

**APRIL 28, 2005**

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April 28, 2005 LB 645

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Pastor Matt Sass, Evangelical Free Church in Hastings, Nebraska, Senator Burling's district. Pastor.

PASTOR SASS: (Prayer offered.)

SENATOR CUDABACK: Thank you, Pastor Sass, for being with us this morning, acting as our chaplain. Pastor Sass is from 33rd District, Senator Burling's district. I call the seventieth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please record your presence.

ASSISTANT CLERK: There is a quorum present this morning, Mr. President.

SENATOR CUDABACK: Any corrections for the Journal, Mr. Clerk?

ASSISTANT CLERK: Mr. President, there's no corrections this morning.

SENATOR CUDABACK: Messages, reports, or announcements?

ASSISTANT CLERK: Two items, Mr. President. Report of registered lobbyists for the current week. And a report from the Nebraska Investment Finance Authority. (Legislative Journal pages 1329-1330.)

SENATOR CUDABACK: Mr. Clerk, we now go to General File, 2005 committee first priority bills. Mr. Clerk, first bill would be LB 645.

ASSISTANT CLERK: Mr. President, LB 645 was introduced by Senator Brashear. (Read title.) The bill was read for the first time on January 19, referred to the Transportation, Telecommunications Committee. The committee reported the bill to General File with committee amendments attached. (AM0316, Legislative Journal page 482.)

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SENATOR CUDABACK:      Thank you, Mr. Clerk.      Senator Brashear, you're recognized to open on LB 645.

SENATOR BRASHEAR:      Thank you, Mr. President, members of the body. I'm going to approach this this morning...first of all, I will tell you I'm looking forward to it, because I made the commitment to you that...when I asked you to consider me as your Speaker, I said that I would not carry the usual volume of legislation that I had. And I hope you feel like I've been faithful to that commitment, because this will be the first opportunity I've had for extended debate on the floor. And I've looked forward to it. I have time, I think, to thoroughly talk about this matter and to bring you up to date, which is my responsibility, to tell you where we started, how we have moved forward, and who has been involved. This is a classic example of one methodology of endeavoring to legislate public policy. And it's certainly not about me. But I will tell you that as your Speaker, I do feel a responsibility to share, sometimes, the way we do things, particularly if they're not all open and obvious to those not experienced in watching or involved. And so I am going to use this as sort of an explanation as I go along. I'd first of all like to tell you how I came to this subject matter, among other ways. When I came to the Legislature,...and I'm talking about technology, but I'd like to share with you a common citizen's approach to technology. When I came to the Legislature 11 years ago, I had to petition, as is required by the rules, the Executive Committee, Executive Board, to allow me to have a private phone line, et cetera, and fax line, that I paid for myself, because it was absolutely essential to me to be able to maintain contact with my business. And so I have had a fax machine the whole time that I've been here. And that fax machine was not only used frantically, in the opening days 11 years ago, by me, but by other members of the body who wanted to...knew that I had it and wanted to use it. And so I view my journey here with you as being sort of an example of what's happening in technology. And I had to keep track of urgent matters and telephone messages and so on, either with a beeper or with a fax machine. And they would beep me or page me on my waist, and I would run to my office at the first available opportunity and attend to things. Well, this morning, as I talk to you, in violation of no rule, regulation, or

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anything else, I can read the e-mail in my office, and I can respond to the e-mail in my office. And while I know very, very little about technology, I think that's the best example I can give you of how fast and how rapidly technology develops. And this is all done without any hardware, or what we would call infrastructure or plant, in the traditional sense. Now, I'm not going to consume my time and let time run and read my e-mail. But nevertheless, I can, and I will. That's my interest in this subject matter, which deals with what are technically called overbuilds, where you take existing plant and you upgrade it at expense to make it do something else, or an expansion such as broadband over power lines, which we call BPL, and which has been talked about for years and years, and is not a developed technology fully proven, but of course, on its face has a great appeal. If you stop to think about it, we have power lines everywhere in the state. But I must tell you, we also have telecommunication lines everywhere in the state. One of the first things we have to, I think, get is a frame of reference here. And since I've had the ignoble distinction among you...and I've never done anything more criticized in my 11 years in the Legislature than when I have occasionally suggested that we study the possibility of selling public power. Please don't let anybody who might be guilty of shallow thinking say, oh, this is just Brashear's continued war against public power. First of all, I don't have a war. My father worked in public power. I herald public power as being one of the three great things Nebraska has done in its history, which proves we could do a lot better than we're doing now in other areas if we will challenge ourselves to be creative and to dare to be great and to reach out. Those three things, very briefly. I've always said public power was something very unlike us, and we did it at a time when we needed to get power everywhere in the state, to our ruralmost areas, and we pioneered, and we are the only public power state, and it was a great and good thing that has paid us many dividends. Now, just to close out that thought, because I've got the time, so why have I ever said we should study selling it? Well, you know, you can build a great house, you can live in it all your life, you can raise your children there, you can do wonderful things. And then someday, when you need to go to the nursing home, you might have to sell it in order to be able to afford the nursing home. Well, if you look

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at the demographic statistics of what's happening in Nebraska, that kind of leads you to where I'm saying, nothing is forever, and all good things must come to an end, and sometimes you have to take your equity investment out of something. But I'm not going there. I'm...I will be...I'm term limited. I'm leaving. Someday, sometime, we do have a treasure that is worth a lot of money that we may need to divert resources for. But I just wanted to touch on it, so we won't play this game of, oh, Brashear is against public power. This isn't about being against public power. How I really came to this was an appreciation of how rapidly technology expands and changes, and recalling--you're going to think I've lost it, but again, I have time--recalling low-level nuclear waste. I've got to tell you, for me, it's one of those things that's gone on over a long period of time, so we've kind of adjusted to what a disaster that was, and we don't any longer call it the disaster it is, and we don't hold people's feet to the fire, and we don't pin blame. I've said it once before on this floor, at least. I'll say it a second time. Senator Beutler was standing on this floor, years and years ago, telling everybody, if you sign this compact the way it's written, you will be selected as the site. And we were. And then, of course, we paid, as a member of the compact, to construct a low-level nuclear waste site. We paid our fair share. But that didn't get us anything. Then I recall when on this floor we withdrew from the compact. I happened to be one of those on the losing side who said, don't. But we did. Then we got hung with the total price for the whole thing, and spent all that money. I'm not here to talk about low-level nuclear waste either, except to tell you that that is part of why I brought the bill I brought in its original form, which was to stop now any thought...

SENATOR CUDABACK: One minute.

SENATOR BRASHEAR: ...that we would simply go on investing and exploring and experimenting with the idea of enlarging what public power does, without stopping and thinking about it. And so the way you begin that discussion is saying, I want to prevent overbuilds for which the taxpayers could ultimately have to pay the way. And I'm going to further develop that thought when I get an opportunity to go on. Thank you, Mr. President.

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SENATOR CUDABACK:      Thank you, Senator Brashear. (Visitors introduced.) As stated by the Clerk, there are committee amendments by the Transportation, Telecommunications Committee. Senator Baker, as Chairman of the committee, you're recognized to open on AM0316.

SENATOR BAKER:      Thank you, Senator Cudaback and members. I will be very brief. And at such time as I'm finished here, I yield my time to Senator Brashear, so we don't break the train of thought here on his discussion. But the committee amendments were a technical issue that we had adopted, that simply referred to the ability of a power company to use the technology for their own internal use. That has been replaced, the entire issue has been replaced, by AM1334. I will tell you this, that we had the hearing on February 8. It was very well attended. I think we had a good, full, and fair hearing. And the committee saw fit to designate Senator Brashear's LB 645 as its first committee priority bill. That's how important we thought this issue was. With that, I would yield the rest of my time to Senator Brashear.

SENATOR CUDABACK:      Senator Brashear, about nine minutes.

SENATOR BRASHEAR:      Thank you, Mr. President, members of the body. Thank you, Senator Baker. I appreciate it. I had just, as I concluded, indicated to you that I was interested in the beginning. We prepared LB 645 in order that we could stop, create a moment at which we would stop and prohibit, subject to the decision of this body, of course, the concept of continuing to invest in technology as a justification...and using as a justification the fact that we already had public power and its plant and infrastructure. Why did I want to do that? Well, we'll have lots of opportunity in this discussion to develop it. But the fact of the matter is, I will assert now, that BPL is not some new technological marvel. It is...it's been talked about for quite a while. It is not something that will project technology and signals over huge, great distances, in order that in greater Nebraska we can utilize it. The literature is full of the limitations on BPL, even though it hasn't been fully proven, the limitations related to distance, and the quality of

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plant. And it is not something in which we just flick a switch. Because it requires modifications to existing plant, if it works. And it requires repeaters, and a concept of pushing along the signal, and all those kinds of things. Now, when you take the uniqueness of the state of Nebraska as a public power jurisdiction, and you recognize that for all of the wonderful things that public power contributes, it also has some advantages unique unto itself. It pays taxes, or in-lieu-of tax payments, but they are not what private companies pay. If you want a number, think in terms of telecommunications companies, totally privately financed at market rates, competing in the market, that pay \$90 million a year in tax, or about 18 percent of their revenues, 18 percent of their revenues, and employ hundreds and thousands of people in the state of Nebraska and are parts of every community. Then compare that with the in-lieu-of tax payments of public power, which is only \$50 million, half as much, and represents only 2.5 percent of total revenues for public power. Am I saying there's something...am I trying to change that? No. I'm just saying we need to compare and contrast. If public power were to decide to pursue competition using BPL, and make the investment, they would do it at a tax-advantaged...on a tax-advantaged basis. First of all, they don't pay the same taxes as those who are competing in the marketplace. Secondly, they would have tax-exempt financing. We have adopted specific laws here that allow them to construct without paying sales tax. Those are all public policy decisions. Now, I'm trying to give an overview and then stand accountable to you for questions, as I will. But I'm trying to take us down the road. So what was my fear, and how did I relate it to low-level nuclear waste? Well, guess what. If the private sector builds the plant and infrastructure and competes, and the public sector builds the plant and the infrastructure and competes, and meanwhile--let's go to another one of my favorite subjects--you've got got 69 counties that have been in decline since 1930 on a steady basis, your population is static at 1.7 million, and the reason we need to desperately create jobs and growth, because 200,000 of us will become age 65 and older in the next 20 years and probably won't be so interested in broadband over power lines and high-tech experimentation, if we build too much capacity in the state, we will make it difficult for people to compete and earn an

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appropriate, fair profit, and to pay the debt that they incurred for their infrastructure, and we will join a lot of...a long list--which I will provide you the details of later on in this discussion--we'll join a long list of people who have too much capacity. We then begin to fail economically because we can't justify the investment. And then we start selling that which we purchased with taxpayer monies. Because that's what public power...come on, you pay for the public power. And that investment then becomes available to somebody on the cheap. They pay 50 cents on the dollar, or 25 cents on the dollar to buy capacity and to begin to compete in the marketplace, having been given an unfair advantage which came out of the taxpayers' pocket. That's kind of the conclusion of the story, and the reason that I have a concern that we know what we're doing before we do it, with regard to technology as it relates to the private and the public sectors both. Now, along the way, you introduce a bill like LB 645. And then you find out that, as you talk with your colleagues and you visit with those who are interested in the proposition and so on, you find out that you probably can't pass that bill outright. It's always good to take a count and have a sense of what you can achieve. Because if you can't achieve it, then you don't get anything done. So I started working with the parties in terms of what we could resolve together. And that's where you'll see the amendment, which is not a presumption upon you, any one of you. For instance--you know, we're all human, and we make mistakes--Senator Connealy recalls for me yesterday that he had, quote, put me on notice. And I may...I didn't forget it, but I may have neglected the notice he put to me, and I may not have included him enough. Well, then you pay the price (laugh) here on the floor. Senator Connealy and I will work on an understanding of the amendment. And that may be true of other senators also. But what I did do is, to the best of my ability, and with much help from others--Senator Baker, Senator Schrock, Senator Raikes, people who had expressed to me a continuing, ongoing interest by their continuing dialogue in this subject matter--what I did do was work on the amendment that...

SENATOR CUDABACK: One minute.

SENATOR BRASHEAR: ...will come after. And the amendment that

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comes after is an effort to bring everyone in to the table and to accomplish something for what I honestly believe is the greater good. It's basically the concept that we will stand still, we will not disadvantage anyone, we will compose a group of 15 people to study this issue in a thorough way, produce a report by a given deadline, that this Legislature and all interested in the subject matter can look at and study and rely upon in making decisions as to how we should approach these particularly complex questions. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the opening on the committee amendments, offered by Senator Baker, the Chairman of the committee, and Senator Brashear. Mr. Clerk, motion on the desk.

ASSISTANT CLERK: Mr. President, first item, Senator Brashear, you had AM1036, but I have a note you wish to withdraw that one.

SENATOR CUDABACK: It is withdrawn.

ASSISTANT CLERK: Senator Brashear would offer AM1334 as an amendment to the committee amendments. (Legislative Journal page 1318.)

