

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 21, 2023

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GEIST: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Senator Suzanne Geist. I represent District 25, which is the east side of Lincoln and Lancaster County. We will start off with having members of the committee do self-introductions, starting on my right.

MOSER: Sorry about that, was cleaning off my desk. Hi, I'm Mike Moser. I'm from District 22, which is Platte County and most of Stanton County.

BRANDT: Good afternoon. Senator Tom Brandt, Legislative District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

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

DeKAY: Barry DeKay, District 40, Holt, Knox, Cedar, Antelope, northern part of Pierce, and most of Dixon County.

GEIST: Our committee counsel to my right is Mike Hybl. To my left is our committee clerk Caroline Nebel, and then also assist-- assisting us in our committee are pages Delanie and Logan. Delanie is studying political science at UNL, and Logan is studying international business at UNL. This afternoon we will be hearing a number of bills, three to be exact, and three appointments. We'll be taking them up in the order that's posted outside the room. On the table near the entrance of the room, you will find the blue testifier sheets. If you are planning to testify today, please fill one out and hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify but would like to record your presence at the hearing, please fill out a gold sheet that's also on the table near the entrance. I would like to note the Legislature's policy that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will be included as part of the record as exhibits. We would ask, if you have any handouts, to please bring ten copies and give them to the pages. If you need additional copies, the pages will be able to help you with that. Understand that senators may come and go during our hearing. This is common and required as they may-- may be presenting bills in other committees. Today, testimony for each bill will begin

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with the introducer's opening statement. After the opening statement, we will hear from any supporter of the bills, then from those in opposition, and then from those who are speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to close and-- if they wish to do so. We ask that you begin your testimony by giving us your first and last name, and please also spell your name for the record. We will be using a five-minute light system today. Who is going to testify today or-- is everyone in the room planning to testify? We would test-- OK. All right. We'll be using a five-minute light system. When you begin your testimony, the light on the table will turn green. The light-- the yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thoughts. I would like to remind everyone, including senators, to turn off or put your cell phones on vibrate. And I will have a senator who just entered introduce herself as well.

DeBOER: Hi, everyone. My name is Wendy DeBoer. I represent District 10 in northwest Omaha.

GEIST: And with that, we will begin with the appointment of Leah Barrett, appointment to the Nebraska Information Technology Commission. Good afternoon.

LEAH BARRETT: Good afternoon, Chair Geist and committee members.

GEIST: And you may go ahead and open and just tell us a bit about you.

LEAH BARRETT: So my name is Leah Barrett; it's L-e-a-h B-a-r-r-e-t-t. I've been a Nebraska resident now just over three years, and I serve as the president of Northeast Community College. I've had the pleasure of working closely with Network Nebraska, beginning in about March of 2020, when I-- when I came to this great state, before the pandemic. And so I began understanding and learning more about the community college role and its importance in supporting opportunities, especially through Network Nebraska, in ensuring that the producers in our region, as well as our students, had access to inexpensive Internet and ensuring that our libraries, our municipalities, our community colleges, and our schools had the opportunity ensured that they had access. So when this opportunity came forward about a year ago, I believe, I did apply for the position and I think was softly appointed. I'm not sure what it's officially called, but I was able to

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attend a meeting in November and would really appreciate your support in-- in serving on the commission.

GEIST: Thank you. Thank you for your-- that, and welcome to Nebraska.

LEAH BARRETT: Thank you.

GEIST: Are there any questions on the committee? Senator DeKay, go ahead.

DeKAY: Thank you, Senator Geist. President Barrett, how many programs does Northeast Community College offer to students in the--

LEAH BARRETT: We have about 133 programs, which would be a combination of certificates, diplomas and degrees. That does not include the work that we do in adult education, English language learning, literacy development, as well as our multitude of workforce training programs in our 20-county service area.

DeKAY: And how many total students, part time and full time?

LEAH BARRETT: 14,300.

GEIST: Wow.

DeKAY: Thank you.

LEAH BARRETT: You're welcome.

GEIST: Are there any other questions? Yes, Senator Brandt.

BRANDT: Thank you, Chairwoman Geist. Thank you, President Barrett, for appearing today. So what can the Nebraska Information Technology-- Technology Commission do to improve broadband for the rural areas of the state?

LEAH BARRETT: I think one of the-- the roles-- and I'm going to talk specifically about the Network Nebraska component, because that is the work that the community colleges are-- are situated within, and so that's how we work together in a consortium to reduce the cost of access to Internet for the municipalities, the schools, the libraries, and the higher education institutions, and so it's important that we work closely with that consortium. I think the other opportunity that

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we have is, specifically, a handful of the community colleges in the state do have data centers. And what these data centers provide the opportunity to do is for us to intersect with providers in making sure that there's redundancy and latency in those systems that are going out into the rural areas. That is a-- a service that we can provide, and we partner-- Northeast, for example, partners with several of the telecommunications organizations to provide that additional stopping point as they are able to move out into the rural areas.

BRANDT: And I see that your last position was in a community college in Wyoming?

LEAH BARRETT: Um-hum.

BRANDT: How does Nebraska stack up against what Wyoming is doing in the technology arena?

LEAH BARRETT: I'm not sure I can effectively answer that question.

BRANDT: OK.

LEAH BARRETT: So I wasn't in a role where I did that kind of work in Wyoming.

BRANDT: All right. Thank you.

LEAH BARRETT: You bet.

GEIST: Any other questions from the committee? I don't see any. Thank you for your testimony.

LEAH BARRETT: Thank you.

GEIST: Are there any proponents for this appointment? Any proponents? Good afternoon.

BRUCE RIEKER: Good afternoon. Chairman Geist, members of the committee. My name is Bruce Rieker, B-r-u-c-e R-i-e-k-e-r. I'm the director of legislative affairs for Nebraska Farm Bureau, here in support of Dr. Leah Barrett's appointment to the Nebraska Information Technology Commission. She's already talked about some of her career, but we have worked with Dr. Barrett. She is a great addition to our state. She-- she strongly believes in the role that community colleges

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play in supporting economic vitality. A lot of that has to do with broadband telecommunication services and especially how we serve underserved areas. Something that I want to bring to your attention that, you know, with precision agriculture becoming more-- more important to our state's largest industry and the members that I represent, she's uniquely qualified, and I think that she would serve a unique role in the Information Technology Commission because of her work in the area of cybersecurity. I've been before the committee and talked about cybersecurity and its threats to our food production complex. I think that she would bring a great deal of-- of expertise to the table with not only her work at Northeast Community College but her interest in the issue. And for that reason and many others, we would like you to support her appointment to the NITC. Thank you.

GEIST: Thank you for your testimony. Are there any questions from the committee? And before we go too far, I will have the senator to my left introduce herself, who just joined us.

M. CAVANAUGH: Thank you. Senator Machaela Cavanaugh, District 6, west central Omaha. Sorry, there's a long wait for elevators in this building.

GEIST: Thank you. Any-- any questions for Mr. Rieker? I don't see any. Thank you for your testimony.

BRUCE RIEKER: Thank you.

GEIST: Any other proponents for this appointment? Any proponents? Are there any opponents for this appointment? Any who wish to testify in the neutral capacity? I don't see any. That will close the hearing then for Leah Barrett for the Nebraska Information Technology Commission. We will move on to Katie Niemoller-- Nee-moh-ler [PHONETICALLY] is that-- this is also for the Information Technology Commission.

KATIE NIEMOLLER: Hello. My name is Katie Niemoller; it's K-a-t-i-e N-i-e-m-o-l-l-e-r. I am a registered nurse at Children's Hospital and Medical Center. I currently work as a clinical informaticist for the med/surg or the medical/surgical departments. So I have been in Nebraska for about 11 years now. I'm originally from Oklahoma and moved up here to be with my husband. Since then, I've been at Children's that entire time. I started out in the emergency department

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as a nurse, found my love for technology, went and got my master's degree in nursing infor-- or information technology, and then I have moved on from the nursing world into the information technology world, and now I'm back kind of straddling the fence, as I do clinical shifts and still do patient care, and then I also provide direction on projects. I worked really closely during the pandemic on our telehealth information that we did and our programs that we started up to get that started. I was on the build side of those things. I did a lot of build with their documentation, mapping out workflows, that type of thing, to try to help them get it up and running and going. And since then, we've had great success with our telehealth and being able to reach those patients that live further away and/or some of those more complex patients that we can bring into the facility because it could be more of a risk for them. Since then, I've also been working on just trying to maintain our patient safety and helping with different programs during our discharge process with our high census and just some of the challenges we had with staffing, working to make sure that we're still prov-- providing the best, safest care for the patients, as well. And so working in that clinical aspect, as well, I still get to have that one-on-one with the patients and still able to tap into my nursing side of things while still trying to grow the informatics world in nursing, so.

GEIST: Interesting. Are there any questions from the committee? Yes. Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thanks for your willingness to serve. I'm-- I'm a bit intrigued by telehealth. So how-- your work-- you started in 2015 in the role that you're in now? So how is-- you-- like with the pandemic and things, even healthcare going virtual, how has that impacted your work?

KATIE NIEMOLLER: I've learned a lot about Zoom. A lot of people have done Zoom. From a patient care perspective, it has really changed how we approach the patients. I know that it was very hard during the pandemic whenever we had to limit the number of visitors that could come in there. And at Children's, we already focus on providing the whole family, because you're not just treating the patient, you're treating the mother, the father. And so that was really a struggle, I felt like, because everybody wants to be included. If my kid goes to the hospital, my mom, my dad, everybody wants to be there. And so being able to use the telehealth aspect of it, being able to provide

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those virtual visits so that the families can still be involved and not necessarily in the room, or being able to have kind of that one-on-one with the doctor while you're on the telehealth, I think that has really changed. Nursing as a whole has changed, I believe. During that time, we went from seeing a lot of-- we saw respiratory stuff, but we definitely went from seeing a ton of patients to-- during the COVID our numbers fell off because everybody was terrified to come to the hospital, and COVID wasn't as big of an impact on children as we saw in the adult population at the beginning. And so being able to adjust to that, filling in when-- at the hospital whenever needed, maybe it's not providing nursing care, maybe it's not doing technology, but just being that team partner, if you needed to go stock shelves or that type of thing. So that's really changed, and now we're kind of on the downslope of that to where our census is up again, we're seeing the sicker kids, people aren't as afraid to come to the hospital anymore, and so just kind of getting back to a different normal than what we were before.

M. CAVANAUGH: Thank you. I have an additional--

GEIST: Yep, go ahead.

M. CAVANAUGH: Is this a first-time appointment for you for this position?

KATIE NIEMOLLER: Yes.

M. CAVANAUGH: What-- what interested you about this position?

KATIE NIEMOLLER: So wi-- with the work that we did with the telehealth, I really thought that that was an area that could expand that out and to try and make sure that we can provide that capability. I also worked with our private-duty nursing department, and we had patients that were out in very far-out places that we were trying to provide services to, and our documentation tools wasn't working there because they didn't have any Wi-Fi or any Internet. And so we ended up having to work with them to get Internet, to be able to connect to their Internet to get it to work, because the Wi-Fi just doesn't work in their area they're at. So being able to expand that out and being a part of that, I think, was something that really drawn-- draw me to apply for this, and so I'm very excited to get started and see what all I can learn and help with.

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M. CAVANAUGH: Well, thank you. I appreciate it. And Children's Hospital is in my district and very near to my house.

KATIE NIEMOLLER: Yeah.

M. CAVANAUGH: And I very much appreciate the quality of care that they provided to my children over the last nine years. So thank you for your service--

KATIE NIEMOLLER: Yeah.

M. CAVANAUGH: --to the medical community and your interest in serving the state.

KATIE NIEMOLLER: Yeah. Thank you.

GEIST: Any-- yes, Senator Moser.

MOSER: Well, I just wanted to-- I don't want to rain on your parade for being on the Information Technology Commission, but nursing is such a high calling and you don't want to discount the value of that. Thank you.

KATIE NIEMOLLER: I appreciate that. Thank you. We do a lot of things for a lot of sick kiddos, so.

MOSER: Yeah, I was really sick, you know, a couple, three years ago, and I can remember all the nurses, but I can't remember any of the computer wonks, so.

GEIST: Any other questions on the committee? You do bring a valuable background to this com-- commission, so I thank you for your interest.

KATIE NIEMOLLER: Thank you.

GEIST: I think that's all the questions that-- on the committee.

KATIE NIEMOLLER: Awesome. Thank you.

GEIST: So thank you for your testimony.

KATIE NIEMOLLER: Thank you guys for your time.

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GEIST: Are there any proponents for this appointment? Is there anyone who wishes to speak in-- as an opponent to this appointment? Anyone in the neutral capacity? Well, with that, we will move on to the next appointment. Zach Mellen-- Mellender-- did I say it right? Mee-lan-der, Mee-lin-der [PHONETICALLY]--

ZACH MELLENDER: Mel-len-der. [PHONETICALLY]

GEIST: Mellender. And I even asked you. OK. Welcome to the Transportation and Telecommunications Committee.

ZACH MELLENDER: Thank you, Chairwoman and Senators. My name is Zach Mellender, Z-a-c-h M-e-l-l-e-n-d-e-r. Although not originally from Nebraska, I moved here when I was eight years old, a son of two enlisted military intelligence, and so we PCSed to Offutt when I was eight. I've been employed at Omaha's Henry Doorly Zoo and Aquarium for the last 11 years and currently serve as the business systems and analytics manager, where I oversee the technology strategy, project management, and ongoing development. So in that role, I help develop and have oversight of our use of technology, both from a business, customer, and animal welfare and conservation science standpoint. In addition to that, I do serve as the project manager on all major projects and work with several different teams to cross silos to branch out into multiple areas. I also serve as the analytics manager and oversee the use of all data, again, from all sources of the zoo, including animal welfare and science, as well as on the business side. Also, I am the signer on validating any compliance with data, including PCI and PII.

GEIST: Interesting. All right. Are there any questions from the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairman Geist. And thanks for your willingness-- willingness to serve. Have you sat in on any of the meetings yet?

ZACH MELLENDER: I have, yes. I sat in on our November meeting.

BOSTELMAN: And what do you see are the major tasks for the committee, what you're-- what you're working on?

ZACH MELLENDER: I think the committee is-- I was actually very impressed with a lot of the progress the committee has been making,

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and I feel very good about how my data is stored at the state because it is very impressive. I think that continuing to lean in on rural broadband access is a key component. There have been major strides made during the pandemic and since, so Nebraska has a very robust network, but it certainly should be more robust and needs additional reliable fiber and broadband access across the entire state, so I think that's one key component. To speak to Dr. Barrett's point, as well, and some of the other commissioners on the commission, leaning into precision agriculture and artificial intelligence and otherwise using and utilizing the tools that technology provides, I believe is enormous. That's something that we are currently leaning into at the zoo, as well, using artificial intelligence, kind of building on precision agriculture for animal science, so leaning into that and focusing on that is a key component that I believe adds to the overall agriculture industry, as well as Nebraska revenues and infrastructure, and UNL does a great job of focusing on that as well.

BOSTELMAN: OK. Thank you.

GEIST: Any other questions from the committee? I don't see any. Thank you for your testimony.

ZACH MELLENDER: Thank you.

GEIST: Thank you for your presence today. Are there any proponents for this appointment? Any opponents for this appointment or any who want to speak in the neutral capacity? I don't see any. Thank you three for being here today, and this will close the hearing on the appointments for the Nebraska Information Technology Commission. With that, we will move to LB61. Senator Brandt, you may open on your bill.

BRANDT: Good afternoon, Chairwoman Geist and members of the Transportation and Telecommunications Committee. I am Senator Tom Brandt, T-o-m B-r-a-n-d-t. I represent Legislative District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties. Today I will be introducing LB61. LB61 will seek to repeal the dark fiber statutes and enable public power to be part of the solution to the expansion of high-speed broadband service to all Nebraskans. All options need to be on the table to ensure proper broadband deployment to Nebraskans that want it. Public power utilities have an extensive network of communications infrastructure, such as fiber-optic cable, that they use to operate their electric

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system. To be extremely clear, public power utilities are not in the commercial broadband business, nor wish to get into this business. Dark fiber statutes were passed by the Legislature in 2001 to restrict power districts from leasing communications infrastructure. In the ensuing years, rural broadband deployment continues to lag, but still remains a high-priority need for Nebraska that must be addressed. Under current law, public power utilities have concerns regarding the restrictions imposed on their ability to deploy and use broadband fiber. These issues include having the Public Service Commission set public power rates for broadband. Public power districts have an elected board of directors that set all of their rates and cannot allow another body to set their rates. Another concern is the requirement that half of all profits have to be sent to the Universal Service Fund. This is not a new concept. The governors of Alabama and North Carolina have signed laws that lift major hurdles for utilities to provide high-speed connectivity to unserved and underserved communities in their states. Georgia, Indiana, Mississippi, Missouri, Tennessee, and Texas have recently passed laws that facilitate rural broadband as well. Nebraska needs broadband deployment to all parts of the state, and we need it sooner rather than later. All the rural areas of Nebraska are underserved or unserved on broadband, parts of north and south Omaha are still underserved or not served at all. After 20-plus years of spotty deployment, every option needs to be considered. With that, I would be happy to answer any questions the committee may have.

GEIST: Are there questions on the committee? I don't see any.

BRANDT: All right. OK.

GEIST: Thank you for your testimony. Are you sticking around for closing?

BRANDT: Yes, I am.

GEIST: OK. Are there any proponents for LB61? Good afternoon.

BRIAN ADAMS: Good afternoon. Chair Geist and members of the committee, my name is Brian Adams, B-r-i-a-n A-d-a-m-s, and I'm the chief of staff of the Omaha Public Power District. I am testifying on behalf of OPPD. Thank you for the opportunity to testify in front of the Transportation and Telecommunications Committee on this important

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legislation. I want to express OPPD's support of LB61, a bill authorizing leasing of dark fiber and eliminating certain powers of the Public Service Commission. OPPD, a political subdivision of the state of Nebraska, is a publicly owned electric utility engaged in the generation, transmission, and distribution of electricity. OPPD serves an estimated population of 855,000 in a 13-county, 5,000-square-mile service area in southeast Nebraska. This bill seeks to re-- repeal the dark fiber statutes, enabling public power infrastructure to be part of the solution to expand high-speed broadband service to all Nebraskans. The PSC has had three dark fiber leases in the 20-plus years these statutes have been on the books, and only one is currently active. Dark fi-- fiber statutes are antiquated and need to be repealed. It is obvious that there are-- they are a hindrance to better deployed broadband. But let me be very clear at the outset. As noted earlier, public-- public power utilities are not in the commercial broadband business and do not plan to get into that business. It is the public power infrastructure that provides a solution to the expansion of broadband. Gaps in broadband coverage are highlighted-- are throughout the entire state. The need for expanded broadband was highlighted during the COVID-19 pandemic. OPPD believes we should apply these lessons and do everything we can to bring true broadband throughout the state. The homework gap, remote work, telehealth, economic development opportunities, and precision farming are some of the areas looking for expanded broadband capabilities. All options need to be on the table to ensure proper broadband deployment to all Nebraskans that want it. Public power utilities have an extensive network of infrastructure, including fiber-optic cable used for communications and the operation of our electric system. OPPD has hundreds of fiber miles connecting over 100 facilities, reaching from the southernmost part of our territory near the Kansas-Nebraska border to as far north as Washington County. Towns like Humboldt, Teca-- Tecumseh, Auburn, Arlington, Ashland, and Louisville could benefit from having public power help in deploying broadband. OPPD is positioned to acce-- accelerate digital access if given the chance. The dark fiber statutes were passed by the Legislature in 2001 to restrict public power districts from leasing communications infrastructure. The arguments made by the telecom industry in 2001 are much the same today, yet broadband deployment continues to lag and remains a high-priority need for Nebraskans that must be addressed. One of the arguments we hear is that le-- letting public power help in deploying broadband will stifle private investment. However, after

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20-plus years of opportunity for private investment with the protection of the restrictive dark fiber statutes in place, there remain serious deficiencies throughout the state in the deployment of broadband. No-- another argument we hear is that public power will cross-subsidize, using our electric service revenue to deploy broadband. Again, public power does not want to be in the broadband business. Further, as a public power utility in Nebraska, we allocate costs for electric service in a fair, reasonable, and nondiscriminatory way. Accordingly, we would keep the cost of electric service and the cost of broadband service separate. Nebraska needs broadband deployment to all parts of the state, and we need it sooner rather than later. This is not just a rural problem either. Parts of north and south Omaha are still underserved with reliable broadband. After 20 years of spotty deployment, every option must be considered. Thank you for your consideration of my testimony and I will take any questions you have.

