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Transportation and Telecommunications Committee  
October 21, 2016

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[LR519 LR539]

The Committee on Transportation and Telecommunications met at 10:00 a.m. on Friday, October 21, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR519. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Curt Friesen; and Les Seiler. Senators absent: Al Davis; Tommy Garrett; Beau McCoy; and John Murante. [LR519]

SENATOR SMITH: Good morning, everyone. Good morning, and thank you for being here this morning. There are a couple of other hearings taking place today so we may have members coming in and out of this particular meeting, so appreciate your patience with that. And welcome to the Transportation and Telecommunications hearing. Today we are hearing LR519...or this morning we're hearing LR519 dealing with the One-Call Notification System Act. First, I'd like to introduce my colleagues to you. Joining us today on my far left is going to be Senator Les Seiler from Hastings. Senator Garrett and Senator McCoy will not be joining us today. On my far right will be Senator Curt Friesen; I believe he will be joining us here shortly. Senator Davis will not be able to join us today. Senator Murante is in the building and he will be joining us shortly. And Senator Murante is from Gretna. And then we will have Senator Lydia Brasch from Bancroft, and Senator Brasch is the Vice Chair of our committee. So again, appreciate my colleagues for being here. Senator Friesen has joined us now. Committee staff with us today is Mike Hybl to my right; Mike is legal counsel to the committee, and you'll be hearing some remarks from him in testimony. To my left is Krissa Delka. Krissa is on loan from the Revenue Committee and I would like to thank Krissa for helping us out today. And we have one page with us and the page will be taking your paperwork as you come to the table to testify. Our page is Bri Hellstrom; Bri is a junior at UNL. If you're testifying, please complete the sign-in sheet so that it's ready to hand in. And again, the page will take that from you. This is a study resolution and not a bill, and so it's a little different in that there will be no proponents or opponents in testimony. But please do complete a sign-in sheet if you wish to share any of your remarks with us. You may notice some senators referring to electronic devices. We're an electronically-equipped committee and some members prefer laptops and iPads to paper when taking notes. So please don't take offense to that. Finally, please silence all of your cell phones. And I think that covers all the housekeeping items other than the time limit. We're not going to use the lights

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today, but I do want to ask you to try to hold your remarks to the three to five minutes and that will give us some time to ask questions of you and have an exchange with you. Again, we would like to thank all of you for being here today and for participating in the legislative process. When you do come up and testify, please remember to state and spell your name. And when you're done with your testimony, there will be an opportunity for committee members to ask any questions. With that we're going to move into LR519. And I'd like to just make just a real quick opening remark. I spent a number of years myself on the One-Call Board and I do appreciate the members of the One-Call Board and the member utilities and the excavators that attend those board meetings, for everything that you do in Nebraska to keep Nebraska safe, but also to be adaptive to commerce and business and help us to grow our state. I greatly appreciate all the board members. I know that's time out of your busy schedule with your employer to serve on that board, so thank you very much for doing that. And now I'm going to turn it over to Mike Hybl, and Mike is legal counsel to the committee. And if we go back to, Mike, it was '94, was the creation of the One-Call (Notification System) Act. Mike was actually on staff during that period of time and drafted the One-Call Act. And so he probably, perhaps, is the most knowledgeable person of the One-Call Act in Nebraska and we're happy to have Mike back on the legislative committee as well. So with that I'm going to turn it over to Mike Hybl and he's going to give a little bit of an overview on the history of the one-call system. [LR519]

MIKE HYBL: (Exhibit 1) Thank you, Senator Smith. What I'm going to do this morning is just give a brief introduction for LR519. Again, the purpose of the study resolution is to examine whether the One-Call Notification System Act should be updated. For the record, my name is spelled Mike, M-i-k-e, Hybl, H-y-b-l. As Senator Smith mentioned, the One-Call Act was enacted in 1994. I think it's fair to say there was a...there were a number of drafters on the bill. This was actually legislation, there was a very large working group that was put together of interested parties, primarily facility owners and operators that met over the course of almost a year that worked on this draft. The legislation went, largely, unchanged through the Legislature in 1994. I think, probably, one of the testaments to the job that those folks did back then, when they worked on the original act, was until 2013 there were really no substantive changes made in the act. And in 2013/2014 there were changes made. First, in 2013, was LB589 which added a new section to the act which defined the term "bar test survey" and the legislation created an exception to the excavation notice and marking requirements when a bar test survey was

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necessary to address an emergency condition by the operator of a gas or hazardous liquid pipeline when there's a suspected leak of natural gas, propane, or other combustible liquid or gas. The second legislation that was enacted was in 2014. That was a bill that provided that unless there was an agreement to the contrary, that there could be no excavation performed within 25 feet of an underground natural gas pipeline unless there was a representative of that pipeline company there during the excavation. The final change that was also made in 2014, was one that I think just kind of reflects that over the time that the act had been in existence and as we saw change in technology, was just a simple change in the law that the law read that before somebody did an excavation they were required to make a call to the one-call center. Things like the Internet had come along and other means of communication. The law simply was amended to provide that an excavator had to notice the one-call center communicating with technology as specified by the center. I have just four things that I put together for you to refer to during the course of the hearing. One is just a listing of the board members for the one-call center right now. There's the most recent report from the Attorney General regarding enforcement actions under the one-call law. And then a copy of the one-call law, as well as a copy of the rules and regulations that the Fire Marshal's Office has adopted under that act. With that, Senator, unless there are any questions, I conclude. [LR519]

SENATOR SMITH: Mr. Hybl, do you recall back, and it's been a long time, but how broad was the coalition that was used to put together the One-Call Act? Was it... [LR519]

MIKE HYBL: I think it was very broad. I think the folks that were supporting an act in the law put together a pretty broad representation of interest and they were fairly divergent interests in some area. We had a number of discussions about who should be in, who should not, who would not be required to list their facilities. But I think at the end of the day, it did result, for the time in 1994, a pretty good product. [LR519]

SENATOR SMITH: Prior to '94, what did that look like? What did excavation and locating look like for Nebraska, do you recall? [LR519]

MIKE HYBL: And I'm sure people that are going to follow me will have a much better recollection, but as I recall, there was, basically, just encouragement to call, that people would

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mark where utilities were, but there was no specific requirement, you know, as we have with the act that you actually make the call to the center as a requirement before you excavate. [LR519]

SENATOR SMITH: It was kind of a distributive process... [LR519]

MIKE HYBL: Right. [LR519]

SENATOR SMITH: ...as opposed to being a centralized process. Okay, thank you. Questions from the committee members? Senator Friesen. [LR519]

SENATOR FRIESEN: Thank you, Chairman Smith. Mr. Hybl, could you refresh my memory on agricultural soil sampling? There was some conflict there of whether or not they had to do the one-call. Was that ever addressed or is that still kind of left out in the open? [LR519]

MIKE HYBL: As I was looking through there, I know there was...in 2011/2012 time frame there was some discussion on that. I don't recall that any of that legislation was passed, but if I'm wrong, somebody from the board will correct me on that. [LR519]

SENATOR FRIESEN: Thank you. [LR519]

SENATOR SMITH: Any other questions for Mr. Hybl? All right, thank you, Mr. Hybl. And I'm going to invite...I think we're going to have two or three members of the One-Call Board come forward, and were they prepared to make some opening discussions or remarks or field any question for us? You're welcome to come alone or have your colleagues join you. [LR519]

NATHAN STEWART: Yeah, we were curious about that. Yeah, why don't Susan and (inaudible) come up. [LR519]

SENATOR SMITH: And we can pull a couple of chairs over next to you. [LR519]

NATHAN STEWART: Okay. [LR519]

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SENATOR SMITH: They're going to bring some chairs over to you. [LR519]

NATHAN STEWART: I was curious how we would do that with one chair. [LR519]

SENATOR SMITH: Yeah. And the mike is not so much for amplification, but to be able to capture your remarks for the record. So you may need to speak loud enough for the folks in the room to hear you. [LR519]

NATHAN STEWART: Okay. [LR519]

SENATOR SMITH: Right. And let me just...and have each one of you identify yourself and spell your name for the record. [LR519]

NATHAN STEWART: I'm Nathan Stewart with...I work for Black Hills Energy, but today I'm representing the One-Call Board of Directors. My name: Nathan Stewart, N-a-t-h-a-n S-t-e-w-a-r-t. [LR519]

SUSAN LYNCH: Good morning. I'm Susan Lynch, and I'm representing Nebraska 811 this morning. It's S-u-s-a-n L-y-n-c-h. [LR519]

ANDY HARTMANN: My name is Andy Hartmann and I sit on the board of directors as the excavators representative for the state of Nebraska. And that's A-n-d-y H-a-r-t-m-a-n-n. [LR519]

SENATOR SMITH: And I think the mike is probably good enough. It will pick up your voices pretty well, so you don't have to lean in to it. [LR519]

ANDY HARTMANN: Okay. [LR519]

NATHAN STEWART: Okay. [LR519]

SENATOR SMITH: It's just that it's not going to amplify. [LR519]

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NATHAN STEWART: It's just a normal human thing you got (inaudible)... [LR519]

SENATOR SMITH: I know, I know. Again, thank you for being here today. And I'm going to leave it to you if you have some opening remarks and then I'm sure we have some questions for you. [LR519]

NATHAN STEWART: Sure. Yeah, we've got, kind of, little bit different expertise on some things, so I'll just open by saying that we're fully supportive of looking at the law. I think as we've been doing this for '94...not all of us have been on the board since '94, but some have. I know Andy has been on the...involved in it since the beginning. But we have seen a lot of changes that have come around since 1994 and some of those are surrounding technology, some around best practices that have been developed around the country. And those things have not, necessarily, been codified in the law. Some of them probably weren't even envisioned in '94 when it was passed; others have just come about through people trying different things and developing things that work well. The One-Call Board is definitely committed to helping grow Nebraska and we see excavation as a key part of that just because for the simple fact that anytime you see kind of economic activity you kind of see digging that goes along with that. But the digging that happens definitely needs to be done safely. And that's kind of why we would like to see some law changes so that we can kind of ensure, and everyone is on the same page about doing that. If you look around the country, there's been some examples of when things were not necessarily done safely as far as excavation. I just listed down a few of them. A few years ago there was an incident in San Bruno, California, with natural gas that involved eight people getting killed. A few years ago, there was one in Kansas City where, some of you might have seen that, JJ's Restaurant, a person was killed. We've had some closer to home with M's Pub in Omaha. And then even I saw this week, a couple days ago, in Portland there was an excavation incident that involved natural gas where there was a building that blew up. So the seriousness of it is real. And if done properly, if excavation is done properly and best practices are followed, those things can be very minimized. But if they're not, they can be very risky. Like Mike said, the One-Call Act was passed in '94 to kind of protect underground facilities from excavation damage. Now what was being done before that, you know, I think it would...probably was just kind of an honor system and you call each utility that you thought might be in the area. So it was a really good idea, it was a really good thing, and I think it has been a success. I think just the

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time has come that it needs to be improved and some of the best practices that have been developed around the country need to be added in. And also some of the technology pieces that have come along need to be mandated. The board does consist of 22 members; 19 of those members are voting, and 3 of those are nonvoting. So, like Mike referenced, it represents a wide variety of utility stakeholders, anybody from natural gas entities, electric, water, rural water, and all those kind of things. The last thing that I was going to talk about in my part of the remarks is just been kind of the growth, the growth in the system and the growth in the amount of excavation activity. I think some of those things probably could not have been foreseen in '94 when the law was written. For instance, in the last five years alone, there's been a 40 percent increase in the volume of inbound requests. Now, an inbound request would be when an excavator picks up the phone or goes on the computer and says I'm going to be doing an excavation, that gets sent to the call center. This year alone it's up 16 percent. Just for an FYI on the number of damages, in 2015 there were 3,674 damages reported to the one-call center. The reason for that is when there is a damage to a facility by an excavator, they are required to make that call to the center to notify the utilities that that damage has happened. Now, the 3,674 may sound like a large number, but it actually probably only represents about 40 percent of the time that things actually are hit. For instance, when I looked at our Black Hills data, the...we know how many times we actually got hit. We looked at it for Lincoln and saw how many times excavators actually reported that damage and it was right around 40 percent. And every year that we looked at it, it's pretty close to those numbers. So if you extrapolate that out, you know 3,600 is 40 percent of maybe the actual number, assuming that everyone reports on the same level. I think, probably, for instance, natural gas probably people are more likely to report that versus like a telecom they probably are even less likely. Some of the other things that probably were not anticipated when the law was passed, probably in the last five to ten years, there's been kind of a rapid growth in the number of fiber installation projects. The fiber installation they want to get high-speed Internet or gigabyte service to customers. They will come into an area and try to install that to every business and house in town in a very short period of time. This causes a big strain to the system because no one is kind of staffed to handle that amount of excavation requests that can come in in a very short period of time. Also, like directional drilling was probably not around or used very extensively in '94, and it kind of comes along with its own set of risks and liabilities. One of the other things would be safe digging methods. There's technology now that a lot of excavators use where they can safely dig around a pipeline. Once