SENATOR CUDABACK: Senator Brashear, you're recognized to open on AM1334 to the committee amendments.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. This is what I meant by the fact that I thought I had time to share with you the background on the bills so that we'd not be presumptive about what we're bringing as what we hope is a somewhat consensual and agreed upon amendment. AM1334 would replace the committee amendment and become the bill. I hope that the Clerk has indicated it has been cosigned by Senators Baker, Schrock and Raikes, and I want to appreciate and acknowledge their input also. I will tell you that I have as a list here available to me at a later point in time, we have the...there are 13 members in the Nebraska Cable Communication Association organizations, and I'm not going to stand here and say we have perfectly included everyone from that organization or any other, but I want you to know what the size of the

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interested parties' grouping is. There are 13 members, excuse me, of the Nebraska Cable Communication Association and there are 32 members of the Nebraska Telecommunication Association, and those people, together with the public power entities, have all, to a greater or lesser extent, participated in or, I would represent to you, had an opportunity to participate in trying to put together this amendment. The amendment has a number of key provisions which I would like to make a matter of record. First, there's a permanent restriction placed on all state agencies and political subdivisions other than public power suppliers from entering the business of providing broadband services, Internet services, and telecommunication services or video services. This is in accordance with the original purpose of LB 1645--pardon me, strike that--LB 645. There is a rationale for separating public power suppliers from other public entities and political subdivisions. Primarily, the distinction is that public power suppliers already possess the infrastructure, as I previously discussed, that potentially can be used for telecommunication services. This is technology known as broadband over power lines, or BPL. Although this technology is unproven and not yet applicable to rural areas, it may have some potential and the power suppliers are, of course, understandably reluctant to agree to discard it prospectively and forever, and so they are not under this amendment. Any other public entity other than power suppliers would need to construct new infrastructure in order to enter the telecommunications field. This is what is known in the parlance of the trade as overbuild. New infrastructure is constructed on a tax advantage basis to compete with existing private infrastructure. This bill would prevent those overbuilds. Accordingly, Section 2 of the amendment would prevent public entry into the provision of services for broadband, telecommunications, or video. The second part of the amendment deals with public power suppliers. These entities are permanently prohibited from entering the telecommunications market on a retail basis, something that obviously I could not bring to you in what I represent as a consensual or collegial amendment, although maybe not totally agreed to by all parties, if they had not been consulted. They have repeatedly said they don't want to be in the retail business, and so we have put a prohibition on it. In addition, there would be a moratorium

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until December 31, 2007 on an entry...on their entry into the wholesale business. So in other words, they could not construct overbuild infrastructure and then compel by giving a favorable price, an under-market price, compel its use by someone else. That would be wholesale. Public power suppliers have indicated they would like to preserve the option of using the infrastructure on a wholesale basis where they would lease it to someone else for its use, and that's part of the study that is planned. The third part of the amendment deals with internal use of infrastructure by what we call public power or any company. There's never been any thought that anybody should be prohibited or prevented from utilizing technology for their own management and internal purposes. Obviously, that's a part of what we call progress. Section 4 of the amendment clarifies that public infrastructure may indeed be used for public purposes of the agency that owns it. The final key of the amendment creates a task force to consider the issues that are raised by all of this and to study them and to provide the report I described to you. Specifically, the 15 members of the task force, three would be appointed by the Governor, three would be appointed by the Executive Board of this Legislature, three members of the Public Service Commission would be a part of the task force, and three members of the Power Review Board or their designees would be a part of the task force, and finally, three members of the Information Technology Commission or their designees. And if I may illustrate what's the difference, in the case of the Public Service Commission, they have duties and responsibilities that come to them for which...and they are paid a full-time salary to discharge those duties. It was my thought in this amendment that three members of the Public Service Commission ought to go through what will obviously be a very informative and educational process of getting to know about this technology. So the members themselves are to participate because we aren't asking them to leave a private citizen's job and serve for nothing on this task force. Whereas when we get to members of the Power Review Board or the Information Technology Commission, these are citizen volunteers serving, and so the thought is that if they cannot afford to participate in this task force, then those organizations which have responsibility in our laws should have an opportunity to designate someone and compensate them for

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serving on the task force and being diligent in bringing about the report which we need. The task force is required to report by December 1 of 2006, and they are permitted to use a professional facilitator. Given that these are competing, competitive subjects upon which people have varying opinions, a facilitator may very well be necessary to the process in order to get a meaningful work product, and that is permitted. But we don't presume to make that decision for the task force, but rather will allow the task force to decide how it can best achieve its objectives. With that, I believe that I have given you the background of LB 645 as it was originally proposed, and what the proposed amendment is. I believe that others will speak to it from their perspective, because they have participated in what has been a, I think, a relatively long course of negotiations, and others want to examine me here on the floor on the subject matter. And with that, I will conclude my remarks, and thank you very much for your patience with me and for your attention. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Brashear. You've heard the opening on AM1334, offered by Senator Brashear to the Telecommunication and Transportation Committee amendments, AM0316. Open for discussion, Senator Smith, followed by Senator Schrock.

SENATOR SMITH: Thank you, Mr. President and members. It has been an interesting adventure, so to speak, with LB 645 and other similar bills but in different committees. And Senator Hudkins and I have the distinct honor, I guess, or burden perhaps, of serving both on the Natural Resources Committee and the Transportation and Telecommunications Committee, so we've heard the various sides of this issue, and it's been quite interesting. I must admit a bias of mine up-front, followed by an acknowledgment. And my bias is with the private sector, with an acknowledgment that public power is working. I believe that public power in Nebraska has generated lower rates. I believe that the consumers and citizens appreciate that. And I would also say that there are a lot of similarities between the public power and private sector competition, but public power does enjoy a protection that probably no other entity in the state enjoys. And I have some concerns when an entity can enjoy the

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protections of their industry without some of the private sector issues that should be applied as well. What concerns me a great deal is investment. What we need across Nebraska is more investment in the infrastructure, whether it's a wireless tower which is really the thing of the future. I don't believe, and I could be wrong, but I don't believe that investments in upgrading the power lines is where the future stands with telecommunications. I talked to a ham radio operator about that. That's something that is oftentimes left out, but the ham radio operator's shortwave radio or whatever you want to call them, they have strong objections because of the broadband over power line not being a refined mechanism for communication, telecommunications. I think it's important to note, although I don't want to shut it out as some people would call it, that BPL is not really a wave of the future. I think it's tempting to look at it because we already have an installed infrastructure across the state, but it needs much more than that. Broadband over power line is really only effective in urban areas, and that's not where we need the services. We need the services out in the rural areas. I mean, I have to point out that Senator Brashear's device he can enjoy in the urban areas of Lincoln and Omaha. I can't enjoy the Blackberry device in rural Nebraska. I hope to someday because I think it would make life easier, but nonetheless, it is an issue that I don't think will ever go away because technology is advancing so rapidly. But if technology is advancing so rapidly, we need that investment and we need to encourage the investment so that the marketplace can do its work. That is what has gotten us to this point so far with telecommunications is the marketplace, and we need to encourage that to be carried forward. It's interesting, I was trying to read some of the handouts here that gave a list of subsidies,...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...outlined the subsidies of the what I believe are called independent telephone companies. I think we need to look at that. And I'm not saying reduce the subsidies. What I think has worked across Nebraska, especially in rural areas, are some of these subsidies that have been applied through the private sector. These independent telephone companies, and I point to Hemingford because it's closest to my home, has

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leveraged the subsidy far greater, I think, than some of the big dogs, so to speak, in the telecommunications industry. But it's that private sector application, that private sector environment, that serves us so very well, and I think we as a state need to adopt policy that encourages the investment in the private sector so that we can leverage that competition, leverage those dollars, and so that we can move forward to provide better services all across Nebraska, not just discouraging retail operation which...

SENATOR CUDABACK: Time, Senator.

SENATOR SMITH: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Those senators wishing to speak to the issue are presently Senators Schrock, Connealy, Brown, Beutler, Engel, Brashear, Chambers, Raikes, Redfield, and Smith. Senator Schrock.

SENATOR SCHROCK: Mr. President and members of the Legislature, I'm probably one of the more naive members of this legislative body. In fact, it wasn't too long ago I was riding on a turnip truck, so I will speak from that perspective. I was asked in early January to carry a piece of legislation that would allow public power to lease their lines for broadband technology, not retail, just lease. And I innocently thought, well, that doesn't sound too difficult, so I said, well, I'll have the members of my committee sign on; it will be a committee bill. I don't think there has ever been a bill more lobbied in the Exec Committee than that one. And members of the Exec Committee, if I'm wrong, tell me. That bill got referenced to the Telecommunications and Transportation Committee, even though I had my committee members sign on to, even though I thought it was a public power issue. Granted, it is also a telecommunications issue. So we redrafted another bill, and the Executive Committee had a difficult time. They had a couple of tie votes, and finally a certain member I won't mention broke the tie and we did get a bill and we did advance that bill with a study. Now I will tell you I'm not the most technologically advanced person on this legislative floor. I don't even compare to Senator Brashear. And if you're going to take somebody on in

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this body, the last person I would guess you'd want to take on is to be an opponent of Senator Brashear's legislation. I don't relish that, I didn't relish that. But we were in a war and it was a turf war, telecoms against public power. I do want to tell you that if you lived in any of the surrounding states, with the exception of Wyoming---and if you want numbers we can get them, and Wyoming, by the way, sits on a coal mine and has a low population with quite a little hydropower---your electric rates would be 20 percent higher than they are in Nebraska. As a farmer who uses a lot of electricity, I appreciate that. Most of our irrigation wells are powered by electricity. We may...as agricultural producers, we pay pretty high property taxes, but at least our electric rates are reasonable. So as this advanced, it became apparent to me that we had a stalemate because neither side could probably get what they wanted. And so I want to commend Senator Brashear for working with both public power and the telecoms to get to the amendment we're talking about now. I do support it. I think it's reasonable. I think it's balanced. I do not know if broadband over power lines is going to be the new technology. I just knew that I didn't want Nebraska to be the first state to ban broadband over power lines. What a message we send to our business. Come to Nebraska, become productive, become a business; by the way, we do ban new technologies, we are not interested in new technology. I am very skeptical about whether broadband over power lines is going to be a technology used a lot in Nebraska or in rural areas. I do not know the answer to that. I just knew that I didn't want to ban it forever, and that's what LB 645 in its original form did. And so, I thought we needed to study the issue, kind of see what's going on in other states, because they are using it in some areas, and apparently it's successful. I do not...I don't have firsthand knowledge of that. So here we are. I did pass out some information. You will note that Qwest, one of our larger telecoms in the state, maybe the largest, paid no income taxes last year--LB 775 credit, that's easy. And you will note that the telecommunications industry is one of the most heavily subsidized industries in the nation. So I do get tired of this argument...

SENATOR CUDABACK: One minute.

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SENATOR SCHROCK: ...that public power doesn't pay taxes. When they build a new generating facility, they get no LB 775 benefits. They pay sales tax on their machinery. They do pay in-lieu-of taxes. And so if you're going to talk about which one pays the most taxes and which one does this and that, I think you've got a stalemate there. So we don't have any incentives for our public power industries in this state. So I just wanted to bring some of those points out. I urge you to look at the handout. Qwest is the only one that's what I would say publicly traded, so it's the only one where you can get necessary information. You will note that Arapahoe Telephone Company which serves people in my area, my son gets his broad...gets his Internet service over...

SENATOR CUDABACK: Time, Senator.

SENATOR SCHROCK: ...Arapahoe...did you say time?

SENATOR CUDABACK: I did, Senator.

SENATOR SCHROCK: Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. Further discussion, Senator Connealy, followed Senator Brown and nine others.

SENATOR CONNEALY: Thank you, Mr. President and members. I was referenced before by Senator Brashear, and I want to thank him for acknowledging that, yeah, I'm not a member of the Transportation and Telecommunications Committee or the Natural Resources Committee so being outside of the negotiations is logical. But I do have an interest in this. I believe in this bill. I think that we need a ban on retail for telecommunications, and I think that a study, both of those parts of this bill are needed. I don't think we need to go farther than that, and I think that this does...even though it's less than the initial bill, I still think it overreaches. I think that we ought to limit this and study it hard so that we don't stand in the way of technology that Senator Brashear talked about. You know, we do have a tremendous growth in that

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world, and as Senator Brashear talked about, we need to be able to have every tool available. I believe a moratorium on cooperation between entities is not needed. I haven't picked this bill all apart, but I did put up an amendment to do those two things. And there might be more that we need to do. I don't know if the task force is a breakup that I want or not, a breakdown, I should say, I want. I have to study that. I just saw this amendment yesterday afternoon. I wasn't...like I said, I wasn't part of this negotiation. I don't know about striking a provision of law that allows counties to be involved. I know in Section 10, I haven't really studied that part of it, of the bill yet, so there's questions in this that I think we have to look at. This is a complicated amendment and a complicated area of law. It's something that we want to do right. I do not want to stand in the way of technology, but I also don't want public power in the retail business. I don't want a public entity to be competing with the telephone companies. I've got fiber optics right by my home in rural Nebraska, and that infrastructure and that investment that my telephone company has made needs to have a line of income to pay it off, so I don't want to stand in the way of that. I don't want to fight to make sure that we become, as public entities, telephone companies. But I also think that we shouldn't stand in the way of cooperation between entities. I think we have to make sure that we don't make sure that libraries or other entities are not able to do the job that they do. And so, I'm worried that this is too strong and too much, and I'll have an amendment later on to address those. And if I have any time left, I'll waive it to Senator Beutler.

