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Transportation and Telecommunications Committee
February 20, 2018

[LB856 LB1113 LB1114]

The Committee on Transportation and Telecommunications met at 1:00 p.m. on Tuesday, February 20, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a DMV compliance hearing, LB1113, LB1114, and LB856. Senators present: Curt Friesen, Chairperson; Jim Smith, Vice Chairperson; Bruce Bostelman; Tom Briese; Suzanne Geist; Mike Hilgers; and Dan Hughes. Senators absent: John Murante.

SENATOR FRIESEN: (Recorder malfunction)...Transportation and Telecommunications Committee. I think we're on the record right now. I'm Curt Friesen from District 34. I'd ask everybody to silence their cellphones. We're pretty sparse today. We'll be hearing the bills in the order of the...listed on the agenda. Those wishing to testify on a bill should move to the front of the room to be ready to testify. If you'll be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the complete testifier sheet to the page when you sit down to testify. Handouts are not required, but if you do have a handout we need ten copies, and one of the pages will assist you if you need help. Clearly state and spell your first and last names for the record. If you happen to forget this I will stop you and ask you to do that. We'll use the light system, five minutes: four minutes with the green light, one minute with the amber light, and when the red light comes on, wrap it up. Those not wishing to testify may sign in on the pink sheet by the door to indicate their support or opposition to a bill. And with that, I will introduce my staff. This is Tip O'Neill, he's the legal counsel. Elice Hubbert is the committee clerk. And they can introduce themselves, starting with Senator Briese.

SENATOR BRIESE: Tom Briese, Legislative District 41.

SENATOR BOSTELMAN: Bruce Bostelman, District 23: Saunders, Butler, and the majority of Colfax Counties.

SENATOR SMITH: Jim Smith, Legislative District 14: Sarpy County.

MIKE HILGERS: Mike Hilgers, District 21: northwest Lincoln and Lancaster County.

SUZANNE GEIST: Suzanne Geist, District 25: east side of Lincoln, Walton, and Waverly.

SENATOR FRIESEN: Senator Hughes and Senator Murante will be joining us, maybe, today. Senator Hughes I know will be here in a little bit. And we may have a page today...Lee-Ann Sims or Kylie Kotouc, from Lincoln, will be our pages today. With that, we'll open the hearing

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

on...DMV Regulatory Compliance hearing. Oh, that's the one. I remember now; somebody's been naughty.

RHONDA LAHM: (Exhibits 1, 2, and 3) Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. I'm Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director for the Department of Motor Vehicles. I'm appearing before you today to offer information regarding the adoption and promulgation rulemaking process for Title 247, Nebraska Administrative Code, Chapter 15 (sic--16): commercial drivers' licenses relative to LB983 and LB977. We appreciate your time for us to share with you how the department has addressed this process. LB983 was approved by Governor Heineman on March 28, 2014, with an emergency clause. The bill amended several sections of commercial drivers' license issuance statutes to comply with federal rule requirements. The DMV worked on drafting the amended rule and regulation which are intertwined with the complex and ever-changing federal rules. While working on the rule change required by LB983, LB977 was enacted in 2016, which again amended several CDL issuance statutes. LB977 included a rulemaking provision of "may" for the DMV to adopt the rules and regulations. To ensure consistency in the rule, the DMV chose to work on amending the rule and regulation to include both LB983 and LB977. The DMV has implemented and instituted the statutory requirements of both bills as intended by the Legislature. The DMV will amend and promulgate Title 247, Nebraska Administrative Code, 16 in order to stay within the three-year time frame for LB977. Thank you for your time, I would be happy to answer any questions the committee may have.

SENATOR FRIESEN: Thank you, Director Lahm. Any questions from the committee? We'll let you off very easy, seeing no questions.

RHONDA LAHM: Thank you.

SENATOR FRIESEN: Is there anyone else wishing to testify...does anyone else wish to testify on the regulatory compliance hearing? Seeing none, we'll close the hearing on the regulatory compliance hearing. I think we may have to take a break now, until Senator Walz shows up.

BREAK

SENATOR FRIESEN: Okay, welcome back, everyone. And I think we're now ready to get started. We will open the hearing on LB1113. Senator Walz, welcome to Transportation and Telecommunications. Welcome. [LB1113]

SENATOR WALZ: (Exhibits 1, 2, and 3) Well, thank you. Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I have the honor of representing District 15. It has become increasingly clear in the world we live in that affordable and reliable Internet access is no longer a luxury, but a necessity. Almost all facets of the community, from education to healthcare to economic opportunities, can be drastically improved by high-speed Internet access. Recently, more populated areas of the state, such as Lincoln or Omaha, have been able to utilize these benefits for the residents, while many, if not most, rural communities in Nebraska are left without them at a critical moment of change and growth. Nebraska currently ranks toward the bottom in the country in Internet speeds; 51 percent of Nebraska's rural population does not have access to broadband services. The world is changing quickly, and rural communities will soon require high-speed Internet to not only stay competitive, but to grow and prosper. Much like the transcontinental railway and the national interstate system, broadband services are becoming a critical component of infrastructure to help communities connect and compete with the rest of the nation. In the Legislature, it is our job to not only identify problems, but to pass responsible legislation to address them. My bill, LB1113, is aimed at giving rural areas of the state the ability to modernize this critical infrastructure without burdensome regulation and oversight that might dissuade private entities from expanding broadband services in these areas. LB1113 would allow it to be easier to form public-private partnerships around broadband. Currently, public-private partnerships are permitted but face heavy state restrictions by the Public Service Commission. The Public Service Commission sets the price and terms of dark fiber leases. Our goal is to allow a political subdivision, such as a city or a public power district, to lay the fiber infrastructure and partner with private companies providing the service without this unneeded government oversight. Right now local governments aren't investing in dark fiber because they don't know what they will get on their investment. And private companies aren't pushing for it for the same reason. Cities like Lincoln have found workarounds to the existing state statute by laying conduit or pipe and renting the space of the conduit or pipe to private companies. The private company would then pull the fiber through the pipe rather than having to pay for digging expenses. But that nearly doubles the cost of the overall project. As a result from their investment, Lincoln has seen increased competition, increased Internet speed, and reduced cost for their consumers. This bill would incentivize new companies or existing companies to partner with city governments, public power districts, and other local agencies to increase services at a lower cost to the consumer and the taxpayer. Rural communities are in desperate need of this infrastructure. My bill seeks to empower local officials to partner with the private sector to invest in their communities and build a platform that will allow them to grow and improve the quality of life for the residents. Our rural communities are declining, the time for legislation is now. I want to emphasize that the private partner has to provide the service. The political subdivision cannot provide the service to the consumer. I know that is a question, and the definition of a public-private partnership in this bill specifically states that. I've handed out three documents. One is a general summary sheet of what the bill does and what my intentions are for the bill. The other is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

ideas for two potential amendments. First, there is no definition in statute of what an Internet service provider is. I've provided an idea for how to make companies comfortable with this, and I'm happy to work with you to get that written. I've also spoken with legal counsel Tip O'Neill on an amendment with clarifying language. This was an attempt to make sure the services created through a public-private partnership would be sold by the private partner. The information about this amendment is in one of your handouts. The third handout is actually something I received recently. It explains business practices and legal issues around public-private partnerships. I have read this, but there are people behind me who understand this much better than I do at this point. Between this bill and LB1114, coming up next, there are people who can explain the concepts of both bills, outline the need for broadband services, and give statistics on where Nebraska currently sits. But I want to take the time to say why this issue is so important to me. I recently gave a speech to a group of school board members and I brought up the broadband issue. Although this topic isn't something that comes up in conversation on how we can make our education system better for everyone, it is something I received many good responses on. How can we expect our high school student that lives on a farm five miles outside of Elgin, Nebraska, that doesn't have Internet access, to do well on a paper that he or she is supposed to write? Business can be global with Internet access, but how can we expect business in Giltner to compete with businesses from Lincoln, New York City, and Seoul, South Korea, without giving them the infrastructure to be competitive? Let's help the farmer outside of Waverly be more practical and save them money while also protecting our natural resources. They all have the capabilities to use the technology to be more efficient, except the actual service. We need to improve broadband for economics, education, healthcare, transportation, and quality of life reasons. This is 2018, and we have people who don't have adequate Internet access. I understand the challenges of getting service to rural areas, but let's try and find a solution together. I'm willing to work with you, private companies, and public entities to tackle this problem, so let's act on it now. I encourage you to advance LB1113 to General File for full debate and I'm happy to try to answer any questions. Thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Walz. Any questions from the committee? Senator Smith. [LB1113]

SENATOR SMITH: Thank you, Chairman Friesen. Senator Walz, who brought this bill to you? [LB1113]

SENATOR WALZ: It was actually a bill...it wasn't even brought to us, it was something that we heard on the campaign trail before I was elected. As we went out to Dodge and Snyder and Scribner, Nebraska, it was something that people talked about. So my legal...my admin assistant and I--who was also my campaign manager--and I just started brainstorming ways on how we could bring Internet service to rural areas because it's so needed. [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR SMITH: So you mentioned in your opening that you didn't have that much experience in this area, so... [LB1113]

SENATOR WALZ: Not technical experience. [LB1113]

SENATOR SMITH: ...I'm curious as to who's worked with you on this bill. [LB1113]

SENATOR WALZ: Center for Rural Affairs. [LB1113]

SENATOR SMITH: Okay, thank you. [LB1113]

SENATOR WALZ: Um-hum. [LB1113]

SENATOR FRIESEN: Thank you, Senator Smith. Any other questions from the committee? Seeing none, thank you. [LB1113]

SENATOR WALZ: Thank you. [LB1113]

SENATOR FRIESEN: Are you going to stick around for closing? [LB1113]

SENATOR WALZ: Absolutely. [LB1113]

SENATOR FRIESEN: Okay. Proponents of LB1113. Welcome. [LB1113]

DAVID YOUNG: (Exhibit 4) Good afternoon, Chairman Friesen, members of the committee. My name is David Young, D-a-v-i-d Y-o-u-n-g. Thankfully, this is not my first testimony before this committee this year. I am here representing the City of Lincoln as the fiber infrastructure manager. First, I want to thank Senator Walz and Senator Briebe for bringing this legislation forward. The issue of broadband public-private partnerships is a topic of discussion across the state. Over the last year and a half, many members of this committee have heard the challenges from across the state of the high cost of deploying broadband, of the lack of USF and NUSF funding and the uncertainty surrounding those funding sources. And what it means to have access to affordable, competitive, and robust broadband connections across our state. LB1113 is a single, strong step forward in dealing with these issues. How does it work? LB1113 encourages cities, counties, and other government entities to partner with the private sector, specifically on dark fiber leasing. The cost of the infrastructure, the permitting, the construction, the engineering, and associating that cost with a capital improvement project will drive costs down

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

for everybody, instead of requiring the private sector to do it on its own or the public sector to install the infrastructure themselves. LB1113 specifically focuses on sharing dark fiber, which is how the Internet works. That is how the national backbone is created, by sharing dark fiber, and how internationally we connect with other countries, specifically. By encouraging public entities to partner with the private sector, we will drive down the cost to deploy broadband in both urban and rural areas. Specifically, this partnership is modeled...is focused on the Lincoln Broadband Project, where we have 10 partners, \$200 million in private investment, and 400 new jobs created. This partnership model works in Nebraska. In short, LB1113 seeks to speed up deployment of broadband across our state. In conversations with business leaders, carriers, and national technology companies, LB1113 is a step in the right direction. Thank you for the opportunity to speak today, and I'm happy to answer any questions you may have. [LB1113]

SENATOR FRIESEN: Thank you, Mr. Young. Any questions from the committee? Senator Hilgers. [LB1113]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Mr. Young, for being here. As I look at 86...Chapter 86-577, which already allows for leasing of dark fiber from agencies and political subdivisions, could you explain how LB1113 differs from the current statutory scheme? I guess from your testimony I wasn't quite...what I understood from your testimony is this helps dark fiber deployment because it allows agencies or state entities to, I guess, lease it or, otherwise, partner with private entities. It seems to me, to some degree at least, it's already allowed in current statute. Can you sort of discuss how those two things compare, please? [LB1113]

DAVID YOUNG: Sure, Senator. Thank you for the question. Specifically, right now, you are correct. Under state law you can lease dark fiber. You must go through the Public Service Commission, through the regulatory process, and there is a laundry list of items that must be done in order for you to get your rate approved as a public entity. LB1113 keeps all of those protections in place and it adds a caveat, a paragraph two, and it says that, if you have a public-private partnership, those regulations do not apply to you. Specifically, this removes regulatory hurdles to the deployment of dark fiber leasing and broadband infrastructure. [LB1113]

SENATOR HILGERS: Doesn't that...oh, sorry, (inaudible)... [LB1113]

DAVID YOUNG: Oh, no. Go ahead. [LB1113]

SENATOR HILGERS: ...sorry. No, thank you for that. I guess...I guess I don't see the distinction because...I mean, I guess I don't know if it's...help me understand this... [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

DAVID YOUNG: Sure. [LB1113]

SENATOR HILGERS: ...because as I understood your statement...your statement was, hey, this keeps all these protections in place, but for public-private partnerships they don't apply. But doesn't that gut...to the extent that 86-577 implies that the lessee of the dark fiber is going to be a private entity, doesn't LB1113 sort of say this just isn't going to apply to this type of...I mean, doesn't this just sort of gut...and maybe that's the purpose, but doesn't it kind of...doesn't it gut the PSC regulation of the pricing, or not? [LB1113]

DAVID YOUNG: It guts the regulation on the pricing, but it does not gut the protections on municipal broadband... [LB1113]

SENATOR HILGERS: Oh, I got it. [LB1113]

DAVID YOUNG: ...so it's strictly, all the municipal broadband protections are still in place. Under LB1113, no municipal broadband is allowed, no retail services, it keeps all of those protections in place. What it says specifically is if you would like to lease dark fiber to a private partner, and you have a public-private partnership for the deployment, then you do not need to go to the PSC for your pricing. [LB1113]

SENATOR HILGERS: Okay, thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any further questions from the committee? So what...again, it states a little bit in here...it talks about you would allow that public-private partnership to take place. So Lincoln, for instance, in the way that you're set up, you would actually be installing the fiber and then you could work with whatever company you wish to offer them access to that dark fiber. You'd lease them space on that? [LB1113]

DAVID YOUNG: You could do that. We would not pursue that path in Lincoln because we already have a large number of contracts and commitments. But what we're saying is that, when you're looking at rural markets, the Lincoln model where you're paying for the conduit separate from the fiber is expensive. In a dense urban environment of nearly 300,000 people, okay, that business model works. But when you're building out to rural Nebraska, creating a partnership based on just the fiber is much more economical. [LB1113]

SENATOR FRIESEN: So your partnership could be anyone out there: government subdivision, a county, whoever? [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

DAVID YOUNG: It could be, yes. And we do, actually in Lincoln, partner with the county and with the state on broadband...on fiber sharing agreements right now. [LB1113]

SENATOR FRIESEN: So in Lincoln, the way you're currently doing it...so you lease space in the conduit, is that correct? [LB1113]

DAVID YOUNG: Correct, sir. [LB1113]

SENATOR FRIESEN: So how do you base...how do you pay for that? What justifies your expenditure there to go into what kind of...you have contracts, I take it, with private industry, then, to enter that conduit? [LB1113]

DAVID YOUNG: We do. The cost justification for putting in the conduit is the repair cost of the road. So with carriers coming in and cutting an arterial section of pavement, it degrades the pavement life by 35 percent. So it's actually cost effective for us to put in additional capacity in conduit under the road up front to protect the pavement. But by deploying it in a low-cost way to the private sector, by allowing them access to that, we get the benefit of having services competitively provided throughout the city. [LB1113]

SENATOR FRIESEN: So when you say low-cost provided, is that to any carrier that wants to come on board? And when you say low-cost, how low is that cost? [LB1113]

DAVID YOUNG: We have agreements for less than a penny a foot. [LB1113]

SENATOR FRIESEN: Okay, and so what are your current charges, then, for entering that conduit? [LB1113]

DAVID YOUNG: So, we have four different models to choose from...and I will say this, the conduit system is almost full. We have space in some areas, but in the downtown area it is full. Those models are all-in, so you can buy access to one space within the conduit system for the entire system, and that price is about \$100,000 a year right now for almost 500 miles of conduit. We have a linear foot charge, so if you only want to go from point A to point B--i.e. across the street or from one building down the block to another--that is \$3.00 a foot per year; so 30 cents a month per foot. And then if you would like to do a citywide fiber to the home type installation, we have an infrastructure support fee model where you only pay when you have customers. That's the model that Allo is using right now to provide service. [LB1113]

SENATOR FRIESEN: So it's a per-customer hookup? [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

DAVID YOUNG: Per-customer hookup, right. So basically, a very low front-end risk for the new market entrant to come in and, if they're successful, the city is successful. If they're not, they had a low risk. [LB1113]

SENATOR FRIESEN: So, if the conduit is full, what is the alternative for another company that wants to enter the market? [LB1113]