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they get their marks, in the system you're going to call in for your locate request, the utilities will come out and mark where the lines are and put paint on the ground. There's not a lot of guidance in the law today to tell an excavator, for instance, how he is to dig around that facility. Once he gets his marks on the ground, his duty kind of ends as far as the statute is concerned. It doesn't really give him a lot of guidance on how he is to dig around that. There is extensive technology today that allows the excavator to dig safely around that, whether it's through use of water or air or even, not technology, just a plain shovel. But there's not a lot of guidance for an excavator on how he's to dig around that line. So that's some of the changes that we've seen, you know, that we feel the law would be warranted to looked at to kind of develop...or include some of the best practices that really have been developed around the country. Susan is going to talk to the one-call center. Susan has been, in one capacity or another, involved in the one-call center operations. The board does not actively run the center, we hire a vendor to actually process the inbound tickets and send those out to the utilities. Like I said, Susan has been involved in that, one capacity or another, since the beginning. So her perspective is pretty good, so. [LR519]

SUSAN LYNCH: All right, thank you, Nathan, and thank you for your time this morning. I'm going to give you a real quick overview of the actual process. I think it's important that everybody understands just how the one-call system works, especially for those of you in the room who may not be as intimately involved in one-call. So with that being said, you're going to learn the process of, you know, when somebody wants to dig to when they can safely dig as it relates to one-call. And then I'm going to throw in a lot of key terms, a lot of one-call lingo that you're going to probably hear quite a bit of today so you understand what those terms are and what people are referring to. And again, I want to kind of contrast some of the technologies that Nathan had mentioned. We continually evolve with the technologies as much as we can based with the law right now and I kind of want to do some contrast from back then. So I will be as brief as I can and I will talk fast so please slow me down if you have any questions. So anytime anybody in the state of Nebraska wants to dig, and that anybody I'm going to refer to as an excavator going forward, so anytime an excavator in the state of Nebraska wants to dig, they are required to contact the one-call center, Nebraska 811, with a set of specific information about their upcoming dig. That would include the name, company name, what type of work they will be doing, where they'll be digging, location, driving directions, the depth of the excavation. Historically, they can only do that by calling in on a phone, landline, probably from a home or an

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office, and if they were super technologically astute, they could use a fax machine. But today, based on the feedback from our contracting community and our excavators, they're a mobile work force and they needed a mobile solution so we now have the electronic entry which Nathan also alluded to. So today, we have almost 65 percent of our excavating community placing these one-call requests, again another term you're going to hear, electronically. Now you can do that with a mobile work force. They can do it on their laptops, their phones, their tablets in the field. So when they call us with this required information, our job as Nebraska 811, the one-call center, is to process that information on our one-call software. And part of that process is we take the directions they gave us and we identify on a map of Nebraska their dig site. And we outline that dig site on that map. And why that's important is because that area that we outline on that dig site, that lets us know what utilities we need to notify about this upcoming dig. So the utility companies across Nebraska have registered their underground lines on our maps. When we identify a dig site, if one of their lines falls in that area, we know we need to tell this utility this excavator is planning to dig in this area, you have lines, you're responsible for now responding back to this excavator on how you're going to protect those lines and keep him safe. So that's how that process works. Now, once we get that information and we've processed it from the excavator, we create what's called a one-call ticket. And what we will do is we'll provide this ticket number to the excavator along with a list of those utilities that were in that dig site. And what that does is that tells the excavator, okay, I've got these utilities that I need to wait for, I need to get a response from them before I can safely dig. So now they've got their marching orders, they've got their ticket number, they're going to wait for the utilities to respond; now what we need to do is get that one-call ticket or notification to those utilities. And historically the way we would do that was pick up the phone, read off the information, they jot it down or we'd send it fax, or even those dot matrix printers that would chug out the paperwork. Essentially what it would do is it would end up with a stack of one-call locate requests all in the paper form, written word, and that's what the utility locators had to go on. And so they would read their directions, they would drive and they would locate. Now with this electronic version, our utility locators can also log into the system, read all that information that the excavator provided us to give to them, and also see a picture of that dig site right there on the state of Nebraska and that helps them identify where they need to locate and how they need to locate this process. So once they've done that, their responsibility...we've given them this one-call ticket, the utilities are responsible to respond now. They need to decide how they're going to respond and they need to respond back to

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the excavator in some fashion. Typically they're going to go out and they're going to paint and they're going to flag their lines and tell them where it's at. Or they're going to determine, based on the information the excavator gave and where their lines are, they're going to determine it's all clear--again, another term you're probably going to hear--an all clear, which means the utilities are not going to mark their lines, they don't need to because this dig will not impact their lines that are in that area. When the excavator gets these responses, as they come in, the excavator checks that utility off the list--I've heard from utility A, I've heard from utility B. When they've heard from all those utility companies, then the excavator knows, okay, I'm good, I've heard from them all, I can now safely dig with respect to the marks and the tolerance zone. And that's, essentially, how the system works. Now, there's another piece of it and that's the communication part between the excavator and the utility. And that's one thing I want to touch on real briefly. Back in 1994, essentially what would happen is utilities would get this paper and they go out and they would have to look at these...they would look at the dig site, they would determine if they needed to mark it, they would determine whether it could be cleared just based on the dig site, or they needed more information so then they would have to try to call the excavator. Remember, this is 1994, there probably wasn't a whole lot of cell phone technology at that time, so they were calling that landline again. And then what the excavator would do is on their ticket they knew they had a start time. So they would usually sit and wait for that start time and then show up at the dig site to see if all the utilities had responded so they could check them off their list so they could begin digging. Without that electronic communication that we have today, that could cost a lot of time on both ends of it. I mean, here's an example: if a utility company can log in, see the one-call ticket, and can do what's called electronic positive response. This is another term we're going to talk about. This is a voluntary process in Nebraska at this point in time, electronic positive response. And I mention that because some of our surrounding states it is mandatory. And if you have additional questions regarding that, please contact me and I can give you some additional information. But what's nice about this electronic positive response, it allows utilities to log in, read the ticket information, determine how they must respond, best respond to this locate request, and then they can either drive on site, mark it, log in, check that they've marked it, and then send that e-mail off to that excavator immediately saying we've marked your site. Excavator gets the e-mail, they open it up, they say utility A has marked it; check, they're off my list. Another way that's easy...makes it easier for the utilities is they can log in first thing in the office, check their ticket list, see where they need to go out and locate a request and if they see

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that there's a dig site here and this is where their facilities are and it's not going to impact their lines, they know it's a clear just by reading the description, they can just clear it from the office, not incur the expense of driving a truck out there to put a flag on that site that says all clear; send it electronically, the excavator gets it, they can check off utility B has cleared, they've already heard from two of the utilities. Another way why it makes it nice is we've also given a voice back to the excavator, because there are times when the excavator will pull up on site, trucks rolling, full crew ready to dig, the start time, and they may not have heard back from the utility. They've got...you know, utility C, haven't heard from them, they haven't called, they haven't responded electronically, there's nothing on the ground. That allows the excavator...we've allowed the excavator now to contact the call center and report what's called a nonresponse. And with that nonresponse ticket, we send it back out to that utility C that's missing, nowhere to be found, no marks to be found, and we send a ticket to them that prompts them to say, hey, you've got a crew on site right now, ready to dig, it's their start time, you need to respond back to them. So, essentially, in summary, excavator needs to dig, he provides required information to the call center; the call center processes the information, provides it to the utilities; utilities respond as appropriate. Excavator makes sure they all respond. He safely digs with respect to the marks and the tolerance zone and that all happens in a two business day period, if it's just a regular locate request. Are there any questions? Yes, ma'am. [LR519]

SENATOR SMITH: Senator Brasch. [LR519]

SENATOR BRASCH: Thank you, Mr. Chairman, and thank you, Ms. Lynch, for your testimony. When you speak, and I was looking through the statutes here, the term "excavator," are you speaking to it as residential, commercial? And then Senator Friesen did ask about agriculture. And I believe back in 2011 is that agriculture does have some exemption to the one-call system, is that correct? [LR519]

SUSAN LYNCH: There is an agriculture exemption listed in the statutes, correct, yeah. [LR519]

SENATOR BRASCH: Exemption, yes, there is. I remember. [LR519]

SUSAN LYNCH: And then in answer to the...I define excavator very broadly,... [LR519]

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SENATOR BRASCH: Okay. [LR519]

SUSAN LYNCH: ...basically anybody in the state of Nebraska--homeowner, personal property owner, contractor, farmer--that wants to dig. [LR519]

SENATOR BRASCH: Okay. And so the next questions is, in some of our rural areas, we still have dead zones when you talk about mobile technology. So I believe, perhaps, the excavators, commercial, use satellite rather than traditional wireless hand-held devices. So...and we have worked with the Public Service Commission and many of the vendors that there is a lot of expense and a lot of challenges and we've been to one end of the state to the other trying to solve having that technology readily available. But to my knowledge, it is not available everywhere yet. But you propose to introduce legislation before it's there a hundred percent? Or what would you like to see happen? [LR519]

SUSAN LYNCH: Well, more so what I was providing was a history of how that electronic is being used currently where it's available. [LR519]

SENATOR BRASCH: Okay. [LR519]

SUSAN LYNCH: Understand the phone option, dialing the phone, is still available and probably will always be available. [LR519]

SENATOR BRASCH: Okay. All right. Okay. [LR519]

SUSAN LYNCH: So this was just a supplement for our mobile work force that... [LR519]

SENATOR BRASCH: For a mobile work... [LR519]

SUSAN LYNCH: Yep. [LR519]

SENATOR BRASCH: Okay. [LR519]

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SUSAN LYNCH: ...has that technology in the field. [LR519]

SENATOR BRASCH: Okay. And then the other when you speak of notification, and this is to the committee as well, just most recently in District 16, my district, in Decatur, we had the unfortunate anhydrous ammonia leak in a pipe where we did have a fatality. And the one-call system, is that enacted in any way once the leak is discovered? I know they have...they're working on new pipe and everything there, or is this just building new pipe, or repairing pipe? What is the scope of the one-call system? [LR519]

NATHAN STEWART: Yeah, whenever there is a damage...if there's going to be an excavation involved in that repair, it's just like you would on a normal locate request, you're going to call it in. But there's kind of an expedited time window. Normally, you'd have to wait 48 hours. It's more of a two-hour window that...but that...again, that's kind of, probably, one of the holes in the statute that it's not clearly defined, it's kind of become an industry practice, but it's a tighter time window than would be on a normal excavation. But you'd still want to notify, even on a repair of a facility, so the other...other facilities in the area. [LR519]

SENATOR BRASCH: And that would be part of the modernizing, this bringing it into the year 2016 and beyond? [LR519]

NATHAN STEWART: Yeah, and just a little bit of language cleanup to clearly define what some of those things are and what the time windows are, instead of just relying on what the industry practices, because if one person doesn't necessarily decide to follow the common practice, then you're coming back to what the statute says. And if the statute is vague, then... [LR519]

SENATOR BRASCH: Okay. [LR519]

NATHAN STEWART: ...it's just...it makes it clear rules for everyone. That's some of the things that we would like to see is just some of that language clean up to define. [LR519]

SENATOR BRASCH: Okay. Very good. Good presentation, thank you. [LR519]

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SUSAN LYNCH: Thank you. [LR519]

SENATOR SMITH: Senator Seiler. [LR519]

SENATOR SEILER: Mr. Chairman, thank you. On the one-call center, I followed you on who gets checked off, do you get after the excavator has everybody checked off, do you get a copy of that checkoff so you know that project is closed? [LR519]

SUSAN LYNCH: If they are using that electronic positive response, it will be documented. And then we will always send out a final communication to the excavator on who has responded and who has not. [LR519]

SENATOR SEILER: Okay. [LR519]

SUSAN LYNCH: So we do close the loop from a communication point from the call center. [LR519]

SENATOR SEILER: Thank you. [LR519]

SUSAN LYNCH: You bet. [LR519]

SENATOR SEILER: I have nothing further. [LR519]

NATHAN STEWART: Also have Andy Hartmann here. And like I said, Andy, again, has been involved in one capacity or another on the One-Call Board since it began, I believe. If I'm not mistaken, you've testified in the... [LR519]

ANDY HARTMANN: Right. [LR519]

NATHAN STEWART: ...original hearings to start the one-call bill. So Andy can talk to kind of an excavator's perspective. I mean, I'm kind of utility focus and Susan is one-call focus, but Andy can kind of talk to the excavator view of how the one-call has kind of evolved. [LR519]

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SENATOR SMITH: And Mr. Hartmann is a second-generation One-Call Board member, right?  
[LR519]

NATHAN STEWART: That's correct. I asked Andy last night when he joined, and apparently it was 2010, but he said that was after his dad served in the same... [LR519]

ANDY HARTMANN: Capacity. [LR519]

NATHAN STEWART: ...same capacity since '94. So there's been a Hartmann in that chair since the beginning. [LR519]

ANDY HARTMANN: It's been screwed up ever since. (Laughter) [LR519]

NATHAN STEWART: No, you do a great job. [LR519]

ANDY HARTMANN: Right, guys? [LR519]

NATHAN STEWART: No, you do a great job, great job. [LR519]