SENATOR CUDABACK: Senator Beutler, about two minutes.

SENATOR BEUTLER: Senator Cudaback, Senator Connealy, thank you. I think I'll start on my own time because I really need a little more than two minutes to open this conversation from my perspective. Thank you.

SENATOR CUDABACK: Senator Beutler, thank you. Further discussion, Senator Brown, followed by Senator Beutler.

SENATOR BROWN: Mr. President and members, I have followed this

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issue fairly closely, serving on the Transportation and Telecommunications Committee, and I share some of what Senator Smith expressed as his feelings about it. I was particularly struck and wanted to share with you some of the testimony in the Transportation Committee, because I think that it helps us in this discussion, because we are having sort of a two-pronged discussion, a discussion about the technology and then a discussion about the system of delivery and the motivation of some of the people who wish to get involved. Some of the things we've already talked about, the issues around stranded investment, the investment that's been made already, and I certainly don't want to be a troglodyte that is trying to stop us from moving from the horse and carriage to the Model T, but I also think that we have to look at it in terms of the structure of delivery. And one of the individuals who testified who wanted to provide services, and we heard a lot about how this was going to be revolutionary, especially in providing services to underserved areas, and yet what we heard in the testimony was that in the Omaha area they wanted to provide services through BPL to Creighton University and Omaha Public Schools, two entities that are already served by high-speed Internet. And so when you begin to look at it then from the standpoint of how we have dealt with telecom in a regulatory environment, we are going to have this entity that is totally outside of the regulatory structure that we have constructed. How you deal with that? And this idea of cherry-picking, which has been an issue that we've dealt with regulatorily and yet we're not going to have the BPL in the same kind of regulatory environment. And I wondered if Senator Brashear might yield to a question.

SENATOR CUDABACK: Senator Brashear, are you available?

SPEAKER BRASHEAR: Yes, Mr. President, I will.

SENATOR BROWN: In terms of the task force, is looking broadly at the regulatory structure and how we have managed the whole cherry-picking idea, is that going to be something that is going to be looked at, and whether you even would need to bring under the...in some sort of regulation, these entities that might consider to do it, even on a wholesale basis?

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SPEAKER BRASHEAR: Yes, that's contemplated. We...beginning at page 4 of the amendment, in Section 4, we specifically set forth certain issues which the task force is required to include within the study: Implications upon competition; need and necessity for provision of wholesale broadband services, Internet services, et cetera; fair and equitable requirements for the regulation and taxation, et cetera. I don't want to take too much of your time. But we lay out the specific issues, the minimal,...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...number of specific issues which they are required to consider and report upon.

SENATOR BROWN: Are the representatives on the task force...do you think that there is someone with the tax understanding that is going to be able to answer some of those questions? Because there was a lot of difference in what Senator Schrock said about the tax implications and what you said.

SPEAKER BRASHEAR: There are six members to be appointed between the Executive Board of our Legislature and the Governor. I would hope, from among those six, we would see the right kinds of composition in terms of background and experience.

SENATOR BROWN: Okay. Thank you very much. I support the Brashear amendment. I have spent a lot of time listening to this subject and I think that...

SENATOR CUDABACK: Time, Senator Brown.

SENATOR BROWN: ...this is the best approach. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. (Visitors introduced.) On with discussion, Senator Beutler, followed by Senator Engel and eight others.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I think this is a very important bill and Senator Brashear has brought in front of us a very important discussion. And

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frankly, with regard to the amendment itself, I know that I'm in favor of most parts of it but I'm not sure about the amendment overall, and I hope we'll have a good discussion of it. I want to basically set out what my framework for looking at this will be, and maybe even in the end, asking Senator Brashear to reflect upon that framework. Sometimes in this Legislature it appears that some of us are all for the free enterprise and some of us are for the public power system. I'm not sure we really disagree all that much, and I think maybe the devil is in the details. But here's my hierarchy of things. For myself, and I think for most of us in the country, we believe in the free enterprise system. We believe that true competition among private enterprise is the best way to get to the lowest cost for consumers. It's the most efficient way of progressing through time and emerging with an efficient economy. If you can't have a pure free enterprise situation, then the second model I think you can go to is a balanced regulation of free enterprise. And that's what happened, I think, early in the twentieth century when we discovered that free enterprise didn't work for us in certain ways, especially in the utilities area. I mean, this hierarchy of models I think applies across the board, but especially in the utility areas where heavy investment up-front is a...differentiates it from many other industries. We've gone to the model of a balanced regulation of free enterprise. Well, that becomes problematic from time to time because that can sink to the position where you're only serving an entrenched monopoly. And I think in telecommunications in some areas today, with the emergence of new technologies, the regulated monopolies that...or the regulated industry structure that we have with the Public Service Commission is basically serving to preserve monopolies with subsidies. And the same lobby out there that argues today for the free enterprise system will not give up the subsidies that it has in other areas. On the other hand, the regulation situation can also debilitate into a situation where you're not encouraging competition anymore. So that model can be useful, depending on how you use it, and it's a continual struggle in a democracy to get the right balance in that model. But if pure free enterprise doesn't work and a balanced regulation doesn't work, the third model is the public ownership. And we go to that model very, very rarely. We know on a worldwide scale that that model doesn't work. The collapse

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of socialist systems around the world indicates that that is not a preferable model by and large. Nonetheless, we have that model here in Nebraska and somehow, contrary to the universal experience, we seem to make it work pretty well. But the final model that I want to avoid at all costs, and from that perspective will come most of the questions I have and most of the...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...exploration of possible problems, is a totally unregulated private monopoly. That, I think, is the situation to be avoided at all costs, the least preferable of the four models that I just described. So, Senator Brashear, I don't know if you agree on that hierarchy or not. You obviously don't have time to speak of it now, but if you're interested, I would be interested in where you...how you analyze the whole model and where this bill fits in. And with that, Mr. Speaker, I think I will stop, except to say that with regard to this broadband over power lines, you know, if it's an iffy technology now, and the probabilities of failures as in other areas of telecommunications are going to persist in this area over time,...

SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: ...then maybe we should avoid it, like Senator Brashear suggests. On the other hand, and I'll discuss that when I have more time.

SENATOR CUDABACK: Thank you, Senator Brashear...I'm sorry, Senator Beutler. Senator Engel, followed by Senator Brashear.

SENATOR ENGEL: Mr. President and members of the body, I'm very happy that they're coming to a compromise on this between the two different committees, because I've never been so lobbied so hard in my life as far as just referencing a bill from the Executive Board and, as Senator Schrock alluded to earlier, that we...they presented the bill to us from his committee and we referenced it to Telecommunications, and the reason I voted that way, and most of us did, because it was...to us, it was a

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telecommunications bill. Then it was requested for referencing and we referenced it again back to the Telecommunications. So then a new bill came out from the Natural Resources Committee and that one was referenced to their committee. So I didn't think this would ever come about where they're collaborating together, so I'm so happy that they are. The only problem I had with the original bill, LB 645, was that they did limit the public utilities for using their lines for internal use. And when they decided to take that out of there where they could use it for internal use, then I had no more problem with this particular bill. To me, it has always been a competition between private enterprise and public. And as far as I'm concerned, that's a line that has to be drawn very, very tightly because the one cannot compete against the other. And I'm concerned about...what I was concerned about, and Senator Brashear allayed our fears as far as him coming up again with trying to sell our public power, but across the country they want to do that, and we've seen that happen in different states, and the price of power has gone up...it's tremendously, when people can...they're paying so much more for their power now than they ever have. In Nebraska, we have one of the best situations in the whole country, as far as I'm concerned, and like Senator Schrock said, other than Wyoming where they have such a source of coal to power their plants. So we do have a good, such a good deal that I hate to spoil that by trying to get...allowing them to get into the private enterprise portion of it. So I think they would be defeating their purpose is why they're here. So therefore, I do support the amendment. I do support the bill. I'm glad they're working together on this, and hopefully it will come out well for all of us in the end. So with that, I would yield the rest of my time to Senator Brashear, if he'd like it.

SENATOR CUDABACK: Senator Brashear, about two, twenty-five. He waives the time. Senator Engel, thank you anyway. Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, hate to rain on the parade, hate to offer discouraging words, but I am not a rubber stamp. This is an area with which I don't have a great deal of familiarity. I read over the amendment

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last night and worked on it some this morning, which Senator Brashear is presenting. Much in it is not clear to me. I'm not going to allow private enterprise and people who supposedly represent the public come together someplace and arrive at an agreement and an arrangement whose terms are not clear to me, and then I go along and I accept it. Not disparaging Senator Brashear, the work he did, or the work that the others did, but I'm not a rubber stamp. It makes me think of one of those congressional hearings and one of those thuggish people--I don't remember if it was Oliver North or which one of those "Repelicans" who had done things to undermine the country--was being questioned, and the lawyer for him made the comment with reference to himself, the lawyer: I'm not a potted plant. Well, that applies to me. The body went along with the bill that had far fewer consequences overall than this one does. This one involves future generations. I'm talking about that helmet bill. Voted for something they didn't even understand, they didn't know what was in it. Well, everybody on the floor except myself apparently understands this, but since I'm a member of this Legislature, I have always emphasized that we who are here should get the information we need to inform our judgment so that we can exercise an informed judgment and make informed decisions. So rather than seek to divide the question, primarily because the bill is so interrelated in all of its parts, I'm going to offer amendments to strike each section, and I'm going to have an explanation given to me of each section. My colleagues are too proud, too arrogant, or too lacking in care to require such an explanation. The big shots have gotten together, the smartest people have worked it out, and although the yeomen--that's the ordinary working people--don't know what's going on, there be those who do know what's going on, and those people have said it's all right, so the Legislature will rubber-stamp. Not I. So I am acknowledging here this morning my lack of preparedness to vote on this amendment or any portion of it. So my approach is going to be to take each one of these sections...and by the way, I don't care if you vote to cloture before I get an explanation of what I want. I'm still going to do all I can to get it. And if you cloture the bill before I get what I want, then I'm going to raise those issues on other bills, and nobody is going to have to answer them, but I'm going to raise them. I'm very keenly aware of how little time we have

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left. The session is proceeding the way that I want it to. You all have set the tone. You're going to cloture. And I said early on that that is the way you're going to legislate this session. So how many bills are you going to get acted on? How many bills are you going to have to cloture on which ordinarily you wouldn't have to? But since you've hurled the challenge, drawn the line in the sand, I'm going along with you. Again, as I've always said, just tell me what the rules are; I will abide by them, and I'll whip you at those, too. Nobody is pulling strings on me. Nobody is dictating that I get this done or that done or anything else done.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: I'm going to follow my mind. I'll march to the drummer that I hear, and I'm not going to vote in ignorance on an issue as important as this one. And other than what Senator Brashear gave by the way of explanation, others who have spoken have not given anything that offered much enlightenment. They have expressed great appreciation for what has been done, but they have not explained what has been done. So I'm going to have to follow my chosen methodology and see how far I can go with it and where it will take me. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion of the Brashear amendment, AM1334, to the committee amendments to LB 645, Senator Raikes, followed by Senator Redfield.

SENATOR RAIKES: Thank you, Mr. President and members. I guess, following Senator Chambers, I'm going to commend Senator Brashear on his work because I think it was very good work. I'm also going to suggest that I'm going to raise a few questions, maybe just my questions, maybe nobody else has them. First, a few comments on the points about the dangers of public entities and their overinvestment at public expense and public jeopardy, and the clear advantage, so proclaimed, of private entities. I would remind you to consider, what about the distortions caused on private entities by the various kinds of subsidies and business tax credits and all that sort of thing? Those go from government to private. It's at least my impression that the

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intent is to distort what otherwise would happen in a purely private environment. I don't think you can say that what might be done in a public entity is necessarily bad and what might be done in a private entity, particularly when it's an environment of sometimes heavy subsidies--somehow ethanol comes to mind--it's not at all clear to me but what there are more ethanol plants built and now...and will be built, than otherwise makes good sense when you consider what the private companies would do. Now Senator Smith seems to think that as long as you direct this distorting influence to a private company, it's all right. I guess I don't see that. I am certainly supportive of private enterprise. I think we need to do it. But I don't think we can be unrealistic and say, anything private is good and anything public is bad. If you look at the performance of public entities and their management and the various kinds of difficulties they've gotten into with accounting irregularities and so on, I think the privates have a much worse record in recent years than do the publics. So I think we need to be evenhanded in the way we look at public entities and them versus private entities. I wouldn't...you know, Senator Schrock has already mentioned that if you look at taxes paid, even though supposedly public entities don't pay taxes, the amount of taxes as compared to private entities in this particular industries are about a wash. I would also suggest to you that, as near as I can tell, you don't have to worry about OPPD threatening to leave the state unless they get some big state subsidy. There are certain advantages that you need to keep in mind. I will, with those comments, just as a expression of maybe some frustration with the balance that we're taking here, turn to a specific question in Section 5 of the amendment. And that has three subsections. The second one says: Except as otherwise provided in Section 3 and 4 of this act, a public power supplier shall not provide on any basis broadband services, Internet services, telecommunications services, or video services. Then the third section...subsection says: This section terminates on December 31, 2007. My question is this. My understanding is that a power supplier...

