FRIESEN: Welcome, everyone, to this afternoon's hearing of the Transportation and Telecommunications Committee. I'm Curt Friesen from District 34. I'll begin with a few things. I'll ask you to turn off your cell phones or other electronic devices. We'll be hearing bills in order. That's pretty simple today, there's one. Those who wish to testify on the bill should move to the front room and be ready to testify. We have an on-deck chair, two of them up here, and-- so you can sit in there and be ready to go when your turn comes. If you'll be testifying, I'd ask that you legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required, but if you do have handouts, we need ten copies. One of the pages will assist you with that if you need help. When you begin your testimony, I ask that you clearly state and spell your first and last names for the record. If you forget to do this, I will stop you and remind you to do that. We will be using the light today. You will get five minutes. Four minutes with the green light, one minute with the amber light. When the red light comes on, I'll ask that you wrap up your testimony. Those not wishing to testify may sign in on a sheet by the door to indicate their support or opposition to a bill. With that, I'll introduce my staff. I have Tip O'Neill as my legal counsel-- committee legal counsel, and Sally Clerk-- Schultz, the committee clerk, and the pages, Ashton and Michaela. So I thank them for being here today, and with that, we'll start introductions on my right.

HUGHES: Dan Hughes, District 44, 10 counties in southwest Nebraska.

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

ALBRECHT: Joni Albrecht, northeast Nebraska, District 17, Wayne, Thurston, and Dakota Counties.

GEIST: Suzanne Geist, District 25, the east side of Lincoln and Lancaster County.

DeBOER: Hi, I'm Wendy DeBoer. My District is 10. It's northwest Omaha and all of the city of Bennington.

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

GEIST: With that, I will have Senator Friesen open up on LB1046.

FRIESEN: Thank you, Senator Geist and members of the committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I represent District 34. I'm the introducer of LB1046, a bill that would reduce franchise fee for cable telecommunication providers from a maximum of 5 percent to 3 percent. That fee is collected by municipalities and could be collected by counties. As we discussed competition in the telecommunications industry during our debate on small cell legislation last year, I came to the conclusion that the playing field was not level. All tele-- telecommunication providers in many cities pay an occupation tax on voice services. Those occupation taxes ranged from 0 to 6.25 percent. Lincoln is at 6 percent, Omaha's at 6.25 percent. However, as technology advances, video services are not taxed at the same rate. Small cell technology will allow wireless providers to provide streaming services to household and apartments in certain areas in Nebraska. Streaming services are not taxed. Cable television, on the other hand, pays up to 5 percent in franchise fees on the gross revenues from video services. We should be providing a tax system that treats similar services in a similar manner. LB1046 provides a small step in treating like technology in the same way. While cable will still be at a competitive disadvantage with streaming technology, it will be more competitive. We should continue to review the competitive landscape in a world where video and other telecommunication services are now being provided by cable, satellite, wired and wireless telecommunications providers. That is why I introduced LB10-- LB1046 and I urge this committee to advance the bill. With that, I would like to answer any questions you have.

GEIST: Are there any questions from the committee? I-- well, I'll ask the people coming behind you. Thank you. And I assume you're sticking around to close.

FRIESEN: Yes.

GEIST: OK. Thank you. Are there any proponents for LB1046?

JULIA PLUCKER: Good afternoon, members of the Transportation and Telecommunications Committee. My name is Julia Plucker, J-u-l-i-a P-l-u-c-k-e-r. I appear before you on behalf of the Nebraska Cable Communications Association, and we want to thank Chairman Friesen for bringing up discussion on this important issue. The NCCA is the primary trade association for the cable broadband industry in Nebraska. The companies and affiliate members of the NCCA include

Fortune 500 companies and community-based independent operators that provide video, broadband, and competitive voice services to Nebraska residences, businesses, and public entities. As Chairman Friesen summarized well, LB1046 would establish a state cap of 3 percent on cable franchise fees. The NCCA believes this is a reasonable policy for two reasons. It helps reduce the tax disparity in the rapidly changing video market, and it continues to provide cities with fair compensation for the privilege of providing cable service. We started as cable television providers serving communities across Nebraska for decades. Today, cable companies are much more than that. We provide-- we are connect-- connectivity companies. We provide landload tel-- landline telephone-- telephone services, mobile phone, cellular service and of course, high-speed Internet. Combined, the members of the NCCA provide services to over 400,000 customers in Nebraska. This committee is acutely aware of the rapid changes in the telecommunications industry. You've considered bills on 5G, deregulation of legacy telephone companies, and the need for broadband to be provided in rural areas. As the marketplace evolves, so does the video landscape. Now, cable companies, wireless providers, and telecommunications companies are all offering video, broadband, telephone, and mobile products to consumers. This competition is great for Nebraska consumers, who can choose from multiple providers in the marketplace. To provide the committee with context, I'll explain the evolution quickly of the video marketplace. In 2007, Netflix launched a streaming video service, changing the way we watch television forever. Today, TV is in your living room, your phone, and with you at all times. Customers expect to watch TV on their own schedule, on their own chosen device at any location. A 2019 report found that video accounts for more than 60 percent of downstream traffic on the Internet. To meet this increased demand and as outlined, the cable industry has invested in new technology and infrastructure to offer gigabit Internet connections to communities across Nebraska. Technologies like virtual and augmented reality will continue to improve the viewer's experience. But this context is important because it demonstrates that the cable industry is embracing the changes in consumer preferences and expectations. We believe we can provide quality products that can-- that customers want at competitive prices. However, the tax and regulatory environment has not kept pace with the technological and consuming evolution. LB1046 attempts to have the regulatory climate keep pace with this marketplace. Customers today can purchase video service from their cable company, a satellite company, a streaming service like-- like Netflix, Hulu, Disney+, Amazon Prime. However, the tax on each of these services is different.