ANDY HARTMANN: Yes, I testified for this in '93. And someone asked what was going on at that time. One of the stories I've brought up, and I think Mike will probably remember it, and I know most of my guys will too. Prior to that you had to know who the local people were. And there could be a sign out somewhere that said call this number, whatever. Well, that was good, a lot of them were either faded out, rusted away, or gone, or shotgun shells blown through them or whatever. So, you had to call somebody and than meant you had to call everybody. Well, at that time it was usually just the telephone, electric, and maybe a gas somewhere. It was fairly easy until you got in...that was out in the country. If you got in the towns where you wanted to do some whatever work in town, that was a little difficult to know where everything was. But every town in the '50s and '60s, they always had that one person that was there when the small towns were...utilities were upgraded--water, sewer, whatever. And Dereck Bookstrom, one of the contractors behind me, his grandpa was part of this operation. Well, so this goes back a few generations, but back then most of these towns had this one person that was there and he was

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there forever. And usually his name was "Ray." I don't know why, it always seemed like Ray was their name, so you looked for somebody named Ray and then you would go see him and then he would...he could walk over and tell you where every water shutoff was, where the manholes were; even though they were covered up, he knew where all this was. Well, as time went on, all the Rays started dying (laughter) and pretty soon there was no Ray in Bee, Nebraska, or Garland or wherever. And there was...you didn't have that person to take over because he never let that information go, he always kept it up here. Well, the contractors, we didn't know where...what to do. So prior to '93 there was a group that got together and started looking at different states, and Kansas was one of them, I believe. And my father just happened to be asked to be on that committee to come up with some solution to this problem. And in '93 I was able to testify, like I said before, in this same room, so I've been here several times. That gives you a...hope that story there gives you a little reason why the one-call system was developed, because nobody really knew. If you were in the area, you lived there, you (inaudible) went out a hundred miles away you didn't know anybody and that was a very dangerous situation to get into. So that's, as my point of view, that's why the one-call system was developed to help the excavator, and that means anybody who digs. And it's...you know, what Susan talked about was the gold standard, this is what's supposed to happen. As a contractor who sits on this board, and I have to listen to my other contractors across the state, it doesn't always happen that way. And that's why a lot of the contractors are here today, that's why I'm here today. We do need to have some changes to the law; whether they're big, small, whatever, it needs to be opened up and looked at. One of the things that we're having trouble with are third-party locators. And third-party locators is a company that is hired by a utility company to go out and locate whatever it is. It's not very...I mean, it is efficient in a way, but it isn't on the other hand. It seems like the locating services, they're overwhelmed with the amount of work that's being done right now, which then...a lot of utilities aren't being marked, and this certain company...a company may have two or three contracts with different utilities. So if that certain locating company does not show up, you could have up to three utilities that aren't being marked, maybe more. So the contractor comes in to do his work--and he's supposed to have 48 hours, remember that, 48 hours--sometimes they don't even show up, they don't even tell us why they're not showing up. By law we could just start digging if we wanted to, but if we hit something, then we're liable, which I think is just plain wrong. If they need more time, then they should call us, let us know, negotiate it. I have done that with different locating companies. The guy says, I just can't make it, is that okay, can we

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make it another day? If they can communicate, you betcha, that's great, works out fine. But it seems like it's getting out of hand and I really think it ought to be looked at in the aspect of a locating party being fined, penalized, or something by the AG's Office for not performing their duty. The contractor, if you read it, we got all the fingers pointing as us. If we do something wrong, by gosh, we're it. And the AG's Office can go after us, the Fire Marshal can; whoever wants to, they can just point the finger at the contractor and we're pretty much done. Now, if we screwed up I'm going to say, yeah, we deserve it, I have no problem with that. But it was out of our control, I think...and it's somebody else's problem for not doing what they're supposed to do, then I think the AG ought to have a way to go after the locating company. That's what I think some contractors would like to see, and I'm sure they'll talk about it today. The other thing that I'm very, very strong on this point here, when the law was enacted the State Roads Department did not have to belong, Nebraska State Roads Department; by law they do not have to, state statute. At that time, they didn't have a lot of utilities buried along highway systems, interstate systems, wherever; they even have it inside towns now, cities. They do not have to locate the utility because they're not part of the one-call system. I have been in discussion with the State Roads Department Director, several meetings with him, and it's still not working. I have hit...came close to hitting, let's put it that way, hitting a utility that was owned by the State Roads Department on a project that the...I would have probably hit it, let's just put it that way, if the local guy from that area hadn't come up to me and said, hey, do you know there's an electric line that comes from that farmer's field over to power this rest area? And I says, no, it isn't marked. All the other companies did. State Roads Department did not have to. Well, out of the goodness of this guy's heart, he warned us about it and he automatically had his people...his people come out and mark it. I do have some...I don't have the instant right in front of me, but I know there was one on...I think the Gretna interchange a few years ago where a company was going along doing their thing and they hit an electric line, or something like that, that wasn't marked by the State Roads Department and it was their line. It wasn't anybody else's. This company was fined...or was fined because they had to repair the line...the damage to the utility that wasn't marked. It was negotiated with the company and the State Roads Department and the price came down a ways. But again, I keep emphasizing, when I testified for this in 1993, one-call system is what we wanted and that's what we thought we had. This isn't a one-call, well, kind of, system if you want to belong. It's a one-call system. If that's what we're going to call it, then that's what it should be. And I'm very adamant about that because I have people that work for me that I want

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to see go home at night in their pick-up, or car, or motorcycle, whatever goofy thing they drive to work. I don't want to see them having to go to the hospital in a rescue squad, or I have to go talk to their wife or kids that daddy isn't coming home. Sometimes they say it's an economic thing, they don't have the money. One of these days, somebody is going to get killed, whether it's an excavator's employee or if a traffic signal gets hit and you got a bunch of people going down the interstate just going like crazy and they have a massive accident, we have people piled up all over the place, it just isn't worth it. And I hope you consider somehow getting the State Roads Department to belong. That's...I'm very adamant about that. I know I'm...also about the third-party locators, I think that's a...I'll go back to that, since we've had such a big influx of underground utility...fiber optics, that type of stuff, going on right now in the big cities, I think that's where a lot of the frustration is coming from because there is so much out there to do, the man power they need isn't there. If they can't do the work, then they're...and they're still going to be in business and they still want to play that game, then there ought to be a law that says, okay, if you don't want to play the game, then this is going to get...then we're going to fine you or penalize you somehow. I guess that's my rant for the day. So do you have any questions?  
[LR519]

SENATOR SMITH: Yep, I'd like to have a clarification from you and I think...for folks to understand, the board balance, that the board members you have 19 and 22, I think 19 voting members and then 3 that are nonvoting. [LR519]

ANDY HARTMANN: Correct. [LR519]

SENATOR SMITH: And the excavator representation, the independent excavator does not have a voting role on the board. [LR519]

ANDY HARTMANN: Correct. [LR519]

SENATOR SMITH: The board is made up of member utilities. Those are the voting members; they are the ones that have the product in the ground, if you would. [LR519]

ANDY HARTMANN: Correct. [LR519]

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SENATOR SMITH: Those member utilities, some of them may also be excavators, such as...if they have their own excavating crew like an OPPD crew, let's say. [LR519]

ANDY HARTMANN: Right, yep. [LR519]

SENATOR SMITH: They have to put a new pole in the ground, they're going to be the excavator as well as the member utility. And then some of these member utilities are also locators. You see that primarily in the gas utilities; the natural gas utilities typically have their own locators. Then you have the excavators. Now some, again, may be a member utility; some are independent excavators like yourself, Mr. Hartmann, and then you have the locator. And sometimes these locators are a third party, they don't actually work for the utility that they are locating for. They're hired to locate and sometimes they're, like you said, there's a package deal to where...as an example, I'm not certain if it remains the case, but let's say CenturyLink and OPPD and a Cox Communications may all have the same locator. So when they go to the location, they make that location. So with that said, excavators don't have a voting role. Tell...describe a little bit how that discussion works inside of a board meeting, and this can go for all three of you, whenever there's this type of a challenge, something...you see that something needs to change. Do you make that determination during a board meeting and then how do you go about executing that change? [LR519]

NATHAN STEWART: Well, and if I...if you don't mind, currently today most of the charge of the board is centered around managing the one-call notification process. Right? So that doesn't necessarily get into a lot of contentious issues. You know, some of the things that Andy is talking about are...like best practices in the field that are involving how to dig and those kind of things. We don't, necessarily, have any oversight of how a utility marks their lines, who they use to mark the lines, how a fiber project may decide to implement the time line of their project, or any of those issues. Those are some of the things that we're bringing to the table, right, to say that these things need to be looked at and addressed in the law because they're not, because there is a significant number of challenges, like Andy mentioned, on both sides of the fence, whether it's a utility's side or an excavator's side. And I think, you know, to kind of tie a bow also around all of our comments, I think that some of the things that Andy surfaced are exactly what we're talking about is that there are best practices to deal with the things that...like what you mentioned, you

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know, there are large-scale fiber projects that can come in and absolutely flood a market that makes it hard for locating staff to keep up. That's whether it's internal staff or whether it's contract staff. I don't think there's a real big differentiation between the two, as I've looked at it, from my view as a Black Hills utility. And there's a number of reasons for that. And we could get into the specifics of what's been developed around the country to deal with some of those things. You know, when you're coming in with that kind of volume, you probably shouldn't be held to a normal 48-hour window. If you're going to roll into a city, say, with 50 drilling rigs and you're going to just go to town, no one is staffed to handle that. So probably a little bit more notice would be needed. But again, there's probably, you know, as we've talked in the past, there's probably a dozen to 15 things that we've identified that could be implemented to kind of address all those things. [LR519]

SENATOR SMITH: Do you feel like you have a clear path, however, to really get changes made? [LR519]

NATHAN STEWART: Outside of changing the law in legislation, I don't believe so. Like I said, I don't believe the board today has the authority to look at any of those specific issues other than how it pertains to the actual notification process of a person submitting a ticket, the ticket coming back out, being received by a utility, and maybe even like how that communication loop is closed. Do you see any different? [LR519]

SUSAN LYNCH: No, I agree. [LR519]

NATHAN STEWART: Andy, go ahead. [LR519]

ANDY HARTMANN: Okay. Well, back to your question about the voting--and, Mike, you may want to help me on this--and if I remember right, when they first come up with the board, there wasn't even a...excavator was even going to be on the board, if I remember right. And then they decided, yes, they really should because the system kind of affects us. One of the things they did by not giving us a voting power...and, you know, it's whatever the law is, is fine with me. We actually as excavators, we don't have to pay for the tickets where, in this case, Susan's fees, whoever that is, all the utility companies that get these tickets, they're the ones that have to pay

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the fees; they're the ones that have to spend their money. The excavator, all we're really supposed to do is call in and, hopefully, it goes the way Susan wants. So we really don't have a...it doesn't cost us, that's why it's always free. You know, you hear it all over on the...it's always free, it's easy and free. But that's why the excavator does not have a voting power at this time. Now whether it's needed or not, I'm game either way. Yes, it would be nice, but I will say, as I've been on the board so long or as many years as I have, the people that sit on the board that do have the voting rights, they are very receptive to look on the excavator's point of view. And it isn't like...there isn't a lot of...confrontation is what I'm trying to say. So I hope that further...that's the reason we don't have a vote (inaudible). [LR519]

SENATOR SMITH: And the other two nonvoting members are? [LR519]

NATHAN STEWART: Let me see here. [LR519]

SUSAN LYNCH: Department of Roads. [LR519]

ANDY HARTMANN: It's the... [LR519]

NATHAN STEWART: Yeah, the Department of Roads and county government. [LR519]

ANDY HARTMANN: Right. [LR519]

SENATOR SMITH: Okay. [LR519]

NATHAN STEWART: County government. [LR519]

SENATOR SMITH: And then sitting in as well is a representative from the Fire Marshal's Office,... [LR519]

NATHAN STEWART: Correct. [LR519]

SENATOR SMITH: ...which you fall underneath, and the Attorney General's Office. [LR519]

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NATHAN STEWART: Correct. [LR519]

SENATOR SMITH: Okay, good. All right. Senator Brasch, did you have a question? [LR519]

SENATOR BRASCH: I did have a question. Thank you, Chairman Smith, and thank you, Mr. Hartmann. When you speak of a locator, are you...entity, is this a land surveyor? What is a locator? Is it...what kind of a... [LR519]

ANDY HARTMANN: We wonder that, too, sometimes. [LR519]

SENATOR BRASCH: Okay. [LR519]

ANDY HARTMANN: What is that? [LR519]

SENATOR BRASCH: Who is a locator? [LR519]

ANDY HARTMANN: It's a company who sends out a representative with the proper tools, hopefully, locating, whatever you want to call them, they have several, and they can get a signal from whatever locating...utility they're looking for. So they walk around and, oh, the beep is here, okay, we've got a line, we got a positive mark right here. So it's just a person that goes around with the right equipment to go around and find utilities that are buried. And of course, we have overhead too. So that's what I mean by locator. I know that's a very... [LR519]

SUSAN LYNCH: No, essentially a job description. [LR519]

ANDY HARTMANN: It's a job description (inaudible). [LR519]

SUSAN LYNCH: A job description. [LR519]