DAVID YOUNG: We would put in additional conduit or we would partner with them to do rent abatement for the cost of them putting in the conduit. [LB1113]

SENATOR FRIESEN: Okay. [LB1113]

DAVID YOUNG: It's very complex, and what we're seeing...what we like in LB1113 is it just focuses on the fiber. So putting the fiber in the rural environment and allowing partnership on that model is much more cost effective and much more competitive. [LB1113]

SENATOR FRIESEN: What is your process for choosing or allowing someone to get onto that? Is there a committee they have to go through or a process...application process, or is it open to anyone who comes up with the money? [LB1113]

DAVID YOUNG: In Lincoln or under LB1113? [LB1113]

SENATOR FRIESEN: In Lincoln. [LB1113]

DAVID YOUNG: In Lincoln? It was first come, first serve. We actually went out and marketed the system across the nation to carriers, anybody regionally--in Omaha, Kansas City, as far as Chicago--to bring people in to operate in the system. [LB1113]

SENATOR FRIESEN: Okay. Senator Hilgers. [LB1113]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you...if you wouldn't mind a follow-up, Mr. Young. Do you have a copy of the bill in front of you by chance? [LB1113]

DAVID YOUNG: I don't, I'm sure I could get a copy of it... [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR HILGERS: Well, and I just wanted to ask you a couple of questions that, I think detail with the language. But if there's someone behind you who could...I want to specifically focus on your...thank you, Senator Bostelman. So, I'm on page 4... [LB1113]

DAVID YOUNG: Okay. [LB1113]

SENATOR HILGERS: ...and I wanted just to unpack your comment earlier, and I think Senator Walz said this as well, if I recall correctly, just that one of the differences is that this does not gut the prohibition on the retail, sale of broadband...telecommunication services by state agencies. Do you remember we had that back-and-forth? [LB1113]

DAVID YOUNG: Um-hum. [LB1113]

SENATOR HILGERS: Okay, so the way that I read this, I'm not sure I agree, but I want to walk through the statutory language and see if you agree with me. [LB1113]

DAVID YOUNG: Okay. [LB1113]

SENATOR HILGERS: And I'm not saying this the intent. So, as I read it on page 4, lines 26, that is the initial prohibition where it says: Except as provided--in some statutory sections--an agency or political subdivision of the state that is not a public power supplier shall not provide on a retail or wholesale basis--do you see all that language? [LB1113]

DAVID YOUNG: I do. [LB1113]

SENATOR HILGERS: And then it adds, on line 28: except as provided...and then...and subsection (2) of this section. Do you see that? [LB1113]

DAVID YOUNG: Um-hum. [LB1113]

SENATOR HILGERS: So then if you go to the next page, on page 5, it says: Broadband services--and other types of services--may be provided on a retail or wholesale basis by an agency or political subdivision...through a public-private partnership. Okay, so that tells me that I should refer back to subsection 5 on page 4, which is what a public-private partnership is. [LB1113]

DAVID YOUNG: Um-hum. [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR HILGERS: And here is the key language...and tell me if you agree with this interpretation. It says: public-private partnership means an agreement between an agency--I'm on line 6 and 7--a political subdivision of the state and a private partner relating--and if you skip all the way down to line 15--the deployment and operation of a system for delivery of the services by the private partner. And so the way that I think I read this section is that the intent, by saying we'll allow these services to be provided, but we will allow...by putting this private-partner language in there on page--or line--7, suggests, at least at first blush, that's the restriction that keeps the current status quo that public agencies can't sell Internet. Is that sort of your understanding? [LB1113]

DAVID YOUNG: That is my reading. [LB1113]

SENATOR HILGERS: Okay, so here is the issue that I have with that; tell me if you agree. [LB1113]

DAVID YOUNG: Um-hum. [LB1113]

SENATOR HILGERS: The language does not say these services must be, have to, or can only be exclusively be provided by the private partner. And says...instead, what it says is the partnership relates--and I'm pulling that from line 7--relates to something provided by the private partner. In other words, I could have...could I have, under the statute...here's the question I guess, and tell me if you disagree or agree. I could have an agreement through which a private partner did provide these services and, also, I provided those services. And if I had such an agreement, would that not relate to the deployment by private partner and then fit within the exception of 86-594(1) and (2)? [LB1113]

DAVID YOUNG: Let me make sure I'm understanding your question correctly, if that's okay. [LB1113]

SENATOR HILGERS: Yeah, please. [LB1113]

DAVID YOUNG: The intent is retail services will be provided by the private sector. But you have to be very careful when you're writing this language because institutional networks, like I operate for the city of Lincoln, connections to fire stations, connections to city hall; that is providing service. It's just not retail service. So I think that's the...what the drafters are trying to chart--this fine line. Retail services shall be provided by the private partner. Institutional network services may still be provided by the city. So the agreement could be with--let's pick a partner--Commonwealth Telecommunications. The city wants to connect two fire stations and they want

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

to pay for part of the fiber-optic cable to be installed and Commonwealth says, yes, we're going to have a public-private partnership agreement. We'll do all the termination, set up the equipment. And then Commonwealth is able to resell service--retail services--off that same cable. So I think that's what the bill drafters are trying to chart this language of the differentiation between institutional network and retail sales. [LB1113]

SENATOR HILGERS: So I think that's my assumption, as well. Would you agree with...what you described sounds different from what the language as I read it. Would you agree with me that the language does not do what you...as you just described? And the reason that I say that is because it does not say...it does not limit the deployment only to private partners, and, indeed, says the agreement just has to relate to a deployment. So you could have something that's both public retail and private retail that relates to private retail, in other words. [LB1113]

DAVID YOUNG: I think you could do that. [LB1113]

SENATOR HILGERS: Yeah. [LB1113]

DAVID YOUNG: And the question is, is how are you building this model for your public-private partnership? So you could have this takeover clause where, after so many number of years, the public sector takes over the public portion of the network, but the private provider operates it in the interim while they ramp up. You could have that. But I think the intent of the bill drafter was to strictly limit and protect the protection against municipal broadband, so no retail sales. But they needed to chart this fine line because the benefit of a public-private partnership is the public network, the institutional network, if you will. [LB1113]

SENATOR HILGERS: Sure, and I...just to be clear, I don't mean to imply that there's some sort of Trojan horse language. I just think...I agree that it is a fine line. And initially when I read it I agree that they probably had walked it...on a second pass, I'm not sure it does exactly sort of what...as you described the intent, but I appreciate the back-and-forth. Thank you, very much, Mr. Young. [LB1113]

DAVID YOUNG: Well, in my conversation I believe that's the intent of the bill drafter. [LB1113]

SENATOR HILGERS: Okay. Thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Thank you, Mr. Young. [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

DAVID YOUNG: Senator Friesen, thank you. [LB1113]

SENATOR FRIESEN: Other proponents of LB1113. [LB1113]

JOHN HANSEN: (Exhibit 5) Mr. Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and I'm also their lobbyist. I've distributed to you my written remarks, which highlight our state convention's special order of business, specifically on the issue before the committee today. And that is the use of a private-public partnership to achieve high quality, high-speed Internet access statewide. So we had five special orders of business, and this issue, along with property taxes and healthcare, are the three top issues that I've heard going across the state during my tour as president. It continues to be at the top. We've worked on ways to try to find creative and helpful ways to get high-speed Internet broadband across the state for at least 15 years. And I've heard every lame excuse that you can possibly imagine about how it is that we can't get there from here. And the time has come...especially when you look at the rural poll data, especially when you look at the federal government we think is going to go forward with some sort of deployment effort on high-speed broadband. Anything that we can do at the state level to figure out how we put the most options in play at this point in time is helpful. When the feds come in and say that they want to help do high-speed Internet broadband, then the state needs to be, in my opinion, looking at that as an historic opportunity to say okay, what can we do to partner with you, because when you can get the state and the feds both going the same direction at the same time, anybody who's done public policy for any period of time knows that's when you make hay. That's when you get things done. So, according to the poll, we have got a good fourth of Nebraskans who continue to believe that their Internet access is not appropriate. And to our members, when you get down to the therefore-be-it-resolved parts, are very clear that we consider the fact that we have a public power system in our state and we have a lot of underutilized and unutilized deep fiber that's already out there. It's part of the running gear that's needed in order to be able to accomplish the task at hand. There it sits. There is the opportunity. Public power, to their credit, is agreeable to the idea of partnering with the private sector so that they can help use part of their running gear in areas that are underserved. And we're in a situation, in rural communities for the most part, where there is a pronounced lack of competition. Where we don't have providers fighting over who's going to bring fiber into not only the last mile, but the last 20 miles. And so that's...we don't have that many people, but we certainly have that need. And so, to us, this is a commonsense operation, commonsense opportunity...and that we had hoped that the committee could work with Senator Walz and figure out a way forward. We also have...this is really complicated to my mind, in that in some instances I know that we have providers that are both sitting there--there's two providers--but it's the, you know, "you can lead a horse to water, but you can't make him drink" situation, where there they sit and neither one are going forward. And yet they keep other providers who would like to do something and come in from getting their territory. So they just sit on it. And so, yeah,

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Transportation and Telecommunications Committee
February 20, 2018

at some point the state needs to, in my opinion, get a much more coordinated effort. And this is a part of that coordinated effort to kind of put some hitch in the get-along and try to move things forward. Thank you, very much. I'll be glad to answer any questions if I could. [LB1113]

SENATOR FRIESEN: Thank you, Mr. Hansen. Any questions from the committee? Seeing none... [LB1113]

JOHN HANSEN: Thank you, very much. [LB1113]

SENATOR FRIESEN: ...thank you. Welcome. [LB1113]

KRISTEN GOTTSCHALK: Thank you. Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee. My name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I am the government relations director and registered lobbyist for the Nebraska Rural Electric Association. We have 33 members with over 225,000 meters over more than 84,000 miles of distribution line. And that's all in rural Nebraska. Our members employ about 1,000 people dedicated to keeping the lights on in rural homes. We are here to testify in support of LB1113. I want to clarify my testimony, based on what Senator Hilgers was getting at. Our testimony is based on the assumption that, as this bill is written, that only the private entity is able to provide the last mile or two the home service. We've heard, through previous testimony and the sponsor's testimony, that broadband deployment in Nebraska really is dependent on access to fiber. And anything that facilitates the deployment of fiber in rural areas is something that should be strongly supported. Internet access is no longer a luxury, it's not about streaming video, it's not about FaceTime, it's not about, you know, playing "Words with Friends" on the Internet. It's that important and necessary tool to keep business alive in rural areas, and it goes right down to agriculture, every section, every mile. Every piece of equipment that comes from the manufacturers now typically has a modem in it designed to connect to the Internet to increase efficiencies and make business better for agriculture. Unfortunately, those modems aren't able to be used by a number of those consumers. What we do see and we find to be very beneficial about LB1113 is the removal of the cumbersome parameters in the approval process by the Public Service Commission. And this really is a step in the right direction because anytime you have a private-public partnership those two entities are working together to benefit both entities. So the oversight and some of the parameters that are specified are no longer necessary. So we do have mutually agreed-upon contracts. And, you know, as we've heard and we talk about the current ability for public-private partnerships in the lease of dark fiber, since those statutes were passed there were only two leases, to my understanding, in place in the state. So, that certainly did not do anything to facilitate the expansion of fiber, but maybe actually put the brakes on in some areas where we might have seen earlier development. I do think we need to continue to think out of the box on this. I don't want to imply that every rural electric system

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

out there has a significant amount of fiber that they're willing to put leases out to. In fact, there's a limited amount that rural electric systems have. But as we're seeing technology demands and the needs for us to communicate with our substations, we're going to see more of that go in. And to create a more beneficial opportunity for public-private partnerships to lease out that dark fiber that we won't be using could reduce the cost and add to efficiencies and reduce costs in providing electric service. So, with that, I end my testimony, and I would be happy to answer any questions that you may have. [LB1113]

SENATOR FRIESEN: Thank you, Ms. Gottschalk. Senator Hilgers. [LB1113]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Ms. Gottschalk, for being here. I have one question on your testimony; I heard you say only two leases have been put in place since the leasing scheme and that maybe...I think I heard you say that maybe it might have put--you know, you're just suggesting--maybe it put the brakes on it a little bit. Could you elaborate on that comment? [LB1113]

KRISTEN GOTTSCHALK: Well, when you go through and you look at it, I don't think that as the parameters and having the Public Service Commission approve the lease and with the requirements that 50 percent of the profit earned by a political subdivision go into an Internet enhancement fund. And so you begin to put these deems (phonetic) that make it less and less cost effective. And that's the point that I was making. [LB1113]

SENATOR HILGERS: Okay. Interesting, thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? So what kind of...how do you envision the public-private partnerships with working together with the small power districts? [LB1113]

KRISTEN GOTTSCHALK: Oh, in...Polk County would be a good example. They're looking at expanding fiber to their substations for communication. They're at a need where the technology needs to change and they're looking at all of their options. Some of those options are a power line carrier, which is a little bit slower. And as they know that technology needs are going to increase, their preference would be to put fiber in place. And at this time it may be cost prohibitive for them, on an independent basis, to put that fiber in. But if they have the ability, or a more attractive ability, to enhance a public-private partnership, leasing of some of that dark fiber not only may offset the cost to the utility but it may encourage the development of last-mile Internet service to consumers within their district where the incumbent provider may not have been able to find a cost benefit situation. [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR FRIESEN: Has any of the private providers ever contacted you and tried to develop a partnership currently under the rules allowing them to use your poles for whatever purpose...I mean to hang their fiber on? Is there any...because right now, you could partner with a private firm in order to get that fiber out there, couldn't you? [LB1113]

KRISTEN GOTTSCHALK: Absolutely, you could partner with the firm. Have we been approached to do that? Most of the...I can't answer that with an absolute; my gut reaction is that, no. And we're hearing that the private providers, at this point, prefer to bury their fiber, not attach it to the lines above ground. My understanding that there hasn't been a tremendous amount of communication. [LB1113]

SENATOR FRIESEN: So... [LB1113]

KRISTEN GOTTSCHALK: I think the communication may have been coming out from the utilities, and perhaps there's a provider behind me that knows a different answer... [LB1113]

SENATOR FRIESEN: So power districts are very open to partnering with private partnerships and providing different forms of broadband, whether it's wireless or... [LB1113]

KRISTEN GOTTSCHALK: Exactly. In fact, you know, we have developed, within our organization, a broadband task force; a four-member group that is learning more, trying to engage more in what's going on federally, what's going on in the state. And as we've had these conversations, you know, it's evident that our members have a desire to see broadband in rural areas because it enhances the economic viability of rural Nebraska, it keeps people there, it brings business there. And so, we would be ecstatic if there could be public-private...more public-private partnerships. [LB1113]

SENATOR FRIESEN: And you're willing to do that same the urban areas? [LB1113]

KRISTEN GOTTSCHALK: Say that again? [LB1113]

SENATOR FRIESEN: Are you willing to do that in the urban areas also? [LB1113]

KRISTEN GOTTSCHALK: In the urban areas? Well, I don't represent any urban areas, so I can't... [LB1113]

SENATOR FRIESEN: Small cities. [LB1113]

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

KRISTEN GOTTSCHALK: Small cells, is that what we're...? [LB1113]

SENATOR FRIESEN: Small cities. [LB1113]

KRISTEN GOTTSCHALK: Small cities? Yes, actually, if we have infrastructure in those communities, we would be desirous to have those. [LB1113]

SENATOR FRIESEN: Any other questions from the committee? Seeing none, thank you. [LB1113]

KRISTEN GOTTSCHALK: Thank you. [LB1113]

SENATOR FRIESEN: Any other proponents of LB1113? Welcome. [LB1113]

RALPH ARMENDARIZ: (Exhibit 6) Thank you for allowing me the opportunity, Senator Curt Friesen and the Transport (sic) and Telecommunications Committee. You'll have to forgive me, this is my first time, so...attest at one of these hearings. So, I've got a lot of notes, so it may appear a bit scattered, but... [LB1113]

SENATOR FRIESEN: Could you say and spell your first name please? And last name. [LB1113]

RALPH ARMENDARIZ: Ralph Armendariz, R-a-l-p-h A-r-m-e-n-d-a-r-i-z. And I'm not sure if I have to disclose this, but I am a licensed professional engineer in the state of Nebraska, and other states as well. [LB1113]

SENATOR FRIESEN: Okay. [LB1113]