Satellite service is subject to stale-- state sales tax only, pursuant to federal law. In Nebraska, streaming services are subject to state and local taxes. Cable service, however, is subject to state and local taxes, as well as a franchise fee up to 5 percent. This means that a satellite customer is paying 5.5 percent tax. Streaming customers pay 7.5 percent. And cable customers are paying up to 12.5 percent. This is unfair and anticompetitive. This bill would reduce the disparity between video services by placing a cap at 3 percent. The franchise fee on cable TV service is a line item on the customer's bill, so as a result of this bill, the savings would go directly to the customer. It's also important to note that this bill does not address the second right-of-way tax that cable customers pay in the form of municipal occupation taxes. This bill will also not impact our obligations to the 911 fund, state universal service fund, or state or-- or sales taxes. We worked and the committee worked on LB184 last year, small cell technology. We were opposed to that bill, but we worked with the-- with the parties and the committed-- committee to make that bill work. But we understood that that, again, would place us at a competitive disadvantage because those companies with that technology are offering the same services we do. The final point I'd like to make, and this is very important, is that the members of the NCCA sincerely value our relationships with cities and counties across Nebraska. Their success is our success. We-- we provide smart city initiatives that can improve services in those cities. And in return, a healthy relationship between the parties allows us to deploy our network, reducing costs, and connecting customers without delay. We-- we want to cap the franchise fee, but we understand it would have an impact on city and county budgets. And we're willing to work with those parties and with the Chair and with the committee to come up with a solution. When cable customers switch to streaming services, this is a loss for the cable industry and the cities. It's in our mutual best interest to find a solution that works for all of us. Thank you. And I will answer any questions.

GEIST: Are there any questions from the committee? I do have one.

JULIA PLUCKER: Yes.

GEIST: I'll ask you.

JULIA PLUCKER: All right.

GEIST: Are-- are franchise fees regulated federally, or is that specifically just a state--

JULIA PLUCKER: The federal sets the cap on them--

GEIST: OK.

JULIA PLUCKER: --but the cities can go up to 5 percent--

GEIST: OK.

JULIA PLUCKER: --and most go to 5 percent.

GEIST: Most do. So the federal guideline is just-- is just saying, you can't go above that.

JULIA PLUCKER: Correct.

GEIST: OK. OK. All right. That-- that's all I have. Yes.

HILGERS: Just have-- I have one question. Thank you for your testimony today.

JULIA PLUCKER: Uh-huh.

HILGERS: It's what-- I think you said this in your statement. I just want to make sure it is clear on the record. So the argument for the cities and counties is that, hey, if-- if-- if cable has a higher cost overall to some other way-- of ways of getting video that aren't-- that don't provide tax revenue to the cities-- big picture, the cities might be worse off because people will cut the cord--

JULIA PLUCKER: Exactly.

HILGERS: --to a service that paid from-- from which taxes go to this-- to the cities and counties. They go to a service where it doesn't. Is that the argument?

JULIA PLUCKER: Exactly. And yeah, as-- as we lose cable subscribers, the cities lose part of our-- part of the revenues. So, you know, there are other ways to counter this and other ways to solve this disparity problem. But the disparity does exist. And I think if the-- if the parties can acknowledge that, we can work together on solutions, and maybe it's this and maybe it's, you know, it's taxing some of those streaming services to make up for some of the revenue that we will all lose as cable subscribers cut the cord.

HILGERS: Well, I think-- tell me if it's-- if this is-- your recollection is incorrect-- my-- my recollection is incorrect, but this came up in the LB184 debate last year, which is cities and counties and states for that matter cannot tax Internet services. There's a federal law in place. So we would be--

JULIA PLUCKER: Right.

HILGERS: --limited in our ability even if we wanted to--

JULIA PLUCKER: Right.

HILGERS: --and getting parity by ratcheting up taxes on the Internet, provided the deal.

JULIA PLUCKER: Exactly. There was-- my members had about three wonderful paragraphs of testimony on that. But I spared you because I ran out of time. [LAUGHTER] Thank you. Thank you for making that point more succinctly than I was going to.

HILGERS: Thank you. Thank you for being here.

GEIST: Any additional questions? Seeing none--

JULIA PLUCKER: Thank you.

GEIST: --thank you for your testimony. Additional proponents.

LEAH VUKMIR: Good afternoon, committee members. My name is Leah Vukmir, L-e-a-h V like Victor-u-k-m-i-r. It is an honor for me to be here in your state house as a former member of the Wisconsin State Legisla-- Legislature. I was a state senator in Wisconsin. I enjoy traveling to other state houses in my new capacity with the National Taxpayers Union, where I am the vice president of state affairs. NTU, as we're called, is the oldest taxpayer advocacy group in the nation. And I am here to speak in favor of LB105-- 46, which would, as has been stated, lower local franchise fees, effectively reducing taxes and monthly cable invoices for consumers. As was mentioned, unfortunately, federal law permits municipalities to impose a 5 percent franchise fee on cable service providers for their use of the public right-of-way, thereby increasing the cost to Nebraskans by millions of dollars each year. Imposed more than three decades ago, the franchise fee was applied to cable bills that were typically less than $10 a month. Nowadays, to access-- as access to entertainment options and services increase, cable bills average more than $100 a month, underscoring this archaic nature of this 5 percent fee. As competitive market forces have provided consumers with more viewing options, poor tax policy should not dictate choice. Imposing the same 5 percent fee on today's larger cable bills is illogical policy, particularly when you consider the disruption of cable right-of-way is very minimal. Cable infrastructure has been in the public right-of-way for 30 years or more; thereby the status quo, 5 percent fee is exceedingly outdated. Nebraska should reduce its cable franchise fee burden, which results in higher prices for consumers. LB1046 updates your laws in Nebraska by reducing the franchise fee to 3 percent of the gross revenue on cable services. If implemented, this reform accurately reflects the cost of the public right-of-way, but more importantly would reduce unnecessary and excessive taxation imposed on the Nebraskan consumer. National Taxpayers Union supports LB1046 and urges committee members to support this needed legislation. Thank you for holding this hearing. If I were a member of the Legislature here, I would most wholeheartedly support this bill as I would if it were introduced in the state of Wisconsin today. And I want to thank Senator Friesen for authoring this important piece of legislation.