SENATOR BRASCH: And they work...are there companies exclusively...is there a shortage of locators? You're saying you...you have to wait. [LR519]

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ANDY HARTMANN: Yes. [LR519]

SENATOR BRASCH: And so do they come from the community college or the university, where do you...or they...? [LR519]

ANDY HARTMANN: Yes, at this time...I have no idea because I'm not...I don't hire them. But, yes, there is a shortage. [LR519]

SENATOR BRASCH: Okay. [LR519]

ANDY HARTMANN: And, again, it goes back to what Nathan said. There's this big push right now for this underground communication line, so they're flooding the market and then it takes awhile for the industry to catch up. And I think that's kind of where we're at now. You take a few years down the road when this big push for this fiber optics is kind of over, you may have the...go the other way again. But again, by law it says you have to do this, this, and this, so, you know, yeah, there is a shortage right now; whether it will rectify itself in while, probably will. [LR519]

SENATOR BRASCH: And then is there like underground mapping that utilities that exists? Say, like we have an electrical grid, we have an underground grid, and I know that grids are highly confidential because of Homeland Security purposes and things. [LR519]

ANDY HARTMANN: Sure. Yes. [LR519]

SENATOR BRASCH: And so I...I see there's a problem and I'm just trying to... [LR519]

ANDY HARTMANN: There are maps of where things are supposed to be. [LR519]

SENATOR BRASCH: Okay. [LR519]

ANDY HARTMANN: The trouble with the "suppose to be" is there's a lot of old stuff out there that has been replaced with new stuff. Well, they may map out the new stuff, but they forgot

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about the old stuff and pretty soon you're hitting the old stuff or the markers are locating the wrong...the abandoned line and forgetting about the new line, which happened several times and I can say we've hit several lines that were mismarked. [LR519]

SENATOR BRASCH: I see. [LR519]

ANDY HARTMANN: So, yes, it is a mess out there. Some entities have not marked their stuff in the past because they didn't have to. [LR519]

SENATOR BRASCH: And as work is being done, redone, or new work, is it then documented and housed with the 811 commission board that you are the... [LR519]

SUSAN LYNCH: Yes, ma'am, whenever a member utility installs a new facility, they will register those on our system map so we can identify them when there is an excavation in the area. [LR519]

NATHAN STEWART: To kind of give a little more color to that, kind of from the utility viewpoint on the maps issue, you know, I think what you're saying is maybe you could just send these people a map and then they know where the facilities are and there's no need to even have a locator. But the problem with that is there are maps, they are generally accurate, but as...I don't know where you are...GIS, but even GIS maps can be off, you know, even a couple of feet. Really and truly the most accurate way to do it is actually to hook up with a piece of equipment and induce the signal and you'll get it down closer to like the inch level versus the foot level. So if you're trying to...you know, I think there are even other places around the world that have tried the map idea. I don't think it's a new one or unheard of. I think Australia is one that has the excavator have the responsibility for that. But I just...it's probably not as accurate as actually hooking up with a piece of equipment from somebody that's experienced with doing that. [LR519]

SENATOR BRASCH: So does Black Hills...you employ locators or certain employees are also...I'm curious about this industry here that maybe that's...move to Nebraska, we'll, you know, be a locator and... [LR519]

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NATHAN STEWART: Yeah, I'm not so convinced whether there's a shortage of locators.  
[LR519]

SENATOR BRASCH: Okay. [LR519]

NATHAN STEWART: I think there's a number of issues. You could get...you could probably spend the rest of the day talking about all the issues that kind of play into it. [LR519]

SENATOR BRASCH: That would be okay. [LR519]

NATHAN STEWART: But the...you know, as far as our own, we do have internal staff; some that are full time dedicated to locating, some that are part time dedicated to locating; you know, kind of in your rural areas there's not enough locate to keep a person busy full time so he might be doing other things. And then there is a combination of contract locating where a locating firm and they have employees that that's all they do and they locate not only for Black Hills but also for other facilities. So, for us specifically, we have a combination of all of those. [LR519]

SUSAN LYNCH: It's also a very seasonal industry. There's not as much digging going on in the winter. [LR519]

SENATOR BRASCH: Oh, sure. [LR519]

SUSAN LYNCH: And so, you know, to keep those staffing levels...and I think...I agree with Nathan, I don't know if it's necessarily a shortage, but it's more of an unexpected volume on the other end that the market just was not anticipating. [LR519]

SENATOR BRASCH: And I do recall from past hearings, though, and I believe that's what tied into the agriculture one was some exemption or that you've got to work while the sun is shining. And so if you're...if it's time to plant or time to harvest, you can't turn off the combine and sit there and wait for somebody to show up or not show up. And so when you talk about a penalty or something I'm just curious if that will...if that's even feasible. Do all of you think there should be a penalty beside...? [LR519]

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ANDY HARTMANN: For? [LR519]

SENATOR BRASCH: For the locators or time line...? [LR519]

ANDY HARTMANN: As a contractor, yes. But as a guy that's hiring a locator, I know they got a different perspective. But that's our (inaudible) and that's who I represent, so I have to say that. [LR519]

NATHAN STEWART: Yeah, I mean, I think...what I usually try to do is look around the country and see if there's some methods that have been tried and work because I think everybody has got ideas about things that might work and then...but it's better to look at things that have. One thing that's been tried, I think, is to look at what a normal level of excavation activity is in a particular area. And then when you have these large projects come in, that's just kind of like above and beyond. Maybe there's some additional notice that would be required of this additional volume that comes in and we're just going to give you 48 hours' notice that we're going to be doing this extreme amount of activity that may double the workload of a town's locating staff whether it's water department may have internal locators, some other place may have contract locators, but it's going to overwhelm all of them. So the law in '94 was looking at it from not understanding that directional drill was going to come, not understanding that these large-scale projects were going to come in; 48 hours' notice was plenty. But what may need to be looked at is in the future if there's going to be a large-scale project, maybe there needs to be some additional notice to give people time to staff up. Because like I said, I don't believe personally (inaudible) but I don't believe it's a lack of locating staff. It's a staffing issue that you have to be able to get ready for and some additional notice might be what's looked at. But like I said, that's just one idea. There's probably, if you look around the country, multiple ideas to try to address the same problem. But one way or another, I think that we need to look at them and try to decide what might make sense for Nebraska. [LR519]

SENATOR BRASCH: I appreciate your answers. Thank you. [LR519]

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SENATOR SMITH: And I think we're going to have the Attorney General...someone from the Attorney General's Office speaking here after you so we can probably talk about a few of those things as well. We're going to go to Senator Friesen and then Senator Seiler. [LR519]

SENATOR FRIESEN: Thank you, Chairman Smith. I've had one...I got a couple of questions, I guess, and it has to do with the one-call, but one time I called in and, basically, they gave me a clear that there were no utilities and I knew there were utilities. And so I...this happened awhile back, maybe it doesn't happen as often anymore, but...so knowing that there were utilities there I even argued with the operator, it was a phone call, and I said I know there's water, sewer, cable television, and telephone. And she said, no, there was not. And I said, okay, fine, I'll dig. I did hit the cable TV which the kids noticed right away, (laughter) but the cable television people fixed it, no problem. But I mean, if it was a fiberoptic cable down the road, who is responsible or liable in that situation when you've been given the all clear and you cut a cable or a pipeline? [LR519]

NATHAN STEWART: Yeah, kind of the way the system works, and Susan can probably talk to this, too, is each utility is responsible for registering their facilities that they have in the ground with the one-call center. So for instance, Black Hills, we know where our pipes are, we're going to go into her mapping...or the one-call center's mapping and we're going to say these are the areas where we have it. So if someone digs at this point, we want to receive a notification of that. What you were experiencing could be anything from just an area that got missed, or got a new area that got added and they didn't adjust their mapping. There's probably a number of issues that could have created that situation. But ultimately, it's the utility's responsibility to keep those base maps with one-call updated so they get the proper notification if there's excavation performed. [LR519]

SENATOR FRIESEN: So if...and now if I've called in and they have 48 hours to come mark, if they don't make it there in the 48 hours, I can go ahead and dig and if I hit something, whose responsibility is that? [LR519]

SUSAN LYNCH: Well, first of all, I want to clarify, it's actually two business days and not 48 hours... [LR519]

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SENATOR FRIESEN: Okay. [LR519]

SUSAN LYNCH: ...if you look at the language. I get that question a lot. I've waited...you know, back in the day, you'd sit there and they'd watch the time and like, okay, it's my start time, I'm digging, and they wouldn't physically inspect to make sure that everybody had been there. And I can't quote it because I don't have the statute in front of me, but it does indicate that you still are expected as an excavator to dig with reasonable care. And if you have those utilities listed on your one-call ticket that says they're in that area and they need to respond and you haven't seen anything from them, it would...you know, the excavator's responsibility would be: I still need to hear from these guys even though it's my start time; I'm obligated to put in a nonresponse ticket and tell them I'm ready to dig, it's the start time, so they still would need to reach out to them and not necessarily just dig based on the start time. Does that answer your question? [LR519]

SENATOR FRIESEN: Is there any liability on the part of the company for not coming out? Are they...if they're busy and just blow it off and I call and, you know, I'm on schedule, too, or whatever, and I want to dig and I've given you this opportunity, you didn't take it. [LR519]

SUSAN LYNCH: Right. And I'll, you know what, I'll usually never address issues of liability just simply because every situation is unique and I do believe the Attorney General's Office will be following me after this so I'm going to probably pass on that response. (Laughter) [LR519]

SENATOR FRIESEN: Okay. Fine. Thank you. [LR519]

SUSAN LYNCH: You're welcome. [LR519]

SENATOR SMITH: Senator Seiler. [LR519]

SENATOR SEILER: Thank you, Mr. Chairman. The only question I have is how the one-call operation works. A big project where you have all the contractors and all the subs come in and sit down and say this is going to be our schedule and we're going to be digging in this place on Tuesday, this place on next Wednesday, this place...and they map everything out. How does the

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one-call fit into that type of program? Do they still call on those days or do they notify you of their construction schedule? [LR519]

SUSAN LYNCH: An excellent question. The way that it starts, first of all, we assist by coordinating that initial meeting by allowing them to schedule what's called a "meet ticket" and all the players involved in that large project would meet on site at a specific time to go over the project and the timing and the planning. When it relates to the actual placing of the one-call, yes, if there's going to be active excavation, you bet, they will be required to place a one-call with us. Now, in your example you broke it down, you know, we'll be starting here on Thursday, here on Tuesday, assuming there's no rain, assuming all the equipment is working. [LR519]

SENATOR SEILER: Right. [LR519]

SUSAN LYNCH: So initially, usually what will happen...in our excavating community, they're wonderful about planning and planning these projects out. What they'll typically do is they'll know, you know, we're going to hit this piece here, this piece here, this piece here, they'll break down the work site based on the rules that you must with one-call and put in the separate tickets for that. If it rains and they can't get to that on Tuesday, then they have the option of what's called a "refresh ticket" and that would allow the utilities then to come back out... [LR519]

SENATOR SEILER: Okay. [LR519]

SUSAN LYNCH: ...and remark the site so it has fresh, active marks so then they can begin to excavate when they can. So in a perfect world, yeah, they would be...hit their schedules, one-calls would be in place, but we also have things in place that adjust for weather, equipment, and vacations. [LR519]

SENATOR SEILER: Okay, thank you. [LR519]

SUSAN LYNCH: Yep. [LR519]

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SENATOR SMITH: I have a couple further questions and then I'm going to try to move on so we can hear from some of the others, but...so...question for all of you, do you believe that this should be...should this be more proactive? That is, should the One-Call Board be more proactive to address changes that are needed to support growth in our state, turning of dirt, and protection of lives and safety and protection of member utilities? Should we be more proactive? [LR519]

NATHAN STEWART: Yeah, I mean, I think so. Right? I mean, when you're talking about a law that was written or passed in 1994, looking at those set of challenges versus...now we're back here in 2016 looking at it from a whole completely different view as far as the technology is developed and, you know, just industry practices have changed enough that it's just a very different game in a lot of respects than it was in 1994. So, yeah, when you're looking at, like, basically a 20-plus year lag on doing those things, yeah, you're not very proactive. And if you look at the damage, you know, number that I referenced, is 3,600 damages is probably far too many, especially when that probably represents 40 percent of the whole number. There's a lot more that can be done to reduce that number. And like I said, I think there's a lot of different models around the country that have been tried and they've all been aimed at reducing that number. So whatever the proactive approach is, I think that proactive is where we should be. And I don't believe that's where we are today. I think we're reactive. [LR519]

SENATOR SMITH: That was my next question. And so you believe that we should be more proactive with the one-call system. So how do we get there? Do we get there by expanding the authority of the Fire Marshal's Office to address the necessary changes? Or do we do it strictly by a statutory process? [LR519]

NATHAN STEWART: I think if you look at it, you know, there's probably limitations of both. But if you look at it from how it's worked from updating best practices that are developed to kind of real time around the country and basically best practice could probably be developed as simply as somebody trying something and, hey, that worked really well, let's tell everybody else in the country what we did. And trying to get everyone on board with that really works well if there is a rule or a statute. Certainly, that's not the only way. We do have an aggressive outreach and education program that we've been working on for years. Outside of managing the vendor, that is probably the only other thing that we really can do is an aggressive education program.