SENATOR CUDABACK: One minute.

SENATOR RAIKES: ...cannot provide...as we speak, cannot provide

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Internet services without specific authorization by the Legislature. That would have to happen or otherwise they could not do that right now. The third subsection says: This section terminates on December 31, 2007. Could that be interpreted to mean that because this ban is in subsection that after December 31, 2007, a public power company would no longer need authorization from the Legislature to enter the Internet business? I leave that as a question to be addressed by those of you who are more knowledgeable than I. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Raikes. Further discussion on the Brashear amendment, Senator Redfield, followed by Senator Smith and others.

SENATOR REDFIELD: Thank you, Mr. President and members of the body. I rise in support of the bill and the amendment. I want to thank Senator Brashear for working out the details. I know that it's been very difficult. One of the things that I have observed through my years here is the study of our business incentives and looking for return on the dollar for Nebraska. Certainly that's what any investor looks for, whether they're purchasing a stock on their own or whether they're investing for their retirement, whether they're a company trying to invest in infrastructure, or certainly a Legislature trying to provide for the future of the state. And one of the things that I have also observed is the high cost of infrastructure and the changes of technology. The pace is amazing, the pace picks up. And we have seen all kinds of mediums of communication come and go, and I think that it would be unwise on our part if we did not consider very, very carefully before we allowed taxpayers or citizens of Nebraska to pay for investment in infrastructure that does not have a long shelf life in return. So I think that the study that is proposed is a good way to go, and I support that wholeheartedly. I know that when we look at taxpayers, we're looking for profit, and certainly we don't tax them until they make a profit, and we want to make sure that we're returning profit to the citizens of the state. Thank you.

SENATOR CUDABACK: Thank you, Senator Redfield. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. I was

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interested in Senator Raikes' analysis of my comments. I don't think they are entirely accurate, or the analysis was entirely, but nonetheless, that happens. I do want to add emphasis that, as we look across Nebraska, we do have some densely populated urban areas, and some rural areas that are pretty thinly populated. And the Universal Service Fund does provide for subsidies of the rural areas. Like it or not, that's what we have here. And then I want to add emphasis to the fact that, as the critics might say that the subsidies of these independent telephone companies are unnecessary, you know, there are always going to be critics, but I'm impressed with how they leverage those dollars and how far they stretch those dollars, and I want to encourage that because I think that the consumers across rural Nebraska who actually are fortunate enough to live in some of these co-ops or independent areas are fortunate. But I also want to go back in the legislative history just a little bit: LB 827. Then Chair of the Transportation and Telecommunications Committee, Senator Bromm, worked very hard on LB 827. We passed it on the floor of the Legislature here. And a similar policy was litigated, I believe, out of Missouri, went all the way through the court system. And last year we had the opportunity to recodify LB 827 in the intent of the Legislature, and it was quite interesting to me the opposition of recodifying that just about a year ago. We could have addressed, I think, this issue with that, but if we need to take a little broader approach with Senator Brashear's approach, that's fine, and I appreciate Senator Brashear working on this. But let's compare for a moment what consumers see first or last with their electric bill and their telephone bill, and their telephone bill as a percentage of that bottom line, a pretty hefty portion of that is taxes. Now, power companies, the power districts around Nebraska, have been very good at keeping those fees, with my support in doing so, keeping those fees off of their power bill, off of the power bills across Nebraska. There have been some attempts to add a fee here, add a fee there, to cover various endeavors of public policy. So that needs to be highlighted as well, that what seems to be a high rate for telecommunications is oftentimes or largely a tax, and we shouldn't forget about that. Now I remain unconvinced that certain, not all, but certain public power entities in Nebraska would...I remain unconvinced that they don't want to go into the retail

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telecommunications business. Now maybe they don't want to go into full retail telecommunications business, but they would love to pick off some of the heavier users of telecom, because it would be profitable. I mean, I think it's important to note that a municipal electric system is vastly different because they have the critical mass to serve without the vast expanses of a rural electric association or cooperative. So we can't always directly compare apples to apples. But I want to do whatever I can to maintain as much competition in the marketplace as possible. I think that's one of the most fundamental purposes of government is to maintain that free competition. And it disturbs me when one entity...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...wants to protect their turf, but they can actually leverage to get into another business. That concerns me greatly. Whatever we can do to maintain as much competition, I want to support. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Further discussion on the Brashear amendment, AM1334, Senator Baker, followed by Senator Janssen.

SENATOR BAKER: Thank you, Senator Cudaback and members. I'm going to try and bring a few other issues to light here on this bill, since it was in our committee and we have done some work studying the issues. Somebody brought up costs, I think, and I don't remember who was asking questions. But at the committee hearing it was brought out that the cost per mile to serve a customer...in my case, I believe the question was what it would cost to get this service to me BPL of about 2.5 miles from a nearest customer who would maybe have it. And it was \$5,000 per mile. This has been touted as a particular technology that would serve the last person. And we do have power lines, of course, out to our place. We have power. But economically, it wouldn't be feasible to spend \$12,500 to get BPL out to my place. Number one, I already have it, wireless Internet, high-speed Internet, at my house now. My telecom provider also has broadband capabilities fiber not far from my house, so the economics of this serving the last mile with BPL, they're not

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good. I think someone else characterized this as "iffy" technology. There was considerable testimony at the hearing dealing with interference caused by BPL to radio signals, and I believe, without dragging out too many notes, it was accepted that there were problems with, particularly from two megahertz, which would be 2,000 up to I think about 8,000, 2 megs to 8 megs interference up to 1,500 feet. They're working on that. I'm not condemning BPL because of this, because it's something that could happen, that they could rectify this. And I also need to state that the BPL, the signal, was carried on the outside of the power line. It's not like a fiber line within the power line. This is actually carried on the outside of the power line. And part of the cost involved with transmitting it long-distance is it has to be bypassed around transformer connections and so on, as I understand it. I'm not an expert at this, but I believe from my memory that was part of the problem was moving the signal around the transformers on these lines that did serve existing customers. Some of the trials are working. It sounds like some of them failed. We've heard both sides of that. It's a little bit hard to believe, as Senator Brashear pointed out. It's just going to give us some breathing room to study the issue and technology as it evolves. Maybe within the next year and a half, it will become more clear what it is we want to do with this. But to expose the ratepayers to power companies implementing some of this and then having to pay for it when it is a technology that's in development stages, everyone agrees with that; it'd probably not be good policy. So we're putting a moratorium on this. Go ahead and put the task force in place. It's regrettable that the task force has to report by, I believe it's December 1, 2006. I think most of us who are working on this particular issue are term-limited out, so we're going to have to depend on some of the senators who are left after this group of 20 of us moves on in the 2007 session. But I have a lot of confidence and faith in you, and you'll obviously get the job done. Want to also address the issue of Universal Service Fund a bit. That is an issue that we work with a lot in the Telecommunications Committee, Transportation. That was, we are looking at the entire Universal Service Fund set-up and how it's disbursed and so on, and some additional accountability that has been used in the past for eligible local carriers, and so on, to get to the last line and provide

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high-speed switches, and so on. And that technology, and this is my personal opinion, is probably...

SENATOR CUDABACK: One minute.

SENATOR SMITH: ...fairly mature. And now we're looking at the issue of Universal Service Fund possibly being modified, and I say this is my opinion only, not the committee's particularly, but mine, that we need to look at transferring use of USF funds or establishing separate fund to update us on wireless communications and so on. And that is something we will be looking at this summer as a committee. So this all fits into the puzzle. The bill, LB 645, is a part of the...one piece of that puzzle. But we need to take a look at this, and how it maybe would fit in other communications issue, whether it be wire line or wireless, and take a look and, you know, step back and take a look at the whole picture and come up with some recommendations. Some of this will be acted up with the USF fund I think next session after we have some interim hearings on that, and go from there. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Baker. Further discussion, Senator Janssen.

SENATOR JANSSEN: Than you, Senator Cudaback, members of the Legislature. Enjoy listening to the discussion about what we have here, and it made me think of a few years ago. We were in San Diego, California for a meeting. And at that time, southern California and most of the western part of the country was under a power shortage, and some of the people that I watched on T.V. in the evening news, they were interviewing older people who were in dire need of power. They were paying an exorbitant amount for their public...for their power in that state, and it was costing some of those people to keep their air conditioning going, practically all of their pension checks or Social Security checks, you know, and I felt sorry for those people. And I got to thinking how fortunate we were to be living in a state that had public power, enjoyed plenty of power throughout the whole state, at a very reasonable rate. So I appreciate the kind of power we have here. And now...and then I think, let people do what they do best. Public power does a great job.

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I'm very supportive of it. But the telecommunications people also do a great job, you know. And technology is great and, you know, who's responsible for that? I believe the telecom people are responsible for the the communications and the advancements they've made in that area, but I also agree that the public power has provided power throughout this whole state at a very reasonable rate. You know, I like to look back 50 or 60 years and the comic strip character, Dick Tracy. Remember as a young boy looking at the two-way wrist radio that Dick Tracy had. How many of you here...Senator Chambers, I'm sure, can relate to that, Dick Tracy and his two-way wrist radio. We thought, what a piece of technology that must be. But here we are, you know, we've got all the things that happen in here. You know, how many of you are annoyed by those little gadgets that we carry around in our pockets that whistle and buzz and jingle? Especially in our committee hearings, we get very upset with them. But I think back at Dick Tracy and his two-way wrist radio and I think, you know, how lucky we really are to enjoy reasonable power rates and have all the convenience that we have. Who's responsible for that technology? I think it's a two-way street. Public power is responsible for bringing us power throughout the state, and the telecom people are responsible for giving us the technology we have. You know, I remember back when I first was in the Legislature, we were toying about the idea of doing away with the PSC. You know, grain elevators were going away, railroads were down to a couple in the state, and they didn't have a lot to do. They do now. They're overloaded with a lot of telecom problems and rail problems and so on. So, you know, thank goodness we still have them here. But I don't want to see cherry-picking throughout this state, from either side. So that's why I think that I am going to...

SENATOR CUDABACK: One minute.

SENATOR JANSSEN: ...support this amendment and see if, over the interim, we come to some kind of agreement. I know it's going to be a give-and-take on both sides, and that's what this body and the two sides out behind the glass have to do, and I think we'll get the job done. With that, I stand in support of the amendment and Senator Brashear's bill. Thank you.

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SENATOR CUDABACK: Thank you, Senator Janssen. Senator Schrock, followed by Senator Don Pederson.

SENATOR SCHROCK: Mr. President and members of the body, having talked with some people in the industry and some members on the legislative floor, there are some things here that concern me. I'm not quite sure if we're interpreting them right or wrong, but this is going to take some time. I do want to...I'm not going to take my full five minutes. I do want to say that I think...the language says the task force may hire a facilitator. I'm fine with that, but I have a hard time believing the task force is going to progress and accomplish what needs to be accomplished, without a competent facilitator. And I will tell you this. I think without the help that...those of us who served on the Water Task Force would tell you that without a competent facilitator, we may not have gotten very far on the Water Task Force. And so I think it's important that a facilitator be employed, hired, whatever. I'm okay with the language that says "may," but if a year from now this task force is floundering, and they don't have a good facilitator, I think we'll all know why. And so I think that's a point to watch. I would be okay with saying "shall" instead of "may," but I think we'll let it be as is. And then I think it certainly deserves to be monitored by this legislative body. Having said that, I have some concerns with some things in here, that we are maybe going a little too far in what we're banning, and we may be banning some existing practices that are taking place. And we don't know all the ramifications and so, we've got time between now and Select File, or we got time to do it on...to have this discussion on General File, and so with that, I'll thank you for your time and be quiet.

SENATOR CUDABACK: Thank you, Senator Schrock. Further discussion, Senator Don Pederson, followed by Senator Beutler.