GEIST: Thank you for your testimony, Ms. Vukmir. Any questions from the committee? Yes--

BOSTELMAN: Thank you--

GEIST: --Senator Bostelman.

BOSTELMAN: --Vice Chairman Geist. Thank you for being here today and your testimony. I wonder, could you give me-- do you know-- you may or may not-- do you know the history behind the 5 percent? Why, where that was set-- why it was set there by the federal government, the franchise fee?

LEAH VUKMIR: Well, I think initially it was because of the infrastructure costs, and I think other people could speak to that more specifically, but it was to help create the right-of-way and build the infrastructure that was necessary. That would've been a good question for the previous person [LAUGH].

BOSTELMAN: OK. Thank you.

GEIST: Any additional comments? I do. Since you're a national organization, do you-- is there any hint on the horizon that the federal government may eliminate the cap or reduce its cap? Is there any talk about that?

LEAH VUKMIR: There has been, but I'm not certain where it is at this point.

GEIST: Okay. Okay. Thank you.

LEAH VUKMIR: Thank you all, appreciate it.

____________: Go ahead.

TIMOTHY LEE: Good afternoon and thank you for this opportunity to speak to you all. My name's Timothy Lee. I'm senior vice president of legal and public affairs at the Center for Individual Freedom. We were founded in 19--

GEIST: Sir--

TIMOTHY LEE: Oh, sorry.

GEIST: --would you spell your name, please.

TIMOTHY LEE: First one to mess up, aren't I? [LAUGHTER]

GEIST: That's all right.

TIMOTHY LEE: Timothy, T-i-m-o-t-h-y, last name Lee, L-e-e, and speaking on behalf of Center for Individual Freedom. Center for Individual Freedom was formed about a quarter century ago in 1998 on the principles of limited government, free market principles, constitutional rights, and importantly for this bill, tech innovation and expansion. It's one of our primary issues in this day and age, frankly. We've got about 300,000 supporters and activists across the country, including thousands here in Nebraska itself. We work at the federal, state, and local levels and at the judicial, legislative, and executive level, so we cover them all. But obviously, local and state issues are extremely important to us, which is why I'm here to speak today on behalf of some of those free market and fairness principles. So LB1046, which we favor, as others have said, caps the cable franchise fees at 3 percent, which reflects today's marketplace realities. As has been mentioned, the 5 percent cap was brought in at a time when there were a lot more sunk costs to localities and they fairly compensated for that. Some people in the room are too young to remember, but I'm old enough to remember. And I'm from Arizona but I assume it was the same way here, where they dug up your front yard and they put in the cable. And so there's a lot of costs associated with that, not only for implementing it, but obviously it can cause damage to the city. You're using the street, you're traversing the city. And there are a lot of sunk costs that don't exist today. So 30 years ago, three decades, it was a very different market. Today, a lot of people's cable fees are more focused on TV licensing than some costs like that. Importantly, back in the 1980s, the typical cable bill for an American consumer was $10 or less. So to have a fee that was 5 percent of that was extremely minimal. Nowadays, as you all know, some people can pay 10 times that or more. And so when we're talking about 5 percent in a day and age of increasing spending for necessities and costs on American families and consumers, that can start to add up. And so not only does the 5 percent cap not reflect today's realities in terms of cost to localities, but it's been magnified just in terms of the amount that people pay in cable bills, so for that additional reason, it's unfair. Importantly, though, as I mentioned earlier, one of CFIF's main founding principles is for free markets. We don't believe in picking winners and losers in the marketplace. And as others have addressed, that's what goes on here. Franchise fees paid by cable can be up to 5 percent. Obviously, satellite pays zero and streaming video pays zero. Obviously, sales taxes are applied disparately as well. And so that creates a certain market unfairness. And CFIF we believe in-- in-- in free markets. And so for that additional reason, we-- we favor this bill as well so that we can end that distortion of the free marketplace. Obviously this wouldn't eliminate them necessarily and so there still would be the ability of localities to-- to receive cable franchise fees to pay for costs that still do exist, even though they're not what they were three decades ago in terms of the sunk costs and-- and things of that sort. And obviously, as I mentioned earlier, a lot of American consumers are facing higher costs on a variety of bills today, some that weren't imaginable 30 years ago. And so reducing that to reflect the fairness in terms of cost to localities creates that additional fairness for American consumers as well. And on that basis, we-- we support LB1046. Thank you very much.

GEIST: Thank you. Are there any questions on the committee? Seeing none, thank you for your testimony.

TIMOTHY LEE: Thank you all very much.

GEIST: Any additional proponents?