RALPH ARMENDARIZ: I represent an engineering firm by the name of Fibra Technologies, LLC, incorporated here in the state of Nebraska. We serve roughly...we serve power utilities' engineering needs in roughly...we're now in about 15 other states. We serve roughly over...our customers pass over a million homes. And fiber technologies...I'm going to go on the other side of this. Today I knew there was going to be a lot of representation, a lot of discussion about the telecommunications side of this discussion and the bill. And please don't quiz me on the bill (laughter). I read it a few times, but I don't know if I know it page-for-page. But anyway...and by the way, I'm one of those two that has gone through the process in this state of dark fiber lease with a public entity. And I will tell you it is a rather uncertain process, not knowing when you're going into that process what the pricing structures are going to be and having faith that you'll

come out on the other end in a favorable position, especially when you're trying to, you know, make profits and support a business off of that fiber and not knowing exactly what those pricing structures are going to end up being. It is a bit difficult to take that course...to voluntarily take that course, anyway. It usually is a last resort when looking at those options here in the state of Nebraska, as a provider's perspective. Anyway, I've been on both the telecommunications and the power utility side of this equation. But like I said earlier, I'm going to address the power utilities side of this. Our experience is what I'm going to share, with the public-private partnerships. Now, we've had a large project down in Huntsville, Alabama, with Huntsville Utilities. Six years ago we started to engage Huntsville Utilities and help them develop their fiber plan. I don't know if everybody is aware, but the Energy Independence and Securities Act of 2007 is encouraging--strongly encouraging--the power utilities to deploy smart grid applications. These applications will allow the deployment...integration of renewable energy...sources of energy into the network. And without...the basis of the network, for the smart grid applications to reside on the network, is the fiber infrastructure. So we engaged Huntsville Utilities to start planning. And most of our customers, unfortunately whom I cannot name...Huntsville, since it's a public entity down there, they're done, and their fiber build is 75 percent complete, you know, all documents are public knowledge as far as their arrangement, and have been, going since the inception. But with their deployment...we were down there working with them to help them with their fiber master plan. Every public power entity in the U.S. is requiring the deployment of fiber-optic cable in order to support these smart-grid applications. This is the very modernization of the power infrastructure that is required today in order to continue to operate these networks efficiently enough to provide cost-effective power and integrate distributed energy resources into those networks. Without fiber-optic communications, the cost to lease services on a per-megabit basis or to lease cellular services is cost prohibitive. The...in some areas it may not even be available. So, with this project--you know, again, I'm just here to share the experiences of the project--we were able to take what would have typically been about a 20-year fiber master plan to deploy fiber throughout their serving area, and we were able to accelerate that to a level...to a term of four years. And so now they will be able to implement these smart-grid technologies, become compliant with the energy acts, and offer their customers cost-effective services. Now the benefit that we've seen down there with Huntsville Utilities is, by partnering with a private entity, they were able to off...not only offset the costs, but after ten years of the network operating they will be making money on the dark fiber that they are leasing. So they're...today they're able to offset the costs of the deployment, they're able to accelerate the deployment, and they will be able to lower their...the burden, the cost burden, to their ratepayers. And this is from the utility side. So this is...just simply by taking a common piece of infrastructure--which both entities, telecom and power utilities, require--and sharing that infrastructure. And that's the bottom line: there is just partnering on sharing that infrastructure. And then, as was mentioned earlier, the institutional network services are the smart-grid services and those will be accelerated. The deployment of those will be accelerated throughout the network and will then benefit the electric customers. So

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Transportation and Telecommunications Committee
February 20, 2018

I encourage you to pass LB1113 in order to allow Nebraska to see these types of beneficial implementations move forward. [LB1113]

SENATOR FRIESEN: Okay, thank you for your testimony. Any questions from the committee? Seeing none, thank you. Other proponents, LB1113. Welcome. [LB1113]

ANDREW NELSON: Thank you, Senator Friesen, committee. I also am a rookie and this is my first time, so just get any of the hazing rituals over with quickly, please (laughter). My name is Andrew Nelson, A-n-d-r-e-w N-e-l-s-o-n. I am a partner with Ralph in Fibra Technologies, and I'm also a resident of the state of Nebraska who enjoys Internet; so I'd like to speak on both sides of that. Ralph talked about the Huntsville Utilities project that we've worked with, and that's one of a couple of public-private partnerships that we've experienced in our business. The one I'd like to talk about is actually the city of Long Beach, California, also publicly announced. We helped them design a public city fiber network that is being built with city funds and that it will, in a similar fashion, be used in a public-private partnership to try and offset some of the construction costs for the taxpayers of the city of Long Beach. They have to connect everything from street lights to fire stations to police stations to public safety cameras. And in the process of installing the conduit--much like the gentleman from Lincoln had said--it is by far the most cost-intensive and time-consuming piece of it. Pulling the fiber and the cost of the fiber is miniscule compared to actually laying the conduit and or, you know, running it across the poles, as well as, you know, the size. He's talking about how through his system, where he has to lease the conduits to people, he's currently full. Well, if you look at the size...you know, my pinky finger here is about the size of either a small-count fiber--whether it's got 24 in it, all the way up to 288. The size of these individual glass fibers that go inside here are, you know, the size of what little hair I have left. So, if you can not have to waste all the extra space on the buffer tubes and the insulation and the pieces that you have to pull through that conduit, and instead just install more conduit and have it available to the businesses, you're going to make much more efficient use of that conduit space that's installed. You know, there's maintenance downsides to that, but that's part of running any network is notification of maintenance. Having said that, as a consumer who lives in the state of Nebraska his whole life, I will kind of talk to the other side. I admit that extending Internet to rural areas is a must-need for Nebraska to stay competitive. I live in Omaha, but where I live, if I want to do...have what the FCC defines as broadband--which is 25 megabits per second down to my house or more--I have exactly one choice. I have no competition. And thus the provider that I have can essentially charge me whatever they'd like to charge me. I have no possible way of buying anyone else to actually get the service that I would want in my house. How this bill might help encourage that is...just as a thought, I talked with some other people in my neighborhood about potentially using the Sanitary Improvement District that I live in and approving a bond with the people who live in that Sanitary Improvement District with me to install conduit--and with this bill potentially fiber as well--to then either sell or lease-to-own back to a private company. That way the company that would provide service to these houses wouldn't be on the

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

hook for the initial capital outlay and they'd be able to recover that in a per-month service afterwards. It's just simply an idea, but it would be a way to foster competition and get potentially better services in my neighborhood. Admittedly, it's a bit of a selfish side piece, but that's...I'd certainly like a better option. That's most of what I had to say. Hopefully there will be some sort of questions, and if not I will dance off, stage left. [LB1113]

SENATOR FRIESEN: Thank you, Mr. Nelson. Any questions from the committee? Could you tell me what kind of service you currently have, what speed and what you pay for that? [LB1113]

ANDREW NELSON: Certainly, I have a 300 megabit down/30 megabit up service that, due to limitations on the total amount of data downloaded to my house, I have to pay \$149.99 for it. That is actually the least amount that I could have to pay as I have teenagers and they use YouTube a lot. So the base one-terabyte plan offered by my service provider, I would easily go over it and be charged even more if I didn't pay for the unlimited plan. [LB1113]

SENATOR FRIESEN: Sounds pretty reasonable for a rural area. [LB1113]

ANDREW NELSON: Well, in a rural area you're absolutely right. In a rural area that may very well be. [LB1113]

SENATOR FRIESEN: Okay. Seeing no further questions, thank you. [LB1113]

ANDREW NELSON: Um-hum. [LB1113]

SENATOR FRIESEN: (Exhibit 8 and 9) Any other proponents? Seeing none, we'll take opponents, LB1113. We do have a couple letters that I'll enter in: from Nebraska Public Power District and Thomas Reiman, president of The Broadband Group/TBG network Services. Welcome. [LB1113]

JOSELYN LUEDTKE: (Exhibit 7) Hello Senator Friesen, members of the Transportation and Telecom (sic) Committee. My name is Joselyn Luedtke, J-o-s-e-l-y-n L-u-e-d-t-k-e, and I'm testifying today on behalf of the Nebraska Cable Communications Association in opposition to LB1113. The Nebraska Cable Communications Association has long opposed public entry into the competitive market of broadband Internet service provision and cable television services. In 2005, the Legislature opted to assert its right to prohibit political subdivisions from offering broadband, Internet, telecommunications, or video services. This was a wise decision that gave the private sector a stable regulatory environment in which to compete. And I regret that Curt

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

Bromm couldn't be here testifying today since he was instrumental in those discussions and those negotiations that happened in 2005. But we've talked a lot about it, so hopefully I can take the reins from here. LB1113 does appear to allow some form of public entry because we don't see a clear framework of how those public-private partnerships would be structured. We are concerned about subsidizing competitive service with ratepayer dollars. And furthermore, it is unclear why this legislation is necessary, why such partnerships could not be entered into today without the passage of this legislation. And for those reasons we oppose LB1113. [LB1113]

SENATOR FRIESEN: Thank you, Ms. Luedtke. Any questions from the committee? Seeing none, thank you. Welcome. [LB1113]

ERIC CARSTENSON: Thank you. Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Eric Carstenson, that's E-r-i-c, Carstenson is C-a-r-s-t-e-n-s-o-n. I'm the president of the Nebraska Telecommunications Association. By the time I introduce myself I always feel like I've almost used up my five minutes. But the NTA is a trade association that represents the majority of companies that provide landline and broadband telecommunication services to people across the state. And I'm here to testify in opposition to LB1113. We appreciate Senator Walz bringing you this legislation, and we look forward to continuing the conversation with her. Earlier this year when you heard LB994, another representative testifying on behalf of the NTA testified that one of the items the broadband task force in that legislation should consider would be public-private partnerships, and I'd renew our point at this time that that would be an appropriate place to put that. And frankly, that was included in our testimony that you heard on that legislation in anticipation of the concerns that Senator Walz is bringing you today. We still encourage this committee to embrace further consideration of that idea, but I also renew our strong concern that government competition in the private telecommunications industry will chill further investment. But we probably need to start looking at new and innovative ways of achieving that public and private partnership, perhaps considering even some things that state government has done with the competitive bidding process. And maybe this committee could consider requiring anchor tenancy as we look at a public-private partnership. And here's my idea: we've heard that the power industry has got to undergo some changes in how they monitor systems. What if they were able to engage in a public-private partnership by putting those communications needs out for competitive bidding? In other areas of state government, we've seen dramatic declines in the cost per megabyte of broadband on a monthly basis when that competitive bidding process was utilized. I think that would be one example of how an effective public-private partnership could be implemented. But then as I've listened to our testimony today, I've also heard some concerns. I have some concerns. I heard that we want to share dark fiber, I've heard that we want to do like Lincoln did and borrow from that model, and I heard that we want to put fiber in the rural market. But my concern about that is we have testified to this committee on numerous occasions that there is a very robust intercarrier fiber network already in existence in Nebraska.

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

Unfortunately what I didn't hear is where there is any fiber that ultimately gets to a retail customer. So what would we be sharing? I'm afraid what we would be sharing would be the network which already exists today and not the most difficult portion of that connection, which is the last mile. So that brings me to another public policy thought. And that's we pretty much know that deploying rural broadband will be expensive. It's a public policy decision on this committee and the Legislature's part about, is it in the public interest for everybody to have access to affordable broadband? We think it is. But the next question then becomes how do we meet that cost? And with existing private infrastructure in place, I think the most disruptive way to do that would be to have some kind of a governmental competition, especially when we know it's all going to cost the same. And of...just out of which pocket are we going to take this cost? Finally, one last concern that I would like to bring up. I know that Senator Walz brought you an amendment, and so I'm just testifying to the green copy, and when I get a chance to review the amendment dealing with Internet service providers, I may have to change what I say. But I'm concerned about that there is a lack of a definition of an Internet service provider. We know what an eligible telecommunications company is. You've spent a lot of time defining what kinds of things those are. But I don't know what an Internet service provider is. Regrettably, I think if you would ask any high school student they could tell you what an Internet service provider is. And they'd probably be right and we'd all understand it. But it's not defined in our statute. So, with those concerns, I'll simply close and say for those reasons we oppose LB1113 today. [LB1113]

SENATOR FRIESEN: Thank you, Mr. Carstenson. Any questions from the committee?
Seeing...Senator Bostelman. [LB1113]

SENATOR BOSTELMAN: Thank you, Chairman Friesen. Mr. Carstenson, thanks for coming to testify today. Question to you is questions you've heard me ask, I think, several times at different hearings perhaps. And I appreciate your comment on existing fiber. We have no maps. We don't know where to start from. We have a little bit of a map, but we don't have all of it. How is it that we are going to be able to get a map with the fiber on it to show...because how do you build something when you don't know what's there? What's your thoughts on that? [LB1113]

ERIC CARSTENSON: We're very familiar with the Public Service Commission. And they had a federal grant several years ago which, unfortunately, as federal grants frequently do, ran out. And they were developing a meaningful mapping system to help us answer that question. They've continued to update that form based...or that map based on information that comes from a form that every broadband provider is required to file with the FCC; we refer to it as a "Form 477." But there would be ways to empower the commission to look at mapping that could answer our question and, I would think, could replicate what they've done before to give us a robust system. [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR BOSTELMAN: Would that include, I guess, some propriety information they would then hold themselves and not release to the public? How would they do that because there are companies that have fiber, and I understand that, and it's...you know, they don't want that information out there for one reason or another. But that might be some fiber that could be used...it just seems like we've got a...as you said, there's a lot of fiber out there we just can't get our hands on...wrap our arms around what's really there so we know what to...if there's a potential to grow off of it. [LB1113]

ERIC CARSTENSON: There...by giving them some latitude in what they're to display, there might be ways to go to, what I call, a straight-line map. Which doesn't say, okay, we go down this section at this mile marker and it is three feet from here; that would put private fiber and public fiber, I think, in jeopardy for terrorism and things like that. But perhaps we could draw what I refer to as a straight-line map, and I don't know if that's a term of art, it's a term of Eric. And it just represents, although it doesn't detail, where it is. [LB1113]

SENATOR BOSTELMAN: Thank you, Mr. Carstenson. [LB1113]

SENATOR FRIESEN: Thank you, Mr. Bostelman...Senator Bostelman. Any questions from the committee? Seeing none... [LB1113]

ERIC CARSTENSON: Thank you. [LB1113]

SENATOR FRIESEN: ...thank you for your testimony. Other opponents, LB1113? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Walz, would you like to close on LB1113? [LB1113]

SENATOR WALZ: Thank you, Senator Friesen. Before I start, I just want you to understand that I made this my priority bill. And I did because I'm very passionate, as Senator Friesen and I have talked about before, about making sure that our rural communities continue to be sustained and hopefully continue to thrive. I know that Senator Friesen has introduced LB994, which would create a task force to study how we could improve broadband in the state, and I want to thank you for your leadership and passion on this issue. I support LB994, but at some point we need to quit studying this and we need to take some action. We've been studying this for two decades: interim studies, task force, informal studies, academic research. LB1113 is something that has been proven to work. Public-private partnerships are already permitted. We are just changing how dark fiber can be leased to save the political subdivision, the company, and--most important--the consumer money by doing these projects in a cost-effective manner. The concept has worked in Colorado, Alabama, and it's worked right here in Nebraska despite having to add unnneeded expenses. My goal here is to grow all of Nebraska. And yes, that means rural

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

Nebraska. Some that I've talked to have really given up on that concept, but I'm not willing to do that. We have to take action to do this. And I think this is a vital part of making that happen. Making sure all Nebraskans have broadband service at an affordable rate is crucial. I want to be clear that I'm not trying to harm our companies that have provided services for decades. This bill will help those companies, it will bring those companies new opportunities just as much as companies looking to expand. Great Plains and Dodge, Nebraska, right now has the opportunity to partner with their local government at a cheaper rate than their competitors because they already have the basic infrastructure in place. However, if a company is unwilling to make improvements, we do feel it is important for local taxpayers and locally-elected officials to have a tool to help them do what is best for the community to be...and to encourage competition if needed. You know, I'm a realtor and I have a lot of competition in my job. And that's a good thing. It makes me be a better realtor and it makes me provide a better service. So competition should not be a scary thing. Let's help our farmers, our businesses, and the ordinary, hardworking Nebraskans that need this now more than ever. The longer we wait, the more it will cost. So let's get this done and let's not kick the can down the road any more. Thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Walz. Senator Briese. [LB1113]

SENATOR BRIESE: Thank you, Chairman. And thank you, Senator, for bringing this bill. [LB1113]

SENATOR WALZ: Absolutely. [LB1113]

SENATOR BRIESE: And just to be clear here; it's not your intent, is it, to allow public entities...or put them in the business of providing retail services? [LB1113]

SENATOR WALZ: Absolutely not. [LB1113]

SENATOR BRIESE: Okay. Okay, thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Briese. Any other questions from the committee? Senator Smith. [LB1113]

SENATOR SMITH: Thank you, Chairman Friesen. And Senator Walz, in all due respect, you do make mention of you being a realtor and that you're not afraid of competition, but yet in your industry you do not compete with the public sector. You are a private sector competing with private sector on a level playing field. What you are asking for here is to create an advantage for

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

the public sector to compete with the private sector. So, that's what is at issue with this.
[LB1113]

SENATOR WALZ: But the public would not be providing that service. The public sector...we're not asking the public service...that has nothing to do with this bill. It does not allow the public sector to provide that service. [LB1113]

SENATOR SMITH: In my interpretation of your bill, it does create an unfair competitive advantage for the public sector. And this is basically a public entry bill to compete with the private sector. [LB1113]

