child is missing? You don't eat because you don't know if your child is eating. You don't sleep because you wonder if they are sleeping. It is pure hell. What took so long to find Kelsey? One word, Verizon. I would like to say that as my husband and I have traveled around the country, we have found it is not only a Verizon issue. It is a cell phone company issue. I was on my way home from a wedding in Des Moines, Iowa, when our daughter, Lindsey, called me. She let me know that Kelsey was not answering her phone or text messages. I knew immediately that something was wrong. My husband, Kelsey's siblings, John, her boyfriend, continued to try and reach her, as did I, for the last hour of my trip home. Sometime that night, after arriving home, John explained that his uncle used to work for Sprint and had explained that our cell phone company could ping Kelsey's phone so we could locate her. It seemed simple enough. Little did we know. I called our provider. I explained that my daughter was missing and I needed help to locate her. They told me they were unable to do that. They explained that I could get on-line, check her cell phone activity. We had contacted the police. I believe...we had contacted the police and

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I believe had located her car. I know sometime that night my husband also contacted them and was told the same thing. In July of 2007 we had a meeting with Verizon officials regarding what had occurred in Kelsey's case. During that meeting, one of the lawyers basically said to us, we used the incorrect terminology when requesting their help. We had used the word "ping." Apparently they didn't understand that. I told them to go back, check their protocol, and figure out where they had failed Kelsey and us as a family. I said that I would follow up regarding this. After several months of not hearing anything, I called Nancy Bates, an administrative assistant. I explained why I was calling. She had the unfortunate job of calling me back to say the lawyers found their protocol to be adequate. If their actions were adequate, I would hate to see what inadequate is. I can tell you this, if Verizon had acted in a more responsive manner, we probably would not be here today asking for this legislation. In no way do we hold them responsible for Kelsey's death. I fully understand that no company can be perfect. I understand that employees are human and that mistakes will be made. This is just part of being human. I do think that this legislation will reduce those errors. Denny Strigl, and I apologize if that's not how you say his name, the President and Chief Executive Officer of Verizon, in October, 2006, included a letter in the Verizon Wireless Code of Conduct which would have been the protocol in place at the time of Kelsey's murder. I have included in my written testimony a copy of this letter. In it Mr. Strigl speaks of integrity going beyond laws and policies to also include the spirit of doing the right thing. Unfortunately, Verizon did not and does not act in the spirit of doing the right thing. In September of 2007, just a few months after we met with Verizon officials, Tanya Rider of Washington State had been missing for eight days. She was found alive, fortunately, at the bottom of a ravine in her wrecked vehicle. Verizon, her carrier according to her husband on Larry King, was not helpful in locating her. Sheriff Rahr of the King County Sheriff's office stated: "There has to be a more timely way to get cell phone records in a missing person's case." She believed that Mrs. Rider could have been found three and a half days sooner. Recently again, in Overland Park, another 18-year-old young lady, Keighley Alyea, was missing. Her body was discovered six days later. Some of the same police officers in Kelsey's case again contacted Verizon to try and get cell phone locate information. Verizon representatives stated they did not understand what the police were looking for...were asking for, excuse me. The same officers, the same police department as in Kelsey's case, they knew what to ask for. In both cases for Kelsey and Keighley, text messaging locate information was vital in locating both of their bodies. Our youth are growing up with a cell phone as a norm. They text each other instead of talking. This was evident recently with our daughter, Dakota's, 4,671 text messages in one month. According to the 2009 CTA Wireless Association's figures, 135.2 billion text messages are sent monthly in the United States. There were nearly 277 million wireless customers. Over 20 percent of U.S. households are wireless only. All of them are potential victims that could be helped from this legislation. As my husband and I have traveled around the country, again I state, we have met with different law enforcement agencies and found Verizon is not the only one. Law enforcement has run into situations with almost every company, especially some of the

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smaller, less-known ones. The Kelsey Smith Act in Kansas was signed by then Governor Sebelius on April 17, 2009. We have been informed that this law has been used since then. What this piece of legislation does is to allow law enforcement to determine what an emergency situation is, not a customer service representative on the other end of a phone. We train our police; they are the best ones to make this decision. I truly believe that this legislation will save a life. It will save money. How much money was spent those three extra days looking for Kelsey? How many man-hours? How many young people and volunteers were invested in bringing her home? All the while our cell phone carrier had the ability to let us know where she was. After they finally did the right thing, Kelsey was located in 45 minutes. According to C.S. Lewis, "Experience: the most brutal of teachers. But you learn, my God, do you learn." In 2007, there were 4,176 young people, ages 17-24 murdered in the United States. How many of those victims had a cell phone? I personally knew of one of them. And I'll be happy to take any questions. [LB735]

SENATOR FISCHER: Thank you, Mrs. Smith. And I offer you our deepest condolences as a committee and thank you for being here today. [LB735]

MISSEY SMITH: (Exhibit 7) Thank you. And I've also included written testimony from my husband for you. He was unable to be here today because he is having surgery. [LB735]

SENATOR FISCHER: Thank you. Are there questions? Senator Hadley. [LB735]