GEIST: Are there any questions? Senator DeKay.

DeKAY: Thank you, Senator Geist. What do you think-- why is there underserved or no service in north and south Omaha? What do you think is the problem there and how do-- how do we rectify that?

BRIAN ADAMS: It's a complicated challenge and, generally speaking, there are two components to broadband access: accessibility and affordability. We can only support a certain part of that. We can support the accessibility part. The affordability would be outside of OPPD's capacity as-- as infrastructure. With that said, there are other mechanisms in place that can help increase services in that area. And along with that, we're willing to be a partner, however we can, to improve the services that [INAUDIBLE] needs.

DeKAY: Thank you.

GEIST: Senator Moser.

MOSER: The bill describes these fibers as being dark or unused. Would you anticipate OPPD installing more fiber and letting it be used by Internet providers?

BRIAN ADAMS: Our primary focus and our, of course, our primary business is electric service. And as we expand, as-- as most utilities

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around the country are expanding, they are doing more and more digital activities, remote sensors, advanced meters, various ways that data is transported for smarter and smarter grids. So the prospect--

MOSER: Do-- do your smart meters transmit the electrical usage back to OPPD by Internet or by radio wave?

BRIAN ADAMS: It depends on the environment. In-- in a denser area, there are certain solutions, and in more remote areas, there are different solutions, so I would say all of the above.

MOSER: And so if the bill allows the use of the fiber trunks and doesn't really address getting people attached to it, how's the bill going to help people get Internet when it's the last mile that costs so much?

BRIAN ADAMS: There are a couple of components of that. I would draw your attention to the IIJA that was passed in the last year or so. A lot of funding is coming from the federal level through the state to provide last-mile services, so funding may become available for that.

MOSER: But that's not funding that you're seeking.

BRIAN ADAMS: We would be focused on partnering with others. Again, as was pointed out, we have no interest in being an ISP. Won't-- we will not be the end.

MOSER: The-- the partnerships are OK under current law, though, correct?

BRIAN ADAMS: I would say that we are disadvantaged from being able to provide. And as a relatively fiscal conservative, I would use--

MOSER: You don't like the part where you have to give half your revenue to the USF fund?

BRIAN ADAMS: There are-- there are enough constraints or risks associated that-- with it that we tend not to pursue things that-- with that level of risk.

MOSER: OK. Thank you.

GEIST: Senator DeBoer.

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DeBOER: Thank you. The-- what we're really talking about here is-- is mainly middle mile, right, so the middle mile and leasing that as part of the process. Omaha is pretty well built out for middle miles, I would assume.

BRIAN ADAMS: Right.

DeBOER: So this isn't really going to affect OPPD very much.

BRIAN ADAMS: So our service territory covers 13 counties, and while Douglas County is the largest of those, we also serve a lot of other areas all the way down to the Kansas border.

DeBOER: And are those middle miles built out already, I mean, for broadband? You may not know because you don't do that, but I would assume that those middle miles are fairly built out. Do you have any knowledge of whether they are?

BRIAN ADAMS: Yeah, so we-- we did do a very high-level study. And understand that, roughly speaking, the further you get from a large population center, the worse service is available. Therefore, I-- I-- again, I don't know. I'm not the expert in-- in the middle-mile structure, but there is less and less access in smaller-- smaller population centers.

DeBOER: OK. Thank you.

GEIST: Yes, Senator DeKay.

DeKAY: One last question. I can't remember for sure. How far south does OPPD's service territory go, like from Auburn or Nebraska City area?

BRIAN ADAMS: So we go from Washington County all the way down to the Kansas-Nebraska border.

DeKAY: You go to-- all the way-- OK. Thank you.

GEIST: And I do have a couple questions. There-- as I'm reading through this, and I notice on page 5 there's a reference to selling, leasing or licensing, and I'm curious if you would let us-- the licensing, I've not ever heard. That's a new thing here, and I'm just

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curious if you would tell us what the difference in leasing and licensing is.

BRIAN ADAMS: I would need to check on that and I'd be happy to get back to you.

GEIST: OK.

BRIAN ADAMS: I don't know off the top.

GEIST: OK. All right. Any other questions? [INAUDIBLE]. Thank you.

BRIAN ADAMS: Thank you.

GEIST: Thank you for your testimony. Any other proponents? Good afternoon.

JOHN HANSEN: Madam Chairman, members of the committee, good afternoon. For the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n. I am the president of Nebraska Farmers Union. Every time that this bill and its concept has come up, we have strongly supported it. And from our perspective of folks who represent primarily rural interest, the-- the infrastructure that serves rural Nebraska is a lot like the retail structure in that it's very uneven. And so we're very grateful to our public power partners for stepping up and saying, we have infrastructure, we ought to be able to work something out so we could more efficiently utilize the infrastructure that we as Nebraskans have already bought and paid for and own. So here we have cases where we have infrastructure that is lacking and we have other cases where we have infrastructure that's overbuilt. And so we have some unevenness to that system. And it seems both sort of inefficient, but also kind of foolish, not to take advantage of the full amount of resources that we have available; from our perspective with the amount of dollars that we have coming into our state from the-- from the feds at this point in time, that this ought to be an "all hands on deck" kind of situation where we take a good, hard look at every single opportunity we have to move forward as fast and as efficiently as possible to have the infrastructure that we need to be able to do deployment. And so if you have-- if you have a, a, a need for infrastructure and you have unused infrastructure, it seems fairly obvious to us that you ought to be using the underused infrastructure that you already have, and that that frees up dollars to build other infrastructure where you need it.

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So it seems like that this would add capacity and efficiency, and we don't really see a downside. We see a-- a-- a plus in helping streamline the rules of the road so that we can more effectively and clearly use this. And we thank public power for stepping up and saying, what can we do to help? And so with that, I'd be glad to end my testimony and answer any questions if I could.

GEIST: Yes, Senator Moser.

MOSER: So you're kind of the champion of cooperatives?

JOHN HANSEN: I-- there-- there--

MOSER: Not the champion, a champion of cooperatives?

JOHN HANSEN: The-- I've been called worse things, yeah.

MOSER: So would there be a role for cooperatives to try to provide Internet to people in certain areas of the state, if they'd band together, try to write a contract with somebody, and provide Internet for members of their cooperative?

JOHN HANSEN: You know, Senator, I-- you know, I think we already have some of that going on, and so we already have some cooperatives trying to figure out ways to help get the-- the capacity that their customers need in order to be able to utilize the-- oh, the products that they buy from the cooperative.

MOSER: You-- but you're talking about existing cooperatives where I was thinking, you know, like in the spirit of the old phone companies way back when, when--

JOHN HANSEN: Yeah.

MOSER: --a dozen neighbors all bought a roll of wire and string it up from pole to pole and-- and they were all on one party line.

JOHN HANSEN: I still have some of that wire, Senator.

MOSER: I have a roll of that wire at home, too.

JOHN HANSEN: That's right.

MOSER: My father-in-law's.

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JOHN HANSEN: We use it for electric fencing.

MOSER: It's-- it's really stiff and very conductive. It's handy. Thank you.

JOHN HANSEN: And I do-- and I do think, to your point, though, that I think that any and all structures that we can use, we ought to and we ought to be thinking about any of those things. And in our view, a lot of the-- a lot of the-- the-- the cooperatively owned telephone companies and-- and Internet providers have-- have stepped up and-- and borrowed the money and built the infrastructure years ago. And so we're extremely pleased with-- with the fact that they did that.

MOSER: OK. Thank you.

GEIST: Any other questions? Senator DeKay.

DeKAY: Not-- thank you. Not a question but just a statement. I-- I've used that wire. I've got that wire around the place; not a fan of it-- too stiff. But anyway, back to the cooperatives we talked about, there's cooperatives up in our area, telephone companies, Three River Telco, Great Plains, and them that I've already got fiber right to my house, so I've got high-speed Internet right to my house now, so those-- those situations have been in place for probably-- probably 15 years or so, so there are contracts like that out there that are working in the rural sector of the state, so.

GEIST: Very good. Any other questions? I don't see any. Thank you for your testimony.

JOHN HANSEN: Thank you.

GEIST: Any other proponent? Good afternoon.

JAMES DUKESHERER: Good afternoon, Chair Geist and members of the committee. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I'm the director of government relations for the Nebraska Rural Electric Association. The NREA represents 34 rural public power districts and electric cooperatives throughout the state, and we're here today in support of LB61. Like others have testified, NREA agrees that LB61 is needed to promote the development of rural broadband. What the NREA will add to this conversation is that we believe what LB61 really does is opens up the possibility of more public-private

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partnerships. It moves the statutes out of the way and lets two companies sit down together and decide if they can come to terms on a five-year lease agreement. Some would say that LB61 represents public entry into broadband. It does not. This bill simply lets public power lease glass without going through the seldom-used-- seldom-used PSC process. LB61 is unique in this discussion because it removes a roadblock to development that could reduce the cost of serving the rural areas. While we're hearing so much about the high cost of rural broadband development, the need to reduce required matches for state and federal funding, and the continued need for ongoing support beyond the federal money that's coming to our state. LB61 is the only bill that we see where we're talking about the possibility of reducing the cost of deployment. So how does it reduce the cost? For starters, as has been said, some of the larger power districts already have fiber in place that ca-- can and should be used to reach more rural customers. If we own the fiber and it's on our poles, there may also be some efficiencies gained for deployment and for maintenance. On owning the fiber, if we're allowed to-- if we own it, our business model is completely different than a private telecommunications company. Most private companies may look at a project and say they need to be paid back in three to five years or they're not going to do the project. Public power can depreciate at over 20 to 30 years or the whole life of the infrastructure, and we can do that with little or no profit expectations. Additionally, we may have access to low-interest capital to take on such large projects. When we brought up rural-- we brought electricity to rural Nebraska, we did it with-- with rural. We did it with federal grants. We did it with low-interest REA loans, and we paid those loans back. Because of factors like these, we may be da-- we may be able to take on some risk where a private company could not. This could-- could result in lower lease rates to telecom companies, which hopefully would allow those companies to further expand their services into rural areas. As my members begin to look towards the future of our industry, some see a need for increased connectivity, connecting substations and further developing the capabilities of-- of AMI systems, advanced meter systems, for examples. These needs can be part of a partnership model where costs are shared. Maybe we would build a line of fiber that connects our substations, and then that line of fiber could then be used to provide broadband to rural customers. Public-private partnerships are already possible, as Senator Moser noted, but we haven't seen many of them. Eliminating the roadblocks, as LB61 proposes, is a step forward in

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promoting these partnerships, reducing the cost and reaching more rural Nebraskans with rural broadband. Thank you.

GEIST: Are there any questions from the committee? Yes, Senator DeKay.

DeKAY: Thank you. Mr. Dukesherer, what-- what do you think are some of the roadblocks in the dark fiber statutes that exist today?

JAMES DUKESHERER: Thank you for the question. So the-- the dark fiber statutes, they-- they envision or they talk about served and unserved areas. So first off, I would say that if you're going to do a lease agreement in-- in a served area, that's where-- where some of the requirements kick in. And a couple of years ago, Senator Bostelman had a bill that passed, and the Legislature passed it, that changed what was deemed served in the state of Nebraska for broadband. It moved the-- mood that-- that line up to 100 by 20 service before you were deemed served. This statute never got changed, so it still says that if you have 25 by 3 service, you're deemed served. So we all know about the maps that the state has and how they may overstate broadband service. So they overstate that more people are served than-- than should be, and that kicks in this-- this process where, if you're going to do a lease agreement in those areas, you have to remit 50 percent of the profits back to the Universal Service Fund. There's also a process in the statute that deals with contesting the lease, so a company can contest a project that-- that two companies decide on. That takes time, effort. The PSC has to hear the case. And there's also language in-- in the statute that deals with what's called the safe harbor rate. So the-- the PS-- the PSC-- a couple of years ago a bill was passed, 2020, and the PSC was charged with developing a safe harbor rate. If your lease agreement falls within that rate, the-- the lease is deemed-- deemed approved. The problem is that the PSC has never set that rate, although, in their defense, they have opened a docket on that right now. But we would argue that, even if they did develop a safe harbor rate, the process is still burdensome. And if you remove it and just let two companies sit down together, decide what's best and what works out best for them, that-- that's all there should be.

DeKAY: Thank you.

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GEIST: Any other questions? Would you mind-- I'll ask you the same question about the licensing and what's different between the leasing and the licensing?

JAMES DUKESHERER: I-- I have a cheat sheet on this, Senator, and if-- if you'll forgive me for checking on it, I'll read you what I have. A lease transfers to the lessee a specific property interest to occupy the subject's property and generally conveyed a broader property right than a-- than a license. A license is a more limited interest in property that gives the permission of the owner to an individual or an entity to use real property for a specific and limited purpose.

GEIST: So it-- does that speak then to the taxing difference? Is there a taxation implication from one to the other?

JAMES DUKESHERER: I think you've reached the-- the potential of my ability to answer that question, Senator, so I will--

GEIST: [LAUGH] OK.

JAMES DUKESHERER: I will get you your answer.

GEIST: OK. Thank you. Yes, Senator DeBoer.

DeBOER: As I'm listening to this, I'm-- I don't know if you're the right person to ask-- ask this question or not, but isn't there a concern that if we allow two companies to just sit down with each other, as you've suggested, that they could agree on a price which is under market value, which would, therefore, undercut an already existing company that's in the area. And if that happens, isn't there then going to be an incentive for folks to overbuild, as opposed to going to areas of the state that are not already served by anyone, right, because if they're going to get a lower price, they can go in there, they can do it, there's already a business case for the area, that's why somebody's there, seems like they can do it cheaper there, great, they'll go there. Now we've got other areas where no one is. Do you see what I'm saying?

JAMES DUKESHERER: I see what you're saying, and my thoughts are that, in particular, in the areas covered by the REAs, we're just not seeing competition in those areas, and what we're hearing is that there's no business case to be made to-- to bring broadband to those areas because it's too expensive. So, you know, would there-- could there be

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an example out there where a company does get undercut? I suppose it's possible, but I think it's far more likely that the cost is reduced and some more people get service because of-- of the passage of this bill. And if that cost is reduced, at least I hope that that means that the cost of broadband for those customers is-- is lower cost and-- and it works out for them.

DeBOER: So in the dark fiber statute that we had that this is basically repealing, one of the things that it did was it limited to unserved, underserved, as you said. If we change the unserved, underserved to match with what we're now saying is unserved, underserved in Nebraska, then we would have a situation where we were, I think, still saying, OK, in those areas, sort of, anything goes because we want to get those served. But in the areas that-- that are served already, maybe we don't need to provide an incentive to overbuild.

JAMES DUKESHERER: I-- if-- if that's the decision this committee made or chose how to move forward with this bill, we would support that effort and we did support it when-- when we were trying to make that-- that change a handful of years ago, in 2020. I-- we-- we argue today that it's cleaner just to-- to get rid of it, let the companies decide on that. But, yes, moving that bar up to 100 by 20 would-- would have a significant impact on-- on what is deemed served in the state, and everything that had less than 100 by 20 would be deemed unserved for purposes of having a, a, a lease agreement, that would open up a huge part of rural Nebraska to-- to lease agreements.

DeBOER: OK. Thank you.

GEIST: Any other questions? I don't see any. Thank you.

JAMES DUKESHERER: Thank you.

GEIST: Any other proponents? Good afternoon.

ANDREW VINTON: Good afternoon. Chair Geist, members of the committee, my name is Andrew Vinton; that's spelled A-n-d-r-e-w V-i-n-t-o-n, and I'm the in-house legal counsel and lobbyist for ALLO Communications. I'm here today to testify in support of LB61 and to offer our thoughts about several provisions of this bill. For over 20 years, ALLO has been building a ubiquitous citywide fiber-to-the-premise networks in

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communities throughout the state and has invested nearly \$600 million of private capital in bringing broadband to Nebraskans. Once ALLO's in-progress builds are completed, more than 60 percent of Nebraskans who live outside of the city of Omaha will have access to ALLO's symmetrical gigabit or multi-gig service. Our efforts have resulted in the city of Lincoln being ranked in the overall top 3 of 100 largest American cities in upload speeds, download speeds, and latency. We take immense pride in building fiber to substantially all residences, businesses and government entities in our communities, and providing all ALLO customers with world-class service. With more than 125,000 customers and almost 1,000 employees in the state, we are the largest Nebraska-based, majority-Nebraska-owned telecommunications company. The first reason we support this bill is we-- we feel like it would modernize the dark fiber statutes. The current restrictions regarding dark fiber leasing by public entities and profit sharing with the PSC were passed in the early 2000s. There's been significant changes to the industry since then. For example, when the Legislature passed the requirement of having the PSC set rates for dark fiber leases, very little fiber existed in the state of Nebraska. The Legislature wanted to ensure that the rates were market-based and at least one public provide-- as at least one public provider had undercut the incumbent's tariffed rate by 67 percent. However, in 2023, that concern has been largely abated by the significant amount of fiber which has been deployed in Nebraska, the available low-cost capital, and the competitive fiber rates that exist today. Tariffed and contract rates have declined substantially over the years and the threat of rate arbitrage is remote. The second reason is that ALLO supports public-private partnerships. ALLO has long supported the concept of public-private partnerships and is involved in several such partnerships in Nebraska, including ALLO's lease conduit-- lease of the conduit system owned here in the city of Lincoln. Without this conduit, ALLO would not have been able to build the Lincoln fiber network. Lincoln is one of the fastest-gig communities in the United States. Another example is Valentine, Nebraska. ALLO leased assets from the city of Valentine to allow us to provide world-class service to the community. ALLO has also participated in public-private partnerships in three communities in Colorado and several in Arizona. Each public-private partnership has a different model. We believe that LB61 is good policy because it provides flexibility to communities to contribute to solving the urban-rural digital divide while also preserving protections against public entities providing retail

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broadband service. We would be opposed to any attempt to allow municipalities, public power districts, or rural electric associations to provide retail telecommunications, Internet or entertainment service. We also believe L-- LB61 presents good public policy because it allows local communities to choose to invest in their community's infrastructure, and to ultimately pick the telecommunications partner who will utilize the investment. Legislation such as LB61 would provide the ability to impact the development of telecommunications infrastructure, would allow partnership with local companies. While we do believe the current PSC dark fiber leasing process would work as intended, uncertainty around the process has led to very few public entities bringing dark fiber leases to the PSC. In practice, a change in law would likely bring public entities to the table to lease their dark fiber. LB61 would present this sort of change. In summary, ALLO has partnered with communities in Nebraska, Colorado and Arizona and supports the concepts of public-private partnerships with necessary restrictions on retail telecommunications service by public entities. We believe LB61 would expand the options for communities struggling with poor or no broadband service, and we encourage the committee to advance LB61 to General File for-- for full legislative debate. And with that, I'd be happy to try to answer any questions you have.

GEIST: I'll ask you a question. When-- I notice that all of your examples of public-private partnership have been done with the existing statutes. So how does ALLO see this as being a necessary part of their business model when you're already doing public-private partnerships? It-- does this go for-- further or what's the thinking behind how this would help your business?

ANDREW VINTON: Thank you for the question, Senator. I think it's really an effort to get to underserved and underserved, so rural, high-cost areas. Our footprint's primarily in town. We're a privately funded company and we have to be able to make a-- a return on our investment. And that's enabled by density; that's enabled by a lot of customers on a smaller amount of-- of plant deployment. When we get outside of our towns-- we have 25 in Nebraska-- it gets difficult because it's a math problem. There's a lot of fiber that goes into it and not a lot of customers to spread that cost across. If we were able to efficiently, transparently, economically lease fiber from a rural electric or a public power district that already had fiber out there, that lowers our ba-- barrier to entry and it helps that math problem balance and would get us into more rural areas.