SENATOR WALZ: My interpretation of this bill, that it's not a public entry to compete.
[LB1113]

SENATOR SMITH: Thank you, Senator Walz. [LB1113]

SENATOR FRIESEN: Thank you, Senator Smith. Any other questions from the committee?
Senator Briese. [LB1113]

SENATOR BRIESE: Thank you, good Chairman. Thanks again for being here. But it's your belief that this mechanism will enhance broadband deployment across rural areas of Nebraska?
[LB1113]

SENATOR WALZ: Yeah, it already has in Lincoln. [LB1113]

SENATOR BRIESE: And it will lower cost, correct? [LB1113]

SENATOR WALZ: Yeah, I believe that, yes. [LB1113]

SENATOR BRIESE: And lower cost all the way to the consumer also? [LB1113]

SENATOR WALZ: Yes, absolutely. [LB1113]

SENATOR BRIESE: Okay. And we didn't hear any testimony today that really countered those two points, did we? That it wouldn't lower cost or that it wouldn't enhance deployment across the state? [LB1113]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR WALZ: No. [LB1113]

SENATOR BRIESE: Okay, thank you. [LB1113]

SENATOR WALZ: Thank you. [LB1113]

SENATOR FRIESEN: Thank you, Senator Briese. Any other questions from the committee? Seeing none, thank you. And we will close the hearing on LB1113. Okay, we will now open the hearing on LB1114. Senator Walz, welcome back. [LB1113 LB1114]

SENATOR WALZ: Thank you. Thank you, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z, and I represent the 15th Legislative District. LB1114 would change how broadband accessibility is mapped at the state level. Grants to the Nebraska Universal Service Fund help finance projects to bring telephone and Internet access to rural Nebraskans at a reasonable price. It can be expensive to provide services to all farms and acreages where there are few customers to make up the cost of the infrastructure to get to those locations. Currently, broadband is mapped at the census block level, which is problematic, especially in rural areas. If one place in the census block has broadband capability, it shows the entire census block has access. In reality, many census blocks are many miles long in rural areas and there are many places that barely have access at all, let alone high-speed service. This bill would require the telecommunication services to be tracked at the address or land parcel level. This is in order to truly determine the accessibility, the areas we need to improve, and to provide information for this state to invest in smart developmental--development--projects in the future. Like most businesses, we know there's sensitivity to make sure that private companies don't have to release their business plans to competitors. We researched other states who have passed similar legislation to alleviate concerns of the private sector. We hope this bill addresses the concerns of companies, but we'll work with them if they do have concerns. There will be people coming up after me that will be able to explain how other states have made this work and can answer questions on some of the specific details. Some questions may be suited for them, but I'm happy to try and answer any questions now or in my closing. Thank you. [LB1114]

SENATOR FRIESEN: Thank you, Senator Walz. Any questions from the committee? Seeing none, thank you. [LB1114]

SENATOR WALZ: Thank you. [LB1114]

SENATOR FRIESEN: Proponents of LB1114. Welcome. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

BRENT LEGG: (Exhibit 1) Chairman Friesen and members of the committee, thank you for the opportunity to share Connected Nation's insights on this important topic of broadband data collection and mapping and our support for LB1114. My name is Brent Legg, B-r-e-n-t L-e-g-g, and I am vice president of government affairs for Connected Nation. We're a national nonprofit organization with a 16-year history of improving lives and strengthening communities through increased access to, and adoption of, broadband and related technologies. Headquartered in Bowling Green, Kentucky, Connected Nation's work has impacted more than 30 states. We serve as the single largest grantee under NTIA's State Broadband Initiative grant program. Under SBI, we manage broadband mapping and planning projects across 12 states and 1 territory, representing 42 percent of the U.S. landmass. And our mapping and data validation techniques have been widely recognized as "best practices" by NTIA, the FCC, and others. CN also has a long history of working at the grassroots level in more than 600 communities through initiatives like our Connected Community Engagement Program, in which we help local leaders build comprehensive technology plans for their communities. Our work on the ground in these communities has helped us develop an intimate understanding of the impact that broadband has on rural and urban areas alike, and there can be no doubt that accurate and granular broadband mapping is one of the most critical tools in developing sound broadband policy to close the digital divide. Reliable broadband mapping is a matter of critical importance to residents, businesses, and community anchor institutions in areas where robust broadband is lacking, as any good map should give voice to those who find themselves on the other side of the digital divide by prioritizing the closing of those gaps. We strongly believe in the importance of accurate and granular broadband data collection and mapping for three reasons: to inform better decision-making on where public resources should be invested to build broadband; to avoid potential overbuild situations where service may already be available at a comparable speed and cost; and to ensure accountability for the ratepayer and taxpayer dollars that public investments are making in broadband build-out. When federal funding for the SBI state broadband mapping grants ran out in 2014--as you've heard about earlier today--the FCC and other federal agencies began to rely on what is known as "Form 477" data--which you've also heard about earlier today--to understand the extent of broadband coverage in America. Later this week, the FCC will roll out an updated National Broadband Map using 477 data. Unfortunately, this data isn't sufficiently granular to adequately inform policy-making or decision-making either at the state or the federal level. Form 477 requires service providers to report census blocks where they provide service. Unfortunately, if even one household in a given block is served, the entire block is considered as having service, resulting in a significant overstatement of availability. This is particularly problematic in rural areas where census blocks can be very large. In fact, there are 5,835 census blocks in Nebraska that are larger than two square miles in size, comprising 50.5 percent of the state's land area. Thirty-five of those blocks are actually larger than the entire District of Columbia, which is just over 68 square miles in size. Yet these rural areas are where broadband availability is most lacking and needs to be accurately defined. That's why states cannot rely on federal census block data on service availability. Until Congress fixes this issue,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

the state should enact LB1114 to collect GIS data at the street address or land parcel level of detail, with an understanding of provider name, service type, and speeds available at each serviceable location. LB1114 includes a provision that would provide assistance, at no charge, to service providers that may not have the capability to submit their service footprints in GIS format, and includes a provision that may--that will--protect any proprietary or confidential information that may be collected from service providers to help them in that endeavor. I know that there is many concerned about the fiscal note attached to this bill. Based on our experience as a nonprofit mapping broadband in Minnesota and 12 other states under the NTIA grant program, as well as in years since, we believe the estimate for the contract that would be necessary under this bill is too high and would range between \$275,000 and \$350,000 per year, less than half of what is projected in the fiscal note. And because the map would be used to make the expenditure of state funds more efficient, there may, in fact, be a net cost savings, over the long term to the state, if the map is granular enough to more effectively target where state USF funds are expended for broadband expansion. We also believe that, while not our first choice, one can make the case that this funding could be derived from the state USF as an administrative expense to ensure accountability for the program as the maps would provide greater transparency to policymakers and the public about where state USF dollars are resulting in broadband build-out. Last week, Connected Nation mapped the home addresses of six Nebraskans that have been working with the Center for Rural Affairs to get better Internet access to their homes. All six live in locations where the Federal Form 477 data indicate service is available. Yet when those individuals call to subscribe, they're told that their homes are not serviceable. The worst part is that the census blocks where they live are also being ignored for federal USF subsidies because, in the eyes of the FCC and USAC, those areas already have service. That's why we believe the Nebraska Legislature must pass LB1114 to provide policymakers like yourselves, the Governor's Office, and the PSC with the information that you need to ensure that all rural Nebraskans have the ability to connect. We look forward to answering any questions that you may have, and thank you. [LB1114]

SENATOR FRIESEN: Thank you, Mr. Legg. Any questions from the committee? Senator Hilgers. [LB1114]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you for your testimony. Just one question: you mentioned you thought the fiscal note was high because the contract estimate would be high. What would be a more realistic or accurate estimate for contract, in your opinion? [LB1114]

BRENT LEGG: We believe, based on the experience that we've had in other states, that that should be between \$275,000 and \$350,000, about half of what's included for the contract in the fiscal note. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR HILGERS: Okay, thank you. [LB1114]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Seeing none, thank you for your testimony. [LB1114]

BRENT LEGG: Thank you. [LB1114]

SENATOR FRIESEN: Welcome. [LB1114]

JESSIKA BENES: (Exhibit 2) Thank you. Good afternoon, Chairman Friesen and members of the committee. My name is Jessika Benes, J-e-s-s-i-k-a B-e-n-e-s. I live in rural Juniata, in Adams County. My husband and I lived in rural southwest Iowa for the past three years before moving back to the family farm. When we were setting things up in preparation for the move to Nebraska, it became very apparent that the Internet service was very limited. Together we called over ten companies about Internet and only one even offered service to our location. The Internet that we have is very poor quality, especially compared to the high-speed broadband from when we lived in rural Iowa. According to the 2016 FCC estimates, we are among the nearly 50 percent of rural Nebraskans that do not have access to speeds that qualify as broadband. But for my family it is more than just a statistic. Limited broadband access impacts our daily lives and our economic opportunities in rural Adams County. Our slow Internet speed created great hardships for me as I tried to take an education class from Parker University in Dallas, Texas. This class was not available any closer to my home. Each month prior to attending in-person classes, I was required to watch on-line lectures and pass a test. My Internet was too slow to load the lectures or the timed exams. I had to take my personal laptop to the public library to download the lectures and then watch them at home. Also, I had to try to schedule a time to be able to use the desktop computer at the library because the Internet kept disconnecting on my laptop. The library computer was even so slow at loading these timed exams that I had to ask the instructor to change the format so that I could get all the questions loaded during the time limit. I now will have to reconsider any forms of education that require on-line components because slow Internet speed makes it too difficult to complete these course requirements. Poor Internet speed is also making it very difficult to operate my business. This year I launched Mid Plains Mobile Vet and Animal Chiropractic. It is very challenging with slow Internet to be able to design and run a website for my business. I also have difficulty ordering supplies from my distributors because oftentimes my Internet cannot load images. Telemedicine is becoming very popular in human medicine, so progressive veterinary practices are also embracing this service. There is simply no way that I could serve my clients with that type of medicine without significant improvements to broadband service in rural areas. From a family standpoint, I'm disappointed with the lack of broadband Internet. I love to share photos with family and friends that are out of state. Currently, I share very little because of the extra time it takes to upload

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

images. Furthermore, as Internet streaming services continue to grow, I would love for my three-year-old son to be able to watch, or stream, a show without having to tell me repeatedly that it isn't working, because much of the time it's sitting there, just buffering. I understand that state budgets are very tight, but investing in our broadband infrastructure is an investment in our future. The world is constantly changing and citizens of Nebraska are being left behind. Thank you for your time. [LB1114]

SENATOR FRIESEN: Thank you, Ms. Benes. Any questions from the committee? Senator Bostelman. [LB1114]

SENATOR BOSTELMAN: Thank you, Chairman Friesen. Thank you, Ms. Benes, for being here. What would you consider appropriate upload/download speeds for yourself? [LB1114]

JESSIKA BENES: Well, I can tell you that right now my download speed is three megabyte and my upload is one, on a good day. Previously when I lived in rural Iowa, I had 10 to 15, which was a significant improvement. It's just a huge challenge with my very limited speeds. [LB1114]

SENATOR BOSTELMAN: I understand. Is 10 to 15 enough, or 20/20? Or what would be...I'm asking you... [LB1114]

JESSIKA BENES: Sure, I mean, so... [LB1114]

SENATOR BOSTELMAN: ...what your...what is it for your business? What is it...or for your family, what would you (inaudible)... [LB1114]

JESSIKA BENES: I mean, 10 to 15 was great. And I would, quite honestly, pay more for better service. Right now I pay \$50 for what I get, which is not acceptable. [LB1114]

SENATOR BOSTELMAN: Okay. [LB1114]

JESSIKA BENES: And I would happily pay more for a higher speed. [LB1114]

SENATOR BOSTELMAN: Okay, thank you very much. [LB1114]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Seeing none,... [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

JESSIKA BENES: Thank you. [LB1114]

SENATOR FRIESEN: ...thank you. [LB1114]

JORDAN RASMUSSEN: (Exhibit 3) Good afternoon, Chairman Friesen and members of the committee. My name is Jordan Rasmussen, J-o-r-d-a-n R-a-s-m-u-s-s-e-n. I serve as a policy associate with the Center for Rural Affairs, but today I share a letter on behalf of a constituent who is unable to be here today. Her name is Lacey Hall. This is her letter: My husband and I reside outside of rural McCool Junction, Nebraska. We live about five miles from town and, for years, have struggled with broadband access. In fact, had I been writing this letter six months ago, I would have been in the category of Nebraskans who didn't have an Internet subscription. My husband is a farmer in York County, so we are very tied to this area and have built an operation here. Our home, however, is not in a convenient spot for Internet access. Yet factors like Internet don't and cannot determine where we live. A couple years ago we had no options for Internet, as there were limited providers, and we were told by all that they wouldn't be able to get Internet to us. Cell phone coverage was also limited, so we personally invested hundreds of dollars in a cell phone booster equipment to get cell phone coverage in our home and shop. Once we made that investment, we adjusted our cell phone plan and were able to use hot spots on our cell phones to connect our computer to the Internet for access when needed. Did that work consistently? No. Was it a fast connection speed? No. Did we get frustrated? Absolutely. But there were no other options. Fast forward two and a half years later and we finally have Internet. I use the term "we" lightly because my mother-in-law built a home half a mile down the road on a hill and she is technically the one that gets Internet. We are reliant on her to bounce a signal down to us. We had to fumble around with lots of equipment, cords, and antennas and personally purchased \$1,200 worth of equipment to do this. Now we get Internet, but we are completely reliant on other individuals and, if circumstances change, we could be back at where we started just a few years ago. The Internet in rural Nebraska is a hindrance to development. Farmers and ranchers like ourselves are trying to run, most often, multi-million dollar operations. Farming is no hobby; it is a business. And the lack of Internet...lack of Internet complicates our ability to succeed. Technology is rapidly advancing in the agriculture industry, yet there is a lack of ability to use it. Precision ag data is useless if the Internet is not readily accessible. We also use cloud-based software for our accounting and our farm management, and the inconsistency and slow Internet speeds make it inefficient. Agriculture is a huge component of the success of the state's economy, contributing over \$23 billion. Yet much of this revenue comes from the rural areas that lack broadband options. As a rural citizen, I can also say the lack of broadband has deterred my education. I graduated from the University of Nebraska-Lincoln with a bachelor's degree in agribusiness and currently have a full-time job off the farm. I have considered furthering my education and taking on-line courses to get my master's degree, but immediately dismissed this because I knew it wouldn't be possible to stream lectures or do coursework on-line. As a rural resident, the lack of broadband accessibility negatively impacts our quality of life and ability to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

succeed. My husband and I work very hard for what we have, but when factors such as rural broadband are so out of our control, we must speak up and share our story so that improvements can be made. Please consider this investment to modernize rural Nebraska. Respectfully, Lacey Hall. [LB1114]

SENATOR FRIESEN: Thank you, Ms. Rasmussen. Any questions from the committee? Seeing none... [LB1114]

JORDAN RASMUSSEN: Thank you. [LB1114]

SENATOR FRIESEN: ...thank you. Welcome. [LB1114]

COLLEEN RICKARD: (Exhibit 4) Thank you. This is the first time I've ever testified, too, so I apologize. My name is...good afternoon, Chairman Fisher (sic--Friesen) and members of the committee. I thank you for allowing me to come and tell my story. My name is Colleen Rickard, C-o-l-l-e-e-n R-i-c-k-a-r-d. I'm a small business owner of C-Pap Easy Clean in Gibbon, Nebraska. Prior to a year ago, we lived in Axtell, Nebraska. As a...sorry. As a small business owner, it is extremely important to have Internet access, where we sell 95 percent of our sales...that's where they occur. YouTube videos as well as Facebook, Twitter, and Instagram are all done over the Internet, all of which are extremely important for our business to function. Unfortunately, living in a rural area, it is extremely hard to find inexpensive and reliable Internet. This lack of access, even except in our modern lives, can even get in the way of actual emergency services. This is extremely disheartening to me, as a business owner of C-Pap Easy Clean was born and existed to help improve the health of my customers. Due to circumstance issues we have had two incidences in our area that could have been life threatening. In one case, an automobile crash outside the road--sorry--outside the road and the driver was ejected from the vehicle. We assisted her and tried to dial 911 and, unfortunately, I had to run up and down the street to try to get direct connection with the 911 operator to be able to help her. In a similar instance, our daughter was in an emergency care. We needed to dial 911 again. We needed to contact emergencies services and, unfortunately, we were unable to make good connections. We performed CPR while trying to move the cellphone around the kitchen floor, desperately trying to save her life. Luckily, both women are still alive today, but these stories could have gradually turned the other way, and it could have been so much easier if we just had good Internet and cellphone services. My husband works for a major medical company, travels all over the state. There are several areas where his cell phone will not work because of lack of signals and Internet calling access. He delivers medical equipment...sorry...medical equipment as...life-saving medical equipment, and doctors need to be able to get a hold of him at any point in time. If they can't live--sorry--if they couldn't live...could they be on-line...if we can't take and find that there water on Mars, surely there is a better way Internet in rural areas in Nebraska's...something has