SENATOR HADLEY: Yes, Senator Fischer. Miss Smith, thank you. I heard your story down in Overland Park, I believe... [LB735]

MISSEY SMITH: Yes, sir. [LB735]

SENATOR HADLEY: ...at the Midwest legislative meetings and I appreciate your being here. Why do you think that the cell phone companies seem to be so hesitant to help? Have they given you a reason? [LB735]

MISSEY SMITH: Our cell phone company did not. I will tell you that AT&T in Kansas and Sprint both voted...testified in favor of this legislation. And, basically, what this legislation does is it takes the federal law that says they "may" provide cell phone locate information to they "shall." [LB735]

SENATOR HADLEY: How is this your, for want of a better word, campaign going across the country? Are other states looking into this same kind of law? [LB735]

MISSEY SMITH: Yes, we have one in California. We've one in Missouri. We've been contacted by someone in South Dakota and also Representative Tiahrt from Kansas

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has dropped the bill before the U.S. House of Representatives. [LB735]

SENATOR HADLEY: Thank you. [LB735]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB735]

SENATOR STUTHMAN: Thank you, Senator Fischer. Missey, thank you for your testimony. The thing that really struck me was at the end of your testimony, in the sentence, you know, "all the while Verizon had the ability to let us know." [LB735]

MISSEY SMITH: Yes, sir. [LB735]

SENATOR STUTHMAN: That really bothers me, you know, when there is the technology when in 45 minutes, you know, they could have let you know where she was at. [LB735]

MISSEY SMITH: Yes, sir. [LB735]

SENATOR STUTHMAN: And would not allow that to be disclosed, you know, until something really drastic happens during that time frame. For what reason, do you feel, these companies don't release that information? Do they have a sound reason why they wouldn't tell you? [LB735]

MISSEY SMITH: When we met with Verizon, all they said to me was they didn't do the right thing. When I asked them why, they did not answer that. To be honest, I think they were afraid we were going to sue. And we explained to them that it either took lawsuits or legislation to get large companies to act. And my husband and I are not about suing. [LB735]

SENATOR STUTHMAN: Thank you. And that's the real issue that I have is, you know, when somebody with technology can give you that information and then they withhold it, in a drastic situation like you had. [LB735]

MISSEY SMITH: Yes, sir. [LB735]

SENATOR STUTHMAN: That really bothers me, so. But thank you for your testimony. [LB735]

MISSEY SMITH: And I will let you know, also, that they were also subpoenaed to release the records and did not comply with the subpoena. That's why I think it's imperative that they're no longer given the option. They bickered with the DA on the wording of the subpoena because it included the word "ping." [LB735]

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SENATOR STUTHMAN: Okay. Thank you. [LB735]

MISSEY SMITH: Thank you. [LB735]

SENATOR FISCHER: Other questions? Senator Louden. [LB735]

SENATOR LOUDEN: Yes, thank you, Senator Fisher. And thank you for being here with your testimony. And that's what I read in your husband's testimony there that you actually had to get a subpoena in order to get this information? [LB735]

MISSEY SMITH: The DA's office, yes, got a subpoena... [LB735]

SENATOR LOUDEN: Yeah, and that was... [LB735]

MISSEY SMITH: ...but at the same time they still did not comply with that subpoena, because it included the word "ping." They bickered with the DA's office; law enforcement; the FBI; the DEA; there were all kinds of people involved trying to locate our daughter, 18 different agencies involved. And finally the DA sat everybody in one room and an FBI agent got on the phone and walked Verizon through what it was they were asking for to get the information. [LB735]

SENATOR LOUDEN: And that was Verizon was the carrier? [LB735]

MISSEY SMITH: Yes, sir. [LB735]

SENATOR LOUDEN: Okay, there wasn't any local carrier that was subscribing through Verizon for your phone...for your cell phone business there? [LB735]

MISSEY SMITH: Not according to my bill. [LB735]

SENATOR LOUDEN: Okay. That's what I mean, it comes directly from Verizon. [LB735]

MISSEY SMITH: Yes, sir. Which is a big company. They should have been able to... [LB735]

SENATOR LOUDEN: Well, I know they just took over in this part of the country from Nebraska Cellular and everybody else. Okay, thank you for your testimony. [LB735]

MISSEY SMITH: Thank you. [LB735]

SENATOR FISCHER: Other questions? Mrs. Smith, in the bill that was passed in Kansas, were the phone companies released or given immunity from any liability concerns? I would imagine that... [LB735]

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MISSEY SMITH: They were. [LB735]

SENATOR FISCHER: ...could play into this. Not that it's an excuse for them, but I would think that that was weighing on their minds in releasing that private information. [LB735]

MISSEY SMITH: Yes, ma'am. The bill there did state that there is a "hold harmless" clause for them if they turn over the information in good faith to law enforcement only. And my husband and I were very adamant about it being law enforcement only. [LB735]

SENATOR FISCHER: Do you think that that was helpful in getting support from the phone companies that did step forward in Kansas to support your bill then? [LB735]

MISSEY SMITH: I do. [LB735]

SENATOR FISCHER: And would it be necessary, do you think, in any legislation, in any other state? [LB735]