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GEIST: Thank you. Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. Let's expand on that just a little bit more, Mr. Vinton. So REA may come to a substation with fiber, but that's only going to be down one county road. How are we going to-- how do you see then that that fiber gets utilizing that backbone, if you will, gets then two, three, four, five miles away from that to that [INAUDIBLE], too. I mean, it's easy if it's-- you're along that-- along that trunk to turn down that substation. But when you start going over several miles into the rural areas, how do we overcome that?

ANDREW VINTON: That's a great question. And I think that's where the-- the various upcoming federal grant programs will come in. The trunk line to a substation would-- would get us closer. I mean, we've heard providers come up here and say that 50 percent and then 25 percent matching funds were not enough under the Broadband Bridge Act to get to very, very rural areas. This reduces the cost more. It gets us closer to those-- those very unserved locations in rural Nebraska and-- and just helps lower the barrier to entry to the point where potentially a BEAD grant can come in and-- and serve some large rural exchanges, in part by utilizing that fiber just to-- to help make the economics balance for the provider.

BOSTELMAN: Yeah, I appreciate that, because some of the things I've heard was mostly just take them to a town, a village or a city, but that's not going to get real rural Nebraska. That gets those towns, and so that's why I asked the question. If an REA or NPPD or OPPD or whomever may be out in that area, how are you going to build from that trunk out? That was, I guess, my point of my question is that-- have to make sure that we're not focusing just on the towns and communities, but we have to be able to build out. If this helps us, that's one-- one area that I'm interested in, so thank you.

ANDREW VINTON: And-- and we are primarily in-town provider, but ALLO wants to be part of the solution to get fiber broadband to everyone in Nebraska, regardless of where you live, and we think this is a step in the right direction.

GEIST: Yes, Senator DeBoer.

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DeBOER: Thank you. So I'm thinking about this now. What if we leave the-- the statute, the dark fiber statute, in place for served areas, served being 100 by 20, 100 by 100, whatever? Since we're talking mainly with dark fiber statutes about middle miles, is there a way to write a piece of legislation or to think through this-- and I just don't know logistically how-- how your systems work-- so that you would say, OK, you can lease it, but only if it's serving areas that are unserved, underserved? Would that be possible to do? Or because the-- the dark fiber goes through an area that served to serve an area that is not served, would that not be possible? Is there-- do you know?

ANDREW VINTON: I-- I would think that would be possible to limit dark fiber leases to unserved and in underserved areas. There's a lot of middle-mile fiber in Nebraska, Network Nebraska, now OPTK, local companies have done a fantastic job deploying middle mi-- mile fiber to towns. But we see this more as a rural, a-- a high-cost-area solution. So if-- if some sort of restriction like that were put into place, I-- I think we'd support it and we could work under that system.

DeBOER: To make it-- to make the-- the opening up of the dark fiber to unserved, underserved at 100 by 20?

ANDREW VINTON: Correct, yeah, we--

DeBOER: OK.

ANDREW VINTON: --we'd agree with that.

DeBOER: Thank you.

GEIST: Senator DeKay.

DeKAY: Thank you. Off of that a little bit, is it-- the statues that are put-- put in place now is considered being served, they're not up to the standards that-- what the industry is looking for today, as far as how Internet will work and--

ANDREW VINTON: Yeah, we-- we feel that's correct. I mean, 25/3 service level, that is not even barebones Internet at this point.

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DeKAY: So you would-- you would still have to amend the statute the way it's written right now.

ANDREW VINTON: ALLO would-- would propose raising that level to at least 100 by 20 and ideally 100 by 100 symmetrical which would-- would ensure that a more futureproof solution is built, that we won't have to come back and upgrade five or seven or ten years.

DeKAY: Thank you.

GEIST: Senator Moser.

MOSER: Are you familiar with a government program that provides low-cost Internet to people with low income? Does ALLO have programs for that?

ANDREW VINTON: We do. ALLO participates in the Federal Affordable Connectivity Program, which is a subsidy program where people with-- with lower income, and there's a number of federal means testing, if you're on food stamps or below the federal poverty line, a number of qualifiers. But if you qualify for that program, which we promote on our website and try to promote to our customers, you can either get \$30 off any Internet product or you can get ALLO's 100 by 100 product for free. And we-- we really try to push that because access to broadband is an issue, but we understand that affordability is, as well, so that's a-- a great-- great-- glad you mentioned that.

MOSER: So you-- you get some grant money from the federal government then for that?

ANDREW VINTON: We get reimbursed by the federal government to-- to participate, correct.

MOSER: Yeah, I-- I was surprised. One of my friends said he had gotten free Internet. And I thought, you know, when we were talking about free TV with a home antenna you put in your window or something, you know, but it sounds-- and is it a popular program for your customers?

ANDREW VINTON: Oh, to date, we have about 3,200 participants and-- and that grows weekly, so it is popular.

MOSER: Well, sounds like I asked a question that you knew the answer to. Thank you. That doesn't always happen.

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GEIST: And I failed to have Senator Fredrickson introduce himself when he came into the room. Sorry about that.

FREDRICKSON: Yeah, no worries. Good afternoon. I'm John Fredrickson. I represent District 20 in central west Omaha.

GEIST: Thank you. Now does the committee have any further questions? Thank you for your testimony.

ANDREW VINTON: Thank you.

GEIST: Any other proponents? Good afternoon.

LASH CHAFFIN: Good afternoon. Thank you. Good afternoon, Senator Geist, members of the committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, staff member at the League of Nebraska Municipalities. We really want to thank Senator-- Senator Brandt for bringing this bill. This is-- this is an important bill, and the-- the barriers that are in the law now obviously have served as a deterrent over the-- over the last 20-plus years. The-- the 500-- over 500 cities and villages in Nebraska own water distribution systems; over 400 own wastewater collection systems; over 120 own electric distribution systems; and 13 own natural gas distribution systems. What do they have in common? They all dig holes. They dig holes every day and they-- the-- they dig holes, they put stuff in the hole, and they manage holes. And they're-- they're in a position to be perfect partners for-- for middle-mile development of fiber. As a matter of fact, many cities and villages have been dropping fiber in, including very small villages for a long time. They-- you know, if you grew up in small-town Nebraska, and it was particularly if you grew up in a flat place, you-- there was probably a red light between downtown and the-- the wastewater lagoon. If it got plugged up, the red light went off. Guess what? That's controlled by a computer now and-- and that might be done by radio. But increasingly, if you're-- if you're a political subdivision that digs holes, what do you eventually do? You drop fiber in the hole. You connect-- you connect your facilities, place to place, with fiber. There's fiber out there and-- and rural Nebraska is growing impatient. They're tired of watching their downtowns crumble day to day and being told, we can't make a business case to come to your municipality, to your area around your municipality. This is-- they're growing impatient. You know, if somebody has got the wherewithal and the desire to get this done,

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let's knock down the barriers. Let them get it done. The-- quite frankly, it's-- there are places in Nebraska this just is not getting done and, you know, and villages in Nebraska understand the ag economy is very important. I sit on a committee and there was a farmer who always sits next to me, great guy, and he-- he was telling me a couple inches in GIS inaccuracy can mean a 10 to 30 percent crop-- crop loss in his-- in his-- in collecting his crop. Literally, around a village, that could be hundreds of thousands, if not millions of dollars of money, not flowing through that local economy, you know, a 10 to 30 percent crop loss just because of computer inaccuracies. This is important. This-- this issue needs to be fixed. You know, if the-- if the business case is a little different, if you happen to be sitting on the village board or the-- or rural electric public power district board, your-- your business case, your concept of business case is a little different. This is where you live. These are your neighbors. And you might approach it a little differently. You might look for partners; you may seek out partners. You're just-- not going to say, oh, we'll wait a couple more years until your turn comes. You need your turn to be now, and so if somebody wants to do it, I say let them do it. Let's knock down these barriers. I'll certainly answer any questions.

GEIST: Any questions on committee? Yes. Senator Moser.

MOSER: As far as I recall, the GPS signals are transmitted by satellite and they're triangulated or at least two directions for GPS devices to tell you where you are. I don't know that they need to be connected to the Internet, right?

LASH CHAFFIN: They-- they probably don't at this point. But you have five years ago, there were things I had no idea needed to be connected to the Internet, and now I don't even know, when they fail, that they needed to be connected to the Internet, so.

MOSER: Yeah.

LASH CHAFFIN: Yeah, the world is changing very quickly, Senator, and--

MOSER: Yeah. Thank you.

GEIST: Any other questions? I don't see any. Thank you for your testimony.

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LASH CHAFFIN: Thank you.

GEIST: Any other proponents? Good afternoon.

BRUCE RIEKER: Good afternoon, Chairman Geist, members of the committee. My name is Bruce Rieker. I'm with Nebra-- oh, B-r-u-c-e R-i-e-k-e-r. I'm with Nebraska Farm Bureau. In addition to being here on behalf of the Farm Bureau, I'm also here on behalf of the Nebraska Corn Growers Association, Nebra-- Nebraska Pork Producers Association, and the Nebraska Soybean Association. There's very little that I could add to what has been said already, but I would like to stress that this isn't-- I-- I'll take the testifier, Mr. Vinton, when he said it gets us closer, you know, it's-- that's why we support it, every step that gets us closer. Would I be able to tell you how these public-private partnerships would look? No, I can't talk about that. I don't have that expertise. But the last thing I'll leave with-- leave you with is that broadband is a necessity, not a luxury, for those of us that we represent in the business that need it for the amounts of data that we're transmitting to central processing units, from machine to machine, as well as around the world, as expected by customers. So with that, I would just end my comments and ask you to advance LB61.

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

DeBOER: Thank you. Thank you for your testimony. So I assume the Farm Bureau is very interested in the economic success of the rural areas of Nebraska. Do you think that it is more valuable to the rural areas of Nebraska to have-- I can see the value to have a second provider that maybe could provide a lower rate. Or do you think it's more important to get everybody to have one good provider, like 100 by 20 everywhere, or is it more important to have price competitiveness in the areas where there already is 100 by 20?

BRUCE RIEKER: Well, I would-- I would say that depends on what you're using it for. You know, yes, there is definitely, you know, Internet for entertainment purposes and things like that, and convenience, but there's also a necessity. I would say that the more we deploy precision agriculture technology and the expectations of transparency and traceability of all of our data, you know, we need to protect that privacy. But when you de-identify it, what is expected of, you know, consumers around the world as to where their food came from, we do

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need 100 up and 100 down. And I'll give you an example of, you know, how that works in the livestock industry, is that it's not every day that you need this. It's not every day that most people need 100 up and 100 down, but businesses do. If you have a livestock auction where you have consumers that are trying to-- or purchasers of livestock making tens of thousands, if not hundreds of thousands, of dollars of acquisitions and things like that and you're uploading that on four or five platforms, you have to have 100 megs up and 100 megs down for that to be a real-time, well-run auction and things like that. The amount of data that is transferred between machines, and I know that these are very expensive machines, but I-- I think I've testified to this extent before in this committee, but if you have 25 down and 3 up-- we had a producer that, you know, was trying to transfer that information between machines, whether they're combines or planters or-- or even the computer in his office, it took a couple days to do that or-- yeah. If you have 100 up and 100 down, you can do it in seven or eight minutes, so.

DeBOER: So-- so I don't think that was my question. My question is--

BRUCE RIEKER: OK. I'll try better.

DeBOER: --is it-- do we need 100 by 100 everywhere in the state, every inch of the state, basically?

BRUCE RIEKER: No, not at all. We don't need it to every acre, but we need it closer than where it is. We need to be able to access it. You know, there are, you know, ways to, I guess I'll say, harvest the data from your plants and things like that.

DeBOER: Sure.

BRUCE RIEKER: That can be done in slow and small amounts that are aggregated. And then when we have to move it fast, you know, we need to be able to do that, but, no, we don't need broadband to every acre. What I will--

DeBOER: Maybe every-- we need it to every, let's say, farmstead, in some way or another, right? They need access to it at the farmstead.

BRUCE RIEKER: Absolutely.

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DeBOER: So if we need that, then we should probably be trying to promote every single person getting it, right?

BRUCE RIEKER: Absolutely.

DeBOER: OK.

BRUCE RIEKER: And I would suggest.

DeBOER: So--

BRUCE RIEKER: Oh, go ahead.

DeBOER: So if what we're doing is trying to create a system, then we probably shouldn't be going to places now where we already have some, where we already have 100 by 20. We should be going to areas where we don't have 100 by 20, right?

BRUCE RIEKER: Absolutely.

DeBOER: OK. That's what I--

BRUCE RIEKER: We-- we are high cost and, you know, we're-- it costs a lot to get to us. And I would suggest that, if you're unserved, you probably have no competition. I mean, there's no competition in the area--

DeBOER: Right.

BRUCE RIEKER: --if you're unserved, so that's where we need to focus.

DeBOER: That's right. OK. Thank you.

BRUCE RIEKER: I may be slow, but you got me to the point there.

GEIST: Any other questions? I don't see any. Thank you for your testimony.

BRUCE RIEKER: You're welcome. Thank you.

GEIST: Any other proponents? Good afternoon.

BETH BAZYN FERRELL: Good afternoon. Chairman Geist, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n,

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Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm testifying in support of LB61. Counties have prioritized broadband, rural broadband, particularly. A number of counties have elected to allocate a sizable portion of their ARPA dollars toward broadband in their communities. We see LB61 as another tool in the toolbox, another ability for a partnership to get the broadband out to the people who really need it. I would be happy to answer questions.

GEIST: Thank you for your testimony. Are there any questions? I don't see any. Thank you. Any other proponents? Are there any opponents to LB61? Good afternoon.

TIP O'NEILL: Good afternoon, Senator. Happy Mardi Gras.

GEIST: Thank you. You caught me.

TIP O'NEILL: Chairperson Geist, members of the committee, my name is Tip O'Neill, spelled T-i-p O-'-N-e-i-l-l, and I'm president of the Nebraska Telecommunications Association. The NTA is a trade association that represents companies that provide landline, voice and broadband telecommunications services to Nebraskans across the state. We oppose LB61. I was working as the counsel to this committee when the most recent changes to Section 86-577, the public entity dark fiber leasing statute, were made. The committee discussed the purposes of the then-current law and amendments that could be adopted to address some of the concerns of the power industry. The changes that were made amended when a profit clawback would be triggered-- that is, only in areas that were not unserved-- and provided for a safe harbor for leases using a competitive price comparison established by the Public Service Commission. The restrictions in Section 86-577 are there to ensure that lease rates are not lower than market rates and to ensure that cross-subsidies are not being used to the detriment of rates for electric users. To my knowledge, the process incorporating the changes passed by this Legislature in LB992 has never been used. We are used to competition in our industry. We also believe public-private partnerships are important to the successful deployment of broadband in unserved areas of Nebraska. However, we believe that the transparency provided in the current law is important. We want to ensure that sales, leases, and licenses are fair, reasonable, and nondiscriminatory, language that is stricken in LB61. We want to ensure that the companies leasing the fiber from public entities are

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experienced in telecommunications or Internet services, also being stricken in LB61. And we want the ability to comment on a proposed lease of dark fiber if we believe it is for an amount that is lower than the market rate, which we believe would be unfair competition. That also is stricken in LB61. This committee chose the PSC to resolve disputes of this nature because of the PSC's experience in telecommunications. Dark fiber releases relate to telecommunications. Until there is a clear need for change, we would ask the committee not to advance LB61. And I do want to comment on-- on a couple other issues that are not in my written testimony. As I read the Department of Revenue regulations, and I-- I could be convinced otherwise because I'm not always correct on my reading of department-- or State Department of Revenue regulations, but it appears to me like that when you're talking about taxation of property owned by state or governmental subdivision, whether it's exempt from tax, that if you lease it for a nonpublic purpose to somebody, then it would not be exempt from tax; but if you license it to another entity and this property is still held by the nonprofit, then the property would still be tax exempt. So that's one nuance as to-- I was trying to figure out what-- what the difference between lease and license is, and I think Mr. Dukesherer explained the difference to a certain extent, but I think there's also a potential tax issue. When you're talking about what changes ought to be made-- made. First of all, the question is, why do we need any changes? But second, you know, I'm not sure that we have-- we're doing anything to require an RFP or a bidding process. When you look at the language of LB61, you're-- you're saying that the agency or political subdivision of the state may lease or license its dark fiber and related infrastructure under such terms as determined by such agency or political subdivision pursuant to its duly adopted and promulgated rules and regulations, issued orders, written policies, enacted ordinances, or adopted resolutions. And I-- I think that that does not give the sector that I represent much comfort in terms of how-- how partners may be chosen without some sort of an RFP or a bidding process. You know that right now in terms of the electric statutes in Nebraska-- and I'm sorry, may I continue, Senator or--

GEIST: You know what, let me see if someone will ask you a question to get you-- get you going.

TIP O'NEILL: OK. OK. Thank you. I'm-- I'm sorry.

GEIST: Yes, Senator Cavanaugh.

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M. CAVANAUGH: I'm dying for you to continue [LAUGHTER]. You had me at "electric statutes."

TIP O'NEILL: Well, the-- the electric statutes are in some-- in some respects similar to the telecommunications statutes, but Nebraska prohibits competition for retail customers in the electric statutes. But it says, while-- and I'm reading this from the NPPD annual report. It says: While state statutes do not provide for wholesale suppliers of electricity to have exclusive rights to serve a particular area or customer at wholesale, wholesale power suppliers are permitted to voluntarily enter into agreements with other wholesale power suppliers, limiting the areas or customers to whom they may sell energy at wholesale. The district has entered into several such agreements. That makes us a little concerned that there could be a favorite partner who would get all-- all of the-- all the dark fiber leases and-- and that companies who might be in a position to enter into those sorts of agreements would not be able to, and that's why we're concerned about the lack of transparency.

M. CAVANAUGH: I have a follow-up.

GEIST: Yes, go ahead.

M. CAVANAUGH: First of all, thank you. That really helped clarify electric statutes for me. I did want to ask a follow-up. You said "favorite partner." Is there an option or an opportunity to make an amendment to this bill that would address that concern?

TIP O'NEILL: Yeah, I-- I-- well, first of all, I-- it would not be our position that--

M. CAVANAUGH: Sure.

TIP O'NEILL: --that the bill needs any-- that the law needs to be changed. But I-- I think there-- I think there would be and I can certainly confer with your--

M. CAVANAUGH: On that specific, I-- just on that specific issue about--

TIP O'NEILL: --legal counsel about--

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M. CAVANAUGH: --putting into-- putting into the-- into the legislation something that would not allow for a favorite partner, because I think, even if this were to move forward, that that would be an important consideration.

TIP O'NEILL: Sure.

M. CAVANAUGH: So thank you.

TIP O'NEILL: Um-hum.

GEIST: OK. Senator DeBoer.

DeBOER: Thank you. So you're talking about it's competition, but it's only competition if there's somebody there. If there's nobody there, then there's nobody to be competitive against. I understand your point about there might be interested parties, multiple interested parties that would want to make a public-private partnership and then how do you decide who gets chosen. That aside, if there's no one there, then we're not overbuilding anyone, right? If there's nobody providing 25-- or, I mean, 100 by 20, then there's no one to compete against, right?

TIP O'NEILL: Well, you're talking-- are you talking the middle-mile network? You talking the last mile? What are you talking about?

DeBOER: Well, I mean, anywhere, right? So if-- for sure, last mile, if there's no-- no one providing 100 by 20 in the last mile, then we're not competing against anyone.

TIP O'NEILL: Well, right now, if you're pro-- not providing 25/3, the area is considered unserved. If it's less than 100 by 20, it's considered underserved.

DeBOER: So what if we-- what if we just take the dark fiber statute? What if-- what if we just get rid of it except in served areas? So the whole thing goes away, but in 100 by 20, then you still-- then you still have it. If there's 100 by 20 available in the area, for that area, then you still have this-- the-- the dark fiber statute. But if it goes away or if you're under 100 by 20, and I guess that's determined by-- I'm sure we could give that to the PSC to determine. Would that work? Would that alleviate your concerns?

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TIP O'NEILL: I-- I'd have to consult. I don't want to get ahead of my members on this issue, so I'd have to consult, but it certainly would be preferable to what we have as far as the-- the draft of this bill is concerned, yes.