SENATOR D. PEDERSON: Mr. President, I'm going to change pace for just a moment. I'm not going to talk about this bill. I'm asking for a point of personal privilege. You have been given a book, bedtime reading, and I hope you do read it. This is our state budget, and it's pretty thick; it's got a lot of detail in

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it. But I would urge you to read first the highlights of this, and then there are some breakdowns as you get into where specific programs were dealt with in kind of a narrative state, and then the details are all here. But the thing that I want to say first is, there are only three things the Legislature has to do. They have to meet, they have to make a budget, and they have to adjourn. Well, this is the 70th day, and by our rules, this is why we're submitting this to you. I would like to thank some people in connection with this. First of all, I'd like to thank the members of the committee. And your Appropriations Committee has been working very diligently, very hard, and very cooperatively, and I've been very pleased at the way in which it has been approached. It's very...they've been very conscientious, they've been very questioning. Secondly, I would like to thank the Fiscal Office. We are blessed in this state with a very good Fiscal Office, that works very hard, they're very accommodating, and I would suggest that if you have specific questions about this budget, that you take it up either with a member of the Appropriations Committee, or that you take it up with a member of the Fiscal Office. As you know, there are ten members of the fiscal staff that are assigned to various agencies, and they can give you some very informative information. Certainly, if you intend to propose any kind of an amendment to this budget bill, I would urge you to contact a member of the Fiscal Office, because they can assist you. And many of these things that you may be interested in kind of overlap into other areas, and I think they can help you in forming an appropriate amendment in this regard. Also, I'd like to thank the Speaker, who very graciously has given us the additional time each day. Now I know you don't mind that you could go home at 4:00 in the afternoon, but we didn't. We went down and we met for about two hours each night. And you know, I think there's a benefit to a product that's done when people are awake, and I think it's helped us to have those two hours after the session has adjourned. And so I'm very pleased with what we have accomplished at this point, and I hope you understand what we have tried to do. I'd like to mention to you that we will have a briefing next Tuesday morning at 9:00 in Room 1524, and at that time, you can ask questions, you can understand the general terms of the budget proposal. An e-mail is going to each of your offices to remind you of this fact, but I would

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urge you to attend. Perhaps have staff members come with you so that you can understand the details as it affects you. Another message that I would have is that today, at 1:00, the Forecasting Board meets again. Our budget has been predicated on the forecast that was proposed when the Forecasting Board met in February. We do not know what plus, minus, or neutral the Forecasting Board will do, as far as potential revenue for the state, but our budget is predicated on what we already knew, and that's all that we could do at that point. This is not the time to be trying to make a budget discussion. This is a time for you to take this material and to study it and to come back when we get back here on Tuesday, hopefully, for you to be at the briefing and talk about this matter. But I would urge you to read it very carefully. So with that, I thank you very much for the time to tell you about this, about this budget. Look forward to any questions you may have. Thank you.

SENATOR CUDABACK: Thank you, Senator Pederson, very much for that. Mr. Clerk, items for the record?

CLERK: Mr. President, pursuant to Senator Pederson's comments, your Committee on Appropriations, chaired by Senator Pederson, reports LB 421 to General File with amendments; LB 422, LB 423, LB 424, LB 425, LB 426, LB 427, LB 614, and LB 746, to General File, most of which have committee amendments attached, Mr. President. (Legislature Journal pages 1330-1336.)

SENATOR CUDABACK: Thank you, Mr. Clerk. On with discussion of the Brashear amendment, AM1334, to the committee amendments to LB 645. Senator Beutler, followed by Senator Brashear.

SENATOR BEUTLER: Senator Brashear, I want to start through the amendment a little bit, to be sure I understand it, and if I could ask for a couple of clarifications, it might be helpful to sorting through things in a more expeditious fashion.

SENATOR CUDABACK: Senator Brashear.

SENATOR BEUTLER: As I see the changes being made by this amendment, it's really divided into two parts. There are those sections that are permanent in nature, and there are those

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sections that represent, it appears, a kind of moratorium until a date a couple of years off, at which time there would be another decision made. As I read the bill, if we're going to be primarily concerned at this time with the permanent changes you're proposing, then we should be concerned with Section 2 of the bill, which I understand to be permanent change, and Section 3 of the bill, which I understand to be a permanent change. So is that much right, so far, that 2 and 3--and we can talk about what's in there shortly--but that 2 and 3, Section 2 and 3 are the ones that we should be concerned about, in the sense that you are proposing permanent changes? Is that accurate? I would yield time to Senator Brashear.

SENATOR CUDABACK: Senator Brashear.

SENATOR BRASHEAR: Thank you, Mr. President. Yes, Senator Beutler, your characterization is accurate; 2 and 3 are the ones that deal with permanent change.

SENATOR BEUTLER: Okay, thank you. Members of the Legislature, I would suggest that we focus primarily on those two sections, not that the others should not be scrutinized greatly, too, but these are the things in the bill that we're making a decision on today, and it will be difficult to change that, once this becomes law. Section 2 says this: Except as provided in a large number of identified statutes, that an agency or political subdivision of the state shall not...that's any agency of the state, or any political subdivision of the state, shall not provide on a retail or wholesale basis, any broadband services, Internet services, telecommunications services, or video services; shall not be issued a certificate of convenience and necessity as a telecommunications common carrier--and I think we need to ask about what that...what prohibitions are contained therein--or be issued a permit as a telecommunications contract carrier. And then it says, these provisions that I just read, shall not apply to any public power supplier. So apparently in Section 2, what we need to think about, is other than public power suppliers, do we want to permanently prohibit an agency or political subdivision, like a city--and now we know we have many cities providing, for example, electrical retail services--do we want to prohibit permanently cities and other political

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subdivisions...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...from either retail or wholesale services of these four types, these four categories of services? Because if we pass this bill, that's what we're going to do, on a permanent basis. This is not a temporary part of the bill; this is a permanent part of the bill. And then it also says a public power supplier shall not provide on a retail basis any of these types of services. So the two permanent parts of the bill that we're talking about is that public entities, other than public power districts, can't provide on retail or wholesale basis, any of these services that are identified, and with respect to a public power company, we're taking them permanently out of the retail side of it. So I hope everybody will give serious thought to whether you want to do that, and explore with Senator Brashear and the floor the dimensions and the implications of those kinds of permanent changes.

SENATOR CUDABACK: Time, Senator.

SENATOR BEUTLER: Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Brashear, on your amendment. Senator Brashear waives his opportunity to speak.

SENATOR BRASHEAR: Thank you.

SENATOR CUDABACK: Next speaker, Senator Kopplin, followed by Senator Chambers.

SENATOR KOPPLIN: Thank you, Senator Cudaback and members of the Legislature. This procedure has been a real lesson for me. I listened to both sides of the issue in committee, and I've got to admit, I got hung up in it, listened to the powers that be and made some decisions without knowing what the real effect on people would be. And I'm referring to Section 2, as Senator Beutler did. Under Section 2, again, any political subdivision of the state shall not provide Internet services and so on.

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Public libraries offer as a service, quite often, to senior citizens and so on, the ability to use the Internet for e-mails, for surfing the Internet, and suddenly, we're saying that even though you've been doing this for 10 years, because the powers that be are in a turf war, you can no longer do this. This is wrong. We need to take a look at Section 2, either amend it, eliminate it, whatever needs to be done, because this was never the intent, I think, of any of us, that public libraries cannot provide a service to senior citizens, but that's what we're doing. And I will present an amendment to that effect, if indeed it is needed. Thank you very much.

SENATOR CUDABACK: Thank you, Senator Kopplin. Senator Chambers, you are recognized, followed by Senator Stuthman.

SENATOR CHAMBERS: Yes, Mr. President, quoting Alexander Pope, since we're expatiating free o'er all this scene of man. I said that on purpose. I happened to hear the sermon this morning, and it was long. I mean, it just went on and on, and every time I'd get ready to leave and come up here, a second wind came, then a third wind, then a fourth wind. And when you all bring those sermonizers here, I'm going to comment on them, and that individual prayed for the men. I listened to him. I listened to whatever happens on this floor. I'm not up here listening to it--prayed for the men. Bless the men who are here. Give them wisdom. I don't even know if my female colleagues picked that up. I listen. He that hath ears to hear, let him hear what the spirit saith to the churches, and you all was having church this morning. You all were having church this morning. And I just kind of chuckled inwardly. As I was telling Senator Redfield on another subject we were discussing, the "Bibble" says God is not the author of confusion. Well there you have it. Let me get to this confusion that is going on this morning. In 1779 there was a guy named Ned Lud, L-u-d, in England. For some reason he was very upset at this stocking maker. So he went into the stocking maker's house, and they had frames on which they made stockings or hosiery. And he totally destroyed both of these frames. From that day forth, anybody who would do something that was destructive would be referred to as a Luddite. In years following Ned Lud, people who thought that bringing in machinery and displacing workers without making any provision for these

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people who had worked faithfully for whoever is bringing in the machinery, to take care of their families and their own needs, those people who looked at that situation felt that it was inappropriate to have this machinery doing these things, so on some occasions they would destroy the machinery. The false notion developed that Luddites, as they were called, were opposed to progress or technological advances. That was not their issue. They were concerned about technology being allowed to create serious dislocations and problems for working people, without making any provision for the problems created thereby. Those who want to prevent these public entities from developing technology, because they say it competes against the phone companies, which are hustlers and shysters, are the Luddites. Do you know these telephone companies charge you a long-distance fee, even if you don't use the long-distance service? Every place they can tack on a fee, they do it. I'm not sympathetic to them at all. They're the ones who don't provide the service in rural areas, and I'm the one who got that special universal service fee tacked onto everybody's bill, so that you can try to provide service in the rural areas. The phone companies, left to themselves, are not going to do what they ought to do. They are not good citizens. As far as free enterprise, it has never been free. The taxpayers have always paid. So when Senator Redfield, bless her heart, and others whose heart will not be blessed by me at this point, will talk about the taxpayers having to pay this or that when it comes to public power and so forth, the taxpayers are absorbing all these incentives given to the big companies.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: They have to pay more taxes. So Senator Redfield and her friends are concerned about what is going to befall the taxpayers, unless it's one of those big companies which inhabits her district. Corporations are making more money now than they ever have before. For the first time in I don't know how many ages, the wages for workers have not held their own. Corporations are getting more work out of fewer people and cutting benefits, but the profits for the corporations are skyrocketing, and the benefits for the corporate leaders are skyrocketing. So there are other issues that need to be

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discussed on Senator Brashear's amendment. But since my time is up now, I will stop for now, and resume my sermonizing the next time. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion, Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I didn't realize that my name was up quite that quick. I'm not quite organized yet. So with that, I'm going to defer some of my comments, but I'd like to give the balance of my time to Senator Beutler, if he wants some.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Stuthman, thank you very much. Again, I want to spend a little time understanding the amendment and being sure that I'm on the same wavelength with Senator Brashear, in terms of what's intended and identified. And so Senator Brashear, if we could have an exchange again, I would appreciate that.

SENATOR CUDABACK: Senator Brashear, would you respond to a question from Senator Beutler?

SENATOR BRASHEAR: Yes, Mr. President, I will.

SENATOR BEUTLER: Senator Brashear, I want to go back to Sections...to Section 2, which is one of the two sections that you're making permanent, and that's the one that prohibits...

SENATOR BRASHEAR: Senator Beutler, may I comment on that?

SENATOR BEUTLER: Sure.

SENATOR BRASHEAR: Just because you had asked me about that earlier, and I had agreed with you. I only want to clarify that we are making...we are taking something that people argue about and we are defining it with some permanency. There are differences of opinion about who can do what now; that's part of the open issue that's out there.

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SENATOR BEUTLER:    Okay.    Sounds like we have other additional questions to explore.

SENATOR BRASHEAR:    So we're addressing it from a public policy standpoint.

SENATOR BEUTLER:    And actually, maybe the questions I have here will give you an opportunity to further delineate.    In Section 2, with regard to the types of items and categories that are...that will be permanently prohibited, you have four categories:    broadband services,    Internet services, telecommunication services, or video services.    Let's just start down that list--broadband services.    Can political subdivisions and agencies currently...do they currently have authority to give broadband services?

SENATOR BRASHEAR:    I don't believe there is any specific authority permitting it or prohibiting it.

SENATOR BEUTLER:    So we're in a situation with regard to broadband services that our best informed opinion doesn't tell us whether they can do those services now or not; is that your position?

SENATOR BRASHEAR:    That's right.    We haven't made that public policy choice.

SENATOR BEUTLER:    Okay, so with regard to...well, let's skip...

SENATOR BRASHEAR:    And particularly not universally, in the opinion of all people affected.

SENATOR BEUTLER:    Okay.    Well, let me then do this a little out of order, and skip from Section 2 to the part that talks about public power districts and wholesale, which are only temporarily imposing a moratorium on.    Now you're imposing a moratorium.    Then am I to understand it, because we don't know what the law is, and in the interim, you want to be sure the law is that they cannot do broadband services; is that an accurate statement?

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SENATOR BRASHEAR: I think as to some, we know what the law is and they could. As to others, we're not...there is a disagreement as to what the law is.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Okay, with regard...

SENATOR BRASHEAR: And so we're keeping everybody at the status quo.