DUSTIN ANTONELLO: Good afternoon, Chairwoman Geist and members of the Transportation and Telecommunications Committee. My name is Dustin Antonello. That's spelled D-u-s-t-i-n A-n-t-o-n-e-l-l-o. The Lincoln Independent Association [SIC] is testifying today in support of LB1046. The franchise fees that cable companies pay to municipalities are an added tax on individuals and businesses who subscribe to cable services. Every consumer who subscribes to cable has to pay this 5 percent tax, which is then remitted to the city's general fund. This amounts to millions of dollars a year in franchise fees that would otherwise be in the hands of consumers. It will be one thing if the franchise fees were actually used by the city to pay for moving or laying down new utility lines. But this is not the case. If a cable company has to relocate its lines for a municipal construction project, it comes out of their pockets, not the municipality's. The same is true for electric, gas, telephone lines. Cable companies are basically paying rent in the form of franchise fees for lines that were put in the public right-of-way decades ago. LIBA believes these franchise fees are no longer serving their intended purpose and should be reduced or eliminated altogether. Municipalities should not be using the revenues from these fees to pad their general fund budgets and pay for unrelated services. Thank you. I'll be happy to answer any questions.

GEIST: Thank you, Mr. Antonello. Any questions from the committee? Seeing none, thank you for your testimony. Any additional proponents to LB1046? None? Any opponents to LB1046?

JERRY JANULEWICZ: Good afternoon, members of the committee. My name is Jerry Janulewicz. That is spelled J-e-r-r-y J-a-n-u-l-e-w-i-c-z. I am the city administrator for the city of Grand Island. And I am here today in opposition to LB1046. The city of Grand Island has a franchise agreement with Charter, it was that-- originally it was Charter Communications, an agreement negotiated in 2012 for a term of 15 years. That agreement provides for a 5 percent franchise fee to be paid to the city of Grand Island. And yes, the city of Grand Island has the nerve to charge a franchise fee to provide police, fire protection, and all the other public services the people expect in a city. A franchise fee such as this directly offsets the amount of property tax the city would otherwise be required to levy to provide all the services it provides for its inhabitants. That 5 percent fee totals approximately $572,000 a year. A reduction to 3 percent would amount to a 40 percent reduction of that fee, which would be a loss of $229,000 in revenue on an annual basis. What I'd like to point out to the committee is that, yes, this is 5 percent. But looking at my own personal cell-- my own personal cable TV bill, I pay approximately $85 a month for cable TV service. In addition, for the two receiver boxes I need to have to actually view the channels, that's another $16 a month. Then there is a $13.50 charge per month to receive broadcast stations, local stations. So the franchise fee that I pay to the city of Grand Island through my phone bill-- through my cable TV bill amounts to $6.85. That's out of a total bill of approximately $215 when you include Internet services. I would submit to members of the committee that most subscribers aren't too concerned about a franchise fee of $6.85. You reduce that amount by 40 percent that-- this bill would-- would reduce amounts by, that's a $2.74 reduction of that fee. We would submit that this bill would do major damage to the city of Grand Island, especially when you consider another bill pending, LB960, which affects proprietary funds. Those bills combined, if enacted into law, would reduce the city's general reserve resources by over $1 million per year. That amount equals 2.6 percent of our general fund-- general fund levy, excuse me. We would ask this committee not to forward this bill to the floor of the Legislature. We believe this is bad policy and especially is contrary to the Legislature's stated interest of reducing property taxes. This bill could have the exact opposite effect. Thank you.

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

HILGERS: Thank you, Vice Chair Geist. Thank you for your testimony today. Got two lines of questions. The first is regarding the contract you currently have; you said it was entered into in 2012. Is that right?

JERRY JANULEWICZ: That's correct.

HILGERS: It's a 15-year contract?

JERRY JANULEWICZ: That's correct.

HILGERS: So I-- as I understand the law, the-- the Legislature doesn't have the authority to do anything to an existing contract. Now, assuming that's true for a city, and I-- I am assume-- it may not be true, but assuming it is-- as I would then read it, if-- if LB1046 would go into law today, it wouldn't impact the current contract that you have. So in other words, this would impact any-- any new franchise agreement you might enter into in 2028 for instance. If so, just assume with me--

JERRY JANULEWICZ: OK.

HILGERS: --that that's true for a moment. Isn't that a long enough time for the city of Grand Island to plan for that and to manage any loss of revenue without increasing property taxes [INAUDIBLE]?

JERRY JANULEWICZ: That could be. But I-- but I disagree with the premise of your question.

HILGERS: No, go ahead.

JERRY JANULEWICZ: I'm an attorney. I've been practicing law for nearly 40 years. The-- the cases I've seen over the years involving conflicts, I guess for lack of a better term, between the state government and a city or county indicates to me, my understanding of law, is the state government can in fact put a cap on-- on that.

HILGERS: Well, it's slightly-- I appreciate that. I would say, it's a slightly different question, which is not whether the state has the authority to do something. I would agree with you--

JERRY JANULEWICZ: OK.

HILGERS: --that they do. But the state does not have the authority, as I read the constitution in general, to modify or impair an existing contract between two parties. And so my point is not that the state couldn't do it. Agreed. But if you have a contract, if Grand Island has a contract that's in place, I don't believe the state could do it, could say-- could pass a law that would eliminate someone's obligations to Grand Island under that contract.

JERRY JANULEWICZ: I don't believe the state could impair a private party's contractual rights.

HILGERS: Uh-huh.

JERRY JANULEWICZ: Whether the state could impair a city or a county's--

HILGERS: Uh-huh.

JERRY JANULEWICZ: --contractual rights, I think is a different matter.