MISSEY SMITH: I do. [LB735]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you so much again for being here. [LB735]

MISSEY SMITH: Thank you. [LB735]

SENATOR FISCHER: Other proponents for the bill, please. Good afternoon, Colonel. [LB735]

BRYAN TUMA: (Exhibit 8) Good afternoon, Senator Fischer, members of the Transportation and Telecommunications Committee. I'm Colonel Bryan, B-r-y-a-n Tuma T-u-m-a, Superintendent for the Nebraska State Patrol. And I'm here to testify today in support of LB735. The purpose of LB735 is to require a wireless carrier to provide call location information of a wireless communication device to law enforcement in an emergency situation that involve calls for service or an event where there's a risk or threat of death or serious physical harm without liability to the wireless carrier. The bill establishes the Nebraska State Patrol as a conduit between law enforcement and the wireless carrier. Call location information is invaluable to law enforcement in situations where time is of the essence. In situations where rapid emergency response is needed for missing persons who are vulnerable or victims of abductions, just to mention a few, the passage of time is one of the greatest enemies to law enforcement. As time passes, the potential for a successful resolution diminishes. The Nebraska State Patrol would like to express our appreciation to wireless providers for their level of support in the past when dealing with these types of situations. Generally, the providers have had a desire

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to assist law enforcement, but at times express concerns of liability and privacy regarding the release of requested information. Some providers have voluntarily cooperated in an effort to assist, but responses can be hampered by internal reviews to determine if the release should be made. We understand their caution and respect their justification for such reviews. We believe that this bill would help address those issues. It has the potential to enhance working relationships between law enforcement and providers who...providers and should be beneficial to both. There is one item we would like to see clarified. The definition of "law enforcement agency" in Section 2 of the bill is quite broad and includes prosecutor offices. For the purposes of this act, we believe that a more narrow definition is proper that would merely include police departments, sheriff offices, and the Nebraska State Patrol which are agencies that are involved in these types of situations. Our agency believes that there will not be any undue burden placed upon our operations to carry out the provisions of this bill. If this bill passes, we intend to deploy the resources of our Nebraska Information Analysis Center or the NIAC to house and disseminate contact information for wireless carriers as required in Sections 5 and 6. I would like to thank you for the opportunity to appear here today and share a law enforcement perspective with you. And I'd be happy to address any questions. [LB735]

SENATOR FISCHER: Thank you, Colonel Tuma. Are there questions? Senator Louden. [LB735]

SENATOR LOUDEN: Yes, as I notice here, this is...as you say, it says "law enforcement agencies", the way I understand the bill, it's written that just law enforcement would be entitled to get this information. What about your health or your Flight for Life people, out in our area, why it is important if...a lot of times helicopters come in someplace, pick somebody up and if they're out there somewhere on a road, they can, perhaps, find out where that cell phone is coming from, be more accurate than what we have. Should they be included in this, besides law enforcement? [LB735]

BRYAN TUMA: Well, yeah, I think what the intent of the bill is, and I base this on our past experiences, in the past we had the administrative subpoena power where we could go directly to a carrier with an administrative subpoena and request that information. We no longer have that ability. We have to go through a county attorney in conjunction with a criminal investigation. So, I understand the concerns of the service providers about giving out information and how it's done. Our proposal in clarifying that definition of law enforcement is to allow the carriers an opportunity to provide us that information quickly in exigent circumstances with the knowledge that goes to a law enforcement agency who can share that information within our network. Once we have the information, we can coordinate it with...if it's a prosecutor's office or a first responder of some type. We can alert the other public service agencies in the area to help us expand the search or locate that individual. We see it as a way to better protect the information that would be asked the service providers to give us. [LB735]

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SENATOR LOUDEN: Well, right, and I'm talking about first responders in car wrecks, or something out there, if they had some way to pinpoint that, rather than just tell them on the phone that you're over here by some lake about 15 miles north of some town. And I'm wondering if they should be included in this besides...rather this...law enforcement or if this should be some emergency responders also capable to get that information. [LB735]

BRYAN TUMA: Well, I guess I'd suggest that they're probably plugged into our communications network, somehow, so we can get the information for them rather quickly if we had to and share it with them using our communications network. [LB735]

SENATOR LOUDEN: Same one you used when them guys left Mullen and went clear... [LB735]

BRYAN TUMA: Well, I mean, that's an example of the telephone company was pinging that phone...we're talking about the three suspects from Indiana, the escapees, and it was difficult to communicate in that area, I will agree with that. But that's an example, yes. [LB735]

SENATOR LOUDEN: Okay, thank you. [LB735]

BRYAN TUMA: Yes. [LB735]

SENATOR FISCHER: Other questions? Colonel Tuma, on the fiscal note, the Patrol estimated that there was no fiscal impact. Is that due to...in your testimony, you said that the Nebraska Information and Analysis Center would house and disseminate the contact information, is that why? [LB735]

BRYAN TUMA: Yes. [LB735]

SENATOR FISCHER: There would be no fiscal impact. [LB735]

BRYAN TUMA: Right. [LB735]

SENATOR FISCHER: You're just going to take care of it inhouse? [LB735]