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

to be done to help Nebraska, and people that live here, to have better Internet and cellphone service. I apologize. [LB1114]

SENATOR FRIESEN: That's quite all right. [LB1114]

COLLEEN RICKARD: I can still see those people, see what happened. And there's got to be a better way, guys. There has to be. [LB1114]

SENATOR FRIESEN: Okay. Thank you for your testimony. Are there any questions from the committee? [LB1114]

COLLEEN RICKARD: Thank you. [LB1114]

SENATOR FRIESEN: Thank you for coming in. Any other proponents? Welcome. [LB1114]

JOHN HLADIK: (Exhibits 5 and 6) Good afternoon, Chairman Friesen and members of the committee. Thank you for paying attention to this important issue and, also, thank you to Senator Walz for introducing this bill. My name is John Hladik, J-o-h-n H-l-a-d-i-k, and I'm testifying on behalf of the Center for Rural Affairs. I want to provide some context, a bit of it's a repeat, but I think it's worth reviewing. Nebraska Public Service Commission was awarded a \$500,000 grant through the State Broadband Data and Development Program for mapping and planning. That grant ended in January of 2015. Our PSC, thankfully, continued to map broadband access across the state. But after that ended in January of 2015, they began to use Form 477 as the primary data source. As we know, this requires facilities-based broadband providers to file data with the FCC twice per year, stating where they offer Internet access service. For mobile systems, providers file maps of their coverage areas for each technology and for fixed data systems. Providers file lists of census blocks, in which they can, or do, offer service to at least one location. This provides a host of challenges. If a carrier reports providing a service to any one household, the whole block is considered served. For example, and I'm thinking where I live now in rural Burt County, consider a one square-mile section in rural Nebraska with eight separate houses. If one household out of the eight has broadband access, all eight are considered served by both the state and the FCC. This is true even if the other seven have no physical ability to gain access. In other cases, the block may be counted as served when no households at all have access. This takes place when a broadband provider reports that the block could be served without an "extraordinary commitment of resources." This term is not officially defined at the FCC or here at the PSC, and providers have latitude to interpret it differently. Some may use the term when they have an ability to accept new customers, but other may use it when significant construction would be required, even at an additional cost to the homeowner. And this resulting misinformation is especially acute in rural areas where, as we've heard, a census block may

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

encompass hundreds of square miles. There's 35 in Nebraska that are larger than the District of Columbia and just over 5,800 larger than two square miles in size and, because homes and businesses are spread widely throughout these blocks, the accuracy of Form 477 data here is very weak. Even wireless coverage is reported by census block under Form 477. And we know that, owing to terrain and other obstacles, many rural areas suffer from weak, inconsistent, or nonexistent service. There are likely areas within a census block that are shown to be covered, but have no access for miles. And I wanted to walk through three examples quickly. And this is the second attachment I shared. The first one has staples, and this is just that second, loose sheet of paper. This document illustrates the failure of this approach at the home and business level. And I'm going to use Jessika and Colleen and Lacey as an example here. So we know that Jessika is in rural Adams County, Colleen in Buffalo County, and Lacey in rural York County. So we know that Jessika has intermittent access to satellite speeds that are far below, already, the FCC's definition of broadband. We know that Colleen can only access through a mobile service provider, and then just barely. And then we know that Lacey purchased specialty equipment to access a signal sent from a relative's home a half mile away at speeds that, again, fall far below this definition of broadband. And so the next eight columns you see, on the right, are copied from the most recent FCC Form 477 data available. This is straight from the form that is provided and that the FCC and PSC are making decisions on. They include the information for the addresses Jessika, Colleen, and Lacey provided. So you can see, in each of these three cases, the Internet service provider reports serving broadband access to their census block. You can tell that because, if you go under "Max Advertise Down" and "Max Advertise Up," all three have fields that stretch above the 25/3 current standard definition; it's 60/30, 60/60 and 50/25, respectively. So in each of these three cases an Internet service provider reports serving broadband to that census block, but neither Jessika, Colleen, nor Lacey actually have that option. Either the wireless signal does not reach their address or their home, a fact that is corroborated by the provider, or the infrastructure necessary to connect hasn't been extended to their address, a fact that is also known to the provider. This example demonstrates the consequences of relying on 477 as a credible source of information. In each case it tells us that Jessika, Colleen, and Lacey have access to broadband, so the FCC considers them served, the PSC considers them served, I do, you do; everybody in this room considers them served. But they do not have broadband because we all count them among the households with broadband. The programs, initiatives, and efforts that we have in place to close that gap cannot be used because, again, we think of them as having broadband when they do not. They're likely to remain stranded for the foreseeable future. And this snapshot is not comprehensive, by no means. We at the Center do not have the resources to go out and find the only three Nebraskans to whom this applies. These results imply that hundreds, and possibly thousands, of homes and businesses across the state are similarly situated. As this shows, the inaccuracies inherent in Form 477 process combine to create a significant overstatement of access. This leads to faulty decision-making and mismanagement of resources. A reliance on inaccurate data makes it impossible for us to efficiently deploy Universal Service Fund revenue and other resources, and an incomplete

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

understanding of service gaps guarantees communities will be left behind. I see my light is red, but I would like to make a statement on the fiscal note if you will permit. We were disappointed to see the fiscal note, and I think that it would be a mistake if we considered that a barrier. There are several options we have, or that the committee may have at their disposal, for doing this at a cost that is more befitting to the state. The first is to limit this to large blocks, and some states have done this. As we know, there's 5,835 in Nebraska that are larger than two square-miles. It may be reasonable to begin with those census blocks that are larger than two square-miles, to begin the mapping at that point and then ease into doing it for the rest of the state. It could be a bill...an amendment that implements this over a multiyear basis and in phases. A second option, if I could bring your attention to the legislation on page 3, line 14 (sic--11), under subsection 3, "the commission shall create and maintain the statewide geographic information system (map) by (a) contracting for and purchasing geographic information system services from a third party, or (b) working directly with telecommunications companies providing advanced telecommunications capabilities service to input and process data." I think we know from reading the fiscal note that the Fiscal Office interpreted (a) as the only option and did not consider (b) as an acceptable option. And that would be a scenario where the fiscal note would be much less lower. A third option is cost...Mr. Legg, with Connected Nation, made it clear that other states pay that same contract for a fraction of the price, and it's not clear to us why the PSC or the Fiscal Office thought that would cost more. And a fourth is, I think we've been discussing in this committee for a couple years now the Nebraska Internet Enhancement Fund, what that's being used for and whether there's sufficient demand. I think there are some funds there that may be considered if a General Fund appropriation is deemed unacceptable. And then, finally, an option of last resort: We know these administration costs are consistent with the mandate of the Universal Service Fund and it may be an option to look at that. I know there's certainly a high demand for that fund, but this would fall under that rubric. And with that, I'm happy to answer any questions. [LB1114]

SENATOR FRIESEN: Thank you, Mr. Hladik. Any questions from the committee? Seeing none, thank you for your testimony. [LB1114]

KRISTEN GOTTSCHALK: Senator Friesen, members of the Transportation and Telecommunications Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I am government relations director and a registered lobbyist for the Rural Electric Association. And I am here to testify on their behalf today. We heard a lot of testimony earlier about the need and the lack of broadband in rural areas. In fact, the three individuals all live within census blocks that are indicated to be covered with broadband. And I, too, live in one of those census blocks, where I was sent a map recently outlining that...showing that Saunders County is 100 percent covered, yet when I contact my telecommunications provider for access to broadband Internet, I'm told that: I'm sorry, we have nothing to offer you. And so the only access I have is also satellite. Satellite does not constitute broadband and for the same reasons you heard earlier.

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

So when we need to look at where we're going, we have to know where we are. And that's really what this bill does, is it combines all of the information and the real information, not just the federal reporting version of that information. Where are the resources? This all makes sense. The fiscal note is scary but, as we look at this as an economic development issue and needing to expand broadband to those areas that don't have it, the value may far exceed the cost for the fiscal note. And while I would agree the fiscal note seems excessive, I do appreciate the testimony previously stated that there are other options and ways to reduce that cost so that we can get the information that we need to move forward and expand broadband in Nebraska. And again, economic development, the value...that's the step one; we need to move forward. One of the things that happened...I mentioned in previous testimony, that NREA has a group that is focusing on broadband. We had a wireless Internet provider come in, talk to us, and they said their biggest issue is lack of access to towers, not knowing where those towers are. So, on a voluntary basis, our organization is accumulating that information so that it can be shared, because if there is access and there is capacity on those towers to accommodate additional wireless communication, we're ready and willing to provide that and make that another step. The other thing that concerns me...we look at the fiscal note, we get scared away from trying to accumulate this important data. But how much time have we already wasted and we haven't really moved forward with expanding broadband in rural areas? So we need to look at that. I know that security issues are another thing that we may hear about, I know it's an issue for electric providers. You know, how much information do you make public with respect to where your infrastructure is specifically? And I think there are ways that, as this information is accumulated into a large GPS database, that those issues can be addressed and protected. Maybe what's made public is different than what's made available to policy developers. With that, I end my testimony and I'd be happy to answer any questions you may have. [LB1114]

SENATOR FRIESEN: Thank you, Ms. Gottschalk. Any questions from the committee? Seeing none...Senator Geist. [LB1114]

SENATOR GEIST: I've just been thinking as I've been listening, and I'm not sure you're the person to ask, but you are the person on the seat, so (laughter). [LB1114]

KRISTEN GOTTSCHALK: Okay. [LB1114]

SENATOR GEIST: Do you know about how long it would take, in a process, to accumulate enough information for a map for this? [LB1114]

KRISTEN GOTTSCHALK: I could not answer that. [LB1114]

SENATOR GEIST: Okay. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

KRISTEN GOTTSCHALK: It would seem to me that providers already have...and I can use our rural electric systems as an example. We already GPS our systems; we already know what's out there. So providing that information in shapefiles should not be cumbersome. [LB1114]

SENATOR GEIST: Okay. [LB1114]

KRISTEN GOTTSCHALK: And since there is also the aspect of the bill that says if you can't do it yourself there is someone there to help you, in my mind--and I'm sure somebody might counter that--it does not seem like it should take five, ten years. It should take months or a year. [LB1114]

SENATOR GEIST: Thank you. [LB1114]

SENATOR FRIESEN: Thank you, Senator Geist. Any other questions from the committee? Seeing none, thank you. Other proponents? Seeing none, opponents of LB1114. Welcome. [LB1114]

JOSELYN LUEDTKE: (Exhibit 7) Hello, Chairman Friesen, members of the Transportation and Telecommunications Committee. My name is Joselyn Luedtke, J-o-s-e-l-y-n L-u-e-d-t-k-e. And I'm here to testify in opposition to LB1114 on behalf of the Nebraska Cable Communications Association. LB1114 is duplicative and burdensome regulation on an industry already heavily regulated at the federal level. As you've heard, the FCC does...already requires such reporting at the census block level of detail. And requiring a more detailed, semiannual filing for Nebraska would impose significant regulatory compliance costs on our companies. Just wanted to say that the service territories and services are growing so quickly in this area that we are worried that the information would be out of date by the time it was processed, turned into a map, brought before the Public Service Commission, considered, voted on, and used to distribute funds to service providers that are already in a competitive marketplace. We're also concerned with the fiscal note and the Public Service Commission hiring a consultant, just another use of...maybe waste of taxpayer dollars. So for those reasons the association opposes LB1114. [LB1114]

SENATOR FRIESEN: Thank you, Ms. Luedtke. Any questions from the committee? Senator Briese. [LB1114]

SENATOR BRIESE: Thank you, Chairman. And thank you for being here. You mention it would impose significant costs on your membership; could you quantify those costs or give us an example of what those costs might be or how they would add up? [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

JOSELYN LUEDTKE: You know, I don't have anything at hand, but I can definitely check back with our member companies and see if there are similar things that they've had to do in other states. [LB1114]

SENATOR BRIESE: Okay. [LB1114]

JOSELYN LUEDTKE: I know the level of detail with the shapefiles was just something that concerned the companies about having to hire more people to come in and compile that data and provide that. But I'll be happy to get back to you with some costs. [LB1114]

SENATOR BRIESE: That would be great, thank you. [LB1114]

JOSELYN LUEDTKE: Um-hum. [LB1114]

SENATOR FRIESEN: Thank you, Senator Briese. Any other questions from the committee? Do you have any idea how many customers you may have that are in census blocks that are reported, I guess, by the industry as being covered that they're not being covered, because I know there are situations that are like that. But do you have any idea from your members, I guess, how many there might be that are lacking? [LB1114]

JOSELYN LUEDTKE: Yeah, it would vary from member to member. And I can go take that back to them and see if that's something that they compile. It's...to my knowledge, it's not something that they are looking at currently. But I'll take that back to them and see. [LB1114]

SENATOR FRIESEN: So your...I mean, does any of your customers call you and complain about lack of service, I guess, from those members. I guess I want to know if they have a system in place where they're trying to address lack of service. [LB1114]

JOSELYN LUEDTKE: Sure, and when they're making their business case on whether to expand to a different community or whether to expand their services that those are things that they take into consideration, but I don't have any specifics for you on which companies or which census blocks. [LB1114]

SENATOR FRIESEN: Okay. Senator Bostelman. [LB1114]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Go ahead; I'll let you finish writing your note. I don't mind. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

JOSELYN LUEDTKE: Okay. [LB1114]

SENATOR BOSTELMAN: Your...the association, your clients that you represent, are they mostly in cities? Are they rural, or certain municipalities? Who is it that you (inaudible) mostly? [LB1114]

JOSELYN LUEDTKE: Generally in cities, so Charter Communications, Cable ONE, Eagle, and Cox. So it varies. They're across the state, but generally in incorporated cities. [LB1114]

SENATOR BOSTELMAN: Okay, thank you, very much. [LB1114]

JOSELYN LUEDTKE: Um-hum. [LB1114]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you for your testimony. [LB1114]

JOSELYN LUEDTKE: Thank you. [LB1114]

SENATOR FRIESEN: Any other opponents to LB1114? Welcome. [LB1114]

GERRY KEEGAN: Thank you. Chairman Friesen, members of the committee, Gerry Keegan, G-e-r-r-y K-e-e-g-a-n, with CTIA, the trade association for the wireless communications industry, here in opposition to LB1114. Although the bill is well-intentioned, it would require duplicative efforts already being undertaken by the FCC and would be costly for wireless carriers, especially smaller and more rural carriers, to implement. The FCC already requires, as you heard, wireless carriers to submit information in under Form 477. States can use that information, they just have to enter into a data-sharing agreement with the FCC. Adding a broadband mapping mandate at the state level would be duplicative and would force carriers to divert investment away from broadband deployment in order to comply with the mandate. Moreover, the legislation would require more granular-level mapping than the FCC currently requires. It is unlikely that wireless carriers currently collect this type of information and would need to add additional staff and compliance systems in order to comply. Such a requirement would impose new, burdensome fiscal and personnel costs on carriers, especially those carriers who serve more rural areas. For these reasons we oppose the bill. Thank you. [LB1114]

SENATOR FRIESEN: Thank you, Mr. Keegan. Any questions from the committee? Seeing none, thank you for your testimony. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

GERRY KEEGAN: Thank you. [LB1114]

SENATOR FRIESEN: (Exhibits 9, 10, 11, and 12) Any other opponents to LB1114? Seeing none, anyone wish to testify in a neutral capacity? We do have a couple letters from Nebraska Public Power District; Jessika Benes from Juniata; Lacey Hall, McCool Junction; and Doris Rohrer from Verdigre, Nebraska. Welcome. [LB1114]

TIM OBERMIER: (Exhibit 8) Thank you, Senator Friesen, members of the committee. I appreciate the opportunity today. I am Tim Obermier, T-i-m O-b-e-r-m-i-e-r. I'm a professor in the information networking and telecommunications program at the University of Nebraska-Kearney. I'm very visual in terms of my overview here, so as soon as my handout comes out, I'll begin. But while we're waiting for that, I'd just like to note that this little box here with the lights in it; my students would love to have this (laughter). [LB1114]

SENATOR FRIESEN: I enjoy it myself. [LB1114]