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And it's worked. I mean, we've gotten a lot of people on board with doing best practices around digging just through education. But there's going to be a certain segment that waits for there to be a rule to tell them how to behave before they do it. So statutory changes are one way to do that. But based on we're here 23 years later, that might not be the most proactive way to do that. [LR519]

SUSAN LYNCH: I agree. [LR519]

SENATOR SMITH: And then finally, the voting members are all employees of a member utility. [LR519]

NATHAN STEWART: Correct. Or an excavator. [LR519]

SENATOR SMITH: Or an excavator. [LR519]

NATHAN STEWART: Right. [LR519]

\_\_\_\_\_: He's not voting. [LR519]

ANDY HARTMANN: But I'm not voting. [LR519]

SENATOR SMITH: He's a nonvoting member. So then, everyone is going to have kind of a different opinion... [LR519]

NATHAN STEWART: Sure. [LR519]

SENATOR SMITH: ...most likely geared towards...oriented towards their employer. How do you pull that diverse opinion together to be proactive in a decision? [LR519]

NATHAN STEWART: Well, I think there's a lot of best practices that everyone can get on board with. I don't know if you're familiar, but there's a national organization called Common Ground Alliance and that's, basically, the charter of that organization is to develop best practices, taking

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input from all stakeholders, not just utility members, but also excavators and other groups, and it's been pretty successful. So I think there is a model to say that you can take the input from everyone and come to a common agreement on what works and doesn't work. Because, quite honestly, a best practice isn't going to work if anybody is kind of left out. Everybody's interests kind of have to be addressed and looked at to make it work most effectively. So I think you could; I think you could do it. [LR519]

SENATOR SMITH: All right. Okay. Well, thank you very much for your time today. And I think as a courtesy I'm going to invite the representative of the Attorney General's Office up if they would like to make any remarks. And not to put the Fire Marshal's Office on the spot, they, too, are welcome to come up and...first before we open it up to anyone else that wanted to speak. [LR519]

SUSAN LYNCH: All right, thank you. [LR519]

NATHAN STEWART: Thank you. [LR519]

SENATOR SMITH: Thank you. Let me ask real quickly, how many are planning to testify? All right. We have a small number of hands, so we're going to continue to stick with my original approach of not using the light system if we could just...once we open it up to general remarks to kind of keep those three to five minutes. Welcome. [LR519]

MILISSA JOHNSON-WILES: (Exhibits 2 and 3) Good morning. Senator Smith and members of the committee, my name is Milissa Johnson-Wiles, Assistant Attorney General, appearing on behalf of the Attorney General's Office. Thank you for the opportunity to address you today. I have brought some handouts to pass around for your review as I am speaking. I'm not sure what information you have from our office regarding recent enforcement that was in the packet that was provided to you by Mr. Hybl, so I apologize if some of this is a little bit duplicative. I will start to give you a little bit of an overview of the enforcement that has been by our office, and then I'll open it up for some questions. Our office has been involved in the direct enforcement of the One-Call Notification Act since 2004 and we work under a memorandum of understanding with the State Fire Marshal's Office and receive a grant from...through the State Fire Marshal's

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Office from the Office of Pipeline Safety or the Pipeline and Hazardous Fuels (sic: Materials) Safety Administration. And directing you, if you will, to...this is a...this one-call enforcement PowerPoint is actually a presentation that I gave to the Fire Marshal's Office, their pipeline safety seminar in February of 2016. So, I'm just providing you with something that I'd already submitted to a number of individuals who attended that seminar. But this kind of goes a little bit through our enforcement over the years. In 2004, our office had six files that we received and investigated. And then fast-forward to 2015 and we had 50 in 2015. And in the third...up through the third quarter of 2016, we have received 42 files for investigation. We receive complaints, it's a complaint-driven process, we receive complaints through our...we have a complaint form on the Nebraska 811 Web site and also on the Attorney General's Office Web site. And I speak at board meetings when I can and kind of advise of the process, as well as seminars like this to get the word out that if someone has a complaint about violations of the One-Call Act they can submit those to our office. And to give you a little bit about...a little bit of an overview of our process, we go through and once a complaint is received, we determine whether additional information may be necessary and investigate those complaints. If there is a gas line hit and the State Fire Marshal's Office has been called to investigate, we will contact the State Fire Marshal's Office and work with the State Fire Marshal and glean the outcome of their investigation as well. So we'll investigate whether a violation occurred and then proceed to determine whether we're going to send a warning letter or if the case is appropriate for a civil penalty. And page 3 of the PowerPoint that I presented to the State Fire Marshal kind of gives an overview of the civil penalties that our office has assessed over the years. Now civil penalties can...according to the law, are up to \$10,000 per occurrence per day for gas or hazardous liquid pipeline facilities and up to \$500 per occurrence per day for any other facility such as electrical or water and the like. So these numbers, the civil penalties that you see include both gas lines and nongas lines. So our office will review the complaints when they come in and pursue those violations. We work closely with the complaining party, the witnesses. And if I can back up a little bit, I'll tell you a little bit about the type of complaints that we receive. We receive complaints from utilities, and we actually have a very active underground gas pipeline community who regularly keep us apprised of violations that occur that affect their lines. But we receive complaints from other facilities as well, whether it's electric companies or cable or water, fiber optic. And then we also receive complaints from excavators, excavators who have complained that they have called and an underground facility has not located its facilities. So we do receive a number of complaints

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from a different variety of the players that are involved and we investigate those all the same. As I indicated, we will determine whether civil penalties shall be assessed. If we do, I provided to you a sample consent decree that our office would enter into with, in this particular case, it happened to be with an excavator, and a sample consent decree that provides for the payment of a civil penalty whether...if there would be a portion of time where, if the offending party maintains compliance with the One-Call Act for a period of time, they could have a portion of the civil penalty waived. If they participate in damage prevention safety education training that is approved by the State Fire Marshal's Office during that two-year period of time, that's a factor that can be considered. So we do enter into these regularly. And if we cannot reach an agreement, then we proceed to litigation. Most of the time I've not had to pursue much litigation in these cases and we've been able to get some resolution. So I will tell you that our office, our enforcement vision is that there are a number of different stakeholders and a number of different views. And our enforcement vision is that the One-Call Act was designed so that we would have a plan whereby excavators will notify utilities of intended excavation, utilities would have an opportunity to mark the facilities and open up that line of communication so that safe digging practices can take place in order to protect the individuals who are out there digging, protect the individuals that are in the vicinity, and to protect the facilities themselves from damage. So with that, we do receive a number of different complaints whether it's an excavator failing to call before they dig, an excavator failing to wait two business days after calling, whether it's an underground facility failing to locate its facilities. We receive complaints against excavators for failing to notify the facilities of damage. Those are kind of the general complaints that we receive. And we do look at those and approach all of those based on the enforcement vision that I indicated to you earlier. And then separately, the states are subject to federal audit by the Pipeline and Hazardous Fuel (sic) Safety Administration on enforcement. We just went through an audit. I worked with the State Fire Marshal's Office in July of this year. We're waiting for the audit results. That is the feds' view on effective enforcement and we feel pretty confident about the results of that. We do not have the results yet. There are a number of factors that...and I'm sorry I don't have a copy of this release, so I'll give you a citation to the code, Federal Regulations 49 C.F.R. 198.55 and then 49 C.F.R. 198.53, kind of outlining the federal overview of the process and what they determine to be adequate enforcement for their purposes. So that's all the prepared comments I have today. Happy to answer any questions. [LR519]

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SENATOR SMITH: Senator Seiler. [LR519]

SENATOR SEILER: Yes, ma'am, I was looking through your materials. Your jurisdiction is the district court I assume. [LR519]

MILISSA JOHNSON-WILES: Yes. [LR519]

SENATOR SEILER: But where is the county...is it the principal place of doing business or is it where the accident occurred? [LR519]

MILISSA JOHNSON-WILES: It's where the violation occurred. [LR519]

SENATOR SEILER: Okay, thank you. [LR519]

MILISSA JOHNSON-WILES: Yes. And our civil penalties, and I'm sure I'm speaking to the choir here, but our civil penalties do go to the school fund for the local county where the violation occurred. [LR519]

SENATOR SEILER: You have to join the group that it files everything in Lancaster County. [LR519]

MILISSA JOHNSON-WILES: No, (laugh) not as of yet. But I'm limited, so. [LR519]

SENATOR SEILER: Thank you. [LR519]

SENATOR SMITH: Senator Friesen. [LR519]

SENATOR FRIESEN: Thank you, Chairman Smith. Earlier my question I asked if so if you call diggers hotline and you wait two business days and no one comes out, you go down your checklist and one of them hasn't contacted you, whatever, and you start digging and hit something, who is liable there? You've done your part; they failed to come out. Is there liability on part of the contractor? [LR519]

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MILISSA JOHNSON-WILES: Well, I will tell you from my standpoint, and my standpoint is enforcing the One-Call Act. In that particular case, if a call has been made and the utility has failed to respond in those two business days, they may be subject to civil penalty under the One-Call Act and enforcement. I've been asked that question by a number of individuals as well and my answer is that I don't get involved in liability, that's not our purpose. Our purpose is to enforce the one-call law only. And I would recommend them to a private attorney to determine whether there were, maybe, other principles that may be involved to address liability such as negligence. [LR519]

SENATOR FRIESEN: So is there any utility owners who have failed to go out and mark in that two business days? What penalty is assessed on them for failure to call? [LR519]

MILISSA JOHNSON-WILES: Well, it depends on the type of underground facility that has been affected. So it could be up to \$500 if it's a nongas or hazardous liquid or up to \$10,000 if it's a gas or hazardous liquid. [LR519]

SENATOR FRIESEN: And that's for failure to go out and mark your... [LR519]

MILISSA JOHNSON-WILES: Right, right. [LR519]

SENATOR FRIESEN: Okay. Thank you. [LR519]

SENATOR SMITH: And there could also be damages? [LR519]

MILISSA JOHNSON-WILES: Definitely, and the damages would be, again, outside of my area, but, yes, that would...civil penalties would be in addition to any damages that occurred. And we do enforce regardless of whether damages have occurred. So it's not just in damage cases. [LR519]

SENATOR SMITH: All right. Ms. Johnson-Wiles, thank you very much. [LR519]

MILISSA JOHNSON-WILES: All right, thank you. [LR519]

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SENATOR SMITH: Appreciate your time. All right, we're going to open it up now to others that would like to provide us some remarks, and first come, first serve. Please come on up if you would like to share some remarks with us. Welcome. [LR519]

JANE ANDREW: Exhibits 4, 5, and 6) Thank you. I am Jane Andrew, J-a-n-e A-n-d-r-e-w. I am representing Andrew Farms; we are fifth generation of farm operation. We farm...own over 3,000 acres in Nemaha, Richardson, and Atchison County, plus we rent another 8,000 acres. So I have a variety of experiences with easements and eminent domains. It seems to go...they grow rampant in that part of the state, the southeast corner. I am very familiar with the 811 call and the problems involved. Our son, Luke, in 2011, hit the Magellan Pipeline that runs through Nemaha County. Needless to say, after five years of a grueling and very stressful legal lawsuit filed against us by their insurance company, so you ask about liability, I can tell you a bunch about that. My son had called 811. He got busy in harvest. After it had rained, he had a couple of extra days to get back to the site and he started. Magellan Pipeline site supervisor had come down for the second time, pulled their own stakes and told my son to have at it. He was in the process of taking out a tree strip between a farm that we owned and a farm that we rented and that's...the accident happened. So regardless of whether you call...and at that time, of course, and I have to really praise the 811, they've addressed over the years a lot of the problems that had happened. For instance, now you white flag the areas; the refresh movement, all of those things. So they are coming, but there still needs to be, I feel, improvements. For one thing was addressed here about the training and the equipment that these locators use. Are they trained? How well are they trained? How updated and high-tech is their equipment? We built a new home in 2012, and the water line was located four feet off from where it was and our skilled borer was able to find it and recommended to us that we not drill where we were going to because he had found...and so...but at the same time, there are now the 811 people have, I found out, because I just attended their educational class in Nebraska City, that there are now eight forms available for the public. And that is not in their new brochure and is not really anywhere in their materials. I think that could be addressed. I think as far as the farming and ag industries, we now are so big that a lot of us have our own dirt work and excavators and land levelers and bulldozers that maybe they ought to be included more in this process. That's what got my son into a lot of problems. I asked about, at the class, about why there wasn't a complaint filed against us when we hit the pipeline and they said it was because a federal pipeline...it was the Magellan Pipeline, the same people who

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had the ammonia leak. And by the way, their leak is aboveground so maybe 811...unless they start to have something to do with digging around it might not be involved, but, yeah, it was a federal...across the state line interstate type of thing so the Nebraska Fire Marshal didn't have much to do with it. Let's see...we've had trouble in marking my house. It's a 22 acreage on the east side of Auburn, and when I called the 811, they did not know about it being a 22-acre yard, I can say, and so it was not completely and thoroughly marked which surprised me. I didn't know if that was my responsibility or I just figured it was the 811 because they would have that information about that location, but apparently not. And then there's problems with utility companies not having easements too. So it doesn't show up on your deed or a deep search type of thing. So you might not even be aware of a utility. And another problem we ran into on that property was vacated lines. Well, we've run into that on three other properties, too, where utilities have ran a line, vacated it, and you snag it out in the middle of a field or something. And so that's another problem. I would like to see that when 811 people call in, especially in the farmers, or homeowners, and the town, that they are asked if they need information or the brochures and that they either got an opportunity to decline the information, or if they accept it then it is mailed out to people who need mail because they are not high tech, just like me. I couldn't figure out how to turn off my phone. I apologize about that. So it would be nice if they still addressed that problem with us less "techy" people. But I think the homeowners do not know of this and so if you...in a city and you get a permit, I think at that time that should be offered to people when they get permits and then (a) when they call in, anybody that, you know, so that they know about the white flags. I never knew about that until I went to class. There's a lot of things that we as general public do not know and understand about this process. So that's all I have to say.