BRYAN TUMA: Right. And we would...the Nebraska Information Center is a facility that we have here in Lincoln that shares criminal justice information with our law enforcement counterparts, both federal, state, local. And so we have processes in place, right now, we simply get the information and disseminate it rather quickly and we can also warehouse the contact information, make it readily available for anybody that needs it. [LB735]

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SENATOR FISCHER: Thank you. Other questions? Senator Stuthman. [LB735]

SENATOR STUTHMAN: Thank you, Senator Fischer. Colonel Tuma, is there anything in your regulations right now when somebody reports a missing child that you won't take any action for so many hours or anything like that? [LB735]

BRYAN TUMA: No. If we have knowledge of a missing child or an abducted child, we can use our Amber Alert System and it typically...well, there's a protocol that we have in place to make sure that we have, actually have an abduction. But then once we broadcast that information, it goes out rather quickly through a...I mean, we have a network already established where we use the Nebraska Emergency Broadcast System to help get that information out through the radio, commercial radio, on the sign boards, the electronic sign boards that are on the interstate and on other expressways. So we have a variety of ways we can get that information out rather quickly. But this set of circumstances...this is for a set of circumstances that involve a whole variety of issues. We look at it as an opportunity, it may be a victim that we're looking for or this may be a situation where we have escapees who have assaulted and robbed a homeowner, took their cell phone. And if we know that we could possibly ping that phone rather quickly, we might be able to apprehend those individuals that really represent a threat to, you know, health and safety. It's in the best interest of the public to try and apprehend those people. We see that as a...this is an appropriate venue to exercise this type of protocol. [LB735]

SENATOR STUTHMAN: But you have nothing in your regulations, guidelines, stating that you have to wait 12 hours or 10 hours or anything like that. If you feel the need, it's urgent, you can immediately take... [LB735]

BRYAN TUMA: Absolutely. [LB735]

SENATOR STUTHMAN: Move on it. [LB735]

BRYAN TUMA: Yes. [LB735]

SENATOR STUTHMAN: Okay, thank you. [LB735]

SENATOR FISCHER: Other questions? I see none. Thank you very much, Colonel. [LB735]

BRYAN TUMA: Thank you. [LB735]

SENATOR FISCHER: Next proponent, please. [LB735]

JERRY STILMOCK: Good afternoon, Senators. My name is... [LB735]

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SENATOR FISCHER: Good afternoon. [LB735]

JERRY STILMOCK: Thank you. Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of the Nebraska State Volunteer Firefighters Association in support of LB735. Oftentimes the men and ladies in the volunteer services on fire/rescue will work hand in hand with law enforcement in searching for a missing party. And so it was without hesitation that the men and ladies of the volunteer service directed that there be support for this important legislation. What we're really talking about, obviously, is communicating in today's technology in split seconds and moments. And I just ask you to reflect, it took somebody, years ago, a thought, where do people and towns communicate when law enforcement needed assistance. And we take it so granted...for granted today. But it occurred to me that somebody had to think of a way to assist law enforcement years ago when the only means available to them was the communication that they had available to them. Somebody had to stop and hesitate and think: Why don't we help law enforcement by putting up information in the most frequented places in a community? Let's put up for these perpetrators, let's put up wanted posters in the post office. We take it as such a commonsense idea today. And I venture to say that Mr. and Mrs. Smith and their families are the people that have thought of this idea: Let's take the technology, the information and let's push it out to assist in law enforcement when an emergency arises. So that information, given with our communication, where we're at today, we can push that out and make that available so much more quickly in order to assist in locating a lost or missing person. We'd certainly, on behalf of the association, the clients that I represent, ask the committee to advance the bill to General File. Thank you. [LB735]

SENATOR FISCHER: Thank you, Mr. Stilmock. Are there questions? Senator Louden. [LB735]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Jerry, do you think the emergency responders should be able to access some of this information, some way or another, you know, like when they're looking for a wreck in a rural area or something like that? [LB735]

JERRY STILMOCK: I'd have to admit I did ponder that thought when I was reviewing Senator Gay's bill, and it occurred to me that because of the relationship we have with law enforcement and the importance of a communication that we receive, volunteer fire and rescue, receive our communications through 911 system with parallel dispatch both to emergency rescue and to law enforcement. So it was, at least believed by the administration of my association, to let it flow one direction to law enforcement only, Senator. I listened intently to your questions, but I think, given the nature of, number one, law enforcement and the authority that a badge-carrying member of law enforcement provides to the community and to the businesses which they'll have to deal

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with, it seemed to my client that the best way to communicate that, Senator, was through law enforcement. [LB735]

SENATOR LOUDEN: Okay. Thank you. [LB735]

JERRY STILMOCK: Yes, sir. [LB735]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB735]

JERRY STILMOCK: Thank you, Senators. [LB735]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB735]

BETH CANUTESON: Good afternoon, Senator Fischer and members of the committee. My name is Beth Canuteson and I'm the director of external affairs for AT&T Nebraska. I appreciate... [LB735]

SENATOR FISHER: Could you spell your last name, please. [LB735]