HILGERS: And I would agree and I-- and I--

JERRY JANULEWICZ: And--

HILGERS: --I noted that in my question. I'm assuming that they can't, but-- or cannot. But it very well might be that that assumption is incorrect and if so, then the premise of the question would be wrong. The only other question I have is, I-- I know-- we-- you know, I-- I take your example. It's not a lot of money. But-- but I would just ask, you know, when it seems like every cost in taxpayers and citizens in Nebraska tend to go up, you know, housing goes up, insurance goes up, health insurance goes up, child care goes up-- shouldn't we be trying to find places where we could try to reduce the burden? And wouldn't that also include franchise fees if it-- even if it's only a couple of dollars?

JERRY JANULEWICZ: Sure. And-- and wages for police go up. Healthcare for police go up. Wages for firefighters go up. Healthcare costs for firefighters go up. And the city-- the city has costs, too.

HILGERS: Uh-huh.

JERRY JANULEWICZ: And the public doesn't want us laying off police officers, doesn't want us to lay off firefighters. The public wants services.

HILGERS: Uh-huh.

JERRY JANULEWICZ: And so that-- that tension goes both ways, in my opinion.

HILGERS: No. I wouldn't disagree. I just-- I don't-- well, I wouldn't disagree. Thank you for coming down.

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

BRANDON KAUFFMAN: Good afternoon, Senator Geist, members of the committee. My name is Brandon Kauffman, B-r-a-n-d-on K-a-u-f-f-m-a-n. I'm the finance director for the city of Lincoln. I'm here to testify in opposition to LB1046, which would li-- limit cable franchise agreements to 3 percent of the gross receipts. The city of Lincoln currently has three 15-year franchise agreements for cable TV services. These are all at 5 percent as allowed by federal law. These agreements are important because they-- they provide the oversight on how the cable providers utilize the public easement, right-of-ways [SIC], and generally interact with the residents of Lincoln. Cable franchise agreements' revenues go directly into the city of Lincoln general fund, which most of these funds provide for public safety in our community. In fact, over 56 percent of our general fund costs goes to provide public safety. In a growing community, these revenues are important to provide for services. This legislation would impact the service levels the city is able to provide to its citizens, which are growing needs as the community expands. This has a potential financial impact to the city of a loss of $1.2 million annually. In addition, enacting this law could raise issues of constitutionality related to impairment of contract if imposed on existing contracts. If imposed over time as franchises expired, it would create an uneven play-- playing field as well, with some at 3 percent and others at 5 percent for many years. We deal with these cable providers very often and have valued the relationship to our community. We believe that dealing with cable providers on a local basis is a better way to address than to enact state legislation like LB1046. Thank you for the opportunity to comment, and I'm happy to answer any questions.

GEIST: Yes. Thank you, Mr. Kauffman, thank you for your testimony. Are there any questions on the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairwoman Geist. Thank you for your testimony today, Mr. Kauffman. Who else or what other right-of ways [SIC] fees do you collect?

BRANDON KAUFFMAN: Excuse me. I can't tell you off the top of my head how many--

BOSTELMAN: I mean, are there several--

BRANDON KAUFFMAN: --how many--

BOSTELMAN: I mean, are there a number of those or not?

BRANDON KAUFFMAN: I can't tell you off the top of my head. I-- that's something that I can go back and research and get some answers back to you.

BOSTELMAN: Yeah. Thank you.

BRANDON KAUFFMAN: Yeah, we will do that.

BOSTELMAN: So, you know, the other question, I guess, kind of follows up on this, what the opening and what I think Ms. Plucker had-- had talked about, too. As we-- we see more streaming, we see more wireless, we see more of those type of-- of things, it seems we continue to see an increase in-- in competition, I think, in the-- in this area. And I guess, you know, the thought is, her-- her point bringing up was that if we continue, if cable continues to have a disadvantage in their view on pricing because of franchise fees, that eventually, that they could lose business. They lose business, and the cities lose the franchise fee, and that could be a cascading effect, I guess. Could you speak to that?

BRANDON KAUFFMAN: I think there's always a potential for that. I can tell you, based on our experience, what we're seeing right now is for mo-- for the most part, our cable franchise revenues have been signif-- have been flat over the last five to seven years. We're seeing significant de-- decreases actually in our telecommunication taxes over the years. So, you know, as we think about those trends that more people are moving to wireless services but at the same time, we're not seeing those revenues grow, we're actually seeing them drop considerably.

BOSTELMAN: OK. Thank you.

GEIST: Seeing no additional questions, thank you for your testimony.

BRANDON KAUFFMAN: OK. Thank you.

DAVID PTAK: Good afternoon, members of the committee. My name is David Ptak, D-a-v-i-d, last name spelled P-t-a-k. I am the city administrator for the city of Hastings, Nebraska, formerly the Hastings city attorney and Norfolk city attorney. Hastings currently has four cable providers, of which they have been granted a franchise by ordinance. In addition to that, we have negotiated a written franchise agreement with each one of the four providers. It was bargained for and it was a result of a consensual agreement between two contracting parties. This bill interferes with the city's right to contract freely as far as with those it does business with. If I were asked the same questions that Jerry Janulewicz was asked, I would answer them the very same way. So I just wanted to get that out of the way as far as for you, OK? Since it is a consensual agreement, it is subject to renegotiation by willing parties. None of the four franchise holders have asked to renegotiate their franchise agreement. They've not asked to come in and reduce their franchise fee. And so it's kind of silly that the state has to do their bidding for them as a result of this bill. They could simply ask to have their franchise contract renegotiated if, in fact, the franchise fee is so exorbitant in their opinion as far as to deal with that. We receive 5 percent on each of those four franchise agreements. The city of Hastings dedicates 1 percent of that amount, not 1 percent of the 5 percent, but 1 percent of the amount to Hastings's public access channel. This is money that's used to program for senior citizens and other church services that are broadcast over that public access channel to the community. They depend upon that 1 percent of the franchise fee to basically subsidize not only their equipment, but their programming and the ability to provide that extra programming to the citizens of Hastings. The net effect of reduction of the franchise fee from 5 percent to 3 percent would have a loss of $128,000 to the general fund of the city of Hastings. You couple that with the potential loss that LB960 would have, the effect to the city of Hastings would be over $4 million. That is over 20 percent of our general fund revenue. The Legislature is committed to tax relief. Well, this goes the absolute opposite way. And so I would ask the committee not to advance LB1046. Thank you.