SENATOR BEUTLER: With regard to broadband services, can you tell us which public entities are now authorized to issue broadband services? And specifically, are public power districts?

SENATOR BRASHEAR: Lincoln Electric Services is generally, with unanimity, regarded as having the authority now.

SENATOR BEUTLER: Okay.

SENATOR BRASHEAR: The public power districts and people interested in whether they can or can't will argue with you whether the public power districts have the authority or don't have the authority. And I think ultimately it's one of those questions that either needs to be legislated for clarity or litigated for clarity.

SENATOR BEUTLER: Okay. And with regard to retail-level broadband services, do municipalities currently have the authority to engage in broadband services?

SENATOR CUDABACK: Time, Senator Beutler. Thank you, Senator Beutler. Senator Friend, followed by Senator Stuhr.

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Just recently, this morning, Senator Schimek showed me some...a record of some floor debate that I had recently. I think I need to start being a little more careful about what I spew into this microphone. Actually, I digress. It was funny, but thank you for that, Senator Schimek. I needed

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that laugh. I forgot about it, almost. In regard to this issue, this is extremely interesting to me for a couple of reasons. AM1334 I think makes an impact on a bill that needs to be discussed, and we may need something like this to happen. But what I would point out is that I think we need to exercise great caution in this area, and I'm going to elaborate on that in a moment. I think as you all know, we're going to be dealing, or it's quite possible that we could be dealing with a couple of natural gas service territory type of bills in the future. The whole issue is controversial, it's confusing. It's far-reaching in its scope, in that we have public, publicly owned utilities, huge in themselves, huge corporate interests, privately owned type of utilities, in themselves huge, powerful organizations, and there are many differences between what we're dealing with in discussing this broadband issue and the questions related to the natural gas...the natural gas issues. Many of the differences relate to transportation type of infrastructure. Local distribution companies, when it comes to natural gas, they're different, in that we're talking about, I believe, higher costs. We're also talking about...there's another difference. I think safety is a concern. I don't remember that, you know, we've heard of broadband blowing up in a particular town, or cities where we've had that type of issue occur. But there are some similarities, and many LDCs, or the local distribution companies, that are investor owned--similar to companies, I think, like Qwest, MCI, and the like, and the LDCs that are publicly owned, I guess, the MUDs and everything else, or the locally...the local government owned type of utilities, probably similar in a lot of ways to OPPD, NPPD, things like that. I believe these...I believe overall that these arguments should remain distinct, separate as much as possible. But that said, I think if publicly owned entities are promoted in their efforts to compete against privately owned entities, then we'll run into similarities that could create intense problems, could possibly create intense problems. We've got a situation with natural gas we can't get out of.

SENATOR CUDABACK: One minute.

SENATOR FRIEND: And the reason is because we've got monopolies created all over the state. It's not a free market business.

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We've got monopolies created all over this state that are regulated to compete against each other. How do monopolies compete against each other? Somebody help me out on this. Senator Bourne, you know. (Laugh) Help me out. What we're doing is possibly, I would submit, if we don't take action or if we don't proceed in a deliberate way, what we could possibly be doing is, in my opinion, promoting monopolistic type of business. Now with that in mind, what I would say is that if LB 645 isn't the answer, then maybe we can address it after this...

SENATOR CUDABACK: Time, Senator Friend.

SENATOR FRIEND: Time?

SENATOR CUDABACK: Time is up, I'm sorry.

SENATOR FRIEND: Thank you.

SENATOR CUDABACK: Thank you, Senator Friend. (Visitors introduced.) On with discussion of the Brashear amendment. Senator Stuhr, followed by Senator Beutler.

SENATOR STUHR: Thank you, Mr. President and members of the body. I have appreciated the discussion this morning, and after looking at the amendment a little bit more thoroughly, I too have concerns about...I'm glad that we...there is a facilitator listed in the amendment, because it is very important. I did serve on the Water Policy Task Force. We would not have been able to do what we were able to accomplish without having a facilitator, and a very outstanding facilitator, to do that. What concerns me is, when I look at the fiscal note, there is no allowance for any money whatsoever, for the entire task force, unless I am not seeing something clearly. So that means there is no funds available to hire a facilitator that would be very important in this process, and I think that certainly is a key point. I too have problems with Section 2 and Section 3. It was my understanding that was one of the reasons that we were having the task force, was to look at both sides. I share the same concern that Senator Kopplin has, as far as the services being provided by public libraries. What about hospitals? I

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know that our pivots are controlled locally by some of these services that our public power districts supply, allowing us to turn those off and on. Would all of these be no longer available? I simply cannot support the bill with Sections 2 and Sections 3 included, and I would give the remaining of my time to Senator Beutler, so that he might continue that dialogue between Senator Brashear and himself. Thank you, Mr. President, and if Senator Beutler would like my time.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Beutler, about two, fifty left, if you care to use it.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, did you yield me time, Senator Stuhr? Oh, thank you very much. How much time remains?

SENATOR CUDABACK: About two, thirty now.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: You're next, Senator Beutler.

SENATOR BEUTLER: I would like to pick up the conversation with Senator Brashear, if I could.

SENATOR CUDABACK: Senator Brashear.

SENATOR BEUTLER: Senator, we were on Section 2, you'll recall, and we were talking about one of the four categories that you're permanently prohibiting political subdivisions and agencies from participating in, and you had indicated--and I appreciate this--your best opinion as to what the current law is with regard to the provision of broadband services to...by certain kinds of entities. Let me follow up on that question a little bit more, and ask you this: With respect to broadband services--still staying on that one of the four categories--is that, whether it's...whether LES does it or should a city or a public power district be able to it under current law, and with respect to private companies that might get involved in broadband services, are they regulated by anybody?

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SENATOR CUDABACK: Senator Brashear, would you reply?

SENATOR BEUTLER: Senator, these are not...

SENATOR BRASHEAR: Well, for instance...

SENATOR BEUTLER: ...these are not trick questions, either.

SENATOR BRASHEAR: No.

SENATOR BEUTLER: I don't know...I don't know the answers to these things, and I'm guessing most of us on the floor don't.

SENATOR BRASHEAR: I understand, and I'm trying to be as responsive as I can be. When you say "regulated by anybody," for instance, an exception that's carved out is that public power can provide broadband by satellite, so that's somewhere in the regulatory scheme. But in terms of regulation at the regulatory level...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Does the Public Service Commission have any authority in this area?

SENATOR BRASHEAR: I don't know, Senator Beutler.

SENATOR BEUTLER: Okay.

SENATOR BRASHEAR: Certainly...certainly, they have to have the regulatory authority that accompanies that which they have over any of these industry groups. But if, if...

SENATOR BEUTLER: Is a definition like...I mean, broadband is defined in the first part, first page of your bill.

SENATOR BRASHEAR: Yes, it is.

SENATOR BEUTLER: But I'm still at a loss as to whether that overlaps with whatever definitions we may have of telecommunications. There's no definition of...well, it has the

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same meaning as in 86.117.

SENATOR CUDABACK: We're now on your time, Senator Beutler.

SENATOR BEUTLER: Is that a...are those completely separate categories, or is there overlap between...is broadband a part of telecommunications?

SENATOR CUDABACK: We're now on your time, Senator Beutler.

SENATOR BEUTLER: Then, having posed the question, I would yield part of my time for Senator Brashear to answer.

SENATOR CUDABACK: Senator Brashear, if you care to answer.

SENATOR BRASHEAR: Yes, Mr. President. You are correct. There is some overlap, but supposedly these are reconciled.

SENATOR BEUTLER: I didn't say that there was, Senator. Again, I'm working from a very low level of knowledge here, but there is some overlap?

SENATOR BRASHEAR: Yes.

SENATOR BEUTLER: Okay, and can you tell us a little bit more?

SENATOR BRASHEAR: I can tell you that the definitions used in this amendment are not inconsistent with existing law. They're either supplemental or a consistent amplification on existing definitions.

SENATOR BEUTLER: Okay. Let's move to, then, the second category of services that you're permanently prohibiting, Internet services. Can public agencies, cities, public power districts, other public entities, currently provide Internet services to people, under current law?

SENATOR BRASHEAR: Not wanting to be disrespectful, I'm tempted to say they must be able to, because they are.

SENATOR BEUTLER: Okay, which public entities are now providing

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Internet services?

SENATOR BRASHEAR: Well, we're being, we're being told on the floor that the Papillion library is providing it, Internet services to senior citizens.

SENATOR BEUTLER: Okay.

SENATOR BRASHEAR: Now the problem with that is that they aren't...that isn't some special piece of legislation that allows them to provide to senior citizens, and if they can provide it to senior citizens, then they can also, by extension, provide it to teenage youth groups and anybody else that they want to include. And other members on the floor are telling me about specific providers that are doing it for profit, to anybody who wants it.

SENATOR BEUTLER: Okay, so it would be your opinion that right now, with regard to Internet services, they're totally unregulated with respect to public or private entities?

SENATOR BRASHEAR: At least in part, they are unregulated.

SENATOR BEUTLER: I missed that distinction, though. Go over it again, when you say, "in part."

SENATOR BRASHEAR: At least in part. There are some people that are providing, that are on no basis regulated. They've simply begun doing it, because they have the capacity or capability to do it.

SENATOR BEUTLER: Okay, and no regulatory agency has claimed jurisdiction over those particular activities, to date, apparently.

SENATOR BRASHEAR: That would be my understanding.

SENATOR BEUTLER: Okay. So the Public Service Commission, for example, does not regulate anybody with regard to Internet services; would that be accurate?

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SENATOR BRASHEAR: No, I can't agree with that. For instance, telecom providers are regulated, to the extent we have a regulatory scheme for telecommunications, and they must go to the Public Service Commission. And they are Internet service providers. And so I'm not prepared to stand and say that the Public Service Commission would not, under its general regulatory authority, exercise jurisdiction over an Internet service provider that happened to be a telecom, telecommunications company subject to their jurisdiction.

SENATOR BEUTLER: Okay, so the law is uncertain with respect to whether the Public Service Commission has jurisdiction over the provision of Internet services?

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: I'm not trying to hound you. I'm...I really am trying to...

SENATOR BRASHEAR: I don't think it's unclear. I think if a telecommunications company is subject to the jurisdiction of the Public Service Commission, and it is an Internet service provider, there is no question but the Public Service Commission would, in its broader authority, have some basis for jurisdiction. But somebody who was not otherwise subject to the telecommunications, to the telecommunications act or the Public Service Commission jurisdiction, might be an Internet service provider and not be subject to the Public Service Commission by any obvious or known methodology.

SENATOR BEUTLER: Okay, and then would public entities of one type or another fall within that category that are not obviously regulated by the Public Service Commission?

SENATOR BRASHEAR: Yes, a short answer.

SENATOR BEUTLER: Okay, so probably the answer is yes right now, that no public agency is regulated with regard to the provision of Internet services.

SENATOR BRASHEAR: And then in my experience, there are people

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who will argue both sides of that question,...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BRASHEAR: ...whether they are or they aren't. Some people take...could take the absence of a specific prohibition or regulation to be a license.

SENATOR CUDABACK: Time, Senator. Thank you, Senator Beutler. (Visitors introduced.) On with discussion of the Brashear amendment, Senator Schrock, followed by Senator Mines. This will be your third time, Senator Schrock. He waives his opportunity. Senator Mines.

SENATOR MINES: Thank you, Mr. President, colleagues. Senator Chambers encouraged me to speak when he talked about telephone companies in Nebraska. I hadn't really intended to engage today. I am employed by a communications company, proudly employed by a communications company, and I think I need to make it very clear that some of the information that Senator Chambers was talking about doesn't apply to what I would...I hope you understand the difference between a local telephone company, a local communication company, and a long-distance communication company. There are about 40 local communication, or local telephone companies in Nebraska. Most of us are quite small. The company I work for has about 12,000 customers in eastern and northeastern Nebraska. Long-distance companies like MCI, Sprint, Qwest, they...our customers subscribe to them for their long distance. And Senator Chambers indicated he was upset that they have a base fee on long-distance service, and I want to assure everyone that has nothing to do with local telephone companies. Those are standards and marketing practices instituted by long-distance companies. But there are also many other fees that Senator Chambers brought up, on your local telephone bill, and I need everyone to understand that these aren't fees that local communication companies collect and keep. Local communication companies, in fact, are the tax collector for government fees and taxes. Just a few--we collect sales tax for the state sales tax; we collect a federal sales tax; we collect a local sales tax; we collect local occupation fees. These are all taxes that are then remitted back to local, state,

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and federal coffers. We also, at the direction of this body, collect the E-911 fee. We don't keep it; we remit it back. We also collect, according to the Federal Communications Commission, a Universal Service Fund fee. According to this body, we also collect the Nebraska Universal Service Fund fee. We also collect, at the direction of this body, a hearing-impaired fee. And those are not...I mean, it drives me personally crazy that local telecommunication companies are the tax collector for the state, the federal, and local entities. But we are. Don't confuse that with the basic level of service, local dial tone, local other telecommunications services that are provided. And maybe I imagined this, but I thought I heard Senator Chambers call us scoundrels and not good corporate citizens. In argument to that, and in fact, the company I work for is a very small company; again, 12,000 local access lines. And corporately, we contribute hundreds of thousands of dollars to local--every year--to local organizations, not-for-profits, and we are involved in the community, not just through contributions, but our people are involved, as well. And you'll find that throughout the state. I'm defending communication companies because they were challenged.