DeBOER: So your concerns are that there's going to be people overbuilding your partners or your membership, that there would be people overbuilding some area that they're already serving. Is that the concern?

TIP O'NEILL: Yeah, certainly, I mean-- I mean, if it-- if there's an available middle-mile network somewhere that's within a certain area, you would really not-- we would prefer not to duplicate that with another network that may be tax subsidized and thus be able to provide a lower-- lower price. We-- we-- we don't necessarily believe that's a-- that's a-- that's a good thing, so--

DeBOER: If--

TIP O'NEILL: --that's why the market rate issue is important to us.

DeBOER: But-- but do you even need the market rate issue if you're talking about unserved/underserved areas?

TIP O'NEILL: I'd have-- I'd have to give that some-- some thought. There-- there still may be-- I mean, if you're-- if you're-- if you're-- if you're saying you're building a network and there's-- there's no middle mile or there's nobody out there right now, is what you're saying, right?

DeBOER: Nobody that's providing 100 by 20.

TIP O'NEILL: I-- I'd have-- I'd have-- I'd have to talk to some of my members about that because I-- I'm not-- I'm not quite grasping it from my standpoint, so.

DeBOER: Oh, OK. All right. Thank you.

TIP O'NEILL: Sorry about that.

GEIST: Senator Moser.

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MOSER: The question of licensing or leasing dark fiber, is that only a nomenclature difference or is there a functional difference between--

TIP O'NEILL: Oh, no, there-- there-- there's--

MOSER: --licensing or leasing?

TIP O'NEILL: There's clearly a functional difference. There's clearly a fun-- that-- that the owner of-- of the property retains significantly more authority over a license than he or she would over a lease. In other words the-- the--

MOSER: Does the licensee provide more equipment than they would if they were just leasing?

TIP O'NEILL: It de-- it depends on the type of license, I think. I-- I would say that a, a, a license would say you can-- you can use this for this specific purpose, whereas a lease might say, you know--

MOSER: You can use it for whatever.

TIP O'NEILL: --you can use this for whatever purpose. Right. That's-- that's really the essence, I think, of the difference between a li-- lease and a license.

MOSER: So the leasing is more restrictive than the licensing by the--

TIP O'NEILL: No, the lea-- the lease would be less restrictive as far as the lessees, yes.

MOSER: Less restrictive on the lessee.

TIP O'NEILL: Yes. Yes.

MOSER: But as far as government is concerned, it-- it would be the other way around.

TIP O'NEILL: Yeah, more restrictive. Yes.

MOSER: Yeah.

TIP O'NEILL: Yes.

MOSER: OK. I'm just trying to figure it out.

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GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. How many members does NTA have?

TIP O'NEILL: Depends on the day, but usually, I think, about 24.

BOSTELMAN: Sorry?

TIP O'NEILL: 24.

BOSTELMAN: There's 24, and of those members, are they bar-- both large companies, small companies, independents? What-- what's the makeup of those members?

TIP O'NEILL: Yes, they are-- they are-- they are a mixture. We have-- we have the largest-- one of the largest companies in the state. We have a CenturyLink-- or Lumen and Great Plains, and then we have affiliate members also, which--

BOSTELMAN: So you really have a diverse mix in there that--

TIP O'NEILL: Yes.

BOSTELMAN: --has differing, probably, ideas or responsibilities how they-- how they conduct their business. They're-- they're pretty diverse, I guess I would say.

TIP O'NEILL: Yes.

BOSTELMAN: And I would-- OK. Thank you, appreciate that, because--

TIP O'NEILL: Sure.

BOSTELMAN: --I-- I think that's-- that's part of the challenge sometimes, maybe, is that obviously they don't all agree on an area. One comment--

TIP O'NEILL: On this one, though, they did agree because I'm here testifying on their behalf. [LAUGHTER]

BOSTELMAN: Least the more-- at least the majority did, right? One more than the-- than those who didn't. In your-- in your testimony, you say-- I'm on the-- I'm on the back page--

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TIP O'NEILL: OK.

BOSTELMAN: --of your testimony, the last paragraph. It says: the PSC to resolve disputes of this nature because of the PSC's experience in telecommunications. So are you saying-- I guess my question is-- make sure I'm following you. PSC has authority over telecommunications, regulatory authority?

TIP O'NEILL: Ge-- generally, regulatory authority, yeah. If we were talking about a dispute regarding an electrical service, it obviously-- obviously go to the Power Review Board.

BOSTELMAN: Right.

TIP O'NEILL: But because dark fiber leasing is telecommunications issue--

BOSTELMAN: So-- so would the PSC have a similar regulatory authority over the fiber?

TIP O'NEILL: Well, that's-- that has to do-- I mean, that-- that's-- that's an interesting question, because generally, Internet services are not regulated by state public utility commissions.

BOSTELMAN: Right, and so--

TIP O'NEILL: So--

BOSTELMAN: So that's why I kind of come back to-- to the PSC's experience, telecommunications. We're talking two different types of systems, though, if you will.

TIP O'NEILL: Well--

BOSTELMAN: So you have fiber that you could do telecommunication over, that you can do-- you can do Internet service over, so PSC has this piece but not this piece, or does it have the whole thing?

TIP O'NEILL: I-- I think in-- in this one, where-- where-- where the Ne-- the state of Nebraska is a Dillon's Rule state, where the state has to authorize political subdivisions to do specific activities rather than just being permissive and allowing them to, to do that, then I think that it's appropriate for the PSC to have the regulatory

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authority because you're talking about an activity that's not necessarily allowed in state statute right now.

BOSTELMAN: OK. Thank you.

GEIST: Any additional questions? I do not see any. Thank you for your testimony.

TIP O'NEILL: Thank you very much.

GEIST: Good afternoon.

MICHELLE WEBER: Good afternoon. My name is Michelle Weber, M-i-c-h-e-l-l-e W-e-b-e-r-, and I am testifying in opposition to LB61 on behalf of the Nebraska Advocacy Group, a group of ten Nebraska telecommunications companies that provide telephone and broadband services throughout the state. Our companies are very proud of the work that we're doing and the investments made. It's important, but very expensive work. One of the reasons that NAG companies have been so successful and so aggressive in their broadband investments is because of the certainty and stability afforded by: number one, a steady Universal Service Fund; and number two, Nebraska law that has precluded public entry and put into place reasonable prerequisites for any political subdivision, including power districts, to lease its dark fiber. Current Nebraska law is designed to make sure that Nebraska political subdivisions do not reduce the incentive for private sector telecommunication companies to compete and invest in those areas which have competition or could potentially support private sector competition and to dilute the positive impact of already limited Universal Service funding by causing the building and funding of duplicate networks or portions of networks in rural areas where competition is not feasible. If a political subdivision starts to build fiber and lease it in rural areas that cannot support the cost of duplicate network, it further erodes the revenue base of private sector providers, which further decreases that provider's ability to support services to the rest of its customers and consequently results in higher cost for broadband deployment in rural Nebraska. The restrictions in 86-577 contain three fundamental requirements that are designed to ensure that our competitive playing field remains equitable. Number one, that lease price should not be lower than market rates. This is designed with the idea that the political subdivision should not be able to, given its favorable tax

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structure, to price below privately provided telecommunications services. Number two, that lessees should share pro-rata in the maintenance cost. This is designed, again, to make sure that this pricing of the service is competitive and that political subdivisions are not subsidizing the provision of fiber facilities, but that the lessee-- the lessee of the fiber is actually paying its fair share of the maintenance costs. Number three, the political subdivision is right now required to contribute 50 percent of its profit from that lease to serve an already-served location to the Nebraska Universal Service Fund. The design of this provision is to make sure political subdivisions are not incented to build excess fiber facilities beyond that subdivision's need in an already-served area, and yet offers the ability of that political subdivision a way to secure some cost recovery. These are reasonable provisions that maintain a level playing field and discourage political subdivisions from overbuilding. The current regulations, we suggest, are not the reason that more dark fiber is not being leased today. The existing public-owned fiber, leasable fiber, is not this last-mile fiber that's needed to connect our remaining unserved customers. It is primarily aerial fiber, which costs more to maintain and is more susceptible to outages and event disasters or weather. LB61 disadvantages private-sector telecommunications companies in Nebraska, decrease investment by private carriers in Nebraska at a time when we need to do exactly the opposite. For those reasons, we respectfully request your opposition of this bill. Thank you.

GEIST: Thank you for your testimony. Are there questions? Senator DeKay.

DeKAY: Thank you. Thank you, Ms. Weber. How the-- you said 13 telecommunication companies that you represent. How many of them are-- got all fiber to their customers and how many are copper? And if there are some that are still going with copper to the households, what-- what is their roadway to going to all fiber going forward?

MICHELLE WEBER: Sure. It's a mix of both. We were hoping that someone from Hartelco in your area would have been here today to testify. They're 100 percent fiber to all of their customers, I think, in their-- their service area. They have 260-plus miles of fiber that they took on significant capital loans and are slowly repaying back, and they were aggressive about that because of exactly the reasons that I mentioned, the steady NUSF and because we precluded public

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entry into this area. There are some that still have copper plants in town, and their plan is to continue to-- to use the support that's provided to them, including through the Broadband Bridge Act and through the ARPA capital grants funds to make that remaining build-out. But their decisions to do that would be chilled if we were to open the door to overbuilding, such as this bill would do.

GEIST: Go ahead. Go ahead, if you have a followup.

DeKAY: Would they-- with the ones that are still within the copper community, are they-- are they choosing to go forward or-- or, you know, like in the-- in my area, they chose to take out loans and-- and sell off stocks and stuff to buy-- get the fiber put in. If they're not financially able to move forward with that, would there be an opportunity at that point to work together to make sure that finances from two different entities be able to come together and work and get to that last mile or, if there is existing fiber, hook onto it at a trunk or a substation or something like that, to be able to work together to make sure that both sides are taken care of in the right way but-- and no-- nobody's getting the monopolized out of the business?

MICHELLE WEBER: Yeah, I think those places where-- where they haven't been able to build out 100 percent fiber, they've put in applications, both through the Broadband Bridge Act and now they're looking to do so through the ARPA-- ARPA capital construction funds to make that, that final build-out. And again, their-- their caution with this is that, when they're doing that, they are the local exchange carrier that's looking to build out the-- the whole area. And to the extent that we're willing to open the door to public entry, such as the municipal broadband bill that was in front of this committee last-- last week, that then we create a scenario where only maybe in-town customers are served by that municipality, and then the company that was putting in the application to build out that network doesn't have the revenue base from the in-town customers and has even less of a case to build out to the-- the rural area surrounding that. And so they've been very cautious against any form of public entry because they're looking to serve not only those communities but the surrounding areas as well.

DeKAY: Thank you.

GEIST: Senator DeBoer.

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DeBOER: Thank you. The-- would there be a problem with allowing sub-market rate lease rates in unserved areas?

MICHELLE WEBER: Yeah, I've been listening to your-- your questioning on that and I think, if there was some filing, at least, or some awareness of where those leases of public fiber were made to serve truly unserved areas, if there was a way to have an accounting for that, that would be less objectionable than the bill as presented that would have no oversight for any leases, whether they were to serve competitive areas or unserved areas.

DeBOER: OK. Thank you.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Chairman Geist. I guess I would challenge your question or your comment on this would create overbuilding. And the reason why I say that is because I think when we're talking about true rural areas, unserved and underserved areas, as places where potentially, you know, it's not financially reasonable right now for companies to do that, so they're going to have to apply for grants anyway to build out. And those grants on unserved and underserved do not-- does not allow you to overbuild. So I'm not so sure that we would-- anyone would be overbuilding unserved and underserved areas. Get your response to that?

MICHELLE WEBER: I think in areas where perhaps-- I mean, and there are some cases I know-- for the Nebraska Central Telephone Company, for instance, they've taken advantage of USF funding to build outside of town and are-- now are looking to complete fiber deployment in in-town rates. And if we were to pass this bill as is and they could do-- utilize dark fiber, I guess, essentially, as-- as the backbone to serve those areas or maybe they don't have fiber service, but the company is looking to make that investment, I could see that that would be a disincentive to that private company to-- to go that route if somebody else could essentially get the-- get public fiber for-- for free or under market rates.

BOSTELMAN: And I appreciate that. You know, my-- I guess my comment to, not you specifically or whatever, is that, how many years have we sat here and tried to build out to rural Nebraska? Nobody's taken it. Nobody's doing it. Now, all of a sudden, there's money out there so

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now everybody's like, oh, oh, me, me, me. You know, I think-- I think we need to look at any way that we can help, because I-- what I'm hearing from-- from those who testified before of public power, they weren't saying we want to do this to provide retail, but we're there or we're-- we can go to that substation. So now we provide that-- whoever that telecom is or whoever the person is wants to put on the area, now they've got a-- a fiber they can connect to, to make it-- make it work, where before they couldn't. So I guess, you know, that's been-- that's been the struggle I've had in-- on this committee. And of course, I've never said anything about broadband before, as we all know, sarcasm added to that. But I-- at what point in time, you know, are we going to get serious about building out? Because it hasn't been that-- so far, we've relied on 477s, which we know-- which we know were horribly reported on, and we-- we've got to find a way to actually make a difference. And ho-- and one thought is, with this, it's a way to help make that difference, help make that business, that-- that profitability margin or that business model to build out to an area by partnering with those providers who are-- who are currently looking to do that. So, that's just my thoughts with that. Thank you.

GEIST: Any other questions? I do have a question, kind of a comment. But the problem all along with the deployment has been financial. Right? So for now, for the first time, our state has a lot of money to deploy broadband, so the conditions are different than what we've ever had. And I think that sets up an interesting dynamic because now everyone wants in, because suddenly we have money, and everyone has a solution because suddenly we have money. Anyway, I-- I think that sets up kind of what we're hearing today, so, my two cents, so thank you for your-- are there any other questions? Thank you. Any other proponents? Opponent, I'm sorry, opponent. Good afternoon.

DAYTON MURTY: Good afternoon, Chairman Geist and members of the Transportation and Telecommunications Committee. My name is Dayton Murty, spelled D-a-y-t-o-n M-u-r-t-y, and I'm testifying today in opposition to LB61 on behalf of Charter Communications. Charter is a leading broadband connectivity company and cable operator providing superior-- superior high-speed Internet, voice, video and mobile services under the brand name Spectrum to more than 32 million customers across 41 states. In Nebraska, we serve over 178,000 customers in 90 communities, and in 2021 we paid over \$20 million in taxes and fees, and we invested over \$36 million in private capital to

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expand our network to reach an additional 8,000 homes and small businesses. To-- to be clear, our opposition to LB61 is not to dark fiber in unserved areas, but it is twofold. We believe that this bill will allow for cross-subsidization of fiber networks not necessary for delivery of electric services, which could pose a risk to both the broadband market and to electric rate-- electric ratepayers; and (2) the bill eliminates all provisions of current statute where-- which protects existing broadband providers from unfair subsidized competition in already served areas. In regards to cross-subsidization, when a monopoly provider of essential utility services enters a competitive broadband market, either as a retail broadband provider or through the lease of dark fiber, there is a risk of distorting the marketplace, resulting in harm to electric and broadband consumers. Allowing utilities to enter the broadband business with no regulatory oversight may put electric ratepayers at financial risk. For example, if the utility's fiber product is failing, the utility may seek to offset these operational losses through higher electric rates or having the public power entity take on additional debt. As a result, electric customers would be obligated to cover these costs over the long term by paying those higher rates or the interest payments on those debts. We can look to examples all across the country of failed governmental networks similar in nature to dark fiber network leases in served areas that LB61 promotes to see that this is a bad investment for the state. One Taxpayer Protection Alliance report highlighted that competitive [INAUDIBLE] failed in Groton, Connecticut, Cross Lake, Minnesota, Bristol, Virginia, Burlington, Vermont, and taxpayers in all these communities suffered heavy losses on the sale of their governmental networks. And ratepayers here in Nebraska would face a very similar risk if their utility bills are used to install government entity-owned dark fiber networks in areas of Nebraska already served with reliable high-speed Internet. In regards to subsidized overbuilding, in many areas of Nebraska, a government subsidy is vital to broadband buildout so that every resident of the state can receive reliable, affordable, high-speed broadband and the opportunities that provides. However, subsidizing a broadband overbuilder in an area of the state that is already receiving quality broadband service and undercutting private providers discourages private investment, harming the market and consumers. And this bill would eliminate all the restrictions currently in place on leasing dark fiber in certain areas. Even when the public entity does not provide retail service, leasing

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infrastructure paid for by a public entity means that the government is taking on the risk and capital cost that competitive private providers normally take on themselves. If we looked at page 13, line 10, the bill deletes the requirement that lease terms are fair, reasonable, and nondiscriminatory. Public power companies are agencies or political subdivisions of the state and these leases are government contracts. Deleting this section leaves the state open to waste, fraud, and abuse, and would-- would allow for leases that are not competitively neutral between parties. Page 13, lines 12 through 24, eliminates the provisions of current statute that equate to a challenge process for these leases, again, leaving private providers defenseless against government subsidization of competition in served areas and subject to unfair competition. Finally, page 14, lines 4 through 11, removes the only real barrier to dark fiber leases in currently served areas, the relinquishment of 50 percent of public power companies' profits from leases in served areas. LB61 will have the effect of encouraging public competition with private broadband providers in served areas of Nebraska. Passing this bill will disrupt the broadband market, undercut competition, discourage investment in private broadband networks, and enable the cross-subsidization of broadband networks by electric utility ratepayers. Charter strongly encourages you to vote against passing LB61 out of committee. Thank you and I'd be happy to take any questions.

GEIST: Are there any questions on the committee? Yes, Senator DeKay.

DeKAY: Sitting here listening today, and from-- off of what Senator Bostelman had talked about earlier, over the years, it seems like everybody has been able and willing to come to the table for the communities, for the towns, whether it's been a chance to have a profit or gain a profit. And there's never been a lot of talk of-- unless private companies, telecommunication companies themselves come and borrow the money, borrow the funds to build, to get excited about going out into the country, out that last mile. So my-- my question is, is, you know, when we come to power companies or public entities getting involved in this, is-- I don't see it as-- and I might have it wrong, and excuse me if I do, but it's not to overbuild existing networks that are out there, but try to build to the areas that have no build to them right now. And all of a sudden, when public entities want to get involved to try to get to those-- that last mile now, it seems to me that people are getting a little more excited that their turf is being stepped on a little bit. Is there a possibility to get

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to that last mile, where public entities and private investors or private companies could get together to cohesively get to that last mile where there's nothing existing at this time?

DAYTON MURTY: There's-- there's always opportunity to work together to reach every Nebraskan, and that's that's the goal. I think everybody, whether they're a public power company or a-- a-- cable company or a fiber company, has that goal in mind. The-- and the problem is, if this bill limited the-- the use of dark fiber to unserved areas, Charter wouldn't have a problem with it. Your-- the-- our issue with the bill is you're eliminating oversight. You're eliminating the challenge process where we can come in and say, wait, wait a minute, we already serve that area. Electric utility ratepayers shouldn't be subsidizing a broadband network in that area. It's eliminating the provisions of current law that says that these leases have to be fair to-- to competition, and it's eliminating the only real restriction on-- on a network like this going into a served area that-- what's currently stopping this from happening in already served areas is that they would have to remit 50 percent of their prof-- profits to a Universal-- to the Universal Service Fund. That gets stripped out, so our issue is-- with the bill isn't that they're trying to use dark fiber for unserved areas. We completely support that. It's that you're taking out all the limitations on using dark fiber to subsidize a broadband network in a served area.

GEIST: Yes, Senator Bostelman.

BOSTELMAN: What's your market rate?

DAYTON MURTY: Our-- our--

BOSTELMAN: Market rate.

DAYTON MURTY: --market rate for our products? I mean, it-- it varies, so we've got Spectrum-- Spectrum Internet Assist, so a low-income offering. We also participate in the Affordable Connectivity Program. We have very different promotional rates. Right now, we have standard rack rates of \$79.99 for our 300/10 service, and it goes all the way up to our gig service at \$119.99.