GEIST: Thank you for your testimony. Are there any questions from the committee? Yes--

BOSTELMAN: Thank you--

GEIST: --Senator Bostelman.

BOSTELMAN: --Vice Chairwoman Geist. Just want to make sure I understand what you said just a minute ago. Senator Hilgers' question about if you have a contract in place-- would the state. If this-- if this bill would be passed, would it [INAUDIBLE] -- would it cause, with a standing contract-- in that case, it was a 15-year contract out to 2027, I believe it was-- does it stay in force or would this change?

DAVID PTAK: I agree with what Jerry Janulewicz answered, as far as the effect that it would have. I think the state can in fact come in and effect a contract as far as prior legislation. So it could. If it couldn't, the effect would be, as these four franchises that we have would expire after their 15 years, we would have some paying a higher franchise fee, while others would pay a lesser franchise fee. And if the idea is to level the playing field, it doesn't do a very good job of it because if it has to be brought in upon the expiration of a contract, it's not going to work very well as far as that leveling.

BOSTELMAN: Thank you.

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

DAVID PTAK: Thank you, committee members.

GEIST: Any additional opponents?

STACEY HULTQUIST: Good afternoon. My name is Stacey Hultquist. That's spelled S-t-a-c-e-y. My last name is spelled H-u-l-t-q-u-i-s-t. I'm an assistant city attorney for the city of Omaha. I'm testifying today on behalf of the city of Omaha in opposition to LB1046. LB1046 would cap the franchise fee at 3 percent under state law and prohibit a city from imposing a higher franchise fee up to 5 percent as provided under federal law. This bill includes no grandfathering provision for franchise agreements between cities and cable companies or counties and cable companies for franchise agreements currently in effect. So this would immediately reduce Omaha's franchise fee revenue by 40 percent. Even if a grandfathering provision were added, Omaha's cable franchises expire in 2022, so the financial impact would still be swift. LB1046's impact is estimated to mean for-- that Omaha would lose just under $2.5 million in franchise fee revenue per year. This bill would have an immediate statewide impact on all municipal and county revenue, resulting in the loss of millions of dollars of franchise fee payments. Cable companies agreed to the 5 percent franchise fee revenue for the entire term of the franchise agreement when they entered into that franchise agreement with the city or county. And then the cities and counties have relied on this franchise fee revenue when setting their budgets going forward. The immediate unforeseen impact of this bill would turn those already strained government budgets upside down. Cable companies use the city's rights-of-way for their fiber lines. The FCC has said in its recent controversial Section 621 Order that cities can only receive a 5 percent franchise fee on cable services, not on Wi-Fi or small cell antennas attached to the cable system that is in the city's rights-of-way. So the FCC is already allowing cable companies to use the city's rights-of-way for all communication services, but only pay the 5 percent franchise fee on cable services. This bill would now cut that service-limited 5 percent franchise fee revenue down to 3 percent. Cities and counties have no opportunity to assess any other right-of-way fees to recoup the added burden on their streets. I'm asking that you do not advance this bill for the reasons that I have stated. Thank you for your time today.

GEIST: Are there any questions from the committee? I have one. I-- you do, though, collect other right-of-way fees from other telecommunication companies, correct?

STACEY HULTQUIST: That may be. I-- I don't have that specific information with me today.

GEIST: OK-- OK, thank you. Thank you for your testimony.

STACEY HULTQUIST: Thank you.

GEIST: Additional opponents.