[LR519]

SENATOR SMITH: Thank you, Ms. Andrew. I appreciate you coming in and testifying. And I bet there's a lot of us that don't know what the white flags and the refreshing and all of that means. So there's a lot to be learned. And unfortunately, you learned it through a very frightening process. [LR519]

JANE ANDREW: Yeah, there's a man sitting behind me that goes, there's a lot of people here, why would they be interested. And I can tell him, a \$4.2 million lawsuit against you would get your attention fast. And so I'd like to share that that is the possibilities when you hit these things,

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even though you have tried to do your best and you've done what you knew or thought you knew you should do, so. [LR519]

SENATOR SMITH: Yeah. I think what you've encountered is an imperfect system. I can't say that it's perfect in any state, and we certainly need to make some improvements. That's what we're wanting to figure out the best process to go forward in making the improvements we need and the One-Call System Act. So you've provided some good suggestions. I've got a general question for you. As you know, there are certain exemptions in the law and some of those relate to agriculture. Do you have any particular feelings about the ag exemptions? [LR519]

JANE ANDREW: I didn't realize there were any ag exemptions. I'm sorry. [LR519]

SENATOR SMITH: So, for example, dealing, in some cases, dealing with tilling and soil sampling and things of that nature. [LR519]

JANE ANDREW: I didn't realize that there was any involvement there. [LR519]

SENATOR SMITH: Okay. All right. All right. Thank you very much for your time. [LR519]

JANE ANDREW: Um-hum. [LR519]

SENATOR SMITH: Next person wishing to share comments with us. Welcome. [LR519]

BRADLEY WOEHLENER: (Exhibits 7-11) How are you? I'm going to just briefly start off, we've gotten a written statement that we're going to read to you and then most of your questions, if you'd ask them again, I'd answer them, so I've got comments. Good morning, Senator Smith, Transportation Committee, good morning and thank you for your time and your efforts related to LR519. We are grateful for the opportunity to provide you with contractor insight and suggestions. My name is Bradley J.--I go by "B.J."--Woehler, that's B-r-a-d-l-e-y W-o-e-h-l-e-r, with Robert Woehler and Sons Construction, Inc., located in Wayne, Nebraska. I am testifying today as a private underground utility contractor and frequent user of the 811 system and also as a member of the Nebraska chapter of NUCA. I am also the cochair of NUCA of Nebraska's one-

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call committee. Several other NUCA of Nebraska members are here today. NUCA stands for National Utility Contractors Association. NUCA is the leading trade association and voice for the underground utility construction and excavation industry in Nebraska and a driving force for improving conditions in the underground utility construction industry for both open-cut and trenchless contractors. NUCA of Nebraska represents contractors from across the state. We are professional excavators and installers of underground utilities who are dedicated to the safety of our employees and the general public. For the past several months, our contractor members from all over Nebraska have been discussing and researching the Nebraska and other states' one-call laws, prioritizing our concerns, and developing suggestions based on the best practices that will improve operations and reduce risk for all parties involved. We have been attending One-Call Board of Directors meetings and we met this past summer with Senator Smith to express our concerns and ideas. We are encouraged by the spirit of the cooperation surrounding the efforts to improve the system and we look forward to continuing communication and collaboration. We all want the same thing--a safer and more efficient system. The purpose of LR519 is to examine whether One-Call Notification System Act should be updated. NUCA and its member contractors are united in their opinion and we say, yes, the one-call notification system needs to be updated. It has been brought to our attention that there has been some talk of who should have jurisdiction over the one-call system. Our position regarding jurisdiction and oversight of the one-call system is neutral. We are less concerned about what office, committee, or commission has responsibility for the one-call system and more concerned about the content of the law and how it is carried out day to day. For some time, many NUCA members have voiced concerns regarding utility locator response and accuracy, issues that put our employees' lives at risk and the public at risk. We went looking for information and insight on how to voice our concerns and collaborate on changes and improvements in the system. We researched the law and how to carry out to the board level and operational level. This research had led us to the following conclusions: The law and the administration of the law itself is the problem. The process needs to be more agile. The One-Call Board is not empowered to effect changes in a timely, responsive manner. No one should be satisfied with "we can't change anything without a change to the law" response. Not only are policies and procedure changes needed now, but also ongoing empowerment and agility are needed to allow the routine review and updates that reflect industry trends and issues that develop. Secondly, all underground facility owners must be made to participate. There exists significant gray areas and participation loopholes creating significant

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risk to public safety and underground utility worker safety. For example, the NDOR does not participate and locate their buried facilities in their right of way such as power lines and signal wires. Additionally, municipalities vary in their definition of ownership of buried facilities creating locating inconsistency. And, private line owner notification and owner-required locating is extremely problematic. I strongly believe that more agility in the administration of the law and better representation by all key stakeholders are improvements that are needed as soon as possible and I encourage you to move forward with the bill and update the one-call law. For your reference, I have provided copies of testimony. Attached to that are letters from several NUCA contractors providing real-world examples of problems we've experienced with the one-call system. Thank you for your time and attention this morning and I encourage you to contact NUCA if you have any additional information and insight regarding the law that is very important to us. And I give you the contact information for NUCA and then my contact information. [LR519]

SENATOR SMITH: Thank you, Mr. Woehler, for your comments. Do we have any questions from committee members? We probably can't ask you all the questions that we asked of previous speakers, but is there something in particular you want to respond to that you heard before? [LR519]

BRADLEY WOehler: Oh, boy. (Laughter) [LR519]

SENATOR SMITH: See how I put that back on you? (Laughter) [LR519]

BRADLEY WOehler: Yeah. Our biggest thing we're seeing right now is the third-party locators and I know we talked about that, Senator Smith. [LR519]

SENATOR SMITH: Okay. [LR519]

BRADLEY WOehler: And they're overloaded. And I think that I don't mind and I understand; I understand their use. I think our concern is what those contracts look like and the penalties. We can be penalized, but they can't. I think Andy brought that up; that's a good point. I don't really want to see the contracts, but I want to know if I'm...if I hit a line, I'm just going to use company

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A, and they've used a third-party locator, and they didn't mark it properly, they were outside the 18 inches and they cause damage to my stuff, who do I sue? Can I sue the third party or do I sue the facility owner? And that's not addressed in the law. And I guess that concerns us because in your situation you had, Senator Friesen, you didn't know who to go against. But it's very clearly wrote that they can fine us. [LR519]

SENATOR SMITH: Mr. Woehler, do you feel that you have any remedy going and speaking with the One-Call Board members or meeting with a subset of One-Call Board members to work through some of your concerns? [LR519]

BRADLEY WOEHLER: We met with them earlier this year and they're great people, and Andy does a great job. I came up with ten ideas to be proactive and their comments to me were: We agree with probably 95 percent of what you're saying, but we have to go to the Legislature to get the law changed. So that's why we're... [LR519]

SENATOR SMITH: So it comes back to that path that I talked about earlier, spoke of earlier, that how do we go about executing changes that are needed. And really, it all comes back to the Legislature and to address those things rather than being able to address them through the Fire Marshal's Office or through the one-call office. [LR519]

BRADLEY WOEHLER: Yeah. I mean, I understand the law is important to have. But I think there can be a step down where the board, and I would...I bounce back and forth whether or not contractors need to be a members, too, just like Andy, because we don't want to pay fees. We do want a voice and we don't want them to overrun it and push it outside of our realm. So I don't know if contractors should or shouldn't be a member because the current board, the way it's set up, is basically for marketing and for call center operations. That's nothing we need to be on. But if it's a board that's going to change...have the ability to change the law, absolutely, I want a seat at that table. I think ag needs a seat at that table; I think citizens, if you can find some active ones, need to be a member of that committee too. [LR519]

SENATOR SMITH: When it comes to excavators, there are member excavators, there are large excavators and smaller excavators. [LR519]

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BRADLEY WOehler: Yep. [LR519]

SENATOR SMITH: Do you have any idea how I would distinguish, say, a large from a small excavator? If we're trying to think about how to have representation on the board? [LR519]

BRADLEY WOehler: Well, like my company, we're like...it's me and my brothers and dad and a handful of employees, less than ten. I've got companies behind me that probably represent a hundred-plus. You'll hear from a lady that represents her company, here in a minute, that they're a large company. She puts in over 80 locates; all the time I have about 10 running. So there's probably three levels: there's the large guys, there's the medium people like me, and then there's the guy that's just got his own little backhoe service, really private, maybe has an employee, maybe doesn't. But that's where NUCA is...we've just formed in the last five to ten years in the state of Nebraska and put this together where we just...our subcommittee, here just a year ago, to address this issue so before we were all kind of...kind of members of AGC, but they're concentrating on general contracting and paving. So we always kind of felt left out so we started...brought this organization in. [LR519]

SENATOR SMITH: All right. Thank you. Senator Brasch. [LR519]

SENATOR BRASCH: Thank you, Chairman Smith. And your conversation here about contractors has me very curious now. Nebraska: How many excavators? And there probably are Iowa ones also, correct? [LR519]

BRADLEY WOehler: Oh, there's a lot of out-of-state ones. [LR519]

SENATOR BRASCH: That's what I was thinking. [LR519]

BRADLEY WOehler: We have 29 members in our organization that are contractors. [LR519]

SENATOR BRASCH: Okay. [LR519]

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BRADLEY WOEHLER: There's a lot of suppliers and different non...diggers, but there's a lot more than that. Just in my hometown, I can name off ten and I'm the only one that's a NUCA member. [LR519]

SENATOR BRASCH: Okay. And the NUCA is a Nebraska Chapter. [LR519]

BRADLEY WOEHLER: The Nebraska national. Yep, we're national. [LR519]

SENATOR BRASCH: Okay. So you do network with the Iowa folks and so our 811 Board, though, we're Nebraskans talking about our laws here. [LR519]

BRADLEY WOEHLER: Yeah. [LR519]

SENATOR BRASCH: And I'm just wondering if across the state line contractors are problematic at all or do you all play nice in the sandbox or...? [LR519]

BRADLEY WOEHLER: It's interesting because there's a lot of my competitors that we're all working together today. [LR519]

SENATOR BRASCH: Oh, okay. [LR519]

BRADLEY WOEHLER: But we all bid against each other for public bids, public contracts, private work. So it's...and, yeah, out of state guys, that's a whole other ballgame. [LR519]

SENATOR BRASCH: And what is the largest type of contracting you're doing now? I know we're bumping up our roads work right now, are you...? [LR519]

BRADLEY WOEHLER: For me personally? [LR519]

SENATOR BRASCH: Yeah. [LR519]

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BRADLEY WOEHLER: We're in Norfolk doing a three-quarter million dollar water main project. [LR519]

SENATOR BRASCH: A water main, okay. All right. [LR519]

BRADLEY WOEHLER: My crew is on the site right now. [LR519]

SENATOR BRASCH: Okay. Very good. Thank you for... [LR519]

BRADLEY WOEHLER: And I'm a small fry; there's guys back here doing multimillion-dollar projects. [LR519]

SENATOR BRASCH: Big...okay. Very good. I appreciate your coming forward and your testimony is excellent. [LR519]

BRADLEY WOEHLER: And I wanted to add to the ag thing, the exemption, that's gray and I don't know it all, but one of my ideas there was there's certain fields that there's nothing in it. And there's a way. The one-call center knows, if they put in a locate, they could clear that and if they could get a stamp or a notification that that property is clear, then they could go do the soil borings, they could do the deep diving, and they don't need to put it in all the time and waste a lot of people's time and energy because...now, there are other ones that are hot zones. And, unfortunately, this lady's son found one. There are pipelines out there that we all forget about and they run through that ag. I had a local contractor, competitor of mine, his brother hit one. I've had bad experiences...I wouldn't call them bad experiences, but I'm not liked in the ag community because I mandate we have to put in the 48 hours. So I've been out fixing a water line, and they're like, hey, just go tear that tree out over there. Well, I didn't put that in my box, as they explained before for the 811s, so I'm not going to go down the lane a thousand feet and tear that tree out because I don't know what's there. Oh, I've lived here my whole life, I know (inaudible). That's what happened to this guy and he tore out a tree and he hit a major gas line. So it's a touch and go between ag, but I think there's a way to clear certain properties. And then I think there's the other thing, like she talked, the education (inaudible). She should...if she has put in an 811, I get tons of fliers from 811 all the time explaining what those signs mean, what you need to do,