BOSTELMAN: Yeah, I mean, I'd said it before, and Senator DeKay said it. So now it's-- I've been on this committee for six years and every

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time we try to, this committee, if I bring a bill or someone else brings a bill to try to make a difference to those of us who have no broadband, high-speed broadband-- and oh, by the way, I'll remind everybody, I live 32 miles from here and I don't have it. And what I-- what's happening is, is those price cap-- price cap companies who have large areas refuse to build and refuse to let anyone else build, and I find that rather problematic. I think Charter's done some things where they've allowed that-- some things to happen, but I don't see where anyone has come in here on the proponent side wanting to overbuild anyone. What I've heard them say is we want to be able to provide an opportunity for Charter, perhaps, to partner with us to go into an area, a true rural area that Charter maybe would not be willing to build into, but now this makes business sense for them because we've got the fiber there and now they can connect to it and we can make that happen. So, your thoughts with that?

DAYTON MURTY: Yeah, I mean, I think I understand the-- the sentiment and-- and-- and it's appreciated. And again, if-- if that's what the bill-- you know, if the bill was limited to just allow for that, I don't think I'd be sitting here in opposition today. You know, when-- when we look at, you know, the legislation, we-- we just want it to-- to--

BOSTELMAN: So--

DAYTON MURTY: --actually spell that out.

BOSTELMAN: So does Charter lease dark fiber?

DAYTON MURTY: We do not currently lease dark fiber--

BOSTELMAN: Any?

DAYTON MURTY: --from a public power entity.

BOSTELMAN: But you do lease--

DAYTON MURTY: But we have some fiber leases in the state of Nebraska.

BOSTELMAN: And what's-- how does that work? What's the rate? How does that work?

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DAYTON MURTY: I-- I don't know the rates off the top of my head. I can-- I can follow back with you individually to talk about the different circumstances. It's mostly middle-mile, any of-- you know, we-- we try-- gen-- generally, we try and stay away from leasing whenever we can. We do for middle-mile to reach areas that are harder to-- to serve.

BOSTELMAN: Sure.

DAYTON MURTY: Our-- you know, our construction team prefers to have it be owned by Charter so that it's easier to make repairs whenever there's damage and just maintain our-- our network infrastructure. But like I said, we-- we do have some leased areas to get out to the-- the harder-to-serve residents.

BOSTELMAN: Yeah, because I know I've got a lot of communities within my district that don't have high-speed Internet, so.

DAYTON MURTY: Yeah, and, you know, I completely understand that that's-- that's certainly--

BOSTELMAN: So does--

DAYTON MURTY: --a big problem in Nebraska, which is one of the reasons why we invested \$36 million in 2021 to expand our network.

BOSTELMAN: So, yeah, so my frustration, again, is, no, we're not gonna build, no, we're not gonna build, no one else can build, but now there's money, so now we're going to change our force-- how we report. All of a sudden, now we're going to say, oh, yeah, we need money in order to build out. And that's just kind of problematic to me, is-- is-- is-- as the sense that had-- we-- you all had the opportunity-- the companies had-- not you specifically. I won't pick on Charter specifically. It's more general. Companies had the opportunity to build out and had the opportunity to report, so we could have done this beforehand with the Bridge Act, with other funding, but they've not been willing to. And once again, Senator Brandt comes with a bill to-- for us-- for the committee to-- to look at, to consider, so I guess if there's any changes to the bill, amendments to the bill, I think we'd be willing to hear what those are. Thank you.

DAYTON MURTY: Thank you.

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GEIST: Any other questions from the committee? Bless you. I don't see any. Thank you. Good afternoon.

TAYLOR TEEPPELL: I think we're afternoon now, right. My name is Taylor Teepell, T-a-y-l-o-r T-e-e-p-e-l-l. I'm with Lumen Technologies. Some of you all know us formerly as CenturyLink. Senator DeKay, I made sure I wore the right socks today. I left the yellow shoe ones in the closet, didn't want to offend anybody today. I think there's something that-- that as I listened to the testimony, a lot of really great testimony, something I think that is really important to emphasize here. Our industry is not bringing legislation to prevent public power from leasing dark fiber. They have that ability today. We are not opposed to that ability. We're not fighting that ability. What we're concerned about is the fact that several years ago, when this was put in place, there was provisions put in place to assure that ratepayers, who are paying for this fiber that is going into the dirt, right-- this-- these dollars are coming from somewhere. And the private sector that's already invested so much money into the state of Nebraska have some sort of oversight of what's happening in this, frankly, a space that's outside of the provisioning of energy. It is now a communications space. That is our concern, at least for Lumen. I don't want to speak for the entire industry. Our concern is not the dark fiber. The concerns that have been raised by the committee, Senator Bostelman, you're concerned about specific areas being serviced. Public power can partner right now in a public-private partnership to do just that. They just have to go in front of the PSC and the PSC has to ensure that all parties are operating in a competitive manner. Now if there's a-- a failure at the-- at any level to make this an expedited process, maybe that's something to consider, but the complete elimination of regulation, frankly, seems a little extreme while some of us in this space, particularly telcos, still have to operate under that regulated space. So effectively what we're doing is we're wiping out the assurances that this marketplace remains competitive. So for that reason, I want to sit here today and ask y'all not to move forward with LB61, not because we're opposed to this process; we're opposed to the regulations and the protections that are in place currently being completely removed out of statute.

GEIST: Thank you for your testimony. Senator Bostelman.

BOSTELMAN: Thank you. Thank you, Chairwoman Geist. The problem I have with what you're saying is you all can't agree upon what you all want

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to agree upon, and that's the way it's been for years. The providers, those telecoms, Cox, all of you are trying to play in the sand-- same sandbox, and you all can't agree upon the same rules to play by. And I don't see where anybody is going to agree upon the same rules from here on out. That's a problem that we face. You know, standing in the way of trying to get things done, if any of you had a suggestion on how to change this, it would have been interesting to hear it, other than we just have to do what-- what was already there. I don't think any of you will agree on any amendment that may be brought before this committee to address the things that you all have said. Thank you.

TAYLOR TEEPPELL: Thank you, Senator Bostelman. I-- I think the one thing that I would add to that is I have not heard from the proponents why this change is needed beyond the fact that there is concerns about a burdensome process. And-- and frankly, burdensome could also be considered thorough. There's a thorough process that's in place to make sure that the competitive market remains competitive.

BOSTELMAN: So I-- my comment to that would be pretty plain and simple. This has been in process for a while. It is burdensome. It is a problem. It does stand in the way, and it needs to change.

TAYLOR TEEPPELL: Yes, sir.

BOSTELMAN: That's my comment to that. I am very thin on patience anymore, and fiber and dark fiber and what's going on in our state. It's a money grab by companies, and they need to get over it. We need to get this built out. We have the opportunity in the next few years to build it out, and we all need to come together on a way to make that happen. This-- if this is not the right thing, then what is? Because there's a problem and this state is going to lose hundreds of millions of dollars potentially because people aren't taking action, things aren't happening, and we're going to have providers now stand in the way of anything that may make [RECORDER MALFUNCTION]-- of those people who came in, in support of this bill. So they want to overbuild. I'm not saying they want to take over in this territory. They said, we have fiber there. We have fiber there. It's available. Let's connect. Let's make it work. And I really-- you know, and I think it's sad that we're having part of the comment/discussion we're having today. We should not be at the place we are today with this or other bills that we have in front of this committee. Everybody's

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trying to protect their own turf. You're all trying to play in the same sandbox. It's not working. You need to change your thinking.

GEIST: Senator DeKay.

DeKAY: Thank you. Yeah, when we're-- you know, when-- the landscape has changed over the years, you know? The public power world has changed somewhat. The public power world never, probably 25, 30 years ago, envisioned having these conversations. They were there to support and bring public power to the state. And with changing technology, with AMR meters and stuff like that, it brought fiber to the substation, fiber to the irrigation systems and so-- and just a little bit off of what Senator Bostelman was saying, you-- we-- the fiber has gotten brought to a certain point in rural Nebraska. Where can we tie on with the fiber that's existing to get the last mile so that it isn't-- I mean, we're talking today. We're worried about overbuild by the public power district. And public power, they don't want to-- that's not their business. Electricity is their business. They don't want to overbuild, but they've got to-- they've got a commodity there that could be utilized. And I think that we got to look at utilizing that. Now, you know, I-- my question would be, is there any competition between the different investor-owned companies? Are they worried about somebody from within their own structure overbuilding on them and-- where do-- you know, how's that being handled?

TAYLOR TEEPELL: That's a really good question. The, the competitive nature of the marketplace is what, is what drives the, the standards of which we operate. We have to fully front the cost of what we put in the dirt and so that drives the rates in which we charge and it creates our math problem. And in a, in a market where there is no set rate and in a market where there is no guaranteed inputs, we have to build and we have to compete, compete on price, quality of service and quality of product. And it's the very reason why in some places where folks have not invested, another entity has come and invested and they've taken off market share. But the competitiveness of the marketplace is what has driven the results that have happened there. When you enter into a competitive space and then you have a entity that's funded by public taxpayers basically, you create a, a system that it's not even. It's not an even playing field. And effectively what you begin to have are ratepayers in the energy space who may not all consume the Internet offering, subsidizing what we compete against the private sector, which is-- I think is why the Legislature, when

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this was enacted, placed in there those provisions that the PSC would have to sign off saying these are competitive rates to assure that you didn't have this discrepancy between the private sector and the public sector, creating a noncompetitive space, which effectively will drive out those of us who have to front our own bills out of our own pockets because you can't compete against an entity that's being funded by their ratepayers, whether the ratepayer wants to fund it or not.

DeKAY: Follow up with that, you know, I'm just trying to run it through my mind. You know, we got, we got fiber going to substations, to different trunks of stuff throughout the state. I-- where I'd like to see the private sector get involved is you have-- ratepayers didn't envision paying for that, but fiber got to that point because of the new technology with the automatic meter reading and stuff like that so it's out there. There's a point so if you got-- to get from point A to point B would be 70 miles or whatever. If you've got fiber already to the first 35, 40 miles, what would be the problem of being able to hook onto it and go that last 30 miles off of a public power fiber and try to bring a private investor in to finish off that last 30 miles or whatever it happens to be out in the central part of the state to make sure that everybody has access to the same quality and getting the same-- if they're paying the same price, they should be able to be getting the same quality of Internet and high speed as everybody else is. And right now, that-- I don't see that really happening.

TAYLOR TEEPPELL: I think it's a great point and I think the beauty of Nebraska's current statute is it allows for that. The way it's currently drafted allows for that. What's being presented today is a, a complete reduction of regulation on a publicly funded sector to compete with the private sector without any oversight.

DeKAY: Because-- and maybe I'm missing the point and maybe you're not catching it, but it's not a-- it's not an argument for me to see it as an overbuild when it's already there and there's still fiber available. So instead of having private sector come in and build the whole 70 miles, be able to just utilize what's in front of them and--

TAYLOR TEEPPELL: Yes, sir. And I-- again, I get I, I, I am speaking for my company. I'm not speaking for the industry. I'm speaking for my company. We are members of the NTA, but again, I'm speaking for, for our company. We will compete against anyone. We operate historically in 50 states and 60 countries. We compete against anyone. Our concern

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is that the playing field remains fair. We are not today proposing legislation that would remove public power's ability to lease their dark fiber. We appreciate that currently in statute, statute assures that it remains competitive by another entity reviewing and assessing the rates that would be charged. But we are happy to compete with that.

DeKAY: Well, you know, like I say, public power isn't wanting to get into the Internet or into the fiber business. You know, they're in electricity, but they got-- not forced into it, but through evolution, they, they got to the point they are today. So if the-- if it got from-- if you're going from point A to point C, if you got to point B and had the fiber there, what would-- where would, in a context of competitive spirit--

TAYLOR TEEPELL: Yeah.

DeKAY: --company A, company B, be-- being a private investor, where would that lie for them to have the bidding process just to finish up that last mile?

TAYLOR TEEPELL: Well-- and I think there is, there is a component here that's not being considered. Where public power can provide the middle mile, other entities in the communications space may also be able to provide a middle mile. However, if the rates that are being charged are fundamentally different, then those of us who have built that middle-mile fiber that would have to compete against public power, whether somebody is going to lease our middle mile or lease their middle mile, then you get into a cost situation. And if nobody's looking at their price to assure that it's competitive in the market rate, then what keeps them from ever undercutting dramatically those who've already built into that space who could provide that middle-mile service?

DeKAY: If the middle mile was already set up and going, how do we get to-- from the middle mile-- you know, regardless of if it's a private company or public power company or whatever, how do we-- if the middle mile is already set up, how do we get to that end mile? And because--

TAYLOR TEEPELL: Yeah.

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DeKAY: --nothing is getting cheaper. Fiber is not getting cheaper. It costs--

TAYLOR TEEPPELL: That's right. Yes, sir.

DeKAY: --a lot of dollars to put it in the ground. So nobody is, nobody is doing it. And for the prices that you're going to have to charge ratepayers, you'd never pay for it. So how do we get to that end mile and still--

TAYLOR TEEPPELL: Yeah.

DeKAY: --get the best product to the people?

TAYLOR TEEPPELL: The Nebraska Broadband Bridge Program is an incredible plan. The, the dollars that are about to flow in from the federal government for broadband are going to fundamentally change the landscape of broadband in rural communities across the country. It's an unprecedented investment and I think a lot of us are still-- I don't want to say unclear, but the marketplace is going to look fundamentally different in just a few years because of that amount of dollars that are going to be dumped into particularly very rural areas based off of speed requirements.

DeKAY: Well, you know, and that's kind of my point. You get out in the, say the central part of the state, Thedford/Hyannis area, how do-- if you're serving the community of 300, 400, 500 people there, how do you get from there to that ranch that's 30 miles away from there and give them the best product you can going forward?

TAYLOR TEEPPELL: Yes, sir. I appreciate it. Thank you.

GEIST: Yes, Senator Bostelman.

BOSTELMAN: Thank you. So you made a comment that you didn't think it would be-- and, and you can rephrase. I probably not going to say it right-- that it's-- wouldn't be fair because we're using public-- if you're-- if it's a public power, you're using public dollars to put that fiber in. Is that correct, words to that effect?

TAYLOR TEEPPELL: No, sir, it was, it was that an energy ratepayer, as part of their, their rate as an energy consumer--

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BOSTELMAN: Right.

TAYLOR TEEPPELL: --they funded a deployment of fiber.

BOSTELMAN: Right.

TAYLOR TEEPPELL: Now that ratepayer may purchase Internet from me. They may purchase it from ALLO. They may purchase it from Charter. They may pay for it from somebody else. Their next-door neighbor that is also ratepayer for that energy may determine that they want fiber from--

BOSTELMAN: But the--

TAYLOR TEEPPELL: --the public power.

BOSTELMAN: But my, but my-- and I'll-- my, my question isn't to competition. My question goes to I thought I heard you say that part of the thing is, is that public power-- that the ratepayer, the public, pays for that fiber and you're opposed to that.

TAYLOR TEEPPELL: I'm not opposed to the ratepayer paying for that fiber. We are opposed to a fiber-- when, when we, when we go into a market or when we build a middle mile, we foot that cost on our own. We build out. You know, it's very much Field of Dreams. If you build it, they will come. We build out and then we have to pursue consumers. That fiber that's been built by public power, that's already been paid for by a ratepayer.

BOSTELMAN: All right. Do you--

TAYLOR TEEPPELL: Their cost models are different than ours.

BOSTELMAN: So do you receive NUSF funds?

TAYLOR TEEPPELL: Yes, sir. We do.

BOSTELMAN: So public pays for that, don't they?

TAYLOR TEEPPELL: Yes, sir. They do pay for a portion.

BOSTELMAN: Thank you.

GEIST: Senator Moser, did you have a question?

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MOSER: Yes. Thank you, Chairman Geist. So do you see this bill doing anything for the last-mile customer?

TAYLOR TEEPPELL: I have to--

MOSER: I mean, given the fact that the power districts don't sound like they want to get into retail Internet service provision--

TAYLOR TEEPPELL: I, I don't think that we've asked them to define what retail Internet provision is. I have the-- I'm fortunate enough to cover numerous states for our company and I've heard that definition vary depending on which public power entity wants to provide Internet services. I don't-- I have to take them at their word here that they are-- do not want to provide services to retail consumers. Retail consumers--

MOSER: I can see where it would-- the customer service would be a headache and I would think in my guess-- and of course, that's a guess-- that the power districts don't want to hire a whole bunch of people to answer questions about how come I have to unplug my computer and plug it back in to make it work?

TAYLOR TEEPPELL: You solved all the problems. There-- that is how you solve them all.

MOSER: Yeah, I know. I've got that problem myself. Do you-- you say it's possible now for power districts to utilize their dark fiber. Do you-- do any of your customers contract with public power to provide middle mile or any--

TAYLOR TEEPPELL: As far as I understand-- and again, I'm speaking from conjecture here-- as far as I understand, the process that's in place has never been utilized for public power to explore leasing their dark fiber here in Nebraska.

MOSER: It's permissible in some instances, but it hasn't been highly utilized.

TAYLOR TEEPPELL: I don't know if they've gone through the process with the PSC. Again, I'm welcome for anybody to tell me that-- provide some clarity there, but I don't know if the process with the PSC has ever been pursued.

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MOSER: OK. Thank you.

TAYLOR TEEPPELL: Yes, sir.

GEIST: Yes, Senator DeBoer.

DeBOER: Thank you. So you've heard my-- you've been here you've--

TAYLOR TEEPPELL: Yes, ma'am.

DeBOER: --heard sort of the, the direction I'm heading in all of this--

TAYLOR TEEPPELL: Yes, ma'am.

DeBOER: --is that I think there's a difference between unserved, underserved areas and served areas. The question I think-- the problem with all that-- because I think vaguely there's agreement that there's a difference between sending dark fiber into unserved areas and sending dark fiber into served areas. I think vaguely everybody is kind of on the same page there. The problem is have-- what is the process for determining where the unserved/underserved areas are? And that that has in the past, with our dark fiber statute, been a very onerous process for determining that going through the PSC to determine whether it is served or isn't served and going through all of these different processes is a difficult process. That's what I think we're here about today. I don't know, but I think that's kind of, that's kind of where I think the CliffsNotes are is that we're trying to figure out is there a process? So the bill-- the legislation proposed here says let's get rid of everything. And there are others, I think, saying, well, maybe not let's get rid of everything because-- but then there's a really valid, real concern that the process of determining where an unserved area is versus where a served area is has become so convoluted that trying to even provide dark fiber just becomes not worth it because you have to go through this process.

TAYLOR TEEPPELL: Yeah.

DeBOER: So is there a better way than going through the PSC? Is there a middle way that you all would be willing to go through for sort of stipulating where served/unserved is for purposes of allowing folks to get to those underserved areas?

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TAYLOR TEEPPELL: That's a great question. You know, the reality is I think a lot of times, government is incentivized to try to recreate the wheel. And in every state, they're pursuing broadband grant programs, but at a state level, for several years, but also with the amount of federal money that's flowing in. And so with that comes the creation of these maps. All of us as providers are incentivized to provide very good information to the state as they create those maps because if we do not, then the default is we are overbuilding, right? And so I am, I am incentivized to make sure that the data that I provide to the state is extremely accurate. And there's a challenge process in there for folks that go, oh I think Lumen is overstating where they serve in that area and the state comes to us and says, here's the addresses that are in question. Can you prove to us that you provide the speed? If we can't, they're off the map, right? And so you have this map that's in place because if not, your broadband grant program isn't going to be successful. So I would submit-- and again, this is my solution-- the state has this map that has-- they've invested a ton of money and time into creating because you have to have it for your broadband grant programs to operate efficiently. It's there. The data is there. Historically, it wasn't, right, but--

DeBOER: Right.

TAYLOR TEEPPELL: --just in the past couple years, it has really come about. And this dark fiber is not necessarily being run anywhere. Dark fiber of that middle mile, it exists already out there, right?

DeBOER: So, so is-- what you're saying is that you would stipulate to the fabric map is what you would say this determines served/unserved.

TAYLOR TEEPPELL: Yeah.

DeBOER: If you're in an unserved area or an underserved area on the fabric map, then we're just going to-- say we grant you your, your-- the PSC just-- that's a checkmark. They get to grant your dark fiber leases. And those unserved, underserved areas in the, in the fabric map, that's it. Those areas are OK.