BETH CANUTESON: Oh, I'm sorry, yes, I need to, I know. C-a-n-u-t-e-s-o-n. [LB735]

SENATOR FISCHER: Thank you. [LB735]

BETH CANUTESON: Thank you. I want to talk a little bit about...there's some certain things, I have written testimony, but I think I'm just going to talk a little bit more off the cuff because I think we've heard a lot of conversation here today about the importance of the bill, and wanted to address some of the questions. I think one of the main focuses to remember is that this is when somebody can't call 911 for whatever reason. This is an individual that, you know, maybe has wandered off, has Alzheimer's and they have their cell phones in their pocket, that they don't know what's going on. There's been situations where somebody has threatened suicide and has left and they don't know where they are, they're trying to find that individual, certainly, certain situations like Kelsey Smith's. And so we want to do everything we can to provide that information. There are, obviously, a lot of concerns about privacy, which is why we don't share that information with just anyone. AT&T has a process in place now where we provide that information to law enforcement. We had, just this week, I was on my drive up this morning, talking to our director at our national compliance center where we handle these calls and she said that just last week they had somebody calling and they were pretending to be law enforcement and we have, as a way to protect ourselves against liability and to protect our clients against privacy issues, we have a system where we have a database of law enforcement agencies. We will share that information with them when they make a phone call and say we have a situation where we...it's an exigent circumstance and we need information on location technology. We fax them a form,

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they fill it out, it's like a one-pager; they fax it back and we have the information ready for them. So, it could all take place within about five minutes, five to ten minutes. And we can provide that information. We get about 100 calls a day at that center for exigent circumstances and it's open 24 hours a day, 7 days a week. So we're pretty proud of that. You know, one of the main concerns and one of the things that this bill really addresses is providing with the highway patrol a reposit for that information of who to contact. We have a separate 800-number just for that center. And if you call customer service, you know, it's just going to waste time. And we want to make it very clear to everybody who they need to contact with each carrier and make that as streamlined as possible. So just to talk a little bit about how we find individuals. There are different types of subpoenas that are offered, but in exigent circumstances, typically, people are just looking for the location of the phone where it currently is. We can look to see where the phone was the last phone call or the last text message. If somebody was driving down a road, we had a situation where a woman went off the road and her battery died and we were able to determine what road she was driving on because of...she had been on a call for a while before that, and so we could see the trajectory of where she was going. So we knew she was heading in this certain direction and they were able to, you know, concentrate the search in that area and find her. So there are different opportunities there, but one of the things that Mrs. Smith referenced was "pinging" and that's kind of, you know, laymen's term for sending a message over...to the phone and just, basically, asking where are you? And what people don't always realize is that right now your phone is in your purse or your pocket or wherever and it's contacting, at any given moment, three different cell sites. And so, when your phone...that's what allows it to transfer. It's always on three cell sites and it transfers to the one that has the best signal as you move down the road or wherever you are. So when we send that message, it sends a message to all the towers that it's in contact with. And then, based on how fast that message gets back to the towers, we can use triangulation methods to determine, not to 100 percent accuracy, but within 100 meters, usually. Federal law mandates that it be within 300 meters. So, we're able to, you know, narrow that down, that helps the search teams quite a bit. If they are Phase II compliant, which you were talking about 911, and some of those dollars, then, obviously, the accuracy is better, because those towers are already set up for Phase II and that technology. If you're on the outskirts of a service area, you may only be in contact with one or two cell towers and in which case, you know, then we'll say, now on top of the cell towers, there's a triangle too, and we'll say it's on this side of the cell tower, one-third of that area. So, so again, it depends on where you are; if there's not service there, if there's no tower there, obviously, we can't help. But oftentimes there's something there that we can help to locate those individuals. I completely understand the issues that were raised on the definition of law enforcement and happy to work on those; I think that makes sense. I think that's everything I really wanted to cover unless there are any questions. I appreciate your time very much. [LB735]

SENATOR FISCHER: Thank you, Miss Canuteson. Are there questions? Senator

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Hadley. [LB735]

SENATOR HADLEY: Senator Fischer, thank you. Miss Canuteson, for a real layman, I have such an old phone, mine just calls people and they answer, (laughter) it can't take pictures, it can't do anything like that. Does the phone have to be on then in order to do this pinging? [LB735]

BETH CANUTESON: It does. It does have to be on. And I know that there was just this situation of a guy in Haiti who was in the rubble and he was turning his cell phone off to save battery and then turning it on occasionally. But typically in these situations, the phone is, hopefully, still on. [LB735]

SENATOR HADLEY: Well, I think this is a very important piece of legislation and I'm glad to hear there are also safeguards, because I can see people wanting to abuse... [LB735]

BETH CANUTESON: Right. Stalking. [LB735]

SENATOR HADLEY: ...the system to...stalking...boyfriend can't find the girlfriend, you know, mother can't, you know, I'm glad there are situations that law enforcement is involved in this so that we know this is a legitimate reason that we're doing this. So thank you. [LB735]

BETH CANUTESON: Exactly. Thank you. [LB735]

SENATOR FISCHER: Other questions? I see none. [LB735]

BETH CANUTESON: Thank you very much. [LB735]