SENATOR CUDABACK: One minute.

SENATOR MINES: The same thing can be said for public power, as well. They are good corporate citizens. I don't think that...I don't think...that's not what this is about. This discussion, this amendment, and this bill are very basic. You've heard if from half a dozen speakers already. Should public entities compete with private entities, when the private sector has competition already, and the needs and the wants of people in this state are, by and large, being fully served? I don't think public entities should compete in the private industry, like I don't think private industry should be allowed to compete with our public power friends and neighbors. So thank you, Mr. President.

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Thank you, Senator Mines. Mr. Clerk, do you have announcements?

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CLERK: Mr. President, I do. Revenue Committee will meet in Executive Session at 11:30 in Room 2022.

SENATOR JANSSEN: Thank you. Next speaker is Senator Chambers, and this is your third time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. I didn't realize that I was being recognized, so pardon me for delaying. Members of the Legislature, Senator Don Pederson usually speaks accurately, but he made a blunder this morning. He said there are three things the Legislature must do: meet, budget, and adjourn. But he left out the most important thing: that's mooch, sponge, and eat off the lobbyists. Eat off the lobbyists. And I don't believe in catching my colleagues off guard. You all wanted these late nights, and you're going to have them, based on what the Speaker has laid out. When you go over there in that lounge to be fed by the lobbyists, I'm going to have some kind of protest sign that I'm going to wear, so that public will know--I'm not eating off these lobbyists. I don't get paid well, but I get paid for being here, and the lobbyists don't pay me. It will have something about moochers, spongers, Lieutenant Hungry and Captain Lunch-Hunter, and all ye who enter here to sponge off the lobbyists. I want the public to watch and know who you are, and that I'm not one of them. You ought to be ashamed of yourselves. You're going to let them give you a sandwich. Here's a sandwich and some pop, oh, and some potato chips. There are poor people in this state who don't have those kind of meals given to them by anybody. And the senators dare to take these freebies when we're cutting programs, and the Governor will say there are other programs that may have to be cut to make more money to give away to these big shots, and the kind of people out there behind the glass now. When we were talking about the constitution, were they out there? No. Do they care about the constitution? No. What do they care about? Dollars. And when their dollars are at stake, you'll see them out there so thick that you couldn't grow dandelions among them. That's how thick they are. And then they tell the senators, we're going to feed you. And you're going to accept it? My goodness. For heaven's sake. Egad. Now on this bill, I think the horse is being put before the

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cart. If you're going to have a study, hold everything at status quo; don't put anything in the bill that prohibits this, or allows that. Leave everything just as it is. But if you're going to make certain declarations and freeze them into the statutes so they are law, why have a study? Everything ought to be stripped from this bill, and you ought to only have the task force and let them study. That's all that ought to be done, and that's the direction I'm going. And I want those people in those suits to know what my thinking is. They care about what I say. They want to know what my position is. What other senator are they going to be shaking about, and saying, well, what does she think? What does he think? You heard of E.F. Hutton? (Laughter) "General" Friend, when E.C. speaks, they listen. They don't want to--they hate it. But they better, because they know they cannot get around me. When have you ever heard of going to a doctor's office and saying, Doc, I need something done for me. So the Doc says, okay, come over here, I'm going to stick this needle in your arm; I'm going to stick this IV in the other arm, and I'm going to saw off the fingers on your left hand. Then I'm going to give you a physical examination and see what's wrong with you. You're not going to go for that unless you're insane--going to a doctor in the insane asylum. But here we are, responsible lawmakers, taking care of the public's business on an issue as important as this.

SENATOR JANSSEN: One minute.

SENATOR CHAMBERS: And you're going to do certain things and put it in the law, then you're going to have a study. Why, you've already skewed the whole thing. You've given it a direction. You've drawn conclusions. My good friend Senator Flood would hate to go before a judge defending his client, and the judge tells him, well, Attorney Flood, your client's guilty. I sentence him to 30 years in prison. Now, would you like to present your client's case? We can see the irrationality of that approach everywhere else, but since the big shots and the suits think they're calling the shots, this is what we get. They're not going to call the shot on me, and I'm challenging them now to run roughshod over me, and I'll bet you can't do it, because some of the senators are going to become embarrassed and ashamed that all of this other work is going to be impressed

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into the law, and then have a study. Thank you, Mr. President.

SENATOR JANSSEN: Thank you, Senator Chambers. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President. Members of the Legislature, one final distinction that I wanted to make, an interesting one. Heavily regulated industry, natural gas, for safety purposes, and another industry that's regulated for appropriate business reasons, for customer or rate payer protection, if you will. The reason that an idea like this one isn't a bad one is because, if you can prevent, like we mentioned before, the competition between large public corporate interests and large revenue-motivated corporate entities, you do it. And we're living to learn why that's the case. Since World War II we've had public natural gas, and we've had investor-owned companies competing against them. It's not fair. We know that, and there's nothing we can do about it. What we're doing here is taking a proactive approach, possibly, if the body agrees with it, to stop the potential unfair competition. That's all. Because here's my contention: If we don't, we will be, or could be, back in five or six years, saying, guess what? Qwest wants service territories. Hm, I wonder why. I wonder why. Qwest wants service territories. MCI...well, whoever...whoever it is. We can't compete anymore in this business. I don't want to see that. If we as a body determine that AM1334 onto to LB 645 is the right thing to do, I think we need to do it, to prevent, to be proactive. I would yield the rest of my time to Senator Brashear, if he so wishes.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Senator Brashear, about two and a half minutes.

SENATOR BRASHEAR: Thank you, Mr. President, members of the body. Thank you, Senator Friend. Everybody, of course, we all are free agents here. So everybody can be as intense as they want to. I thought, this is actually...this one's kind of amusing, I think. Maybe I have a strange sense of humor. I'd particularly beseech all my colleagues who were concerned about the libraries to listen to me, please. We'll all wish this one

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hadn't escaped us--duh. Section 2 says, provide on a retail or wholesale basis any broadband, da ta-da, ta-da, ta-da services. Well, it isn't retail or wholesale if you're giving it away free. Now if you're charging for it, that's a different proposition. If you're giving it away free at the library, then drop down to Section 4, where it says, for internal use and purposes of the agency, political subdivision, or public power supplier, or to carry out the public services thereof, like going to the library, senior citizen checks their e-mail, and nobody's making a profit doing it. So we aren't prohibiting a library, unless it has begun to take, in absence of any regulatory authority or mandate or prohibition, and start providing it at a remote location, for a fee. Then we would be banning it. But for senior citizens who go to the library to use the free facilities there, for the purpose of Internet access, we're not doing anything to them, because there's no money involved,...

SENATOR CUDABACK: One minute.

SENATOR BRASHEAR: ...so it, by definition, can't be wholesale or retail. Thank you.

SENATOR CUDABACK: Thank you, Senator Brashear and Senator Friend. Senator Baker, on the Brashear amendment.

SENATOR BAKER: Thank you, Senator Cudaback and members. I'm going to try and explain a few of the questions I think that Senator Beutler raised. Is telecom a common carrier? When they're granted that designation by the Public Service Commission, then they have authority over...PSC has authority over them, and they have to...or they are eligible, then, to provide services to the public, subject to PSC rules and regulations. That's where we are right now with wireless carriers, cell phone carriers, providers. They would like access to Universal Service Fund money, but in order to do that and be regulated by the PSC, they have to be granted common carrier, you know, eligible telephone carrier eligibility to be subject to, or to access USF funds. Too many acronyms here. Right now the PSC has no jurisdiction over the Internet. We have a...currently have a case being litigated against the state

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of Nebraska. PSC had issued an order that said they expected that particular company to collect the Universal Service Fund surcharge on voice over Internet, and this particular company said, no, you have no authority over that, and that is currently being litigated. So we don't have a clear direction on that, at this point and time, using Internet to provide basically a telephone service. That's, as I said, going through the courts. What we're doing here is trying to be proactive, and rather than litigate these issues...and Senator Beutler raises some good questions. There's nobody really knows what authority the public power districts in this case, or any other public entity, has to provide Internet service--high-speed Internet, broadband, call it what you want. That's unclear. So Senator Brashear is taking a proactive approach here and saying, let's stop this nonsense right now, get this thing under control, take a look at it, and although there's some certain issues here in Sections 2 and 3, we make the law here, we're going to change it. I would suggest to the body, once we get this task force put together and they provide some direction, some idea of where it is we want to go, where we need to go, then we'll come back and look at this. But in the meantime, until we get that report and direction from the task force, this is the way it's going to be in Sections 2 and 3. That gives us some stability at the time. And with that, I...I don't know whether Senator Brashear still wants the balance of my time or not. I think he answered that library question that had been floating around, and I agree with him 100 percent. So with that, I believe I will stop, and thank the body.

SENATOR CUDABACK: Senator Brashear, about two, seventeen, if you care to use it.

SENATOR BAKER: Did...I don't think you want it. Thank you.

SENATOR CUDABACK: Thank you. Senator Brown.

SENATOR BROWN: Members. To follow up a little bit on what Senator Brashear said about the libraries, I would like to tell you, quote some of the testimony in the committee, because one of the individuals who testified in support of the activity of the power districts in providing broadband over power line. And

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one of the things, from a technical standpoint, that it's important to note is that broadband...Internet service is not only the service of your computer, but increasingly, as voice over Internet becomes more prevalent, it is also a voice telecom system. But anyway, when all of the possible good that broadband over power line could do was being discussed, my question to him was then, when you're talking about wholesale, are you only talking about recouping your costs, providing this to the people at a very low cost? And the answer was, yes, but with a rate of return. Rate of return is a term that I have generally heard used in the private sector, so that we're not just talking about the provision of services here, we are also talking about an income stream that is outside the scope of the skill or the rationale for being. And some of the issues that Senator Beutler raised are related to that, because we're not talking about comparing a public utility versus a private utility. We are talking about a public utility providing service in an area, service which has a great deal of investment up front, so it's going to have some downside risk, a service that is outside their traditional area, scope of practice. So there are many issues that have been raised. Some of the issues that Senator Beutler raised were...because we talk not about whether the service is regulated; we talk about whether the provider of that service is regulated. And so we do absolutely have to slow this down, because there are too many issues that have been presented by this, far beyond whether the technology is a good idea. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. Senator Beutler, you have spoken three times, so you will not be allowed to speak this time. Senator Brashear. Senator Brashear waives his opportunity to speak. Any further discussion? Senator Brashear, there are no further...Senator Kopplin.

SENATOR KOPPLIN: Thank you, Senator Cudaback, members. I don't believe the library issue has been settled. What Senator Brashear described was someone walking into a library, sitting down at their computer, and reading their e-mail. That may be covered. The situation that I brought forward is not and deserves further study. Thank you very much.

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SENATOR CUDABACK: Thank you, Senator Kopplin. Senator, you're recognized to close on your amendment, AM1334.

SENATOR BRASHEAR: Mr. President, members of the body, having listened to all of the debate this morning, it is clear to me that there are people who have questions, and I have tried to be responsive publicly and also responsive privately, in discussions. And I know that there are those who want to work on aspects of this bill, and I have indicated, as has always been my practice, that I will work with anyone prior to Select File, who has an interest in discussing this bill. I've not tried to prevent people from speaking to it, and I would...but I'm not going to miss an opportunity to ask you to advance the amendment, which becomes...the amendment substitutes for and becomes the Transportation Committee amendment. So we have a couple of procedural opportunities here, and I would ask you to...I'm not going to go through the amendment again, because I notice that a number of people are gone. I think we've had a thorough and far-ranging discussion. I know there are still issues you want to deal with, so I will simply proceed to take the vote, move the amendment into the committee amendment, and then see where we go. Mr. President, I'd request a call of the house, please.

SENATOR CUDABACK: Thank you, Senator Brashear. There's been a request for call of the house. All in favor of the house going under call vote aye; those opposed, nay. Record please, Mr. Clerk.

CLERK: 19 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. All unexcused senators please report to the Chamber. Senator Dwite Pedersen, Senator Janssen, Senator Pahlis, Senator Heidemann, Senator Johnson, Senator Naikes, Senator Stuhr, Senators Landis, Redfield, Baker, Prelater, and Connealy. Senator Stuhr. The house is under call. Senator...Senator Brashear, did you wish to wait for Senator Stuhr, or did

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you...how did you wish to...all members are present or accounted for. How did you wish to proceed, Senator Brashear? Machine vote? There's been a request for a machine vote. All in favor of the Brashear amendment, AM1334, to the committee amendments vote aye; those opposed vote nay. The question before the body is AM1334, offered by Senator Brashear, to Transportation and Telecommunications Committee amendments to LB 645. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 34 ayes, 1 nay, Mr. President, on the adoption of Senator Brashear's amendment to the committee amendments.