TAYLOR TEEPPELL: I, I, I would hesitate to say absolutely 100 percent that's where we are, let's move forward. I think that that is a good model to understand where underserved and unserved are. There's still

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very much a concern of elimination of the consideration of is this a competitive price for not.

DeBOER: If there's nobody serving in the area at the, at the rate that we need to be serving now, right-- we need them to be serving not just at 25/3, but 100 by 20. We made that decision as a body, I don't know, a year or two ago. We've kind of said that ship has sailed. That's where we're going.

TAYLOR TEEPPELL: Yeah.

DeBOER: So if that's the case and you're in an underserved or an underserved area, then I don't know why, in an unserved or an underserved area, a competitive rate would be necessary.

TAYLOR TEEPPELL: Let me-- we often hear in this, in this process and the world of broadband and future proofing, right, folks say we a future-proof--

DeBOER: Sure.

TAYLOR TEEPPELL: The goal in Nebraska is not to have one provider or one backbone of communication in every place, right? So at this point, a place may be underserved or unserved, but if it's not-- if you're not operating at a competitive price, then you're assuring that no other provider is going to come in there in the long run, right? So from a future-proof standpoint, effectively what you're doing, if you assure that the price is not competitive by eliminating the competitive standpoint in statute, effectively what you're going to assure is that there's going to be one provider providing there going forward because no provider is going to come in and say, it's cost me-- excuse me. I'm sorry.

DeBOER: That makes sense except that the areas that are underserved or unserved now, there's not a lot of market case-- I mean, there's been time. We've had time. There's not a lot of market case being made for those unserved/underserved areas that there's going to be three, four, five people line up to get into there. So I don't really think that that's a concern of mine, that these are areas that we're stifling competition and if only we would have market rates, then everyone would be there because otherwise they'd already be there.

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TAYLOR TEEPPELL: Well, and the reality is you're-- and Senator-- you're about to have-- nobody knows the exact number, but I believe it's hundreds and hundreds of millions of dollars coming into the state to serve those unserved and underserved areas driven by the competitive industry and not by an industry that is supported by ratepayers that don't have a say of whether they are participating in that activity or not. What we heard today was OPPD saying that they support this legislation because they have counties that are underserved. But the reality is the, the majority of dollars for their dark fiber that's being built out is coming from ratepayers inside of Omaha who may be also purchasing their Internet from me or from Google or from Comcast or from ALLO. And so effectively what you're having is rate-- energy ratepayers in one dense community are going to be funding the Internet provisioning in an [INAUDIBLE] community where these federal dollars that are coming in for--

DeBOER: Isn't that--

TAYLOR TEEPPELL: --broadband grants could fund it.

DeBOER: I mean, isn't that what my NUSF funds do? My NUSF funds that I pay in Omaha, don't they pay for somebody to have--

TAYLOR TEEPPELL: But at least it's a telecommunications--

DeBOER: --phone right now?

TAYLOR TEEPPELL: --purpose, right? This is an energy purpose funding communications purposes. NUSF is communications funding communications.

DeBOER: All right, thank you.

TAYLOR TEEPPELL: Yes, ma'am.

GEIST: And I'm just going to weigh in here for a minute because one of the things we're not talking about is that what do we do with this network going forward?

TAYLOR TEEPPELL: Yes, ma'am.

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GEIST: And it may make a good business case today, but at some point, we also have to talk about what are we going to do to maintain this network that gets built out--

TAYLOR TEEPPELL: Yes, ma'am.

GEIST: --as we go forward? So if you have a very uncompetitive rate in this area, going forward, you're going to have to address that. The PSC can't be totally blown out of this equation when eventually, there has to be some oversight on this network moving forward.

TAYLOR TEEPPELL: Yes, ma'am.

GEIST: And I think that's something we also have to understand is in light of this-- it's a good conversation, but there's a whole future out there that we're not addressing and has not been addressed. I know it can't totally be addressed in the state, state side, but it's a very real portion of why we need some oversight continuing in this arena--

TAYLOR TEEPPELL: Yes, ma'am.

GEIST: --so. Yes, Senator Bostelman.

BOSTELMAN: NUSF will follow that fiber, right?

TAYLOR TEEPPELL: Yes, sir.

BOSTELMAN: NUSF funds will follow the fiber. If you go in and build-- any one goes in and build in an area where there's copper 25-3, puts fiber in, if they take over the telecom portion of that, they receive NUSF funds.

TAYLOR TEEPPELL: I believe that's, that's on the bill that's being considered--

BOSTELMAN: That's the one that you're arguing with, with, with me on, yeah. That's my bill.

TAYLOR TEEPPELL: The one from last, last week or two weeks--

BOSTELMAN: No.

TAYLOR TEEPPELL: --ago.

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BOSTELMAN: Right. It's my bill.

TAYLOR TEEPPELL: Yes, sir.

BOSTELMAN: Yeah. Because the NUSF fund follows. So that public money follows that so public money is going to be there. So I, I-- your argument, I think, is, is-- on that sense, is a bit mute [SIC] because those in use of funds will follow when that bill is passed for that fiber that goes there. Because you're no longer-- in unserved/underserved areas, that copper is gone, the 25/3 is gone. The 25/3 is gone so that follows that fund. That then follows the fiber. Thank you.

GEIST: Any other questions from the committee? I'm afraid to ask?

TAYLOR TEEPPELL: You sure you don't want to go longer?

GEIST: I don't see any. Thank you for your testimony.

TAYLOR TEEPPELL: Thank you. Thank you all.

GEIST: Good conversation. Any other opponents? Anyone who wishes to testify in the neutral capacity? Senator Brandt, you are welcome to close. We forgot you were over there. I do have letters of support too: no opponents and one in the neutral.

BRANDT: He's passing out a letter of support from NRCSA on the schools. He was going to testify today and unfortunately he had a funeral and he could not make it. We could have saved a lot of time. This is the testimony from 2001. The opponents were no different today than they were in 2001. If anybody would like to read that, that's right there. So we've had a great hearing and I really do appreciate the people that sat on this committee-- you know, Senator DeBoer, Senator Moser, Senator Geist, Senator Bostelman, Senator Cavanaugh that had been through this several times. I'm-- I learn a lot when I'm sitting over there and so thank you for that. The groups that supported this today, the Farm Bureau, the League of Municipalities, NACO, Rural Health Association, Nebraska Economic Developers Association, Nebraska Rural Community Schools Association, Nebraska Power Association, ALLO, Nebraska Rural Electric Association; pretty much all of rural Nebraska. And I think it was, it was kind of reflected here toward the end of this hearing, you know, what we were hearing. When OPPD testified, they testified these are antiquated

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statutes. This, this bill brings two-- there are two components to anything; accessibility and affordability. This just gets us accessibility. LB61 will remove roadblock in rural areas. LB61 is good public policy. Rural Nebraska is growing very impatient. The NTA gets to use the right-of-way out there in a-- in the country. I get that. So because they get to use the right-of-way, I'm willing to amend this that they get 50 percent of their profits to the USF fund. So, I mean, if it's good enough for public power to have to give 50 percent of their profits, why not the other way, too? You know, I'm not buying this argument. They've had 22 years, 22 years to get, get fiber out there. The situation we've got is this: our public power districts want to harden the infrastructure out there. Twenty-two years ago, they probably went line of sight on their communications. And Senator DeKay probably knows more about this than me. So what they're doing is if you envision ten substations ten miles apart and they're going to bury fiber to that, today, these fiber has 144 pairs. What are they going to use: two pair, five pair? So you've got this dark fiber laying out there in farm country, basically in the areas unserved or underserved that could be easily utilized. And Norris Public Power, my public power district, doesn't want to retail this. They've seen the light. They want the telecoms to come in. And it's like, here's these 130 pairs of fiber that we'll lease or license or whatever we need to do so that they can hook Bruce up because it's close to his house. You know, they aren't, they aren't interested in that middle mile through downtown Beatrice or downtown Lincoln. That's not what we're talking about here. We're talking about those places out in the country like Senator DeKay is describing. So I guess-- I don't know. About the only other thing I'm going to say is this may be my priority bill. This is the number two on my list. I'm waiting to see if, if my number one comes through Education Committee. I don't know if it will. I just want the committee to be aware of that. With that, I'd take any questions that you may have.

GEIST: Are there any questions on the committee? Senator DeBoer.

DeBOER: Last one. Senator Brandt, if there were a way to make this work that would be less onerous to determine whether or not these leases are going or licenses are going through an unserved/underserved or going to an unserved/underserved area, would you be willing to do that?

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BRANDT: Absolutely. But I don't know how, how you would make that determination because this isn't a static thing. This is a very dynamic situation. Just in my district, driving through Thayer and Jefferson and Fillmore County, you see those orange tubes, blue tubes, green tubes sticking out of the ground, a conduit for fiber that a lot of the counties put in, this is, this is changing all the time out there. And you've been involved with the mapping. We don't even have good maps in the state. So, I mean, how do you-- how are we going to determine unserved and underserved? I, I guess it would be easier to say this wouldn't apply to the metropolitan areas that-- therefore, that would leave the entire state outside the city limits of Omaha and Lincoln.

DeBOER: I mean, you could at least do something like-- well, we could, we could work on it.

BRANDT: Sure, yeah.

DeBOER: But if there's a way to work on that that--

BRANDT: We're, we're willing to--

DeBOER: --would identify--

BRANDT: Yeah, we're willing to work with--

DeBOER: --certain areas exclude them from what you're doing here.

BRANDT: Absolutely. We're willing to work with the NTA on language like that.

GEIST: Any other questions?

BRANDT: All right.

GEIST: I do not see any. That will end the hearing for LB61. We are going to take a five-minute break and then we will get back together for the next bill.

BRANDT: All right. Thank you.

[BREAK]

GEIST: Good afternoon.

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DAVE SUND: Good afternoon, Senator Geist and members of the Transportation and Telecommunications Committee. My name is Dave Sund, D-a-v-e S-u-n-d. I am the legislative aide for Senator John Cavanaugh, the 9th Legislative District in the town of Omaha. Today I'm here to introduce LB134, which would provide requirements for authorities under the Small Wireless Facilities Deployment Act. LB134 is an updated version of a bill Senator Cavanaugh introduced last year in this committee, LB731, which was brought in response to a constituent concern about a Verizon cell tower pole that was placed in the middle of a sidewalk outside the constituent's home. What we consistently heard from the city of Omaha in response to this controversy was that the Small Wireless Facilities Deployment Act does not grant the city enough discretion to deny the placement of a wireless facility. LB731 provided the city with additional discretion. Senator Cavanaugh heard the objections from the telecom companies in that hearing and in letters to the committee that the city already has the ability to deny a permit in the circumstance that we are discussing here. And then nothing in last year's bill would have changed that. Nevertheless, they still opposed the bill because allowing for notice to property owners or denial of permits that violated the Americans with Disabilities Act would cause delays. Members of this committee last year felt that the city and Verizon should have worked together to find a better solution. And Senator Cavanaugh agrees, but he does not agree that the state does not have a role in resolving disputes like these. And it is important, particularly when we are talking about political subdivisions of the state, that the state steps in when we can do something to change this. LB134 places requirements on an authority to provide reasonable notification to adjacent property owners or residents prior to installation of a utility pole under this act. It also says that an authority must determine prior to installation whether it complies with the Americans with Disabilities Act, does not obstruct or hinder usual traffic or travel or public safety in the right-of-way and does not obstruct illegal legal use of right-of-way by utilities or impede safe operation of utilities. The primary difference between LB134 and last year's bill is that this responsibility is shifted to the political subdivision rather than the wireless carrier. Importantly, these are all exceptions that the current act allows authorities the discretion to deny. The review and notification are things that authorities should already be doing. But the presumption is so strongly in favor of wireless carriers that even if cities legally have the discretion to deny a permit, they lack the

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practical authority to do so. This bill shifts the balance ever so slightly back to the people through their elected representatives. I recognize-- Senator Cavanaugh recognizes that this solution might not work for every city. He is willing to amend the bill to limit it to just cities of the primary and metropolitan class if the committee chooses to move forward with this bill. We have an amendment that is AM451 and I can just read to the committee. I want to thank the committee for your time. Senator Cavanaugh will be here for closing. He was in Appropriations Committee on another bill. Thank you.

GEIST: Great. Thank you. Thank you for your testimony. Are there any proponents to LB134? Good afternoon.

DANNY BEGLEY: Good afternoon, Senator Geist and members of the committee. My name is Danny Begley, D-a-n-n-y B-e-g-l-e-y, and I am the proud Omaha City Council member for District 3. It's an honor to be here today and testify before you on LB134. Committee members, I am here in support of LB134. It is introduced by my good friend and my state senator, John Cavanaugh, and I want to thank Senator Cavanaugh for introducing it. Thank you also to the committee for hearing the bill today. LB134 would, would enact into law a common-sense approach for the placement of telecommunications equipment into the right-of-way. The bill is meant to balance the ease of placing necessary equipment for businesses with the important and required notice given to the local government and our citizens. This bill was brought in response to an incident that happened in my district in the summer of 2021. I have asked the pages to hand out two photographs which show the issue with a small cell tower placement. On July 1, 2021, I received a text message from a constituent showing and advising me that the corner of 55th and Poppleton had a pole in the middle of the sidewalk. I was skeptical and shocked, to say the least. So being of curious nature, I drove there myself and spoke to the property owner who lived at the home by the name of Jane. Additionally, I called my friend Senator John Cavanaugh and we both went back later to speak to the constituent. The homeowner was not pleased. I think this situation presented itself as a response to the unintended consequence of a bill passed in 2019 on small cell deployment. It was LB184, which was passed by the Legislature and signed by then Governor Ricketts. The purpose of the bill before you today, LB134, is to have telecommunication companies provide better notice as to when these poles are going to be installed. The telecommunication companies are providing a valuable service and they

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need tools for all of us to communicate, constituents and property owners alike. However, no one wants to come home after a hard day's work and see a backhoe in their front yard for a cell tower in the middle of the front sidewalk without any notice before the work commenced. It would be so helpful for the city and homeowners to have a name and a contact person to call when work is to be done. This should be a simple but necessary requirement. This by no means is a criticism of the original bill, which was well intended and necessary to enable our citizens to enjoy the cutting-edge technology. With the ever-growing workforce that is working from home, technology is a tool to enable people. It is also important for students that are studying at home. Open transparency and communication by the telecommunication companies is a whole point of LB134. It is a good bill. It will provide more peace of mind and comfort to both local governments and citizens to have better notice of work to be done on or near their property. I would kindly ask you to look favorably upon this bill and vote to advance it to the full legislature for debate. Thank you very much for allowing me to be here today and I would be happy to try to answer any questions.

GEIST: Are there any questions on the committee? Yes, Senator Fredrickson.

FREDRICKSON: Thank you, Chair Geist, and thank you, Councilman Begley, for being here. You're actually my city councilman so little overlap with LD 20 as well. I am curious. I'm looking at the photo you passed out and I kind of wish everyone here could see this because it's, it's kind of almost unbelievable. It's literally, like, right in the middle of the sidewalk. And so I'm wondering if you might be able to educate us a little bit on the process of sort of how these are dispatched into-- so, for example, what role the city might have in this, what role the private company has. I'm just trying to think of someone who kind of shows up to install this. And I mean, the first thought that-- going through my mind is this seems to be clearly obstructing sidewalk, right, with-- for the installation. Can you educate us a little bit about that process or--

DANNY BEGLEY: I'll, I'll do the best I can, Senator. So when this happened in 2021, the homeowner, Jane, that lived there, she had no idea that this was happening. She grew up in a house and she's probably mid '60s. So she grew up there, lived there her whole life. There was-- other than paint being on the ground or-- to locate, you

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know, fiber, power, gas, sewer, water, you name whatever was under the ground, if you see those locates, it's one thing, but having the notification-- in this case, what happened, she got home one day and as I said in my testimony, there was a backhoe. And the simple thing that we believe and talking to Senator Cavanaugh who had been there is if they notify those adjacent property owners, so it's kind of a backwards process where I'm getting called out there by a constituent. If they had the telecommunication company, John Smith or Jane Doe, on a card, that we're notifying the adjacent property owners. It would really be good government, I believe, to have hey, here's a contact person. We all know these things are going to happen. There's-- I work at Omaha Public Power District. I'm a claims rep, we go into yards and tear stuff up. I go in and give him my card or contact the customer. So I think that's kind of what we're looking at in LB134 is again, it's not criticizing what was signed into law by then-Governor Ricketts, but it's more of a reassurance from people that when improvements are made with-- certainty, we have our cell phones and people work from home, that you'll be able to call the telecommunication. In this case, it was Verizon and we had good discussion with them with the city of Omaha after this happened that it will enable communicate-- as I say, it's communication companies communicating. It's a simple thing. But if you think of that, it didn't happen in this case. With LB134 that Senator Cavanaugh has worked hard on for discussion today, I think that would be the education piece, Senator Fredrickson, that you're looking for. That if there's not only paint and flags like I described for underground locates getting done before excavation, you'll have a notice of a couple of weeks to say, hey, we're going to put this in and here's why. And you got ten questions, you can call Verizon and just find out what the process is to get reassured as a, as a constituent or a taxpayer on what that will look like.

FREDRICKSON: Sure, sure. And just to clarify too, you-- are you representing the city of Omaha? They're in support of the bill or just--

DANNY BEGLEY: Yes.

FREDRICKSON: OK, perfect.

DANNY BEGLEY: Yeah.

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FREDRICKSON: Thank you.

GEIST: Yes, Senator Brandt.

BRANDT: Thank you, Chairwoman Geist. Thank you, Mr. Begley, for testifying today. Do they need a building permit? Or I'm a telecom and I can just put my poles wherever I want.

DANNY BEGLEY: I laugh with you, Senator Brandt. In this case, this is kind of a unique one. I wish I had a bigger picture. So on the south end of that pole where-- of the sidewalk there, there's a huge water line. So that, that's eliminated from putting it between the curb and the sidewalk. And then I heard of a-- you senators probably know what a radio frequency engineer is. I had no clue what that was, but I got educated on it when I came across this. And, you know, mailman's son here says he put that dang thing on the east side of this property and the radio frequency engineer said, whatever mechanism this thing uses, it's got to be placed close to where it is now. On the other side of the sidewalk, there was communication lines. It couldn't go there. On the west end of this property, there was an OPPD pole, but it had three-phase primary lines coming out of it so that wasn't an option. So I, I share your humor in this. I mean, it, it almost was surreal when I pulled up to see that. But my understanding, not being a lawyer, Senator Brandt, there is no mechanism for the city to deny the permit. What they ended up doing is they-- the sidewalk went around that pole and it's ADA compliant when they did that. So I'll grant it, it was a unique situation, but certainly I don't wish that on any elected official to have that-- you know, you get-- you take all kinds of calls. If it can be avoided by simple communication, I think that's a process that Senator Cavanaugh is looking for here in this bill today.

BRANDT: All right. Thank you.

DANNY BEGLEY: Thank you.

GEIST: I just have a question. So if, if notification is made by-- to the homeowner, can they appeal this? Is that what the notification does so that they can say we don't want this in our front yard? And then what power does that homeowner have to move the pole?

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DANNY BEGLEY: Great question, Senator Geist. My understanding of the law is it's just a notification to let you know. A property owner cannot-- and you'd have to defer this to a legal counsel, but my understanding is that, no, if they go to Senator Geist's house and give you this tag and adjacent property owners, it's just so you can find out and know that the pole is going there, what it is. But you can't say, put it ten feet over there or like I thought, hey, it would be great, put it by the alley back there. But then the radio frequency engineers-- there's a reason that Verizon selects these spots. In that law from 2019-- and I'm not criticizing it, but it gives a lot of power to the telecommunication companies. So to answer your question, I don't believe a property owner can tell Verizon or whoever is putting these towers in that you can't put it there. It's just a notification so you don't come home to see a backhoe or, or a bunch of guys working in your yard and you had no idea what was going on.

GEIST: OK. Thank you for that clarification.

DANNY BEGLEY: You're welcome.

GEIST: Yes, Senator Brandt.