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. Represent the League of Nebraska Municipalities, and we are opposed to LB1046. And a little perspective on how cable TV is regulated comes into play here. When cable TV-- because it's regulated different than a lot of other industries and that-- that-- that comes into why the 5 percent is there and-- and some other things. When cable TV was a fledgling industry in the 1970s, a lot of it was just mavericks, you know, some local guy who was pretty good at-- had a battery, you know, had a bucket truck, could start stringing line, and it was just a patchwork of regulation. And unlike the telecommunications companies, in 1984 the cable industry went to the federal government to be regulated. And there were intense negotiations at the congressional level on how to regulate cable television. And-- and-- for instance, this committee sees a lot of telephone bills, but you don't see a lot of cable TV bills. That's because the-- the federal government essentially preempted cable TV regulation. And at the time, I don't think they used those words, but essentially that's what they were doing. And keep in mind, it was still at the time a fledgling industry. You know, people got seven or eight channels and they were fuzzy and whatnot. So they passed the cable TV regulation bill in 1984, and part of that was the 5 percent maximum franchise fee. But there were a whole lot of other issues that came into play. This was a negotiated legislation. It included issues of exclusivity, obligation to serve. A whole variety of issues came mixed into the pot. The franchise fee was not the only isolated, regulated item. So this was a whole stew of different items that kind of came together. But then between 1984 and the '90s, then suddenly it went from an industry with a $10 fee so you could kind of get-- you could see Channel 10 and 11 weather a little better when it was snowing, to something with 200 channels and it was costing, you know, $85. In 1992, Congress, not this-- not the state-- reregulated cable. And what they did there is-- so what was happening is cities were attempting to regulate rates at that point, because we saw-- what we saw was the big uptick in rates. And again, it came with channels and packages and all this stuff. And so in 1992, Congress set forth very strict guidelines on how cities can regulate rates, which are-- which for the most part, they can't do a lot. But there's-- there's-- there are some things they could do. Many-- many of the things they can regulate have kind of disappeared just through the marketplace, but-- so in 1992, Congress stepped in and reregulated the cable industry and-- and it also reregulated the local regulators that the cities-- cities, counties, and in some states, in villages in Nebraska. So-- so for-- since 1984, cable television is something that's been regulated by the feds. And I think that-- that presents a lot of problems in having the state Legislature attempt to regulate one element of a larger picture. And also, I think an understanding of that probably is necessary as we need to take steps forward for a competitive marketplace. We need to start understanding that there's a hodgepodge of-- a patchwork of different regulations and fees, and small things out of context don't necessarily create a better competitive environment. The-- for instance, there's a very legitimate argument that the-- the language, very specific language on not to exceed 5 percent, is preemptive. That may not be a winning argument. It might be a winning argument. I don't know. I think when the cable TV act was drafted, I don't know that the drafters anticipated states stepping in. It's not written in a firmly preemptive way, nor is it written clearly in a way that allows states to step in, as many other statutes are and federal-- federal laws. Also, clearly, it's an impairment of contract. These are negotiated settlements on-- on the-- this is, you know, this is sort of the old school way of-- of working with a company, a local company. It's, you sit down, you negotiate it. And as one of the prior testifiers indicated, they're not coming to the table saying, please reduce this rate. And-- and I guess, you know, we would-- we would be interested in working with the cable companies and others in trying to find competitive, balanced solutions. However, I think not recognizing the patchwork of other regulatory bodies and-- who are involved in this, in addition to the Nebraska Legislature and you know, the Wayne City Council are, you know, I think-- doesn't give-- some-- somewhere, you also need to involve federal officials in trying to solve some of these-- some of these problems. And again, this is, as many others have indicated, this is a-- this is a source of income that cities depend on, they negotiated and something they expected, at least for the term of these contracts. I'll certainly answer any questions. Thank you.

GEIST: Any questions from the committee? I do have-- I'm-- I'm-- I'm always interested to hear how we got where we are, which I appreciate your-- your input. But you do also address the problem that we're seeing and that now the competition is happening. And yet everyone is-- each individual server, for lack of a better-- is treated differently because of how they entered the market.

LASH CHAFFIN: Yeah-- yes, very much so.

GEIST: And now all of the services virtually are similar, and everyone is taxed or--

LASH CHAFFIN: And the consumer--

GEIST: --feed differently.

LASH CHAFFIN: --cannot distinguish--

GEIST: Exactly.

LASH CHAFFIN: --well, you know, I--

GEIST: It's irrelevant to the consumer.

LASH CHAFFIN: --I , I, I can't distinguish that LAUGH], yeah.

GEIST: Right.

LASH CHAFFIN: I know it's a difficult situation. It-- it may involve a national solution.

GEIST: Uh-huh.

LASH CHAFFIN: You know, I don't know that it really occurred to me till I saw this bill, how-- how the federal laws overlay with the-- you know, because at the League we work with the state Legislature--

GEIST: Uh-huh.

LASH CHAFFIN: --yes, National League of Cities and others work federally. It occurred to me, you know, this is something that was dealt with, and these were intense negotiations with Congress to-- to get there, so somehow Congress, knock on wood, has to be involved in some of these--

GEIST: And--

GEIST: --solutions.

GEIST: --therein lies-- my question is, were you saying that you think that 5 percent lid could preempt--

LASH CHAFFIN: It-- it could be preemptive--

GEIST: -- the 3 per--

LASH CHAFFIN: --language. I think it could be, yes.

GEIST: OK.

LASH CHAFFIN: I don't know. I think that's unclear. What-- what this bill would certainly result in is litigation.

GEIST: OK.

LASH CHAFFIN: I think right out of the chute, that would be the first. There are-- there are at least two legal arguments that would-- a court probably will--

GEIST: The contractual legal argument and the cap-- federal cap.

LASH CHAFFIN: Yes.

GEIST: OK. All right.

LASH CHAFFIN: Thank you.

GEIST: Thank you. Yes, Senator Hill-- Hilgers is back.

HILGERS: Thank you, Vice Chair Geist, and good to see you. I apologize for missing maybe every answer to the question I have [LAUGHTER], so I apologize to the room and the committee if this has been addressed. So is the second argument that you just referenced-- the first one I assume was the contract argument that I was-- I was--

LASH CHAFFIN: Sure.

HILGERS: --speaking about with the gentleman from Grand Island. Is the second argument the idea that federal government set a cap of 5 percent, the state can't go beyond that? In other words, it's a preemption argument--

LASH CHAFFIN: I think it's a preemption.

HILGERS: --is that [INAUDIBLE]

LASH CHAFFIN: It's a possible preemption argument. I don't think the federal law-- it's not clearly preemptive, nor is it clear-- does it clearly allow states to enter cable TV regulation. It really doesn't anticipate state regulation of cable TV. And I don't know where those lines are drawn, but certainly there's a court out there who-- who would take a listen at this. I mean, what I think-- I don't know where it would end up, but I think passage of this bill in isolation would probably result in litigation somewhere.

HILGERS: Is the 5 percent, if you know-- as it's written in federal statute, regulation, wherever it exists-- is it a floor, a ceiling, or is it just a number?