SENATOR CUDABACK: The amendment has been adopted. I do raise the call.

CLERK: Senator Connealy would move to amend the committee amendments, AM1351. (Legislative Journal page 1336-1337.)

SENATOR CUDABACK: Senator Connealy, to open on AM1351 to the Transportation and Telecommunications Committee amendment.

SENATOR CONNEALY: Thank you, Mr. President and members. I laid this out a little bit at the beginning of the discussion this morning. I'm in support of a retail ban. I think that we don't want public power in particular involved in retail services of telecommunications. But I think that this bill goes farther than that. And because of the fact that we have a study that I think is needed on deciding how technology is going to be implemented within our different structure here in Nebraska, where our electricity system is owned by us, it's different than any other state, because of that, we have to maybe have a different model also in telecommunications than in other states. We ought to allow cooperation, we ought to allow wholesale, or at least discuss it. And if we ban it now and have a moratorium on wholesale, I believe that there's less pressure to have a good study, to do the work that needs to be done, so that we have everyone at the table to make the right decisions. So to that extent, I would take out "or wholesale" on page 2, line 6, thus continuing to ban, for the time being, any retail of...for public entities, and then also I would put a termination date on that section of the same termination date that we had on the

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moratorium on wholesale. I'd strike section...another section at the end of it, because of the fact that when you do this termination date, that that would not be needed. I believe a ban on retail at this time is what we need. There are public entities that are getting into businesses that they shouldn't, and I'd like to stop that. There's actually been reports of power companies doing things that I don't know whether they ought to be doing. They are providing Internet service and the like that I'd just as soon they stop doing. But beyond that, banning the look at cooperation, or stopping a technology, I think that goes too far. There are other parts of this bill that I think that we're going to discuss as we go through Senator Chambers' amendments and look at the different sections, and I need that discussion, because I don't know if I understand the whole thrust of what we're doing yet. But these two changes, to allow wholesale, not to ban it at this point, and to put a termination date on the ban for retail, I think are moderate adjustments to keep people at the table, so that this gives pressure to the study, to do a thorough study of the issue. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Connealy. You've heard the opening on AM1351 to the committee amendment. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, I'd yield my time to Senator Brashear, so we can know where the sponsor stands on the amendment.

SENATOR CUDABACK: Senator Brashear.

SENATOR BRASHEAR: Thank you. Mr. President, members of the body, Senator Beutler. I appreciate the time. My most serious objection to Senator Connealy's amendment is the fact that he would do away with the moratorium which is provided, and I think the absence of the moratorium forces both the private sector and the public sector to worry about trying to protect their best interests in a competitive sense. I'm not talking a market sense, just in a competitive sense. And so we go from creating a situation in which we have a stand down and a standstill, so we can develop public policy that's responsive to some of the

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things that...inconsistencies or ambiguities that Senator Beutler and others have pointed out in the debate this morning--we go from having the stand down and the standstill to saying, everybody proceed as you see fit, and, you know, may the first person win. And so I rise in opposition to the Connealy amendment, because while I don't doubt Senator Connealy's purposes and motives in offering it, I think we lose the advantage of trying to discipline a particular moment in time, and a particular subject matter, until we can get more information in an expert and studied sense. And I believe that the amendment, the consensus amendment, or partial consensus amendment, as it has been worked out, puts a discipline on the process so that nobody is damaged, but nobody is forced to, in a narrow sense, take advantage of their clout or their ability or their market position, in order that they not lose out, and thus we move forward when we shouldn't. The issues that are identified to be absolutely answered by the task force are things that this body should responsibly want to know, to craft an overall policy. And I'm sorry if I've taken too much time. I return the time to Senator Beutler and indicate that I have some time coming up you can have. Thank you.

SENATOR CUDABACK:      Thank you, Senator Brashear.      Senator Beutler.

SENATOR BEUTLER:      Senator, let me ask for a clarification, because I'm not sure I understood the amendment in the same way that you did. As I understand Senator Connealy's amendment, he's saying that, indeed, agencies and political subdivision will be prohibited for a period of...for the period of the study, from doing any of these four things that we're talking about: the broadband, the Internet services, the telecommunications services, and video services. And he's also saying that public power districts shall be prohibited from dealing on a retail basis, until the study is done. So in terms of prohibiting them from proceeding at all, I'm not sure if I understand correctly what you're arguing. I mean, I would say that the public entities, at least, their feet are indeed being held to the fire, because they can do nothing until this study is completed. And I would ask for your response to that indication of intent.

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SENATOR CUDABACK:    Senator Beutler...Brashear...

SENATOR BEUTLER:      I'm yielding the remainder of my time to  
Senator Brashear.

SENATOR CUDABACK:    About 45 seconds, Senator Brashear.

SENATOR BRASHEAR:    I think that...I think what you have said is,  
in part, true, Senator Beutler, but the wholesale, as I read  
this, trying to study it quickly--I've been working on my own  
amendment--wholesale, they could go forward right now.    So we  
are taking the present situation and locking it in, and we are  
denying the benefit of the bargain they, in fact--public  
power--were willing to make.    So Senator Connealy is getting  
them something that they haven't asked for in the negotiation.

SENATOR BEUTLER:    And you're saying, by striking the language on  
page 3, that that's what will cause that to happen?

SENATOR BRASHEAR:    Yes, sir.

SENATOR CUDABACK:    I'm sorry, time is up.

SENATOR BEUTLER:    If...if we...

SENATOR BRASHEAR:    On page 2.

SENATOR BEUTLER:    On page 2.    Oh, okay.

SENATOR CUDABACK:    (Visitors introduced.)    Senator Brashear,  
followed by Senator Chambers and others.

SENATOR BRASHEAR:    Mr. President, members of the body.    Senator  
Beutler, I would yield you some time.    I'm still organizing this  
analysis.    Thank you.

SENATOR CUDABACK:    Senator Beutler.

SENATOR BEUTLER:    Thank you, Senator Brashear, and I'm trying to  
get a clear understanding of what's being done, and it sounds to

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me like you're right, with respect to the third part of Senator Connealy's amendment, which strikes the language on page 3. If we didn't strike the language on page 3 and there was a total moratorium on everybody...a total moratorium on the public entities that extended for the period of time, whether retail, wholesale, whether public agencies or public power districts, would that be a version of this amendment that you would be amenable to?

SENATOR BRASHEAR:    Senator Beutler, I'd like to think about that.

SENATOR BEUTLER:    Okay.

SENATOR BRASHEAR:    So I don't want to make a commitment on the floor to you that I have not thought through.

SENATOR BEUTLER:    Okay, I would yield the remainder of the time back to Senator Brashear.

SENATOR CUDABACK:    Senator Brashear, it is your time. Senator Brashear waives his opportunity to speak. Senator Chambers.

SENATOR CHAMBERS:    Mr. President, members of the Legislature, I would like to ask Senator Brashear a question.

SENATOR CUDABACK:    Senator Brashear, Senator Chambers is asking you a question.

SENATOR BRASHEAR:    Yes, Mr. President, I'll yield.

SENATOR CHAMBERS:    Senator Brashear, there's a difference between how you described standing still and how I would describe status quo. To me, status quo would mean things staying just as they are. Now your discussion means something different from just things staying as they are; isn't that true?

SENATOR BRASHEAR:    Well, I don't want to be too esoteric, but if you stand down from a situation that exists, then that is the status quo.

SENATOR CHAMBERS:    Then why don't we strike...you can have the

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first...you can have Section 1, because those are definitions. Then we get rid of Sections 2, 3, 4, and 5. That then brings us to the task force. Why can't we just have the task force do the study and that would automatically leave everything where it is, because no reference would be made to anything that exists now. You'd mentioned the subjects that are going to be studied, but nothing is going to be done by the Legislature in the form of positive legislation. Why couldn't it be done that way, if we indeed want to maintain status quo?

SENATOR BRASHEAR: Because, Senator Chambers, respectfully, you are putting people in a position where they have to progress their ability to compete, in order that someone else not do it, or do it when they are not, and they simply lose, because they're unable at a future point in time.

SENATOR CHAMBERS: What concern is that of us, as a Legislature? And I'm asking the question to get a response from you.

SENATOR BRASHEAR: I thank you for that. I believe in this. The concern we should have is the position we're putting public entities in, as it relates to their financial well-being, short and long term, the position we're putting private sector, competitive forces in, as it relates to them being responsible, law-abiding citizens of the state of Nebraska, that are good for our economy and our people through job creation and the like, and the position it puts the state in, in terms of what we will have or not have, in terms of infrastructure and the capacity to utilize it in the future, for technology.

SENATOR CHAMBERS: If the study were undertaken in the way that I'm suggesting, the Legislature would be able to roll back anything that these entities had done, provided they're not of a contractual nature, which the Legislature could not interfere with; isn't that true?

SENATOR BRASHEAR: The Legislature can make law and can apply it, in this instance--we're not talking about criminal things--can apply it retrospectively, but we cannot undo any economic disadvantage that any public or private entity has put themselves in, as a...in terms of investing capital for the

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future.

SENATOR CHAMBERS:      Senator Brashear, if this bill were not to pass, or a competing bill, what would happen as far as the telecommunications industry and public power? What would happen? Would these terribles that you're discussing then take place and run rampant throughout the state, in your opinion?

SENATOR BRASHEAR:      Senator Chambers, I'm truly not trying to make it a parade of horrors or terribles. I'm...I simply think we're not being...

SENATOR CUDABACK:      One minute.

SENATOR BRASHEAR:      ...responsive. You asked me--this is my opinion. We're not being responsive, in terms of establishing a public policy that we want all our corporate and service-providing citizens to comply with. And I think that's our job, to lead, not to follow.

SENATOR CHAMBERS:      I think you might agree, though, that on the approach, reasonable people can differ. You feel that these things that you call "making everything stand where it is," and mine, of saying, "just don't do anything in the area, but have the study," are two differences of opinion, and we can't say with certitude whose might be the most prudent. That's what I would say. You probably feel yours is more prudent.

SENATOR BRASHEAR:      Oh, we could say it with certitude; you just wouldn't agree. (Laugh)

SENATOR CHAMBERS:      Okay, thank you, Mr. President, and thank you, Mr. Speaker.

SENATOR CUDABACK:      Thank you, Senator Chambers. Further discussion. Senator Beutler.

SENATOR BEUTLER:      I'd waive, Senator Cudaback.

SENATOR CUDABACK:      Senator Beutler waives his time. Senator Connealy, on your amendment.

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SENATOR CONNEALY: Thank you, Mr. President, members. Really, the amendment does two things. It says we start over, at the end date of the...the end of the current moratorium in the bill. December 31, 2007, everything is off. That gives some pressure to the process, to make sure that we work hard to come up with the best answers. But it does allow a retail ban, right now, that actually does something. It would stop actions that are going on right now, that it...power companies selling Internet, things like that. There's a roll out of a new satellite system that is going to be less expensive by about half than other satellites, and a lot of power districts have talked about being a part of that. And this would actually stop them from doing that. So this is a real ban. But I think that we have to keep the pressure on the system, to make sure that we make good decisions, that we don't give too much weight to one side or the other of this debate, so that we don't come up with good solutions in the future. The other side of this would allow wholesale operations that could possibly happen within this time period to go forward. I don't think that we ought to have retail competition between public entities and telecom companies, and so I strongly believe that we have to pass that. But I don't think we ought to go farther than that. I think that if that was in place for the time period while the study is going on, I think that will do some good. It will actually stop...it will actually change the way business is done in certain areas. It's something I think the public entities have all agreed to, that they'll stop selling on a retail basis, but that we ought to go ahead and say at the end of the study, that we will start over again, and figure out where this is. That will give pressure to the study, to do good work and come up with solutions in this really complicated area of legislation. Once again, it does two things. It start over December 31, 2007, and it allows wholesale that Senator Brashear's amendment does not.

SENATOR CUDABACK: Thank you, Senator Connealy. (Visitors introduced.) Mr. Clerk, items for the record, please. Yes.

CLERK: Mr. President, a new resolution, LR 96, offered by Senator Byars, calling for an interim study, that will be

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referred to the Executive Board.      Amendments to be printed:  
Senator Redfield to LB 682; Senator Bourne, LB 348; Senator  
Foley to LB 425. (Legislative Journal pages 1337-1338.)

I do have a priority motion, Mr. President.      Senator Stuthman  
would move to adjourn until Tuesday morning, May 3, at  
10:00 a.m.

SENATOR CUDABACK:      You've heard a motion to adjourn until  
Tuesday morning, May 3, at 10:00 a.m. All in favor of the  
motion to adjourn say aye; opposed to the motion, nay. We are  
adjourned.

Proofed by:      AEG