BRANDT: Real quick, a follow-up question. So out here in farm country where we're at, the REAs used to put their poles on the right-of-way. And I live on a state highway and the last several power lines they put in, they put on private property. And the reason they did, if it's on the right-of-way and the state of Nebraska widens the highway, Norris Public Power has to move those poles. If it's on private property, the state has to pay Norris Public Power to move those poles. It's a slight difference. So how they explained it to us is they paid us \$300 a pole. The edge of the pole was the property line and we could choose whether or not we wanted that, but the only difference was if we didn't want it on our property, they would set it on the right-of-way with the other edge of the pole on the property line. So it's like you aren't going to see a discernible difference. Can you set these-- do you-- could you set these on the private property and pay the property owner? Is that a way to solve this problem if they would pay them \$1,000 a pole or something like that?

DANNY BEGLEY: You're putting me on the spot with a, with a fair question. And if I recall correctly on this one at 55th and Poppleton, they could have negotiated with this property owner that, as I said,

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had been there her whole life. But I don't, I don't know, number one, if it would have meant-- not speaking for Verizon, but their radio frequency engineer threshold. Unlike a power pole that you're talking about, these things are a little different than power poles so I think they'd probably could have negotiated with that customer, but again, they had fiber lines running on that side of the property closer to her house. And man, the optics of that, it's tough enough in the middle of the sidewalk, but when you're getting close to the homeowner's house, I-- it would be tough. But could they do it legally? I don't know.

BRANDT: All right. Thank you.

DANNY BEGLEY: Thanks, Senator.

GEIST: Any other-- yes, Senator Moser.

MOSER: Could you get information on who the RF engineer was telling-- who it was who was telling you that the tower had to be right there? I'd like to hear, I'd like to hear the justification for that. I question that. I'd like to know more.

DANNY BEGLEY: OK. Senator, are you speaking of why the poll was set in the middle of the sidewalk in this case with the picture before you?

MOSER: Well, the-- I-- there were a whole bunch of reasons why it wound up where it was. But one of the critical problems was that the radio engineers said it had to be right there and I'd like to hear his explanation of that.

DANNY BEGLEY: If you want to have your staff-- is there some way I can get in contact with your staff? And I can have city staff--

MOSER: I don't think my staff is very good at radio frequency, but I would be-- so I'd like-- if you get me some contact information, I'll call.

DANNY BEGLEY: I'll be happy to do that.

MOSER: Yeah. And maybe there's--

DANNY BEGLEY: And the city councilman--

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MOSER: --something about it that I don't know, but.

DANNY BEGLEY: I know enough to be dangerous. Senator, as a city councilman because of what I went through on this. But I'll, I'll be happy to-- I'll shoot you an email and I'll try to get you hooked up with the Verizon radio frequency engineer and they can give you all the information in the world like they tried to give me on it, so.

MOSER: I-- in my previous political position, I was mayor for 12 years in Columbus and we had cell phone tower placement fights and we made some decisions that made the citizens mad. And I found out later that some of the information we got from-- in this case, it was contractors that were putting in towers for a self-provider. It wasn't actually the actual telecom. It was a contractor for them. But some of the stuff they said was, was-- I'd say B.S. just to clean it up a little bit. So I'd just like to hear more about it, that's all.

DANNY BEGLEY: Understood and I'll, I'll get you as much information as I can.

MOSER: OK.

DANNY BEGLEY: I'll be glad to do that.

MOSER: Sure. Thank you.

DANNY BEGLEY: You're welcome.

GEIST: Any other questions? I don't see any. Thank you for your testimony.

DANNY BEGLEY: Thank you.

GEIST: Any other proponents? Good afternoon.

JULIE HARRIS: Thank you, Senator Geist. I'm Julie Harris, J-u-l-i-e H-a-r-r-i-s. I'm the executive director of Bike Walk Nebraska. We are the state bike and pedestrian advocacy organization. We're here to support LB134. It's a common-sense cleanup as a result of unintended-- unintended consequences of the previous small cell wireless tower bill. It seems like it shouldn't be possible that we are talking about a pole in the middle of a sidewalk. I think I sat here last year and said the same thing, but we saw firsthand the drama that played out as

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everyone involved tried to figure out who was at fault and who had the authority, who had the jurisdiction. And it just was a circle of finger pointing and nobody could quite figure it out. We're pretty well versed in tracking down how decisions get made with transportation and we couldn't get a straight answer either. A fraction of a second of Wi-Fi speed should not be-- come at the cost of a pole in a sidewalk. It should not come at the cost of safe and accessible transportation. So the person inside the house will get a fraction of a speed faster on their Wi-Fi, but the minute they go out to walk their dog, they've got a pole in the middle of their sidewalk. It just doesn't make any sense. I know last session, there was strong opposition to this bill that the committee felt very strongly, is something in the committee that should not be in front of the committee, that perhaps it was just a private issue that should be fixed behind the scenes. And whether or not that's true, I just know that we have this problem and whatever we need to do to solve it, we need to do it. I appreciate the amendment. It was brought up earlier about keeping this to cities of the primary class and above. But I'm also concerned about the small towns in Nebraska who don't have a state senator in their neighborhood that, you know, may not-- may be getting B.S. answers from telecommunications companies placing poles in places telling them they have the authority and now they've got obstructed sidewalks or worse. We need to prevent that from happening. So we're here to support the bill and hope that you'll move it forward to General File.

GEIST: Thank you for your testimony. Are there any questions? I do not see any.

JULIE HARRIS: Thank you.

GEIST: Thank you. Any other proponents? Good afternoon.

LASH CHAFFIN: Thank you. Good afternoon, Senator Geist, members of the committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I represent the League of Nebraska Municipalities and I would like to testify today in favor of LB134 and thank Senator Cavanaugh for his attention to this, this issue. And in particular with the, with the, with the amendment that he offered, the league has-- offers their full support for this measure. The-- and the standards that, that he's putting in statute, they're reasonable and we will recommend to the other cities that they follow similar standards as well. These-- this

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is, this is a-- this-- when, when this happened in Omaha, this got a, this got a lot of airtime amongst city governments. Trust me, they, they all saw the picture and they talked a lot about it. And so we would support any, anything to kind of bring more transparency to the process. You know, in answer to Senator Brandt's question, if you didn't, if you didn't live through the initial discussions of this bill, if it was OPPD or MUD or the gas company or the I-Elect phone company or the cable company, they would have to work with the city and come up with a compatible plan. Now, when it comes to-- there's a particular repeater type instrument used, a small cell tower. Those are treated separately. There's, there's a, there's a legislative bill. There's a state process that tells the city how they, how they deal with those. And, and there's a, there's a list of half a dozen reasons you can deny a permit and you have to fairly specifically fit the, the denial into one of those, those reasons, which is a little different than it would be with OPPD or the old-school phone company. So it's a little different process. And then also there's a series of timelines that, that take-- that trigger certain events. So and it's a, it's an expedited series of timelines. So, so sometimes I think within city government, this process creates a lot of confusion because it goes super fast and, and the parameters might be that you have to, to, to address the application might be different than they would be with a traditional utility application. That said, we support this and I appreciate the amendment that Senator Cavanaugh offered and I would certainly answer any questions.

GEIST: Thank you for your testimony. Any questions from the committee? I don't see any.

LASH CHAFFIN: Thank you.

GEIST: Thank you. Any other proponents? Are there any opponents to LB139-- I'm sorry, LB134. Good afternoon.

KENT ROBERT: Good afternoon, Senator Geist and members of the committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here today representing AT&T. On behalf of AT&T and CTIA, the trade association for the wireless communications industry, I'm here to testify in opposition of LB134, which would provide new requirements under the Small Cell Wireless Facilities Deployment Act. As you know, the intent of that act is to create statewide guidelines as a streamlined process in order to encourage wireless companies to

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accelerate deployment of 5G through small cells. Small cells help bring faster download speeds, improve call quality and a better wireless consumer experience to communities. Small cells also provide the backbone for burgeoning technologies like 5G, smart cities and the Internet of Things. As it deploys small cells, AT&T regularly works to communicate with local governments when we deploy those facilities. We believe it's important to work together and communicate effectively with those local municipalities. We do oppose LB134 as drafted because it seeks to prescribe new requirements under the law that already exists, most notably the authority of cities to enforce. Additionally, we are concerned that the enhanced public noticing and engagement requirements, while well intentioned, could lead to costly project delays. The state statute already lays out a detailed process at the local level for wireless providers to secure necessary permits and engage in public meetings established by the local municipality before deploying those small cells. At every step of the approval process, there are numerous opportunities for engagement of the public and for citizen notification. We are concerned, along with CTIA, that any additional noticing requirements could vary significantly by locality, which in turn could lead to delays and violations of the shot clocks that are set by state and federal law for the review and approval of small cell permits. Additionally, as noted by CTIA in the letter that was submitted online, this bill is unnecessary because federal law already provides localities with the discretion and authority to enforce compliance with the standards set by the Americans with Disabilities Act. As you may be aware, the ADA prohibits discrimination against individuals with disabilities and preserves their right to access places and services. Small cells are deployed in the public rights-of-way and those are managed by local governments and municipalities already have the authority to ensure deployment plans meet ADA compliance. During the application process, providers must provide extensive information, including renderings of small cell deployment that detail how the right-of-way will be utilized. At the local level, municipalities already have the authority to ensure small cell deployments are ADA compliant. In summary, we encourage you to oppose LB134 as we think it will have unintended consequences to delay projects to enhance wireless coverage for residents in cities. Happy to answer any questions.

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GEIST: Are there any questions on the committee? I don't see any. Thank you.

KENT ROGERT: Lucky day.

GEIST: Good afternoon.

ERIN WAGGONER: Good afternoon, Chairwoman Geist, members of the committee. My name is Erin Waggoner, E-r-i-n W-a-g-g-o-n-e-r, and I'm the state and local government affairs manager for Verizon and lobbyist based in Nebraska testifying today in opposition to LB134. I will save you all repeating what Mr. Rogert just said about why-- all the reasons why we oppose it. I will note, though, in Omaha, they have an active ordinance that-- they updated their ordinance to specifically address some additional public noticing requirements. So, again, it truly is already allowable under the small cell law and they have updated based on that. A little bit about the Verizon deployment in Omaha: after the Legislature enacted the act in 2019, the Omaha City Council enacted an ordinance to allow for small cell deployment in the city and it complied with the act. In response, Verizon announced Omaha as one of its first 50 5G cities and began small cell deployment within the metro area in October 2019. Since that time, Verizon has deployed approximately 655 small cells with 600 small cells as co-locations on Omaha Public Power District poles and 55 Verizon-owned standalone poles in the metro area. Throughout this process, we've worked closely with the city planning department, city attorney's office and city council members to implement procedures and successfully resolve issues, answering questions related to our small cell deployment. As a result, we've successfully expanded our 5G service, including offering 5G home Internet across parts of Omaha. At all times, the city of Omaha has had the ability to implement and enforce the same requirements that LB134 proposes and suggests are now necessary. With that, I will try to address a couple of the questions that I heard. Since I'm coming from the Verizon side, for the site in question that has been talked about so far, the original location for that site that was permitted, we determined when we went out to take a look at the site that there were underground facilities so we were not able to go with the initial portion. The other corners had overhead obstructions that I think Councilman Begley detailed well, which is why the city worked with us on-- that fourth corner was the only one available. Through the process and back and forth, different site drawings were given and correspondence with the city to include

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rerouting the sidewalk. So that was all part of the permitting process that we worked through with the city for that specific site. It became a moment-in-time issue of our contractors got out first before the sidewalk was rerouted. So then there was a sidewalk that was put-- or a pole in the middle of the sidewalk. And then traditionally, the city of Omaha prefers their concrete contractors to do the work. In this instance, our team was able to get out there faster to reroute the sidewalk so we were able to take care of that more quickly and resolve that issue that had come up. Senator Moser, the RF engineers, all of that is in the permit, but I would be happy to follow up and get that detailed information from this specific permit to you so you can review it and speak with our team. And with that, I'd be happy to take any additional questions.

GEIST: Any questions? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. Could you provide some information since the cell-- small cell bill was passed, can you talk about the expansion across the state? Especially could you tell us what you've done in Omaha, Lincoln and, and other areas?

ERIN WAGGONER: Yeah, absolutely. So I mentioned in Omaha, we've had over 655 small cells that are currently on air across the whole city. In Lincoln, we have some on UNL's campus. We do not have an agreement. The city of Lincoln has not enacted a small cell ordinance, nor have they updated an agreement with Verizon or other wireless providers to deploy small cells. We have, I think, 25 or 27 that were deployed in Verizon before the small fire-- Small Wireless Facilities Deployment Act was passed in 2019, but we have not deployed any additional small cells in Lincoln since then. Other communities have passed ordinances and as needed for capacity. You know, like, think in, like, a main Street scenario, we will sometimes deploy those with various levels of the technology.

BOSTELMAN: Thank you.

GEIST: Yes, Senator Moser.

MOSER: The answer to my question, you think, is part of the application--

ERIN WAGGONER: Yes, yes.

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MOSER: --for this location?

ERIN WAGGONER: Um-hum.

MOSER: So my staff could dig up that--

ERIN WAGGONER: We have it pretty readily available so I can save your staff the time.

MOSER: OK. Could you just send that to me--

ERIN WAGGONER: Yep, absolutely.

MOSER: --so I can read that? Thank you.

GEIST: So is this location a one of a kind? Is it an outlier?

ERIN WAGGONER: Yes.

GEIST: Is it the only one that--

ERIN WAGGONER: I think that--

GEIST: --was it the issue?

ERIN WAGGONER: I have been brought in on-- well, this one, I was happily on maternity leave and was not around for. But over the course of this deployment, I think there have only been less than five issues that have come to this level. We've worked with a couple of members of the city council on various issues that popped up or questions that their constituents had about sites, but this is-- absolutely has been an outlier in the instance of our Omaha deployment.

GEIST: And then you said that Omaha has-- is their ordinance that they passed specifically to address this issue or to-- is it broader than--

ERIN WAGGONER: It's a broad notice for, for adjacent property owners. And we worked with city councilmembers, the city attorney's office in drafting it to make sure it-- how we were defining adjacent was satisfactory to Councilman Begley and others.

GEIST: And does it notify the homeowner?

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ERIN WAGGONER: Yes, if-- yep, it's like the adjacent and then adjacent to the adjacent.

GEIST: OK, OK.

ERIN WAGGONER: It's after the permitting, before construction, which is compliant then with the federal law for small cells.

GEIST: OK. I don't see any other questions. Thank you.

ERIN WAGGONER: Thank you.

GEIST: Any other opponents? Is there anyone wishing to testify in the neutral capacity? Good afternoon.

BETH BAZYN FERRELL: Good afternoon, Chairperson Geist, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing neutral on LB134. At this point, counties don't have as many small cells as cities do simply because of the nature of them. We do expect there to be more small cells put in place as the broadband expansion, expansion continues. We recognize the benefit of more oversight for the process. But with the amendment, it wouldn't apply to counties so therefore we're neutral. I'd be happy to answer questions.

GEIST: Any questions from the committee? I don't see any. Thank you for your testimony. Any other neutral testimony? Senator Cavanaugh, welcome. You're ready to close.

J. CAVANAUGH: Thank you, Chairwoman Geist. And I think this is my first time in front of Transportation this year, but thanks for having me. I apologize. I was stuck in Appropriations so I didn't get to introduce, but I think you got the gist of what's going on here. I would, I guess-- well, Senator Moser, I pulled all those applications back when this happened. I have them. I can share them with you. I also pulled all of the emails that went around the siting of this and the decision to put it there. And that's ultimately why I brought this bill. So you heard that there's a city ordinance that allows for this notice and so maybe we could lose the notice part of this bill. But the part that I got really interested in here was the Americans with Disabilities Act compliance. And what you saw in the emails and the decision to site this was absolutely no consideration of how this

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would comply with ADA and how they would address that. And the reason I brought this bill was after the fact-- and I can share the picture with you. You can see where they intended to put the sidewalk. It was only after they put the pole in, cut out the sidewalk, put the place where they were going to put the, the cut-around that they brought in the city sidewalk engineer who said this is not going to comply with ADA. And so they already had to comply with this requirement. Their plan would not have done it and they could have very well poured this concrete for the sidewalk and not had to comply with ADA if they hadn't sent that one email to the one engineer at that late stage. So what my bill and my intention is here is to say, let's just have that conversation before we dig up the sidewalk and put the pole in. Because it's entirely possible-- what happened-- if you, if you all want to read the emails, I can share with you-- what happened, this is a unique juncture spot. And they had to put it there and they had to put it somewhere and they couldn't put it too far to the north and they couldn't put it too far to the south and that's wanted to put it on the sidewalk. But the reason they didn't want to put it too far to the north was they didn't want to go that far into this lady's yard. But because they had intended to put the sidewalk to the south, they put it in-- the pole in the original sidewalk. Had they known they couldn't put the sidewalk to the south, they might have just put the pole in the yard and kept the sidewalk where it was. And that would maybe be a favorable outcome if we had stopped for just a second and said, is this going to comply with the ADA? And that place in the yard would have been further into her yard, which is what the city was attempting to avoid by asking them to put it in the sidewalk. So it was just one of these situations where if they had stopped for a second, considered how the sidewalk was going to comply with the ADA, they would have known their first plan wouldn't have worked and that the second plan would have been less favorable than putting the tower in the yard itself. And that's all I think that we're asking that to happen here is that they, they meet their obligation, consider the ADA compliance before they rip up sidewalks. Simple enough. It's not going to make it much harder for anybody. They're not ripping up a ton of sidewalks, as they said, but in one situation, it makes all the difference. So that's why I brought the bill.

GEIST: Senator Moser.

MOSER: So how did the sidewalk wind up being poured then? We, we have a picture of it here.

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J. CAVANAUGH: Oh, you do have a picture?

MOSER: Well, the picture we have just shows the sidewalk coming up from each side and then the blank space in the middle. Did they go around toward the street or did they go around up in her yard?

J. CAVANAUGH: They went around into her yard about five feet into her yard there.

MOSER: And so did the city have to get an easement from her to put that sidewalk on her property?

J. CAVANAUGH: Unfortunately for this particular residence, the easement already goes about 12 feet into her yard.

MOSER: It what?

J. CAVANAUGH: Goes 12 feet into her yard.

MOSER: Already.

J. CAVANAUGH: Because of the way the street's cut there, it's--

MOSER: So they could have put the pole there in the first place.

J. CAVANAUGH: They could have put the pole there in the first place, yeah.

MOSER: Thank you.

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

J. CAVANAUGH: Thank you.

GEIST: That ends the hearing for LB134 and we will move forward after I tell you that we have one proponent letter, three opponent letters and one neutral letter on LB134, which will now close the hearing on LB134 and we will move to LB733. Good afternoon. You're becoming a regular in our committee.

NATHAN JANULEWICZ: Apparently, I am. Absolutely. Good afternoon, Chair Geist and members of the Transportation and Telecommunications Committee. Senator Bostar is not able to be here this afternoon. My name is Nathan Junulewicz. That's an N-a-t-h-a-n J-a-n-u-l-e-w-i-c-z.

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I'm the legislative aide for Senator Bostar and I am here today to introduce LB733, the Broadband Pole Placement and Undergrounding Fund Act. Recognizing the costs associated with pole replacement, mid-span pole placement and undergrounding are significant barriers to broadband expansion in the most rural areas of the state. LB733 creates the Broadband Pole Placement and Undergrounding Fund to defray costs and advance broadband expansion to unserved areas. Utility poles represent the backbone of our nation's broadband infrastructure, especially in rural areas. The poles are not typically owned by broadband internet providers. When providers extend their broadband networks into rural areas, they must first get permission from pole owners, typically an electric utility, and go through the process of permitting, renting space for equipment, rearranging existing wires and associated equipment and replacing old or out-of-code poles. Pole replacement frequently lead to spending more time, money and other resources connecting un-- to connect unserved communities. The precise need and cost for pole replacements is difficult to predict in advance and entirely dependent on engineering factors such as-- or which are out of the hands of Internet providers proposing to build broadband network. An Internet provider-- when Internet providers write an application for a federal or state broadband infrastructure grant, they currently include an estimate of these costs, which can reduce their competitiveness for their application due to their unpredictability. LB733 addresses this by creating a separate fund focused just on the unpredictable aspect that cannot be controlled by the applicant. Passing LB733 would allow applicants of infrastructure development grant programs to avoid the inclusion of potentially unnecessary costs in their application. Under LB733, after pole replacement, mid-span pole placement or undergrounding has been completed and paid for by a provider, that entity will be able to submit an application to the Public Service Commission to be reimbursed for up to 50 percent of the costs of the relevant work. The application will include information established-- establishing the applicant's eligibility under the act, detailing-- details on the number and cost of pole replaced and completion of the reimbursed project. If the applicant seeks reimbursement for undergrounding, documentation demonstrating that the project's costs were reasonable and why undergrounding was preferred to pole replacement or mid-span pole placement will be required so as to ensure the money in the fund is spent in the most efficient way possible. By addressing these barriers and significantly reducing broadband deployment costs, we can

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expect access, we can expect access to conductivity, education, healthcare and innovation necessary for the success of future generations in rural Nebraska. I am aware that this bill had several versions in the past and was met with significant opposition. Interested stakeholders have worked together after the bill's introduction and I am offering the distributed amendment to the committee that I believe addresses those concerns. I encourage the committee to support LB733. Thank you for your time.