LASH CHAFFIN: It is a-- actually, I-- I have-- I have a handout I forgot to hand out [LAUGH] with the federal language in it. The-- it is a "not to exceed." It is-- it's awkwardly written language. It's been there since 1984. It-- it is-- it is certainly awkwardly written and it doesn't-- I don't know that it anticipates state laws, one way or the other. It's-- I think it's-- I'd be hesitant to pass judgment on it without a-- I think you'd have to get into federal cons-- federal, legal, statutory language construction issues, which you know are gonna go back, you know, to a 100-- a 100 years prior to Nebraska even existing. And you're going to get into all kinds of statutory intent issues, which it-- with two houses and a conference committee-- and this was a heavily negotiated bill in 1984. There were a lot of players in the game. And so statutory intent is going to be very difficult to ascertain. I mean I think it's a-- it's a-- it's a very difficult legal process to-- to-- to jump into.

HILGERS: Now for me, and I'm not the judge, but I am a textualist. If the only way to figure out statutory intent--

LASH CHAFFIN: Yeah.

HILGERS: --is by what they put in the language and not-- "shall not exceed" to me suggests a ceiling, not a floor, which would-- would suggest at least some openness to state action. But-- but any opponents who have some legal briefing on that, I'd love to see it. My other question is-- it seems like there's a couple of different arguments for this-- against this. One is that the arguments you've made for this constitutional argument/federal statutory-- there's another argument which is, hey, we need the tax dollars, is the argument I heard from Grand Island.

LASH CHAFFIN: Yes.

HILGERS: There's a third argument that I-- you may have articulated and I apologize if I missed it, but just-- and it was touched on by the proponents, which is, look, this fee doesn't go to any-- it's not meant to offset a cost that is incurred within the city. In other words, can you-- are-- is there a cost-- is there a cost or a fee, a direct cost of providing the service, some-- some sort of, you know, right-of-way cost that's ongoing or some sort of excavation work that's being imposed on a city that if-- if the Legislature were to lower the fee, the fee received to the city and not do something to the cost incurred, it would create an unfairness to the cities.

LASH CHAFFIN: I think-- since the original 1984 regulate-- regulatory process, was a-- there were a whole lot of issues in the stew. And I don't think you can find anybody involved with that process who would say that it's a cost-based fee. It was part of the overall mix of, including some complex issues-- exclusivity, the antitrust issues were at play, the-- the obligation to serve. I mean, it was just sort of a whole mix of issues that got thrown in. So I think it's a-- it's a little simplified to suggest that-- that the franchise fee has always been and needs to be a cost-based issue. And as the city of Omaha testifier indicated, that-- even the federal government has started to chip away at that argument by allowing some costs or some items of-- of communication on the system to not be part of the franchise fee yet not all-- changing. So there's other things that's been a part of the cable franchise that aren't subject to the franchise fee. So there's nobody really at play suggesting that this is a cost-based fee.

HILGERS: That answers my question. Thank you very much.

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

LASH CHAFFIN: Thank you.

GEIST: Are there any additional opponents? Are there any who want to testify in the neutral capacity? Seeing none, Senator Friesen, you're welcome to close.

FRIESEN: Thank you, Chairwoman Geist. I want to go through a few things here that I heard in testimony and I-- I go back to 1984. We didn't have this other technology. We didn't know there was going to be an Internet. We didn't know there was going to be 5G. We didn't know there was going to be streaming. A whole different argument, technology has changed, it's obsolete. I do look at it as a ceiling because we do have cities that are charging 3 percent. It's not a required 5 percent. You can charge up to. And if I recall, in Nebraska the state gives the city authorities to do things and we regulate them. And I'm not a lawyer, so I don't have a technical term for that, but I've been involved in that. So we got a technology now where you could say that a new neighborhood gets built in Lincoln here. And cable TV doesn't go in there. So you have 5G, maybe they stream all their services, they receive Internet over wireless. Are we saying that people do subscribe to cable are the ones that should be paying for public safety services or general obligations of the city when that new neighborhood wouldn't be contributing at all? So to say that that-- those funds are needed to provide city services, when you're only taxing a small portion of citizens who subscribe to that service versus some other service seems kind of unfair to me. Again, it's not related to the services you're getting. So I-- and as far as grandfathering contracts in, I don't think it was my intent to change a grandfather contract because usually we cannot change those. So I will look into that and I'm willing to-- to discuss that further. But typically, we don't change contracts that are written. They are entered into freely by both parties. And I-- I will see once I'm willing to-- to look at that. You know, it's-- technology has changed, and we've all heard that in the last couple of years and how all these services are intermingling and they all operate under different rules and I agree. There's other things that enter into some of the costs of all of these businesses. But this was one that came up last year time and time again, that is unfair tax on certain services. And to say now that, you know, this will hurt the revenue of a city, you're saying now that certain citizens who subscribe to this service should be paying for services that all citizens are using. And to me, that's not fair. So I'm-- I'm willing to work with the different cities. I realize this is a budget issue. Maybe it shouldn't have been all along but-- and I don't see how it is tied to LB960, so I'm-- well, we'll deal with that issue separately. But again, I'm willing to work to see once if we can soften the blow or do whatever we need to. But I do think this is an issue and that's the reason I brought this, so-- with that I'd be glad to answer any questions.

GEIST: Are there any questions from the committee? Seeing none, that will close the hearing for LB1046. Thank you. Oh, I'm sorry. I do have some letters of support I need to read into the record. One letter of support from Jim Doyle, Business Forward; and two letters of opposition, one from Eric Carstenson, president of Nebraska Telecommunications Association, and Mayor Doug-- Douglas Kindig, United Cities of Sarpy County. And-- no neutral testimony. Thank you.