TIM OBERMIER: (Inaudible) these lectures would be five minutes...in five-minute blocks. What I'd like to share with you today are the results of a couple of research projects that I've recently completed, one titled "Residential Internet Access Cost in Nebraska", and I'm testifying from a neutral perspective that I think provides evidence for both bills today, actually. And I will try to be brief. There is a lot of material here, but I will scoot through it as quickly as I possibly can and hopefully bring an understanding for you. I'm not going to spend a lot of time on the literature review. We know broadband is critically important. Probably the most striking thing I found in my literature review is that counties across the country with inadequate Internet access are losing population, and I found that rather interesting. The first set of research questions, if you turn to page 2, the first slide--slide number 5--in the upper left quadrant, I wanted to find out the cost per meg for Internet access in Nebraska, the cost by city classification, and the cost by delivery method, and actual cost for defined broadband speeds. I'm not going to go into tremendous detail on the methodology other than just to let you know that we have exactly 30 first-class cities in the state of Nebraska. We did a random sampling on the second-class and village-class cities in the state of Nebraska in order to come up with the communities to research. I drew a map of all the communities that were involved in the research on slide number 11 on page 3. And you see there is an open area in the Sandhills and if we would have seen that in advance, we would have actually altered the study slightly to include some communities in that area. But the random sampling, this is how it shook out. So we looked at ISPs in every city, looked at data rates, normalized those data rates to megabits per second. I'd like to skip forward to the findings, since time is certainly of the essence here. Research question number 1 on page 4, we come up with, across all classifications of cities, all delivery speeds, and all delivery methodologies, \$13.84 per megabit per second; that's a really important designation to

understand. For research question number 2, we start drilling down a little bit more, and we look at a comparison between the classifications of cities and so, on page 4, slide number 15, you see the amounts, per meg, of the cost of Internet access across all delivery speeds and all delivery technologies. Research question number 3 drills down a little bit more and examines each of the delivery methodologies for accessing Internet, and you see those costs off to your right. And some of those numbers are actually quite striking, but we're going to look at detail a little bit more here. Research question number 4, I'll just skip over that actually; it's just simply a representation of what the data represented for four meg down/one meg-up Internet speed and, at the time, 25 meg down/3 meg up, which is extremely limited in our state. So let's drill down a little bit more. On page 5, slide number 18, we start to be able to dissect the data a little bit, and we find that, if you look at residents of first-class, second-class, and village, and combine those and compare those to metropolitan and primary, those residents across all delivery speeds and all delivery methods pay 8.5 percent more for their Internet access--that is per meg, by the way--than residents of primary and metropolitan combined. The next interesting finding is on slide number 19. We drill down a little bit more. Residents of first-class, second-class, and village cities in Nebraska pay, on average, 63 percent more than residents of primary and metropolitan combined, and that is for four meg down/one meg up service, and that's across all delivery methodologies that you see: DSL, terrestrial, fiber, and cable. When we look at DSL specifically in the next slide, on slide number 20, in the broadband category, residents of first-class, second-class, and village communities combined pay, on average, 170 percent more than residents of primary and metropolitan combined, for four meg down/one meg up. Interesting findings. The findings of that study will appear in an academic journal in the spring of 2019, a journal entitled Great Plains Research: A Journal of Natural and Social Sciences, published here actually in the state of Nebraska. The next study I'd like to take couple of minutes to share with you is drilling down a little bit further, and it's titled "Economic Impact of Digital Subscriber Line Internet Access Service in Nebraska." I am a rural resident and I'm one of those individuals that receive my Internet via DSL. It's one of the motivations, I guess, for me to dig into this. The research questions we need to look at on page 6, slide number 23, I wanted to find out what the prevalence of dry loop DSL--in other words, DSL that only gives us Internet where the customer doesn't have to pay for a phone line. I also wanted to find out the per-meg cost of DSL when factoring in the required telephone line that many folks have to pay for when they get their Internet access. And then I wanted to look at the urban/rural economic comparison of that data and then look at the statewide impact of the cost--overall cost--of just the telephone line that's associated with DSL services. Getting at the issue of dry loop is quite a challenge. What I found is, and what I don't know enough about yet is, that prevalence is impacted by the National Exchange Carrier Association. 40 of our 41 Nebraska ILECs are NECA members. ILECs typically do not offer dry loop DSL due to their tariff restrictions, tariff number 5 that NECA files with the FCC. This is a challenging research question to get at, but I did find some isolated cases of dry loop offerings being offered out there, typically by CLECs. I would not...this needs more study to find out a little bit more, from the business perspective, how this works. So then

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

the next research question: When we factor in the required telephone lines, what are our costs? So in slide number 26, the cost for a telephone line in the state of Nebraska across the entire state, the average is \$38.55. Looking at slide number 27, when we take the download rates for DSL--this may take a second here, I know I'm running close to out of time--9 meg down for metropolitan, 6.57 for example, you see the line that I'm looking at. When we take that cost of the telephone, \$38.55 divided by the download rate in megabits per second, then you can actually apply that cost, the telephone cost in a per-meg basis, add it to the cost from the previous study that I shared with you, and you end up with the actual rates, overall cost for a digital subscriber line when you factor in the telephone line. So the next research question, you skip forward to page number 8, slide number 29. We find that rural pays, on average, 96 percent more than urban for DSL, when you factor in the actual cost of the telephone line. Now getting to the statewide impact question, you see that number--clear down to the last slide, number 32--it's a very large number, \$64 million. And I want to back up because on slide number 31 it shows how that number was actually derived. If you take, in slide number 31, the cost of the telephone service, amortize that over a year--\$462.60, look at the number of households in the state of Nebraska--731,347 in 2014, a study that has benefited us back during when we had the broadband research funds from Vogt, Byers, Hancock, Narjes, and Terry indicated that we have 19 percent of our households are served by DSL. And that's how I arrived at that \$64 million number. So there are the facts. I appreciate the opportunity to present the data today, and I'm open to any questions you might have. I know that is a very, very fast overview, and thank you very much. [LB1114]

SENATOR FRIESEN: You did really well, Mr. Obermier. [LB1114]

TIM OBERMIER: Well, thank you. [LB1114]

SENATOR FRIESEN: Any questions from the committee? Senator Bostelman. [LB1114]

SENATOR BOSTELMAN: Thank you, Chairman Friesen. Thank you for being here. Thank you for being here; I appreciate this information. Is there another...do you go further? Beyond DSL...looking beyond that for rural broadband, as far as that... [LB1114]

TIM OBERMIER: I have not. [LB1114]

SENATOR BOSTELMAN: Okay. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

TIM OBERMIER: No, I have not as of yet. I am in talks with a couple of parties to explore a little bit further. As that gels, I would be happy to carry on a conversation with what we're looking at doing in the future. [LB1114]

SENATOR BOSTELMAN: Sure, thank you. [LB1114]

TIM OBERMIER: Um-hum. You're welcome. [LB1114]

SENATOR FRIESEN: Thank you, Senator Bostelman. So are any of the costs, when you truly get to the last mile of service, does this just cover the small cities, villages, first- and second-class cities? [LB1114]

TIM OBERMIER: Excellent question, and it is important to note that the only comparison we're making here is on the basis of class of city. And that is something I would really like to research, is get down to the actual, rural customer, the person that does not live inside of the boundaries of a recognized class of city by the state of Nebraska, and I'm hoping to do that in my next project. [LB1114]

SENATOR FRIESEN: I'm curious to see once what the service outside that boundary is. [LB1114]

TIM OBERMIER: Right. [LB1114]

SENATOR FRIESEN: I think some of the communities that you have listed here could have possibly fiber to the home in the country...don't know that. [LB1114]

TIM OBERMIER: We don't know that. [LB1114]

SENATOR FRIESEN: But I mean those costs then would be included in there, and the speeds should also be higher, I guess, but...okay. Senator Hilgers. [LB1114]

SENATOR HILGERS: Thank you, Mr. Chairman, and thank you for the presentation. My only question is, you talk about cost in here but, really, what I gather is you're talking about the price, the cost to the consumer, not the cost of building infrastructure, is that correct? [LB1114]

TIM OBERMIER: Correct. That is correct, a cost to the consumer. But it's also cost per meg, and that's really important to note. Some people that I've actually presented this to tried to look at the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

data to compare it to their own service; you cannot do that. The way this study is structured is to be able to compare class of city to class of city; that's the whole point of it. [LB1114]

SENATOR HILGERS: Got you. Is there any literature that you're aware of that compares the actual...the cost of construction or the cost of providing the infrastructure and access versus the price? [LB1114]

TIM OBERMIER: You know, that's a really good question, and that actually came up in a conversation that I had with another individual just yesterday. And I think you might be able to glean some sort of insight if you look, for example, on page 4, just the basic chart of the overall cost across all delivery speeds but, if you look at each individual method of delivery--DSL, terrestrial, wireless, fiber, and cable, you see prices. That's the price to the consumer per meg, but I think inherent in that could probably be some sort of an observation that, if we're charging the consumer more, there must be a little higher infrastructure cost. [LB1114]

SENATOR HILGERS: Well, that's actually what...that's actually what prompted my question when I looked at that, because that was, to me, was a counterintuitive result. You might think that, especially some of the testimony we've heard it with our other hearings, that laying fiber and cable in the last mile would be more expensive, but... [LB1114]

TIM OBERMIER: One would think. [LB1114]

SENATOR HILGERS: ...the wireless and DSL was more expensive, so anyway. That's exactly what made me think of the question, but I appreciate (inaudible). [LB1114]

TIM OBERMIER: It's a great question and, you know, as a researcher it's fun to hear those questions because then that gives us another study. [LB1114]

SENATOR HILGERS: Thank you very much. [LB1114]

SENATOR FRIESEN: Thank you, Senator Hilgers. So when I guess...when you look at the data, and a lot of times, you know, when I'm living in a rural area, I live outside the city limits, so I don't have some of the costs of living in the city, but I have other costs. [LB1114]

TIM OBERMIER: Correct. [LB1114]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR FRIESEN: So as a rural resident who lives outside of a village or a city limits, should I expect to pay more for services that are delivered out there? [LB1114]

TIM OBERMIER: Wow, that is a big question. I am, too, a rural resident, and I have wrestled with that question. I don't have a good answer for you. I mean, just like you said, we pay more for some things and we pay less for others. [LB1114]

SENATOR FRIESEN: Well, and it's...sometimes it's a choice. [LB1114]

TIM OBERMIER: I think the...our Congress has actually defined that for us and, unfortunately, I stand here before you not prepared to cite chapter and verse. But in...there is a citation that states that we should have equitable services amongst urban and rural, and it was passed in the '96 Telecom Act (sic--Telecommunications Act of 1996). So... [LB1114]

SENATOR FRIESEN: Yeah. [LB1114]

TIM OBERMIER: I mean we do have support here. [LB1114]

SENATOR FRIESEN: And we're trying to get there. [LB1114]

TIM OBERMIER: Very good. [LB1114]

SENATOR FRIESEN: But again, what is... [LB1114]

TIM OBERMIER: It's a process. [LB1114]

SENATOR FRIESEN: What is fair and equitable when someone chooses to live in a remote location versus living in a more urban setting, because it is cheaper to deliver some of those services? And that's not just broadband; it's a lot of different services. [LB1114]

TIM OBERMIER: I think the bigger, if I may...I think the bigger issue here is, you know, my situation is uniquely different than my farmer friends that live in the area. You know, they need robust Internet because of commodities trading, because of tracking their livestock...all of the things that they do to run their business. They're running a business. I'm not running a business where I live. I live in the country because I choose to because I like to live there. You know, I have seven-meg service. It's marginally adequate for what I do. I can't upload--like one other testimony provided--I can't upload pictures very effectively to the Internet, but that's not my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

business. Farmers need that and, as we grow...as farmers need to have their fields, their equipment, their livestock more so connected to the Internet than ever before, we have to stop and think about, not next year but, five years, ten years. How are we going to facilitate that business operation? We already have established land values that are higher and situations where farmers have very effectively tracked all of the usage of chemicals and seeds and harvest rates and things like that. Those that have that data, that land is worth more, so we need robust Internet to facilitate that. [LB1114]

SENATOR FRIESEN: So when you're doing your research, are you...obviously there are some companies that have done a really good job of getting high-speed broadband to rural areas. [LB1114]

TIM OBERMIER: Yes. [LB1114]

SENATOR FRIESEN: Do you see, in your research, the economic boost, or have you noticed that yet? Or is your area is typically not being served by high speed broadband? [LB1114]

TIM OBERMIER: I've not been able to...that's an excellent study, and I think it needs to be done. I don't have that data. [LB1114]

SENATOR FRIESEN: Okay, thank you. Any other questions from the committee? Seeing none, thank you. [LB1114]

TIM OBERMIER: Thank you. [LB1114]

SENATOR FRIESEN: Any others who wish to testify in a neutral capacity? Seeing none, Senator Walz. [LB1114]

SENATOR WALZ: Thank you very much. I wanted to address a couple of the questions. Senator Geist, I have the answer for how long it would take. They said it would take approximately six months to accumulate that data. Okay? [LB1114]

SENATOR GEIST: Okay, thank you. [LB1114]

SENATOR WALZ: And then address the comments regarding excessively cost burdens to the provider. The bill is written so that there would not be an increased burden on the provider, but the burden would be on the PSC and the contractor, and I think you can find that on page 3,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

starting at line 17. I do understand that there's a fiscal note; however, I feel that it's important legislation that affects the future of our state, and we need to at least get the conversation started. There were a lot of people behind me who said that we could also look at other options, other than the General Fund, to pay for this. Right now, private companies are awarded over \$30 million annually to expand broadband into rural areas. This goes to places outside of incorporated villages and cities. LB1114 is good policy. I'm happy to work with the committee, with private companies, on any concerns they may have about how the data is collected, and the Public Service Commission. And I hope you will advance LB1114. [LB1114]

SENATOR FRIESEN: Thank you, Senator Walz. Any questions from the committee? Seeing none, thank you. [LB1114]

SENATOR WALZ: Thank you. [LB1114]

SENATOR FRIESEN: And we'll close the hearing on LB1114. We'll let people leave, if they want to leave before we start. [LB1114]

SENATOR MORFELD: It's like a cattle call in Judiciary; we just keep it going.

SENATOR FRIESEN: We're a little more relaxed here. Okay, now we will open the hearing on LB856. Welcome, Senator Morfeld. [LB856]

SENATOR MORFELD: (Exhibits 1 and 2) Chairman Friesen, members of the Transportation Committee, my name is Adam Morfeld, for the record, A-d-a-m M-o-r-f-e-l-d, representing the fighting 46th Legislative District, here today to introduce LB856, a bill to protect Internet neutrality and ensure equal access to the Internet for all Nebraskans. In December the Federal Communication Commission voted to end net neutrality. This step, taken by the FCC negatively impacts hundreds of thousands of Nebraskans who use the Internet every day. Whether Nebraskans utilize the Internet to engage in on-line marketplaces, receive news, or even allow Senator Hilgers to share cute cat compilations with me on Facebook, equal access to the Internet is crucial as Nebraska continues to grow in the 21st Century. And also, don't think that I didn't think it was a sign when my Internet went down right after I introduced this legislation (laughter). Wasn't able to have my legislative Bachelor watch party. In any case, it is because of the Internet that Nebraskans can communicate with one another in an unprecedented fashion, able to reach family and friends from Omaha to Scottsbluff in a few seconds. It has served as a means to promote politically diverse communication and has served as a marketplace of ideas. For Nebraskans, the Internet deserves as much First Amendment protection as traditional media. Furthermore, the Internet has allowed Nebraska businesses, both large and particularly small, to flourish, connecting our innovative entrepreneurs with excited consumers across, not only

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

Nebraska, but the country and the world. Why then should we seek to limit access to this vast free speech zone and marketplace, particularly when Nebraskans in rural areas would otherwise have no means of selling their goods and ideas? If we allow Internet companies to limit access to this marketplace of products and ideas, we are hurting all Nebraskans, especially our rural population. It is for this reason that a state like Montana, whose demographics not unlike our own, has successfully implemented their own form of net neutrality. The Internet Neutrality Act, or LB856, will work in the following ways: It will promote Internet neutrality by mandating that any Internet service provider, or ISP, will be transparent in regards to their business practices; additionally, LB856 will ensure that no ISP interferes with a Nebraskan's ability to view and interact with lawful content; moreover, the Internet Neutrality Act will guard Nebraskans from attempts by an ISP to impair or degrade lawful Internet traffic within Nebraska; furthermore, this legislation will order that no ISP can engage in paid prioritization, thereby limiting Nebraskans' access to certain Internet services and content; finally, LB856 will foster Internet neutrality by guaranteeing that Nebraska businesses have the capability to create lawful content to share with consumers across the world. There is no getting around the role that the Internet plays in our day-to-day life, whether it be connecting with our friends, family, constituents, engaging in Internet commerce or business. Accordingly, if we fail to protect Internet neutrality for all Nebraskans, we are inhibiting their ability to participate in the 21st Century economy and connect with the rest of the world. I'm thankful to the students, consumers, and entrepreneurs across my district, the country, and Nebraska, who have contacted me to demand that we protect net neutrality. It is within our power to ensure that our generation and generations to come are able to use the Internet in a free and open way, promoting both democratic principles and innovative commerce. I've heard the arguments against net neutrality from other states and from sitting down with members of the industry and, in my opinion, they ring hollow. Many Internet service providers have stated they simply don't plan to engage in any of these activities and practices, such as throttling, pay prioritization, and other techniques. However, there were fairly transparent reports of Internet providers either doing these things or actively exploring it, which led to the FCC regulations, a few years ago, in the first place. And don't just take my word for it. I received Congressman Fortenberry's constituent communication in support of the general guidelines of net neutrality, and I just passed that around, and also a letter from Mayor Chris Beutler, in support of this specific legislation, as well, which I also passed around. Net neutrality has broad and bipartisan support across the country. The only people opposed to it are, well, the industry itself, who gains to profit off it, and making it harder for working Nebraskans to have equal access to a market that they're more than willing to pay for. I urge your favorable consideration of LB856, not only because it will help provide equal access to the Internet for all Nebraskans, but I'm just not quite sure how I'll survive the rest of the session without receiving Senator Hilger's cute cat compilations via the Internet (laughter). I'd be happy to answer any questions, Chairman Friesen. [LB856]