GEIST: Thank you for your testimony. We're going to be gentle on you and not ask you questions.

NATHAN JANULEWICZ: Wonderful. Thank you.

GEIST: First proponent. Good afternoon.

DAYTON MURTY: Good afternoon, Chairman Geist and members of the Transportation and Telecommunications Committee. My name is Dayton Murty, spelled D-a-y-t-o-n M-u-r-t-y, and I'm just testifying today in support of LB733 on behalf of Charter Communications and I'll spare you the rest of my intro since you've heard it previously. The passage of LB733 will result in quicker and more efficient expansion of broadband in the state of Nebraska by addressing particularly costly and unpredictable factors of broadband deployment, pole placement and undergrounding. When broadband providers like Charter extend our broadband networks into rural areas, we often utilize the pole infrastructure of existing pole owners, including our public power partners, through joint pole use agreements where providers pay a fee for access to the pole. Part of this process is make-ready work, consisting of rearranging existing wires and associated equipment and replacing old and out-of-code poles. Not only does this process increase the cost of the project on the whole, there is no way to accurately measure how much these pole replacements will cost until an evaluation is done by the pole owners about what work is needed. This unspent need means it is extraordinarily difficult for those who don't own the poles to accurately estimate the cost of broadband expansion projects, particularly when applying for a grant to subsidize a broadband buildout. Cost estimates for these projects could be significantly higher if a larger than estimated number of poles needs to be replaced to complete the project. In one recent Charter broadband expansion project in Nebraska, upon evaluation of the utility pole infrastructure, it was determined that in just over ten

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miles of fiber interconnect, we would need to replace nearly 80 percent of the public utility poles at a cost of between \$2,500 and \$8,000 per pole if we were to use aerial deployment for our facilities. Recognizing the importance of pole replacement to broadband projects, several states have already adopted pole replacement funds, including Texas, North Carolina, Missouri and Kentucky. When aerial deployment is not possible, undergrounding fiber is an alternative to pole attachments. However, undergrounding can be even more costly, which necessitates that a fund also help defray these costs. Creating a pole replacement and undergrounding fund will target these specific high-cost barriers to broadband expansion, mitigate the unpredictable nature of pole replacements and ensure rapid deployment of broadband to unserved areas of the state. I'll just briefly go over some of the amendment provisions. We worked closely with, with the public power industry to try and address all of their concerns, including Section 7. We expanded the language there at the request of the Omaha Public Power District so that it broadens that protection for broad-- for existing broadband facility agreements. We also worked with the Rural Electric Association and Nebraska Public Power District to try and address their concerns with making sure that anytime there's undergrounding, it has to-- you know, we have to show that-- with the PSC, we have to show the PSC that it was preferable to pole replacement in those circumstances. And I just want to make clear that the-- this is a reimbursement so the public power providers will get the costs for-- incurred, incurred from replacing utility poles in due course. And then also included in that amendment is a change in the funding mechanism. Section 8 was a carryover from the version of the bill-- this bill introduced last year and does not reflect that all the ARPA dollars have been spent. Moreover, the Governor's Office has expressed that they do not believe this program would be eligible to be funded through BEAD dollars so the changes-- this amendment changes the funding mechanism to a one-time rainy day fund cash transfer to hopefully eliminate those concerns and I'd be happy to answer any questions.

GEIST: Are there any questions on the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. Could you tell me where the 80 percent of poles are located at that be replaced?

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DAYTON MURTY: So that would have been if we went aerial. We ended up going underground in that circum-- in that circumstance.

BOSTELMAN: Sorry, say that again.

DAYTON MURTY: So we would have had to replace 80 percent if we went aerial, which led us to go underground, still increasing the cost of the project.

BOSTELMAN: Where was that?

DAYTON MURTY: Can I follow up on you-- can I follow up with you on that? I'm sorry. I'm forgetting the name of the town.

BOSTELMAN: OK.

DAYTON MURTY: It was a, it was a project we did last year in 2022.

BOSTELMAN: OK. Yeah, I would like to know where that's at. Isn't this like taking money out of one pocket and putting it into the other pocket?

DAYTON MURTY: That's, that's why we have the amendment. Section 8 is, is deleted and, and so it's not coming from ARPA. It's also eliminating the BEAD allocation. So the money should be coming from one-time Cash Fund transfer. We heard those concerns when discussing with interested parties on the bill and the amendment panned out by Senator Bostar addresses that.

BOSTELMAN: So does this allow public power to access those funds since it's their poles?

DAYTON MURTY: So public powers would receive the benefit of new and stronger poles, but they would not be able to access the, the funds. Since the, the purpose of the fund is for broadband expansion, it would need to be from a broadband provider so we-- so that the fund can be used for the purpose of poles that are-- need to be replaced for expansion of broadband.

BOSTELMAN: So-- sorry.

GEIST: That's all right. Go ahead.

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BOSTELMAN: OK. We-- on LB61, we heard Lumen and others come in and talk about can't do this because REA does, NPPD does, whatever, using ratepayers. It's their money, their things. Well, aren't you doing the same thing? Now you're taking General Funds, you're taking revenue from the state of Nebraska, you're taking money from the people in Nebraska to your-- for your purpose.

DAYTON MURTY: As I said in my testimony on LB61, there are certain areas of the state where subsidy is, is absolutely required to, to provide service. It's our goal to make sure that every Nebraskan receives adequate high-speed, affordable broadband service.

BOSTELMAN: That's-- but that's your responsibility. Why is it, why is it public power's, or REA? Why should they have to replace the pole that's been designed to carry the power lines that it's designed to carry. Because you want to put fiber on it, now they have to replace the pole and pay for the pole or you're going to take money from the residents of the state of-- the people from the state of Nebraska revenue and pay for that pole. Why don't you pay for that pole? I don't-- that's what I don't understand or a follow-up question will be is are you paying for right-of-way?

DAYTON MURTY: So there's a couple of different levels to that question.

BOSTELMAN: Sure.

DAYTON MURTY: I'll try to address each one. The, the make-ready work is currently a-- is part of the process. When we go to expand broadband into a rural area, we, we do an analysis on what, what we believe is going to, going to be the, you know, our assumptions on how much are we going to be aerial, which is on the poles, or how much are we going to go underground? When we, when we go to actually go onto the poles, then work is done on-- to-- well, first, we have to get, you know, a pole use agreement in place so that we can-- we have an agreement with the public power entity to use that space on the poles and then they can send us a bill. OK, this is all the make-ready work that needs to be done for you to be on our poles: rearranging wires, replacing existing poles that might not be tall enough, placing a mid-span pole. That's all decided by their team before we can go on onto a public utility pole. And, and we can pay for that or we can pay to go underground. And so that's kind of how that, that process works

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and right now. What, what this bill does is that since that's so unpredictable and you're not a pole owner and you don't-- we're not receiving any act-- like assets from that investment, the state would reimburse for 50 percent of that cost. So we're still paying 50 percent of the cost to replace that pole. The public power entity is going to get reimbursed for the entire cost of the make-ready and the pole placement and, and then the state, through this fund, would pick up that other 50 percent to defray those costs of, of broadband expansion.

BOSTELMAN: I appreciate that. I do. I really-- I hear what you're saying, but this really goes counter to Senator Brandt's bill. The arguments I heard come in against Senator Brandt's bill was oh, it's ratepayers, it's their money, you shouldn't be using their money, and now you're going to take our revenue, our tax dollars and pay 50 percent of the cost that you should be paying to replace that build because public power never intended on that pole to have fiber on it. Now, I-- don't get me wrong, I think hanging fiber is a great idea. I think it should. But I don't understand why-- here, I think we have a complete opposite argument. You're arguing completely opposite of what you did on LB61.

DAYTON MURTY: I-- again, my testimony to LB61-- on LB61 was exclusively on certain areas on-- and this bill focuses exclusively on funding for unserved areas. You can only apply to be reimbursed through this fund if the build is going to an unserved area. My issue with LB61 was not for using dark fiber to do broadband to unserved areas. My issue was the elimination of the provisions that regulated its-- dark-- the use of dark fiber to serve areas.

BOSTELMAN: Yeah, yeah, I understand. But there was those who came up in opposition to Senator Brandt's bill that basically argued against-- what I would say, argue against everything you're-- that this bill does, saying that you're using public money now for a, for a, for a private person. But this is specifically public, public money for a private purpose. And that was the argument that I heard over and over again against Senator Brandt's bill was, you know, public power can't do it because you're using ratepayers' money so they're going to have a-- so the public power will have an unfair advantage. I just-- I appreciate-- I understand you didn't, but others did. And I just really see this as a-- this is kind of a-- the argument I was making, I guess. The argument that they made against LB61, they're trying to

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use now to take that similar money, if you will, taxpayer-- this is taxpayer dollars and pay for 50 percent of what they should be paying 100 percent for so thank you.

GEIST: Any other questions? Yes, Senator Moser.

MOSE: So the-- let's just say that it's going to cost \$3,000 to replace a pole with one that is strong enough or engineered to hold all of the cables, yours and the power company's. That cost, is that a bill that comes from the power company? They determine that cost?

DAYTON MURTY: So it's actual costs. So they would, they would do the work.

MOSE: But they do-- they put it in?

DAYTON MURTY: Yeah, they-- my understanding is they do the work, they put in the pole and we reimburse them through the--

MOSE: So the power company is going to get their costs back. You're just going to get half of it back from this fund.

DAYTON MURTY: Yes. Yes. So, so how--

MOSE: You're responsible for the whole cost of upgrading the pole under the current scheme?

DAYTON MURTY: Under the current scheme, it, it varies. So the FCC has tried to weigh in on this, but at the end of the day, the pole owners are-- you know, it's their assets and that we're, you know, ask-- requesting access to. Under this bill, we would pay for 100 percent of the costs for the pole replacement and then be reimbursed for 50 percent of that from the fund after the case, after it's been replaced. And we provide that documentation to the Public Service Commission.

MOSE: But without this bill, you'd have to pay the whole cost.

DAYTON MURTY: Yes, right right now and, and, you know, we--

MOSE: And it-- I was reading in the paperwork we got that-- I guess Senator Bostar isn't here right now, but that they're recommending

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that the funds come from the ARPA money we got from the federal government.

DAYTON MURTY: That has been taken out of the bill. So the, the BEAD-- the allocation from BEAD and ARPA has been taken out of the bill in favor of a one-time Cash Fund transfer to fund the bill. As Senator Bostelman said, taking money out of one pocket and putting it in the other doesn't make a lot of sense so that change has been made.

MOSER: OK. Thank you.

GEIST: Senator DeBoer.

DeBOER: I have got-- thank you. I've got one question. May or may not be fair to you, but--

DAYTON MURTY: OK.

DeBOER: --\$15 million, is that going to go very far? Like, do you have a sense of-- are we going back here every year asking for \$15 million more?

DAYTON MURTY: Fifteen million is the same number that the state of Missouri allocated to their fund and that's why it was, was used in this one. Texas allocated, I believe, \$75 million. So I, I believe that that should be enough to at least get a lot of the structure in place and make a lot of progress. Is it necessary for the number to be \$15 million to show that there's value to this? You know, I think you could make a case that you could lower that amount and have a pilot program and let us show you that it, it does its job. But ultimately, \$15 million is the same number that Missouri used. And they haven't-- you know, they instituted the program, I believe, two years ago and they haven't run out yet. So I think it would be funded for several years with \$15 million.

DeBOER: Thank you.

GEIST: Any other questions? I don't see any. Thank you.

DAYTON MURTY: Thank you.

GEIST: Any other proponents?

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BRENT SMOYER: Good afternoon, Chairwoman Geist--

GEIST: Good afternoon.

BRENT SMOYER: --members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, and I'm here representing the Nebraska Rural Broadband Alliance in support of LB733. I will endeavor to keep this short and sweet, given it's a late afternoon and I'm sure everybody wants to have some gumbo for Mardi Gras. We stand in support of this bill because we think it's a step in the right direction of an all-of-the-above approach in order to get broadband out and expanded in Nebraska as quickly and efficiently as possible. I know Senator Brandt stepped out and I was not necessarily officially sent in his capacity to comment on LB61, but I do know the NRBA is eager to be able to try and get involved in those conversations as well in addition to LB733 in an effort to essentially, again, pull in an all-of-the-above approach and make best possible uses of the funding that is coming into Nebraska through ARPA, through BEAD and other federal entities. We do appreciate the amendment switching the funding from BEAD and ARPA to the General Fund. I know that's a conversation again worth having in terms of the amount and the necessity, but we do think this is a great opportunity to again open the door to an all-of-the-above approach to increasing broadband access in Nebraska.

GEIST: Thank you for your testimony. Yes, Senator Bostelman.

BOSTELMAN: So-- thank you, Chairwoman Geist. It seems to me just a little-- and I don't-- you know, it's not anything against Senator Bostar at all with the bill. Don't get me wrong. But the companies will apply for a grant to build out broadband, which is just federal tax dollars. And then they're going to turn around and ask us to take money out of the Cash Reserve to pay for poles. So it just seems like there-- that's a, that's a awful big ask for the-- for us to do. I mean, I understand the need to build out. But at what point, you know, is, is enough, is my question. Maybe you don't have an-- you don't have to answer that. That's more of a statement.

BRENT SMOYER: Fair enough, Senator, and I will say this: I think that's a great question and something we definitely need to have a much larger, longer discussion on. I'm well aware that, you know, this has been a passion project of yours for a long time. We appreciate the

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work you're doing. And I think, again, we just open the door to discussions and keep that ball rolling, sir.

BOSTELMAN: Thank you.

GEIST: Any other questions from the committee? I don't see any. Thank you.

BRENT SMOYER: Thank you very much.

GEIST: Any other proponents? Good afternoon.

NICOLE FOX: Good afternoon. Nicole Fox, N-i-c-o-l-e F-o-x, representing the Platte Institute. Nebraskans are more reliant on broadband connectivity now more than ever. Connectivity is important for people accessing government services, online banking, education, healthcare and remote work. It's important to agriculture and small business, as well as the 48 percent of Nebraska workers that are employed by those small businesses. Broadband, broadband infrastructure investments enable economic growth. Broadband access can generate GDP growth of 1.21 percent for each 10 percent increase in broadband penetration. LB733 creates Broadband Pole Replacement and Underground Funding Act and would address one of the largest barriers to broadband expansion by cutting broadband deployment costs in Nebraska and empowering providers to expand access to reliable, high-speed, affordable broadband. Unlike new developments in suburban areas where dig-once approaches can be taken mutually by utility and telecom companies to deploy broadband, in rural areas, telecom companies often rely on access to infrastructure put in place by Nebraska's public power industry, namely utility poles. This deployment often results in the need to replace old or out-of-date poles, leading to increased time, money and resource expenditures. In cases where pole owners require broadband providers to cover the entire cost of installing new upgraded poles, disputes over the cost of these assets can entirely shut down a rural broadband deployment project or significantly inflate its costs. Moreover, although undergrounding cable/mid-span pole replacement can be used to avoid replacing existing poles, both strategies add significant cost to broadband deployment projects. So we support the adopting of a pole replacement and undergrounding fund which would address these barriers and significantly cut deployment costs, particularly in remote areas where miles of infrastructure can-- may be needed just to reach a

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single house or farm. So with that, I conclude my testimony and happy to answer any questions.

***JOHN WYVILL:** Cox Communications in support of this bill and Charter's efforts to address the challenges and uncertainties associated with broadband pole replacements.

GEIST: Are there any questions on the committee? I don't see any. Thank you. Any other proponents? Are there any opponents?

KENT ROBERT: Good afternoon, Senator Geist and members of the committee. Once again, my name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here today representing AT&T in opposition to LB733, which would adopt the Broadband Pole Placement and Underground Funding Act. AT&T is generally opposed to any pole replacement fund that constitutes carve-outs from state or federal broadband expansion funding because it is duplicative and repetitive. Any cost of deploying broadband should include the cost of any needed pole replacements. Federal broadband for-- oh, and I will say I was not aware of the amendment until just now so I'm testifying to the green copy today. Federal broadband funds represent an unprecedented opportunity for Nebraska to direct more resources to rural areas currently unserved or underserved. However, the legislation before you totally proposes inefficient use of federal funds that may actually detour-- deter broadband deployment in communities in need. LB733 would create a new grant program to help recover pole replacement costs for providers, including for projects that providers have already committed to. However, pole replacements to create additional capacity are a basic business cost of building a broadband network. Additionally, many of these committed projects are already benefiting from grants that consider the total cost for the project, including pole replacement costs. It's shortsighted and wasteful to use federal grant money to reimburse providers for basic business costs essential to deploying and operating a broadband network. We all know that broadband connectivity is essential for nearly every aspect of modern life. This federal money is a once-in-a-lifetime opportunity to deploy that broadband to unserved communities in Nebraska, especially in rural parts of our state. Unfortunately, we believe this bill will disrupt the speedy deployment of broadband to unserved communities instead of maximizing the reach of broadband funds to ensure connectivity for all Nebraskans. We would respectfully ask you to oppose this. Because I was asked today, I did give some language to

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the senator's office and to the proponents that would put AT&T in a neutral capacity if they adopted those points.

GEIST: Does anyone have any questions on the committee? I don't see any. Thank you. Any other opponents? Are there any testifying in the neutral capacity?

SHELLEY SAHLING-ZART: Thank you, Chair Geist and members of the Transportation and Telecommunications Committee. For the record, my name is Shelley Sahling-Zart. That's Shelley, S-h-e-l-l-e-y, Sahling-Zart, S-a-h-l-i-n-g-Z-a-r-t. I'm testifying today in a neutral position on behalf of the Nebraska Power Association, which represents all of Nebraska's publicly owned electric utility systems. First of all, we would like to extend our gratitude to Mr. Murdy and Charter for working with us, for coordinating with us. That hasn't always happened in the past so I would like to make note of that. The amendments bring us to neutral, but this has been an interesting day and I felt compelled to also note that you've had three bills today that deal with public infrastructure, much of it public power infrastructure. Two bills where our infrastructure, infrastructure is hailed as something necessary and needed to expand broadband. And I haven't heard a lot of concerns about anything that might be subsidized or costs we're incurring and another one where people feel the sky is falling if our infrastructure is used, I think there's room for it all. I think we have important infrastructure that can be used to help solve the broadband problems you all and your predecessors have been discussing for 22 years. We're here and we stand ready to continue working with Charter and other telecom providers to try to provide some middle ground where some of this infrastructure can be used to benefit Nebraskans. And I think there are ways to do that. We're finding ways on this one. Yes, we want to keep our customers whole as well. We're also operating businesses, but I think there's room for us to find some middle ground on that. And hopefully this committee will work with all of us to do that. And that's about all I have to say. I'd be happy to answer any questions.

GEIST: Are there any questions on the committee? I don't see any. Thank you.

SHELLEY SAHLING-ZART: Thank you.

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GEIST: Any other neutral testimony? With that, well, Senator Bostar is not here so that will close the hearing on LB733. And except we have three proponent letters, one ADA testimony, which is also proponent, three opponent letters and none in the neutral. With that, we will close the hearing and end hearings for today.