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proper responses. That's probably something that the marketing committee is how to get the ag, and they would have spoke better on that, but how to get them involved and go to their continuing ed classes and teach. I'm a septic tank installer, too, and that was one two-hour topic that we went over was 811 and it ended up, the new system, you know, and why...I actually taught the class to all the fellow septic tank people of how to go on-line and do it, because that's saved me a ton of time versus calling in every time and going to that. You asked another item I wanted to talk about was the big projects. That was another thing we talked about. They used to do this old thing called "meet" and I love that because then I'd put it in, show up, set a time, everybody would come. Not all facilities or owners did that...or would come and show up and that was frustrating. Well, then they changed the law that we had to do 48 hours plus another 48 hours so it really slowed it down. So I don't use those anymore and I put them in block by block when we're working and I hit refresh as often as I can. The lady behind me hits them every three days per her boss's request. So she's overloading the system, but they got a hundred plus people out there working that they have to. So my suggestion to be proactive would be working with us larger contractors to give us a better system than 811 that we have...I hate to use the word "priority" but we have some extra way of working with them and with the locators so we can keep our projects on task because we lose a lot of money if we're sitting there. We have millions of dollars on site and if we're waiting...you know, I've got another contractor behind me that put in five nonresponse tickets. His crew sat there an entire day because one utility wouldn't show up. That's very frustrating to our members. So that's why we're here. We want this to be opened up--we're in support of it--and to be looked at and come up with a...like you said, a more proactive system. [LR519]

SENATOR SMITH: Well, thank you. Thank you for your time. [LR519]

BRADLEY WOEHLENER: Thank you. [LR519]

SENATOR SMITH: Thank you for your testimony and thanks for being an excavator in Nebraska and moving dirt so we can create jobs, build stuff. [LR519]

BRADLEY WOEHLENER: You almost lost me to the "brain drain." I almost went to Chicago and moved on. [LR519]

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SENATOR SMITH: Good to have you here. [LR519]

BRADLEY WOEHLER: Go Cubs. [LR519]

SENATOR SMITH: Thank you. All right. And one more show of hands, how many more folks do we have? Okay, we have about two more following. Welcome. [LR519]

AMY SKALKA: (Exhibit 12) Thank you. Senator Smith and the Transportation and Telecommunications Committee, thank you for your time and efforts related to LR519 and the opportunity to express my concerns and ideas related to Nebraska's one-call law. My name is Amy Skalka. I'm with Van Kirk Brothers Contracting in Sutton, Nebraska. I, too, am testifying today as a private underground utility contractor and frequent user of the 811 system. I'm also a member... [LR519]

SENATOR SMITH: Let me stop you for just a... [LR519]

AMY SKALKA: Yes. [LR519]

SENATOR SMITH: Can you spell your name for us, please. [LR519]

AMY SKALKA: Oh, sure, S-k-a-l-k-a, the last name is Skalka; A-m-y first name. [LR519]

SENATOR SMITH: Thank you. [LR519]

AMY SKALKA: Yep. Along with B.J., who just spoke, I am a cochair of NUCA of Nebraska's one-call committee. And, you have probably guessed by now, I am also in favor of updating the Nebraska one-call law. My primary concern is that the One-Call Board needs to better represent all stakeholders. Of the 22 seats available, only one is designated for private excavation contractors and that member is designated as a nonvoting member. We talked about that earlier. Contractors are responsible for most of the tickets and most of the excavating, who would be better equipped to report from the front lines about what is working and what is not, is how I feel. Secondly, there needs to be more accountability for all parties involved: operators, locators,

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and excavators. This accountability must be achieved through mutually agreed-upon improvements to the violation reporting process, investigation process, and billing/damage recovery process. In other states where NUCA chapters are located, one-call courts exist and they ensure accountability and compliance. This would be a more fair and timely solution than simply relying on the Attorney General's Office, we feel. In closing, I want to reiterate that the most important thing to us is safety, the safety of our employees and the public. Recent underground damage events have put a spotlight on the Nebraska one-call system, and really all one-call systems throughout the nation. It's very frustrating and concerning that most of the information focuses on simply the number of excavators who strike buried utilities and not the circumstances that led to the utility hit. Yes, there are excavators who do not use or correctly use the one-call system, however, there are often circumstances where excavators strike lines due to other factors such as erroneous markings of utility operators or their third-party locators. Wrong or missing information is also a problem, and existing live and abandoned utilities on blueprints, poor participation and/or communication by key stakeholders in preconstruction meetings, and inconsistent installation methods by utility owners. Enforced participation and accountability by all parties would help the one-call system address these issues and ultimately improve safety and the overall operational efficiency of the system. I strongly encourage you to move forward with a bill that will allow for the necessary changes in the one-call law to be made. NUCA of Nebraska and its contractor members, like me, remain committed to not only communicating the issues but being a part of the solution. Again, thank you for your time. Any questions? [LR519]

SENATOR SMITH: Thank you, Ms. Skalka. Do we have questions? I see none. [LR519]

AMY SKALKKA: I would just like to say...to add to this also that, as B.J. said, the company I work for, we have ten crews working throughout Nebraska and Kansas, so my primary job is to do one-call locates. I'm more on the administrative, I'm not out there digging myself. I'm calling in the tickets; and as I said, I have about 75 or 80 per week that I'm either calling in or refreshing. So we do take it seriously. I think most excavators, nowadays, are taking it seriously and so we sure would be happy to be a part of the process. [LR519]

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SENATOR SMITH: Do your locators identify items...areas that need to be refreshed regardless of whether it has exceeded the time limit for refreshing? I mean, sometimes there's no fall or there's some other disturbance of the soil. [LR519]

AMY SKALKA: Right. We, per my boss, he would like them refreshed because a lot of our markings, you know, three days is all they're guaranteed on dirt, or if somebody mows their lawn your markings are gone. So that's why we are pretty proactive as far as keeping them refreshed. It could be as much as a phone call. If the utility contractor calls us and says, hey, I went out there, the lines are okay...or all my lines are still showing, that's fine, that's great. We just want to make sure that we're trying to avoid any mishaps. [LR519]

SENATOR SMITH: Well, thanks for what you're doing and keeping things safe. [LR519]

AMY SKALKA: Okay. Thank you. [LR519]

SENATOR SMITH: Appreciate it very much. All right. Next comments. Welcome. [LR519]

BETH BAZYN FERRELL: Good morning, Chairman Smith, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l; I'm with the Nebraska Association of County Officials. I'm here today to share two comments that we've heard from our members. The first one relates to something you've talked a lot about today and that is the membership on the board. Right now, as you've heard, counties have a nonvoting seat at the table. And if there is a restructuring, we would appreciate retaining that seat or having that input there. The second comment really is a clean up. In the definition of "excavation" in 76-2308, it defines what excavation is and it includes things like grading, trenching, ditching, and so on. It specifically excludes normal maintenance of roads. If the maintenance doesn't change the original road grade and doesn't involve the road ditch, our suggestion would be to add mowing to that just for purposes of clarification. That's all I have. [LR519]

SENATOR SMITH: Very good. Thank you; thank you for your testimony. Welcome. [LR519]

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SEAN CUMMINGS: Thank you. My name is Sean Cummings, it's S-e-a-n, the proper Irish way, C-u-m-m-i-n-g-s and I represent Kinder Morgan and we are...we have about 80,000 miles of pipeline throughout about 44 or 45 states. We do have a small footprint in the southeast corner of Nebraska which brings me here. I'm actually out of Houston. And just as a side note, I'm not just coming in off the street, I also sit on the Louisiana One-Call Board, but I'm here more for Kinder Morgan. And I don't have anything prepared, but I did hear the, which sometimes makes us nervous, the "e" word a couple times: exemptions in the state law. And I think we just...as we move forward with Nebraska potentially changing this law, I would heed caution to how many exemptions you put in the law for following the dig law rules. Part of my job with my company is to go to different states and see what different states laws are doing and what are in different state laws. There are a handful of states that are littered with exemptions and the dig law gets very watered down. I know even in an agriculture state and there are agriculture exemptions and sometimes they are warranted, I grant that. Even with my company, if we do get an 811 call ticket across some farm land, we know it's just going to be normal farm tilling work, soil samples, we might not even respond to it as they have to go to market. We just say we're all clear, no conflict, I understand what you're doing, as long as we know what our depth of pipeline is and that it would not impact the pipeline. So, but again there are...if you do move forward with the law and open up the discussion on exemptions, I'd be cautious on who is trying to get exemptions and that goes from state agencies, local agencies. You know, like in my company, we are a pipeline company, but we also do all of our own. Well, not all, the grand majority of our excavation we do all of our own locates, so we do hit all three aspects of the one-call process with my own...one company. And we hold ourselves to high standards when we respond to our own one-calls. We don't take any shortcuts; we maintain the tolerance zone; we maintain the 48 hours; and we maintain the rules, we don't give ourselves exemptions. So I just want to reiterate, take cautious if...as the law opens up and you are looking at exemptions, be cautious who does get in there. There are some states, I say, who really water down their law and it's very ineffective now because pretty much everybody is exempt, except, you know, a few isolated individuals. All right, thank you. [LR519]

SENATOR SMITH: Mr. Cummings, how do we compare maybe to some of the other regional states that you've been inside their borders? How does our one-call law compare, generally speaking, in terms of exemptions or areas of concern? [LR519]

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SEAN CUMMINGS: I think you have a few standard exemptions, like agriculture is hard to get away, especially in an agriculture state. I would say...I'm an expert on a couple of states, but I would say I have a...familiar with more states than I'm an expert in. Nebraska, I'd be more familiar with this, so I don't know every aspect of the law. But I think you are good. I mean, there's a state south of us who I don't want to name, but they start with an "O" and end with an "A" (laughter), their law is...has a lot to be desired, I would just say that. And it's a...you far surpass that. I do come up and get involved with the Nebraska 811 here, but...and it's a great unit, I see it works well together and it addresses the hearings, so I think you are definitely on the right track to get it going. And I encourage you to keep moving forward. I guess, sometimes, when laws are opened, there's a lot more that gets put in there which was intended to. I'm not saying you shouldn't open your law right now to improve it, but just be cautious on the...on what tries to get on board. [LR519]

SENATOR SMITH: Very good. Any further questions for Mr. Cummings? Thank you for your time. Thank you for being here today to testify. [LR519]

SEAN CUMMINGS: Thank you. You're welcome. [LR519]

SENATOR SMITH: (Exhibit 13) We have one item to read into the record and this is from the Nebraska Public Service Commission, and so they do have a letter that they've submitted and that will be put into the record. Thank you. With that, I think...just really quick comments, I think the One-Call Board, obviously, us being here today, it's one of those not well known but extremely important acts that are in statute and also an important agency that works on behalf of Nebraska to keep Nebraska safe. But also, it's important for the commerce and business of Nebraska because without the one-call, we would have those investments underground damaged and we would have lives harmed and we don't want that. So it's a really important thing to get right in our state, and if we can find some ways to improve upon it, I look forward to doing that over this next session. Appreciate everyone being here for LR519. And those of you that testified, thank you very much for your time. [LR519]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Friday, October 21, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a

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public hearing on LR539. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Curt Friesen; John Murante; and Les Seiler. Senators absent: Al Davis; Tommy Garrett; and Beau McCoy.