SENATOR FISCHER: Thanks for coming back to Nebraska. Next proponent please. Good afternoon. [LB735]

CURT BROMM: Good afternoon, Senator Fisher. And for the record, my name is Curt Bromm and last name is spelled B-r-o-m-m. And I am a registered lobbyist for Verizon and would like to appear before you and support the bill. Like to offer my condolences and deepest sympathies to Mrs. Smith. I'm very sorry that this happened. I'm certainly not aware of all the intricacies of the situation. I'm glad the preceding testifier explained all of the technical aspects of this operation because I would not be able to do that. But we do support the bill. If you do feel there's ways to improve it, certainly, we would support that. Verizon does have, and from what I have received in information, had protocol in place and I think that protocol is very similar to what the bill is. And so we're, you know, hopeful. I think having a bill like this gives reassurance to everyone that...and there's a greater likelihood that the right things will be done when there is an

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emergency. So, if there are technical questions, I probably can't answer them. But if there is anything I can answer, I certainly would, Senator. [LB735]

SENATOR FISCHER: Thank you, Mr. Speaker. Are there questions? Senator Campbell. [LB735]

SENATOR CAMPBELL: Mr. Bromm, just a quick question here in the sense that one of the testifiers talked about that there was a bill in Congress. Are you aware of that bill and how it might affect this state's? I'm assuming they're trying to take this nationwide and so...working state by state, as well as nationally. I didn't know whether Verizon had made any comment about that. [LB735]

CURT BROMM: I have heard that there is such legislation, but I'm not familiar with the details. But now that you've asked that, I think I will try to find out the details and I'll let you know what it does. [LB735]

SENATOR CAMPBELL: Okay. Thank you. [LB735]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB735]

CURT BROMM: Thank you, Senator. [LB735]

SENATOR FISCHER: Other proponents for the bill? Are there other proponents? Any opponents to the bill? Good afternoon. [LB735]

JOHN LINDSAY: Good afternoon, Senator Fischer, members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. We are in opposition only to Section 4 of the bill and that's where we will focus. Any other parts of the bill we...we're not taking a position on. It sounds like excellent policy. It's just that...it's just that provision. And that is the provision that grants the right to be careless to the wireless carriers. That provision, I think, before we get into it, we have to understand little bit, just the basics of tort law. In tort law in order for there to be liability, too often we think we do something, there's going to be liability. That's not the case. In tort, the basic elements of tort law are that you have to have a duty, that you have to breach that duty; that you...that that breach of duty has to cause the damage and that there be damages present. All four of those have to be met before anybody has any liability. So if we...and that is just the basic structure of tort law under almost any circumstance. So in order for the carriers to have liability in this situation, one of those four...excuse me, those four conditions have to be met. What this bill does, without Section 4, what this bill does, is it creates a duty to transfer that data to assist with law enforcement, that duty is created. At that point, the carriers are not just entitled, they're required to provide that information. The only time liability kicks in is in that second prong that I talked to you

about and that is the breach of that duty. And for there to be liability, the carrier would have to undertake that duty and do so carelessly. They would have to be absent ordinary care or the standard that's used is the reasonable person. You have to act in a manner that a reasonable person would not act. And that's when the liability gets created. What this bill does is it says we're going to get rid of that second prong. We're going to say there's no liability, even if the carrier breaches its duty to use care. The...so the question then becomes, what is it that the carriers want to do in a careless fashion? And we should try to identify that, because that is what Section 4 deals with. It protects them against their own carelessness. And so if we're going to absolve them of carelessness, should at least find out what it is that they don't want to take ordinary care to do. The second issue I would point out is in that same section. The language says that all wireless carriers shall be held harmless from any and all claims etcetera. We already absolved them of negligence in the first sentence. We've already said if you're careless you're not liable. Then we have a hold harmless provision that indemnifies them from any act which would include gross negligence, which would include wanton, willful reckless conduct. It is an absolute hold harmless provision. And I would ask you, who's holding them harmless? Is it the state? Is it the political subdivisions? Is it the family? Is it the law enforcement agency that requested the data? Somebody has to hold them harmless, but it's not specified in the act who that is. I think the underlying concern of the carriers, as far as protecting themselves, like anybody else in society, is accomplished simply through creating that duty to provide...to work with law enforcement. Anything beyond that is a duty to be careless...excuse me, is a license to be careless. And that's all we're asking is that Section 4 be deleted and that the bill be advanced. With that, I'd be happy to answer any questions. [LB735]

SENATOR FISCHER: Thank you, Mr. Lindsay. Are there questions? Senator Campbell. [LB735]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Lindsay, can you think of a situation in which someone is held harmless to the extent that is in Section 4? And for what reason would you do that? [LB735]

JOHN LINDSAY: That they would be held harmless... [LB735]

SENATOR CAMPBELL: I mean, you're saying that they're held harmless here in almost the whole range of your four points. Can you think of a situation which, in Nebraska statutes, where we do that; where we hold someone harmless? [LB735]