SENATOR FRIESEN: Thank you, Senator Morfeld. Senator Hilgers. [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR HILGERS: Thank you, Mr. Chairman. If my wife is watching, she would want me to say that I'm a dog person. Cute cat compilations... [LB856]

SENATOR MORFELD: I wanted to say the thing that would be most offensive to you (laughter). [LB856]

SENATOR HILGERS: Oh. I have one question, Senator Morfeld; appreciate you bringing this. Have you developed an opinion on preemption, whether or not we'd be preempted, given the FCC's action? [LB856]

SENATOR MORFELD: Yeah. [LB856]

SENATOR HILGERS: If so, can you share with the committee? [LB856]

SENATOR MORFELD: Yeah, and you know, I actually figured that you would ask me that question, so I read up. I read up; I mean I read up on it before I introduced the legislation, but I read up on it, particularly today. I think that there are some good articles out there, reviewing the different sides of preemption, whether it's preempted and whether it's not. Happy to share those with you, and I can share that to the rest of the committee, as well. I mean I think there are some arguments for and some arguments against. I mean I think that...a few notes on that, that I took, is first, I think that when it comes to preemption, the courts have generally found--one case is Gregory--the courts have generally found that there has to be a clear statement from Congress, expressing preemption in certain areas and then, specific instances where states have otherwise been able to regulate. And I think that there has been instances where states have regulated this activity, particularly with contracting services with the state, as was Montana's executive order just a few weeks ago. But even outside of just contracting with services for the state and, again, I do not pretend to be an expert in the federal Communications Act (sic) of 1996 and 1934, but I've read through it briefly, and I haven't seen any clear preemption in there, or statement of. That being said, I think it will be an issue for the courts to decide. The other thing that I'll say, Senator, is I think that, even since 1996 when the revision of the federal Communications Act (sic) was done by Congress, the Internet has so fundamentally changed and enveloped our lives that I don't think that it's just simply a highway of sorts for goods anymore; it's also a highway for the communication of ideas. And I think that there are some clear First Amendment implications here that didn't exist when this act of Congress was passed in 1996. So I think that there's some new ground to be covered, in terms of the First Amendment and the Internet and the implications of it, and I think that some of those First Amendment implications, quite frankly, could preempt some of the preemption power of the First--or, excuse me--of the FCC. [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR HILGERS: Thank you, Senator Morfeld. I guess if you have some of those articles, I'd love to see them. And I haven't...I have not thought deeply enough about this. [LB856]

SENATOR MORFELD: Um-hum. Yeah. [LB856]

SENATOR HILGERS: I just was willing to start a dialogue. I know in some circumstances, I think that the failure to act, or the determination of a federal agency to remove regulation, can then, in some circumstances I believe, also be...preempt state action. So I guess then,... [LB856]

SENATOR MORFELD: Yeah. [LB856]

SENATOR HILGERS: ...you know, some of those articles or some of the research you've seen address, not just the preemption, the notion of preemption from the original act passed by Congress, but the more recent FCC action. [LB856]

SENATOR MORFELD: Um-hum. No, I haven't seen articles around that. Most of the articles that I have read have been articles that have looked particularly in the area of government-owned networks and whether or not they have the...whether state governments have the ability to either limit or create their own government-owned networks, and whether or not they can preempt, or at least supersede, some federal regulations in that regard, when creating their own networks and infrastructure. [LB856]

SENATOR HILGERS: Yeah. Got it. [LB856]

SENATOR MORFELD: So I've done a, you know, a 20-, 30-minute search on the Internet and in some legal articles surrounding this action, I think it's a pretty new area,... [LB856]

SENATOR HILGERS: Um-hum. [LB856]

SENATOR MORFELD: ...given the FCC action, so I haven't seen too many. [LB856]

SENATOR HILGERS: So my initial...I'll have a talk with you off the mic, outside of the hearing, because my instinct is you're probably right that the original act doesn't preempt this, although I haven't studied it deeply. [LB856]

SENATOR MORFELD: Um-hum. [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR HILGERS: That's my instinct, at least, but I just wonder about the FCC. [LB856]

SENATOR MORFELD: Yeah. [LB856]

SENATOR HILGERS: But we can discuss it. [LB856]

SENATOR MORFELD: It's an interesting area of law, and it's one that I need to do a little bit more research into it. I think that my intent with this legislation is to really talk about the fact that the Internet has vastly changed our lives in the way that we communicate. It's not simply just a carrier of information or goods or things like that. I mean, it quite literally is a mechanism by which we exercise First Amendment rights, almost exclusively in many cases. Most people...as you know, Senator, half my constituency is under the age of about 24. Most of them have never picked up a newspaper, and so the Internet is the way that they express themselves, and express themselves in their First Amendment rights. And so I think that there are some other implications that are out there. I do want to say that I think it's interesting, though, that the industry...when the FCC implemented these rules and regulations two years ago for net neutrality, they said: Oh no, no; they can't preempt, particularly favorable state laws that wouldn't allow them to do that. But now we're saying: Oh no, no, no. Title I preempts everything. And so I think it's a little bit...you know, we all make our argument and our, you know, using our best statutory interpretation and guidance that backs our own argument, but I do think it's a little disingenuous. And I personally don't think that the FCC--or excuse me, the federal Communications Act of 1996 (sic)--preempts this, so... [LB856]

SENATOR HILGERS: All right, okay. Thank you very much, Senator; appreciate it. [LB856]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? I have just one question, kind of. I've read a few articles on this, on the Internet, and are they all true (laughter)? [LB856]

SENATOR MORFELD: Well, there's some fake news out there, Senator, but there's a very... [LB856]

SENATOR FRIESEN: Can we make them mark them so that I know they're fake news when I read them? [LB856]

SENATOR MORFELD: That's a good question. You know, I think that we have a very ambitious federal prosecutor who is looking into those things right now. [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR FRIESEN: Any other questions from the committee? With that, we'll go with the fake news (laughter). Thank you, Senator Morfeld. [LB856]

SENATOR MORFELD: Thank you. [LB856]

SENATOR FRIESEN: Those wishing to testify in support of LB856. Welcome. [LB856]

GAVIN GEIS: Chairman Friesen, members of the Transportation Committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm the executive director of Common Cause Nebraska. Common Cause Nebraska is a nonpartisan nonprofit. We work in the areas of government transparency, access, and accountability; and that's why we're in support of LB856. Senator Morfeld covered why this connects to government transparency, access, and accountability, I think, pretty well, why this matters in terms of First Amendment, and why people...why we would care about this when it comes to how people connect to government access. Over the past ten years we've really plugged into how people connect to their government when it comes to the Internet, all right. We have seen people caring more and more about how they connect to state government, all right...federal government, the state government in particular, when it comes to the Internet. More and more of government access comes down to how do I find out when my local government, when my state government is meeting on the Internet. How do I find that information there? And more and more of our government documents are on the Internet. So how we access the Internet, the freedom of the Internet, and how we go about getting that information is important. So the freedom of the Internet is important, and then how we talk, how we talk to one another and how we communicate is important. Senator Morfeld covered that really well, so I will not go into great depth to re-cover his territory, ever-increasing connection--that fun stuff. So net neutrality is that simple proposition that the service providers shouldn't be able to differentiate traffic without good reason. You shouldn't be able to load NBC's Web site faster than Netflix. You shouldn't be able to load the DNC's Web site faster than the RNC's Web site. Your service provider shouldn't be making those differentiations on your behalf, or shouldn't be asking you to pay more when it comes to making those differentiations. And this bill clears that right up for us. And there are important carve-outs which this bill goes at least part of the way to addressing. There are important things that we do need to differentiate for when it comes to law enforcement, when it comes to medicine. I don't know if it directly addressed medicine. There is one that I've heard of recently...is telesurgery. I'm not sure if this bill talks about telesurgery, and that might be something that needs more...a little bit softer touch on, but that's kind of an outlier. You know, we need to make sure that hospitals maybe need to pay more for their line because they need brought more Internet so there isn't a drop in when that doctor in India is "telesurgering" into Lincoln, Nebraska, to operate on your heart, because he's the best in the world. You don't want the Internet dropping at that moment. It's not quite as important when you're streaming Netflix. It is super important when he's doing heart surgery. So that is to say there are carve-outs. But most of the time there shouldn't be carve-outs. We should all get the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

exact same access, the same exact access. Whether it's the RNC or the DNC, it shouldn't load differently. We shouldn't pay different rates for different services. I shouldn't have to pay different tiers for the Internet I get. It should come across the exact same, whether I'm accessing Nebraska's state Web site or Alabama's state Web site; shouldn't be any different whatsoever. This is a topic that 15 other states actually are addressing right now. So it's not just...as Senator Morfeld pointed out, it's not just Montana; it is 15 other states, among those: Alaska, Georgia, Montana, New Mexico, Tennessee. A lot of people are talking about this; it is a hot topic. The FCC kind of left everybody scrambling to figure out what do we do about this. This is a supremely local issue, it seems. People...everybody at the federal level likes to play around and forgets that everybody at the local level has to pick up the pieces. When it comes to the constituents actually caring about these things, they can shuffle until: Oh wait, people do care about these things; they actually care about how they access the Internet, so we have to fix it. So like I said, 15 states talking about this right now, and we're among those. And you know, I came to realize in that--listening to those last two bills--that in a state like Nebraska, this is kind of a doubly interesting topic because we are, unlike a lot of states, we are discussing not just how do we protect people when it comes to accessing the Internet, we're talking about getting people access to the Internet, right? We're talking about let's get people connected, but this adds that interesting layer. Once they're connected, then what protections will we provide for them, right? What protections do we provide for those people once we actually get them hooked in? And will they have equal access? So will that person in Lincoln right now, who has quality access...once we get that person out in western Nebraska connected finally, will they be on equal footing as that person in Lincoln today? Or will they be a subtiered service? Will we provide equal footing to them? Without net neutrality, theoretically--this is a theoretical--without Internet neutrality, there could be tiered services for farmers. There could be tiered services for equaling...accessing farm data. There's no reason it couldn't be for accessing that type of data, because that's what it's all about; it's about saying certain types of access could be served at a different rate, at a different speed, or at a different pricing scheme. And so, as we have this discussion about how we get people access to the Internet, we also have to talk about what kind of protection do we want to provide for all the people across the state of Nebraska, as we bring them in to the system. Anyway...five minutes went faster than usual. Usually I have only a three. In that wise, five went fast. Thank you very much. [LB856]

SENATOR FRIESEN: Thank you, Mr. Geis. Nice to finally meet you. [LB856]

SENATOR HILGERS: We know him very well. [LB856]

SENATOR FRIESEN: Any questions from the committee? So I guess one question. Do you know of any case where a company has had to pay more to get their service across the Internet faster? Yeah. [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

GAVIN GEIS: For where the companies had to pay more? [LB856]

SENATOR FRIESEN: Yeah. [LB856]

GAVIN GEIS: There...only discussions, I've heard discussions with where Netflix has had to discuss, at a high-grade level, with some service providers, but that's way outside my pay grade, to know what actually happened there. So not really. [LB856]

SENATOR FRIESEN: Because I, you know, when you have big blocks of data, obviously... [LB856]

GAVIN GEIS: Right. [LB856]

SENATOR FRIESEN: ...at Netflix, you want them delivered in a very short time frame, I take it. [LB856]

GAVIN GEIS: Right. Yeah, that's...that's at the other end, right? [LB856]

SENATOR FRIESEN: Yeah. Any other questions from the committee? Seeing none, thank you for coming to testify. [LB856]

GAVIN GEIS: Thank you. [LB856]

JOHN HANSEN: Good afternoon again, Mr. Chairman, members of the committee. For the record, my name is John Hansen, J-o-h-n Hansen, H-a-n-s-e-n. We are in strong support of LB856. Our state, as well as our national organization, has picked up on this issue long before the FCC ruled, and we look at this in terms of a couple different sets of eyes. One is a set of rural eyes, in that a lot of rural folks do not really have much competition for a lot of the services that we get. And so if you're at the short end of the stick, realizing, of course, when you get special treatment, there's special good and there's special bad. And if you are having a problem, as using the data that you want and need to run your farm business, and you are in the wrong end of special, you really don't have much for remedy. You usually have one provider, and your opportunity to shop elsewhere is very limited, so we think it--this ruling at the federal level--impacts rural communities and rural access probably more than urban. And secondly, we look at it as a market issue. And the market issue is that anytime that you allow preferential pricing, which is a kind of the buddy system, that you have put your finger on the scale of honest competition. So if I go to Google and I go where Google takes me for a particular service or product that I'm using, and they happen to have a financial interest in that side of the equation

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

and I get a faster download, and the competing product that competes with their product gets a slower one, that they know that the bulk of the time, folks are going to go where the speed is. And so they have the ability to help make decisions that are in their own financial interests, that are in opposition to the interests of a fair, level playing field on the part of the consumer. And so structurally, as we look at this, whatever benefits exist in this federal ruling that this is as good, whatever those benefits are, this is as good as it will ever get. And as the field continues to consolidate, and as market power continues to consolidate, that we are fearful that this decision will cost us more and more, as the future goes. And we say all this to encourage folks at the state level to pick up the cause and to be engaged. Send a message to the Senate. The Senate can pick this issue up yet; it is not necessarily over. The Senate can act and do some things yet that we think that would be very helpful to offset this decision. So we have in the past, in a lot of cases, done some things in Nebraska, at the state level, which has helped driven and sent a message at the national level. We have, in the case of the ag sector, in the case of meat...the fact that we have mandatory price reporting was because the Nebraska Legislature stepped up and forced the issue at the federal level and caused the feds to have to make a better, more aggressive decision where the meat packers said that it's better to have one federal law to deal with than it is a patchwork of laws across the country. So there are things that we can do at the state level, and we think that this is one that's important enough that it rises to that level. So here's an opportunity for us to stand up for, we think, the interests of all users, Internet users, especially rural. And with that, I would end my comments and encourage you to support LB856. [LB856]

SENATOR FRIESEN: Thank you, Mr. Hansen. Any questions from the committee? Seeing none,... [LB856]

JOHN HANSEN: Thank you very much. [LB856]

SENATOR FRIESEN: ...thank you for your testimony. [LB856]

DANIELLE CONRAD: Exhibit 3) Hi. Good afternoon, Chairman and members of the committee. My name is Danielle Conrad; it's D-a-n-i-e-l-l-e Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. Number one, we'd like to thank Senator Morfeld for his leadership on this bill and, number two, we'd like to offer our support for LB856. I think the other testifiers have done a good job of providing some broad outlines about the issues involved in this important legislation, and I'll leave you with just a few quick points and top lines, and then turn it over to questions, if you have any. And in full disclosure, while the good news is I'm delighted to be with you all here today to talk about these issues, the bad news is I'm probably the least technological savvy person in our office and so...and definitely struggling to get up to speed on all of these complex and important issues that are presented in this legislation. But I promise to do my best and, if I don't know, to do my homework and get back to you with any

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

answers to the questions that you might have. The ACLU strongly believes that Internet rights are civil rights, and that there are key First Amendment issues implicated by net neutrality issues, whether at the federal level, state, or local level. And that's clearly where the bedrock principles that our interest in this legislation is related to. That being said, I think Senator Hilgers offered some really important comments into the public dialogue here today, about the application of things like the Supremacy Clause and the preemption doctrine and exactly what powers state or local governments may, or may not, have to legislate on these critically important topics. I think LB856 represents a very bold statement in support of strong net neutrality and strong free speech rights, and it goes without saying that the Internet is a critical platform for the free expression of ideas, in the marketplace of ideas, and political and personal expression that's become ubiquitous to our daily lives. I think that we would be absolutely delighted to work with this committee and other stakeholders to perhaps narrow the scope a bit to address some of those, I think, very valid and important preemption concerns that have been addressed, and to learn from the experience in our sister states and other jurisdictions that have taken up similar issues, either through legislation, executive order, or some of the pending litigation that's out there, as well. So with that, I thank you so much for your time and attention, and will do my best to answer any questions, but will definitely let you know if I don't know. [LB856]

SENATOR FRIESEN: Thank you, Ms. Conrad. [LB856]

DANIELLE CONRAD: Yeah. [LB856]

SENATOR FRIESEN: Any questions from the committee? [LB856]

DANIELLE CONRAD: Oh, you're letting me off the hook easily. [LB856]