JOHN LINDSAY: The hold harmless, I think, is unusual language. To have hold harmless provision...you see that oftentimes in contracts between individual parties, happens all the time where one party will hold the other party harmless. In statute, holding harmless, I think, is unusual...frankly, I cannot think of a hold harmless provision elsewhere in statute. They might exist. I cannot think of one off hand. [LB735]

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SENATOR CAMPBELL: We used to have them a lot in county contracts and... [LB735]

JOHN LINDSAY: In county contracts, that would be a standard provision. [LB735]

SENATOR CAMPBELL: And we still used to be suspicious of them (laughter). Thank you for that. I was just trying to find an example where we might have done the same thing. [LB735]

JOHN LINDSAY: Okay. [LB735]

SENATOR FISCHER: Other questions? Mr. Lindsay, have you had a chance to review the Kansas law that is similar to this one? [LB735]

JOHN LINDSAY: I have not. [LB735]

SENATOR FISCHER: Have you had a chance to look at any other states that have passed laws like this or have laws pending? [LB735]

JOHN LINDSAY: No, Senator, as I said, our organization does not take a position on the underlying concept of the bill. That is within, certainly, this committee's jurisdiction, but ours is simply, when a...when we're creating immunity from liability, then we do take a position on that piece of the bill. [LB735]

SENATOR FISCHER: I was just curious if the Kansas law...it is my understanding that they have that immunity in their law that they passed in this regard and I was wondering if other states have that too. So we'll have to look into that and see what they're doing. [LB735]

JOHN LINDSAY: I don't know and I'd be happy to look into that in those to see.... [LB735]

SENATOR FISCHER: Okay, if you could work with counsel on that, I'd appreciate it. [LB735]

JOHN LINDSAY: Absolutely. [LB735]

SENATOR FISCHER: Any other questions? I see none. Thank you very much. [LB735]

JOHN LINDSAY: Thank you. [LB735]

SENATOR FISHER: Any other opponents to the bill? Are there any opponents? Anyone wishing to testify in the neutral capacity? I see none. Senator Gay, would you like to

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close, please. [LB735]

SENATOR GAY: Thank you, Senator Fischer. [LB735]

SENATOR FISCHER: (Exhibit 5) Before you start, Senator, I apologize. I do have a letter from the Nebraska Sheriffs Association and they are in support of the bill. Please continue. [LB735]

SENATOR GAY: Thank you, Senator Fischer and members of the committee. Thank you for your attention to this issue. I just listened as well, to professionals and got some information that I think will help improve the bill, as well. Senator Fischer, I can get legal counsel and yourself some more information on the Kansas law. We have plenty of it and I'll make sure that's available to you to review. Senator Campbell asked a question about if this were...if it were federally done, the FBI would be in charge of holding that information at that point. So, as I say, when I looked at this, I think this defines a protocol. This does not happen a lot, thank God, but when it does, we need to act quickly and you heard from law enforcement and emergency management personnel on how this would be beneficial. So I was pleased with that. The situation, like I said, Senator Hadley mentioned, well I have just a phone, regular phone, but it is amazing what is on those things now. I'm with you, there's so many tools that can be used. I think this just enhances that. And some of the...we can check into what Mr. Lindsay talked...discussed, we can check into that and see if we can make this a better bill for you before we move on. I'd just like to say in closing I'm very humbled to be asked that...to help with this bill. The Smiths and their family, you know, are trying to take a tragic situation and turn it into a very good situation in the future. And I think that's what we're doing here. We're saying we can't prevent all these things, but we can certainly help fix them. And that's what this bill does. So I'd appreciate your support. Thank you, Senator Fischer. [LB735]

SENATOR FISCHER: Thank you, Senator Gay. And I would like to thank Kelsey's family for being here with us today. I appreciate you taking the time and being present at the hearing on this bill. With that I will close the hearing on LB735; open the hearing on LB787 and, Mr. Vaughan, will you introduce the bill, please. Good afternoon, Mr. Vaughan. [LB787]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the committee. For the record, again, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB787 was introduced to formally place a legislative representative on the Nebraska Information Technology Commission as a nonvoting ex officio member. The legislative member will be from this Transportation and Telecommunications Committee and will be appointed by the Executive Board under the bill. In 2005, the Governor's Office initiated an informal legislative liaison for the NITC that is currently in existence. This liaison is not in statute and does not have any

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mandatory duties. Senator Tony Fulton is the current liaison and was appointed by the Executive Board last spring. The representative serves as long as he or she chooses to. The last legislative representative who was a member of this committee was Senator Mick Mines in 2007. This committee, along with the Appropriations Committee, is statutorily charged with reviewing the strategies and activities of the NITC every two years. However, there's very little contact that is actually conducted between the NITC and the Legislature. With such a duty on the shoulders of this committee, it only makes sense that a legislative representative to the NITC should be from the Transportation and Telecommunications Committee. This will ensure that at least some knowledge of the NITC's activities is readily available to this committee. With that I will conclude my testimony. [LB787]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. Are there proponents for the bill? Any proponents? Any opponents? Anyone in a neutral capacity? We will waive closing. I will close...oh, excuse me. Senator Stuthman. [LB787]

SENATOR STUTHMAN: The question that...that I have and it is something that's bugged me for a long time. If we ask an individual to be on a committee like this, why is it a nonvoting position? [LB787]

SENATOR FISCHER: Mr. Vaughan, would you like to answer that and give the history of this appointment... [LB787]

DUSTY VAUGHAN: I can try. [LB787]

SENATOR FISCHER: ...that the Exec Board is done in the past, please. [LB787]

DUSTY VAUGHAN: There's a question on a body like this of what branch it falls under. Obviously, the NITC falls under the executive branch. If you put a voting member on there that raises constitutional question of the legislative branch interfering with the executive branch, that's why you make it a nonvoting member, at least that's how this bill was drafted, to resolve any of those questions, but allow the Legislature to have some representation on that board to at least know what is going on with the NITC. And by having that legislative liaison be from this committee, that member can report back to this committee when we need to review your statutory duties of the NITC. [LB787]

SENATOR STUTHMAN: Didn't this take place as Speaker Flood had...in...two years ago in the bill that changed it from a voting to a nonvoting as a member of Executive Board appointee to these committees? [LB787]

DUSTY VAUGHAN: I'm not aware of what you're talking about, Senator Stuthman. It very well could have happened. And I would imagine that Speaker Flood would have

had this same issue as we did about the interference with the executive branch. [LB787]

SENATOR STUTHMAN: And the reason I state that is because two years ago, maybe one year ago, maybe it was just last year when I was appointed to the Rural Development Commission and prior to that it had been a voting member, but then last year in the Speaker's rules and regulations change, it got changed to a nonvoting member. And I was just kind of wondering, you know, when you spend the time to go to these meetings and, you know, travel and everything like that, and you get there and all you can be is just an ear and make a few comments, but you can't vote. That...that...you know, that may be...if you can't be a voting member to these...to these, you know, what is the reason you're there? Are you just there as an individual to bring information back to the body or what? [LB787]

DUSTY VAUGHAN: I think in this case, Senator, that is the reason of appointing this person. Obviously, I think there's been discussions between the leaders of the executive and legislative branches on issues like you just brought up. And that's why Speaker Flood probably initiated that change. And I believe that's why we want to keep this a nonvoting member, so that we don't have those problems. But yes, I would say it is for informational purposes so the Transportation and Telecommunications Committee, and the Legislature as a whole, has an idea of what's going on at the NITC because right now we don't really have a lot of contact. [LB787]

SENATOR STUTHMAN: And I truly agree that there, you know, that there is value to have, you know, a senator there at these meetings. But it always concerns me, if you're going to take the time and effort and all...the only benefit it is, is to bring back the information, you know, I just...I just kind of felt that, maybe, it should be a voting member. So I don't know. [LB787]

DUSTY VAUGHAN: Duly noted, Senator. [LB787]

SENATOR FISCHER: Other questions? Senator Louden. If I would have known you were going to ask this many questions, I would have done the opening and the closing on the bill. But we'll let Mr. Vaughan handle it. [LB787]

SENATOR LOUDEN: This is...save the questions for...all this bill does is change it from the person...instead of being from the Legislature, would be from the Transportation and Telecommunications Committee, that's all this bill does, doesn't it? [LB787]

DUSTY VAUGHAN: Right. Except that we don't have anything in statute currently, Senator. So right now it's kind of informal process. The Governor's Office initiated, kind of as an outreach to the Legislature saying we'd like you to have, at least some kind of representation, at the NITC so you know what's going on. [LB787]

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SENATOR LOUDEN: And then the Executive Board just went ahead and appointed Senator Fulton? [LB787]

DUSTY VAUGHAN: Correct. I believe recommendations were made, but it's obviously up to the Exec Board on who they're going to appoint. [LB787]

SENATOR LOUDEN: Is that bad then, the way that's done now, because when I look around here, I don't know how many of these folks I work with here are that up on telecommunications and some of that stuff. And if you were just choosing from these eight people, would we get the kind of representation that we would maybe want? [LB787]

SENATOR FISCHER: I think...I think it would be important to have representation from the committee, I'm going to interrupt, Mr. Vaughan, on this, since it's my bill. I think it's important that the representation comes from this committee so that the committee gets up on it. I think it's an important part. We focus a lot on transportation in this committee and telecommunications needs to be a strong focus also. [LB787]

SENATOR LOUDEN: Okay. Duly noted. [LB787]

SENATOR FISCHER: We're duly noting a lot here. Senator Campbell. [LB787]

SENATOR CAMPBELL: Thank you, Senator Fischer. Just as a note for my colleagues, and Senator Stuthman and Senator Gay probably won't remember this, but when we reconstituted all the Medicaid Reform Council, we had somebody from Health and Human Services on that. And again, it may be that the person isn't as...knows all the information, but at least it is a conduit back to the committee that will most likely have to deal with legislation in that area. And I know the Speaker feels very strongly about not mixing the executive branch and the legislative branch. But I think it's wise to...at least have...ensure that if you're going to send somebody without a vote, that it be from the committee that they...that the information would be worthwhile. [LB787]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Vaughan. With that I will close the hearing on LB787 and close the hearings for the day. Thank you. [LB787]