SENATOR FRIESEN: Senator Hilgers. [LB856]

SENATOR HILGERS: Oh, just in the nick of time. Yes, yes. I would be disappointed otherwise, Senator. Thank you. [LB856]

SENATOR HILGERS: Nice to see you, Senator Conrad. Thank you, Mr. Chairman. Do you have a...have you looked at the preemption question at all? Do you have any...and I may have missed that in the testimony. If I did, I apologize. [LB856]

DANIELLE CONRAD: No, that's okay. In relation to your questions, which I think are very good and very valid, we see LB856 as a very bold statement in regards to some of the issues underlying the net neutrality issues. We would be delighted to work with this committee and

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

other stakeholders to perhaps narrow application of some of these issues to better address some of those very valid concerns. [LB856]

SENATOR HILGERS: Okay. Thank you, Senator. [LB856]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? I guess I have one question. When you said Internet rights are civil rights... [LB856]

DANIELLE CONRAD: Um-hum. [LB856]

SENATOR FRIESEN: You know we have citizens that don't have access to the Internet. [LB856]

DANIELLE CONRAD: That's right. [LB856]

SENATOR FRIESEN: Do you think it's the state's responsibility to make sure that they have Internet service? [LB856]

DANIELLE CONRAD: Well, I don't think that the entitlement to Internet service is contemplated in this legislation, but I do think it's fair to say that there are important civil rights components when it comes to access to basic services like the Internet. And I think that's one reason, for example, like our public libraries are such a critical source of open access to...for individuals that cannot afford to access the Internet otherwise. [LB856]

SENATOR FRIESEN: Okay. Thank you. Any other questions from the committee? Seeing none, thank you. [LB856]

DANIELLE CONRAD: Okay. Well, I'll have to come back and visit you all more often (laughter); this is a lot of fun. Thank you for your time. [LB856]

SENATOR FRIESEN: We're such a good committee. [LB856]

DONNA ROLLER: Good afternoon. [LB856]

SENATOR FRIESEN: Welcome. [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

DONNA ROLLER: Good afternoon, Senator Friesen and committee. My name is Donna Roller, D-o-n-n-a R-o-l-l-e-r. I can admit that I don't know too much about Internet. I know how to use it. But I support LB856 to adopt net neutrality in the state. The FCC decision to abolish net neutrality stifles free access to knowledge, and science, and new discoveries, and shared dialogue around the world. Loss of net neutrality will damage our educational system to free and open information and will hurt our public libraries and our school libraries. Net neutrality is also good for Nebraska economy, for businesses to advertise and for on-line sales. When I want something, I search the Internet for everything. So I believe the intent of getting rid of net neutrality is for the purpose, for greed and corporate interests, and will...that will decide what you see, by the price you are able, or willing, to pay. Lack of net neutrality endangers our democracy, which depends on open discussion and press, as part of our checks and balances to our government. These are the top ten countries that do not have net neutrality: Congo, China, North Korea, Iran, Eritrea, Saudi Arabia, Cuba, Somalia, Syria, Central African Republic, United Arab Emirates, Myanmar, Sudan, Uzbekistan, Burundi, United States, Venezuela, Yemen, Mauritania, and Zimbabwe. United States has entered a twilight zone where we are dismantling every institution in our democracy. We now are aligning our nation with dictatorships and oppressive governments to limit our access to freedom of information. I urge this committee to take a stand for democracy and to guarantee an open and free Internet. Please have the courage to take a stand for net neutrality, and please forward this bill out of committee and on the floor and vote for net neutrality. Thank you. [LB856]

SENATOR FRIESEN: Thank you, Ms. Roller. Any questions from the committee? Seeing none,... [LB856]

DONNA ROLLER: Thank you. [LB856]

SENATOR FRIESEN: ...thank you for your testimony. Any other supporters who wish to testify on LB856? Seeing none... [LB856]

RYAN SUMP: (Inaudible). [LB856]

SENATOR FRIESEN: Support? [LB856]

RYAN SUMP: Yes. [LB856]

SENATOR FRIESEN: Yeah. [LB856]

RYAN SUMP: Thank you. I wasn't planning on testifying today, so I don't have a... [LB856]

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR FRIESEN: Have you filled out a green... [LB856]

RYAN SUMP: ...green slip for you at the moment. I can get that to you after I'm done, if you want. My name is Ryan Sump, R-y-a-n S-u-m-p. Thank you very much. I am currently on the clock for Jensen Rogert Associates, but I am speaking in an individual capacity and am hoping I don't get an earful for this (laughter) when I talk to Kent next. I'm just a law student at the University, so I don't have the expertise to talk to you about the commercial benefits of net neutrality or anything in particular. But I think it's important to point out most everyone else has kind of talked about the social aspects of net neutrality, and I think it's important to, at least, mention that net neutrality is definitely a probusiness, proentrepreneurial policy. If you go back in the past you see, time and time again, that the companies--I don't know if in "power" is the right word--but the bigger companies, such as Comcast, A T and T, etcetera, are using their power to cut down on access to the Internet for their competitors, in support of their own products and policies. Like for example, A T and T, in--sorry, I'll find it on the list--A T and T, in 2012 and in 2009, blocked Skype and FaceTime on iPhones because it competed with their own software. And to get to the question that Senator Friesen asked Mr. Geis earlier, Netflix actually did have to pay Comcast, because Comcast, over time, was slowing down Netflix's speeds on their service until Netflix agreed to pay them. So yeah, like I said, I wasn't planning on testifying today, so I'm sorry if this kind of rambled a little bit. But I felt it was important to at least kind of get those ideas and some examples on the record. [LB856]

SENATOR FRIESEN: Okay. [LB856]

RYAN SUMP: So I'll thank you all for letting me talk, and I will answer any questions you have, although I don't know how helpful it would be or how qualified I am to answer any of those questions (laughter). [LB856]

SENATOR FRIESEN: Thank you, Mr. Sump. Any questions from the committee? Seeing none, thank you for your testimony. [LB856]

RYAN SUMP: Okay, thank you. [LB856]

SENATOR FRIESEN: Be sure and fill out that green sheet. Any others who wish to testify in support of LB856? Seeing none, those wishing to testify in opposition to LB856. [LB856]

GERRY KEEGAN: (Exhibit 4) Chairman, members of committee, Gerry Keegan, G-e-r-r-y K-e-e-g-a-n, with CTIA, the trade association for the wireless communications industry, here in opposition to LB856. Let me state, from the outset, that the wireless industry supports a free and

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

open Internet. That is why major national wireless providers have committed to not blocking or throttling lawful content in a discriminatory manner. What the FCC did in 2015 was to adopt 1930's utility-style regulations, meant for the rotary phone era, and apply those to the innovative broadband marketplace. What the FCC did in 2017 was to revert Internet regulation back to where it was before 2015 and, in so doing, they found evidence that showed that the 2015 regulation led to a decline in broadband investment in the United States. In the wireless space alone, U.S. wireless providers invested \$6 billion less from 2014 to 2016. The 2015 regulation especially harmed smaller and more rural providers, who filed comments before the FCC noting that the FCC 2015 regulation inhibited their ability to invest and maintain networks in rural America. It's important to note that strong consumer protections remain in place today. In its recent order, the FCC reverted back to FTC regulation over broadband providers and their offerings. The FTC had oversight over broadband providers before 2015, and they can bring enforcement action against any provider that is acting unfairly or deceptively. The FCC also noted, in its 2017 order, that the FTC can bring action against any provider that is acting anticompetitively with regard to their network management practices. For example, the FCC has noted that providers cannot, cannot prefer their own content or services over those of third parties. They also cannot enter into agreements with one another to block or throttle lawful content of third parties. The FCC's most recent regulation also includes a transparency rule that requires broadband providers to disclose extensive information about their network management practices, their service offerings, and their performance. In addition, the State Attorney General can use and apply consumer protection laws of general applicability against any broadband provider that is acting deceptively or unfairly, not living up to its terms or conditions of service or not living up to agreements. Finally, the FCC reaffirmed its finding in 2015 that broadband is an interstate offering, in fact a global offering, and preempted state and local governments from regulating in this area. State-by-state regulation raises the prospect that, as users cross state borders, they will be...have different state laws apply to them. So in the mobile context, does a law apply where the user has purchased service, where the user is currently located, or where the tower that is transmitting the data is located? That type of patchwork of state laws would be untenable for the mobile broadband industry. CTIA is on the record, advocating for a federal legislative solution to this issue. We believe Congress must step in and determine this issue once and for all. But we oppose state legislation like LB856, because it is unnecessary to enact state law in this area. Consumer protections are strong in this area, and providers have made commitments in this area. For this reason, we ask that you not move this bill. Thank you. [LB856]

SENATOR FRIESEN: Thank you, Mr. Keegan. Any questions from the committee? Seeing none, thank you for your testimony. [LB856]

ERIC CARSTENSON: (Exhibit 5) Senator Friesen and members of Transportation and Telecommunications Committee, my name is Eric Carstenson; that's E-r-i-c C-a-r-s-t-e-n-s-o-n.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

I'm the president of the Nebraska Telecommunications Association, a trade association that represents the majority of companies that provide landline, voice, and broadband telecommunication services to customers all across the state. I'm here to oppose LB856. I have two main points, and I've listened to Senator Friesen before, so I won't try and hit the points that have been hit before, but I'll maybe clarify a couple as I've seen them. First of all, as LB856 notes, the Internet is full of commercial possibilities, and there is robust commerce that is inherently contained within the Internet. The FCC saw that. In their decision, where they preempted states from doing anything further, they wrote, "We therefore preempt any state or local measures which would effectively impose rules or requirements that we have repealed or decided to refrain from imposing in this order or that would impose more stringent requirements for any aspect of broadband services (sic--service) that we address in this order." And that kind of language throughout that order is repeated a couple of different times. So the first...our first point is that it's preempted. Our second point is even under net neutrality, as enacted in 2017 by the FCC, competition still remains. Laws against fraud and anticompetitive behavior apply to broadband providers just as equally as they would apply to any other company. If my wife Kathy sends me to the store to go buy a package of corn for dinner, and I pick up the package with a yellow kernel on the outside of the frozen goods, and I bring it home, and Kathy opens it up, and it's full of green peas, guess what? I won't go back to that store again. We are in the business of providing the service that our subscribers want: high-speed broadband access. The whole fast lane idea is not...is nonsense when we realize, really, it's the efforts of so-called edge providers that really determine service quality today. Not to blame is the NTA member who's moving these elements as fast to you as reasonably possible. Who isn't included? Internet edge providers, content providers, network services like Netflix, Facebook, Google, ESPN, and others who are a significant part of the Internet ecosystem and the consumer's overall experience. There are other elements downstream which also contribute to the Internet experience. For example, blocking that happens by the Wi-Fi system at the Nebraska State Capitol. Evidence of that is how hard it will be for each of us next month, during the Final Four, to check our brackets, because ESPN is blocked, and I just checked it, sitting here this afternoon. If I could ask for these to be handed out...in closing, what I'd like to do is to provide you a copy of a statement by Jon Leibowitz, who was...who gave a presentation in Connecticut on February 13th of this year. Leibowitz is a former chair of the Federal Trade Commission, and he was appointed by President Obama, and he served in that capacity, as a commissioner, from 2004-2009. What I find interesting is, in the hyperpolitical environment in Washington, I find it ironic that, in the information I've just handed out, you'll find that Leibowitz argues that the FTC has got jurisdiction in this area. Now I find it ironic simply because here is a former FTC commissioner, appointed by President Obama, agreeing with a Republican FCC and also agreeing with the point that I would make today. Several points--five points--I'd like to highlight that are in that written testimony: Leibowitz said that reclassifying broadband Internet access as an information service restores the FTC's ability to protect consumers and competition in the broadband market; the 2nd point) The order's transparency rule requires broadband providers to disclose publicly, and in an easily available

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

format, their network management practices; 3) The FTC already has a significant track record using its enforcement authority to hold broadband providers accountable, and an example of that was the merger of AOL and Time Warner when they required that they not interfere or discriminate with content; 4) Our Attorney General in Nebraska can also bring enforcement actions in Nebraska; and finally) There is some information about the research that backs up the FCC preemption of states and municipalities. That concludes my testimony. Thank you for your time this afternoon. [LB856]

SENATOR FRIESEN: Thank you, Mr. Carstenson. Any questions from the committee? Seeing none, thank you for your testimony. [LB856]

ERIC CARSTENSON: And your time. [LB856]

SENATOR FRIESEN: Any other opponents? [LB856]

JOSELYN LUEDTKE: (Exhibit 6) Chairman Friesen, members of the Transportation and Telecommunications Committee, my name is Joselyn Luedtke, J-o-s-e-l-y-n L-u-e-d-t-k-e, and I am here on behalf of the Nebraska Cable Communications Association today, in opposition to LB856. Basically as Internet service providers, our members have a lot of the same arguments that have just been presented to you. They have concerns about the FCC's Restoring Internet Freedom order, which expressly preempts any state or local measures, such as these, that effectively impose net neutrality requirements...also have Commerce Clause concerns, as the requirements necessarily would force Internet service providers to modify their conduct outside the state's borders and thus have an impermissible impact on interstate commerce. As noted in the RIF order, it is practically impossible for ISPs to segregate their operations by state, utilizing different standards in each. Basically state legislatures are simply not the place for such regulation. These decisions should be left to the FCC to avoid a nationwide patchwork of conflicting regulations, and we urge the committee not to advance LB856. [LB856]

SENATOR FRIESEN: Thank you, Ms. Luedtke. Any questions from the committee? Seeing none, thank you for your testimony. [LB856]

JOSELYN LUEDTKE: Thank you. [LB856]

SENATOR FRIESEN: Anyone else wish to testify in opposition to LB856? Seeing none, is there anyone who wishes to testify in a neutral capacity? Seeing none, Senator Morfeld, are you willing to close? [LB856]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR MORFELD: Thank you, Chairman Friesen. Well, that wasn't so bad (laughter). My Internet didn't even go down while I was over there, looking up cat memes for Senator Hilgers. You know, a few different notes, based on some of the testimony here. You know it's interesting that we brought up the Consumer Protection Act under state law--and several different times. When we're claiming that there's no way that we can preempt this federal law, but yet the State Attorney General's office can actually bring consumer protection enforcement actions which...I used to work in the Consumer Protection Division of the Attorney General's office as an undergraduate, taking phone calls and doing those things. And I've actually introduced a bill to revise the Consumer Protection Act to be able to provide enforcement authority for Equifax and other credit agencies and providers that lose their data, so I'm fairly familiar with that. I'm not too familiar with too many actions coming out of the State Attorney General's office, in terms of enforcing ISP Internet providers and other things. And so to me, this seems to suggest that this is an admission that there is some dual federalism here, that the Attorney General's--the state's Attorney General's office--does have some authority to enforce some doctrines and standards under state law, and that deal with federal...federally...heavily-regulated-in-faith federal fields. So I think that that argument actually cuts against the opposition. Also this notion that somehow, if we create this patchwork of 50 state laws and it will just be untenable, that we just won't be able to provide these services. I mean that's just nonsense; there already is a patchwork of 50 state laws. That's part of the purpose of this committee, is to create that patchwork and to be able to exert our authority, as a state, in terms of regulation. These are companies that are very...you know, they're very skilled companies that have the ability to follow rules and regulations in all 50 states that they operate. They also have the resources to do it. And so I...that argument also rings hollow. You know, I think that the other thing...I think the other thing to note is that many people bring up, or many--several--folks that came up here brought up, well, it's a competitive marketplace, that if the consumer doesn't like the services that we're providing, they can always go elsewhere and, if they go elsewhere, that's a disincentive for us to be able to not provide net neutrality. And so that's an argument in favor of not putting in these rules and regulations, that this is a marketplace and people have other options, and that actually will prevent us from doing that. Well, the problem is, is that it's kind of a crappy marketplace for the consumer. I mean in Lincoln alone, I think we only have three options that I can think of, off the top of my head. There's one that's emerging in particular--Allo, I think--and, in some rural areas, I don't...I think sometimes there's only one, in many cases. And so if there were, you know, 40 or 50 stores that I could choose from instead of just 3, that might be an argument that makes sense. But the bottom line is, is the market is consolidating in this industry, and there's not a lot of choices, and there's fewer and fewer decision makers, in terms of these important policies that can have huge implication on our free speech and just our ability to be economically viable in the 21st Century. And so if everyone is committed to the values, I think that we should all get together, come up with a law that makes sense, and work out the details. But that's my response to some of the opposition. I'm happy to answer any questions that you may, or may not, have. [LB856]

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Transcriber's Office

Transportation and Telecommunications Committee
February 20, 2018

SENATOR FRIESEN: Thank you, Senator Morfeld. Any questions from the committee?
[LB856]

SENATOR MORFELD: Must be the last bill (laughter). Thank you very much; I appreciate it.
[LB856]

SENATOR FRIESEN: Thank you, Senator Morfeld. With that, we'll close the hearing on LB856.
We have a motion to go into Executive Session. [LB856]