SENATOR SMITH: Good afternoon and thank you all for joining us this afternoon. There are...this is the Transportation and Telecommunications Committee hearing on LR539, which is the study of the jurisdiction and structure of the Nebraska Public Service Commission. I do know that we have other hearings that are taking place this afternoon, as we did this morning, so we may have some of my colleagues come in and out attending other hearings. And so again, thank you for being here. First, I would like to introduce my colleagues to you. Joining us this afternoon on my far left, your right, is Senator Les Seiler from Hastings. Senators Garrett and McCoy will not be joining us today. To my far right is Senator Curt Friesen from Henderson, Nebraska. Senator Davis, as well, will not be able to join us today. Next is Senator Murante from Gretna. And we have with us Senator Lydia Brasch from Bancroft, and Senator Brasch is the Vice Chair of the Transportation and Telecommunications Committee. Committee staff with us today is Mike Hybl to my right; Mike is legal counsel to the committee. And to my left is Krissa Delka, and Krissa is on loan from the Revenue Committee. And I want to thank Krissa for helping us out this afternoon. We have one page with us today and our page's name is Bri Hellstrom; Bri is a junior at UNL. Thank you, Bri, for being with us today. If you are testifying, please complete the sign-in sheet so it's ready to hand in as...and again, you will give that to the page when you come to the table to testify. This is a study resolution and it is not a bill, so it's a little different in that there will be no proponents or opponents. But please do complete a sign-in sheet if you wish to share your remarks with us, and give those to the page. You may notice some of our senators referencing electronic devices. We are an electronically equipped committee and some members prefer laptops and iPads to paper when taking notes, so please don't take offense to that. Finally, please silence all of your cell phones. We would like to again thank you all for being here and participating in the legislative process. When you do come to the table and you give us your name, please spell your name for us; that's so that we can make certain it gets into the record accurately. The microphone is not for amplification, it's for recording, and so you don't really have to get close to it, it will pick up your voice. But you may want to speak loudly enough for the folks behind you to hear. Let me just make a couple real quick remarks about this particular hearing. This morning we had a hearing on the One-Call

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System...One-Call System Act. And obviously the One-Call Board has much less responsibility than does the Public Service Commission, but similar to the Public Service Commission, it's one of those agencies that's not in the public often. It's behind the scenes and doing a lot of heavy lifting on behalf of Nebraskans. What we want to make certain as we hear the talk about growing our state, making our state better, we want to make certain that all of those regulatory bodies that support that growth in our state are functioning well and that we are lending every bit of support that we can from the legislative process. Really appreciate...I know we have a couple of Public Service Commissioners here in attendance today. I appreciate their service to our state. I think this is also a very good opportunity for maybe some people watching by NET, as well as some of my colleagues, to learn a little bit more about the Public Service Commission, what the jurisdiction is of the Public Service Commission, but again, going back, most importantly, how can we be of support to the Public Service Commission in going forward to make certain that it's able to help us grow our state and support the business structure in our state. So with that, we're going to have some opening remarks from Mike Hybl, who is the legal counsel for the committee. And as was this morning, I introduced Mike this morning, Mike was actually part of the One-Call Act that was written in 1994, and so he was able to provide a historical perspective of the One-Call Act. And today I'm going to ask Mike to do something a little bit similar with the Public Service Commission, and of course you all know that Mike has a wealth of knowledge of the Public Service Commission and as with the Legislature. So he is a great person to pull these two pieces of government together for us today. So welcome, Mike. [LR539]

MIKE HYBL: (Exhibit 1) Thank you, Senator Smith. Again, my name is Mike Hybl; it's M-i-k-e H-y-b-l. I am the legal counsel for the Transportation and Telecommunications Committee. The purpose of LB...or excuse me, LR539, as Senator Smith said, is to undertake a study of the jurisdiction structure of the Public Service Commission. Also within the resolution is a specific area that you'll hear testimony on this afternoon relating to the provisions of the Administrative Procedures Act and the rules of general procedure that govern the Public Service Commission and the potential for perhaps creating an exemption for one part of the commission general rules from the APA. But there will be testimony that follows me that discusses that point. In terms of the general subject matter of this resolution, I laid out for you in some of those materials that you have just kind of a quick overview of what the existing authority of the commission is. I would...just to refresh everyone, in the past Legislature there were two areas where we acted to

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expand the jurisdiction of the Public Service Commission. The first was the legislation of 2015 that adopted the transportation network company regulation, the Uber bill, I'm sure you all remember that. But that created a means of alternative regulation for the transportation network companies in this state. And then this past session, this committee processed and the Legislature passed LB938, which adopted the 911 Service (System) Act, basically gave to the commission the responsibility to develop an implementation plan for the next-gen 911 system. That legislation is a little bit different from the traditional legislation that we generally operate under to give agencies authority. The legislation will not become operative until July of 2018, and there's also a sunset date that we're going to have to address. But what we will see during this next session, there will be two things that will be coming to this committee and to the Appropriations Committee specifically. And that is in February there will be an interim report from the commission, in terms of where they are early in the session, in terms of developing the implementation plan. And then in December of 2017, we will get their final...basically the final plan implementation recommendation. Fully assume there will be changes in legislation that will need to be addressed during the 2018 Session, as well, that will come with that, but that's just something that's on the horizon that we'll be seeing, something in terms of what we did this past session that's given the commission a fairly significant responsibility to deal with over the course of the next year and a half. With that, I'll take any questions; otherwise, I'll close, Senator.  
[LR539]

SENATOR SMITH: Mr. Hybl, from your best guess, this expanded responsibility with the 911, how much additional volume workload would you see that creating for the Public Service Commission if it falls within the Public Service Commission? [LR539]

MIKE HYBL: Well, I think to the extent there's going to be added workload, you know, we did give in that legislation...there was the ability to bring in additional staff to deal with the job. There is I think an expectation that there's going to be considerable outreach work with everyone that's involved in the 911 process to get their opinions and their insight on how this next-gen process needs to be implemented. I did meet with a member of the commission staff and a consultant that they have retained last week. I think they're out there doing that now, talking to people. I know that it will probably...the way I see it, it will come in probably two phases. One is putting together this plan, coming back, dealing with legislative issues we may have in the 2018

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Session. And then once we get to the point of actual implementation that will take on, you know, another whole layer of work. So I think there's significant responsibility there. Obviously we're dealing with the 911 system in the state, so it's...much like critical infrastructure, it's going to be an important component of what we do in terms of the public safety network in the state.

[LR539]

SENATOR SMITH: Thank you. Any questions from the committee for Mr. Hybl? Thank you. All right, I'm going to...the order that I'd like to proceed is that I know that Loel Brooks is with us today and he wanted to speak on the rules of procedure adopted by the commission and the provisions of the Administrative Procedure Act. And he has another commitment, so I'm going to let him go first. And then after Mr. Brooks, I'm going to ask...I know the chair of the Public Service Commission, Commissioner Schram, is with us. I'm going to ask Commissioner Schram to go last so that you can wrap up and answer any questions that may come up between here and that point. And then between...sandwiched in between there is anyone else that wishes to provide remarks today. So welcome. [LR539]

LOEL BROOKS: (Exhibits 2-4) Thank you very much and good afternoon, Chairman Smith and members of the committee. My name is Loel Brooks, L-o-e-l B-r-o-o-k-s, and I am a lawyer with the Brooks, Pansing Brooks, law firm here in Lincoln. I'm here to speak to you today about one of the issues, which Mr. Hybl just identified, that was identified for examination in LR539, and that involves the rules of procedure that have been adopted by the Nebraska Public Service Commission and the interplay of those rules with the Administrative Procedure Act. Now before you go to sleep, I know this is an arcane topic and so I'll try to get through a brief summary of testimony that I have just passed out for your further and more detailed examination after I finish. So I'll try not to put you to sleep before that. This is an extremely, although arcane, but an extremely important topic to the attorneys who typically represent and routinely represent clients before the Nebraska Public Service Commission, because we, as lawyers who represent telecommunications clients and other clients of other industries before the PSC, regularly rely on the rules of procedure that the PSC has adopted to help advance and protect the rights and interests of our clients. I am one of the attorneys who regularly appear before the commission in adjudication matters for our clients. And there are others in the audience today who do the same; many of my colleagues who practice before the commission are in the room this afternoon. I'm

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here today to offer testimony that is the product of many meetings and discussions with members of this community of attorneys, which I will call just for short the commission bar, and also Mr. Hybl and other members of various elements of industry who appear before the commission, and also with the Public Service Commission itself, including its legal counsel and its chair. As Mr. Hybl indicated, the commission is a state agency, it's a constitutionally recognized agency with independent authority, among other things, to issue and promulgate its own rules and regulations of procedure. It has the power also to conduct quasi-judicial proceedings, which it does on frequent occasions to adjudicate the interests of various parties before the commission. The rules and regulations of the commission are authorized separately in Chapter 75 of the Nebraska Statutes, independent of the APA. And these rules and regulations that the commission has established and promulgated have been used successfully for several decades. I started practicing in 1987 and the rules have not changed appreciably, except for updating in terms of rules of procedure, since that date. There are some portions of the rules of procedure that comport with the Administrative Procedure Act, and as you know, the Administrative Procedure Act is a separate body of rules that relate to the conduct of proceedings before other administrative agencies. It is a...I would call it kind of a default mechanism. It is how agencies can comport themselves in the proceedings before them and it was adopted, at least the parts that we'll talk about, back in 1993 for the purpose of providing additional uniformity and consistency in how administrative agencies function. We're here today because there are sometimes conflicts between agency rules, duly adopted, and rules articulated under the Administrative Procedure Act. That is not necessarily bad, nor necessarily inappropriate. The APA in fact provides that the model rules which it directed to be identified and created for use by state agencies can differ from an agency's own rules if there are substantial reasons that suggest that that would be appropriate. And in cases where certain agencies have been authorized by the Legislature to adopt their own rules of procedure that, in fact, occurs. In fact, the APA has certain exemptions for application of some or all of its parts by various agencies. And the names of those agencies and relationships can be identified in the materials that I've provided. The problem specifically that we're looking at here involves a conflict between the rules of the Public Service Commission and the APA, with regard to how we as counsel and our clients can intervene in cases that are brought before our agency. As you may know, in some cases, clients who appear before the commission are seeking certain kinds of actions or access to monies or other kinds of issues that the jurisdiction of the commission allows the commission to rule over, in which other parties

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have a direct interest that may affect them economically or operationally. The rules of procedure before the PSC provide a mechanism for interested parties to intervene in cases filed before the commission. And they may intervene as parties to these actions so that they can participate and protect or advance the interests of their particular clients. The APA also has its own set of intervention rules, which also allows for agencies who follow those particular dictates to intervene in other cases in certain circumstances. The difficulty we have here, the reason I'm here, is because those two intervention sets of rules don't necessarily comport with each other as they may apply to the Public Service Commission. The reason I'm bringing this up now is because for the last several years the Public Service Commission has been working diligently to upgrade...update its rules of procedure, including, where possible, trying to conform and align those rules with the APA. And the intervention rules have created some angst for those of us who practice in this area, the commission bar in particular, not for any one client but for any client that would appear before the commission, whether it's a telecommunications client, a natural gas client, somebody in transportation, or other jurisdictional arenas. The basic thrust is this, and this is a procedural due process issue. Under the APA, an intervention can occur in a proceeding within five days of a hearing. In fact, the commission under those rules doesn't have to grant or deny the commission...or the intervention request until 24 hours before the hearing. And as you may know, many of these hearings before the Public Service Commission are conducted much like a trial would be in district court, where once engaged in the activity, the parties may engage in discovery, they can engage in briefing, they can engage in oral arguments. And so sometimes there's a long period of time where there is a litigation process undertaken that allows all parties to be part of that process. In the APA, the rules permit very, very late intervention by another party, which creates in our mind significant due process problems in terms of notice and participation and protection of rights. Under the Public Service Commission rules, which we followed for decades, if a petition or an application is filed, interested parties have 30 days to file an action of protest or formal or informal intervention. We're talking about informal and formal intervention here, which would make them a party. So there's a great deal of notice given to potential parties to intervene, and once those parties have joined the action after 30 days, then the process for getting to a hearing or engaging in a hearing and protecting the interests of the parties is then done with everybody participating at once. If you miss your intervention period, you can no longer participate as a party. There's a significant difference as we as practitioners and our clients find ways to protect and advance their interests. And one of those is having an

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opportunity to participate fully in a proceeding that the commission would use to adjudicate or advance rights of the various parties. During the update of the commission's procedural rules, it has been suggested that the old rules of the procedure, the historic rules of procedure that the commission has adopted, should be jettisoned in favor of the APA rules; in other words, do away with the 30-day period for creating interventions and allow interventions to occur as late as five days before a hearing. The bar has consistently...the commission bar has consistently opposed this because we think it impacts negatively the rights of all parties. And so we have continued to work towards trying to resolve the issue and the commission has worked diligently to listen to us. And we have, by virtue of reasonable people having different views about the law, concluded that we have an impasse. But we also have concluded through many discussions, and I think those in the room would agree, that everyone has acknowledged that this matter could be clarified to everyone's satisfaction with a brief, short amendment to the APA, which I hope those in the room would entertain. And that suggested legislation, a copy of which is before you, would simply exempt the Public Service Commission from the narrow intervention rules of the APA and allow the Public Service Commission to continue with its historic rules of intervention and engaging in proceedings that would protect and advance the interests of clients. So that's the narrow nature of what we have presenting today...or what I'm submitting today is legislation that has been crafted with the assistance of many members of the commission bar, many of whom are sitting in the room, has been discussed with Mr. Hybl, has also been presented to the Public Service Commission for its review. Whether or not we agree legally on the interpretation that's gotten to this impasse, I think all will acknowledge that an action by the Legislature would in fact provide sufficient clarity to resolve this issue moving forward. The legislation you have before you is simply one page, it simply has a one-line exemption of the Public Service Commission from the particular issues of intervention that the APA provides. For purposes of his legislative intent, our former...your former colleague, Senator "Bob" Wickersham, my old law school classmate, interestingly was the senator who introduced LB446 in 1993, which was codified into the intervention proceedings of the APA. And I've spoken with Bob on numerous occasions about the conundrum that we're facing. And he has advised me that he feels that the APA sections on intervention were never intended to supersede rules of procedure adopted properly by an agency. And Bob has very thoughtfully crafted a letter, which is before you, in which he makes that finding. He simply says that the APA was intended to provide uniformity to agencies, but that agencies were not bound to follow that if there were reasons that they could

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demonstrate that suggested that it would not be in their interest or inappropriate to do so. And I think you'll see by looking at the APA that a number of exceptions have already been made for agencies in terms of following these procedural rules. And I'm very grateful for Senator Wickersham's assistance in identifying what his intent was. And so he recognizes that different agencies have different needs, and to the extent that those are articulated properly by the agency and the agency has properly adopted their rules, that those should stand and not necessarily be superseded by the rules of the APA. So it is with that background, and hopefully you're all still awake, it really identifies a short, very calculated, targeted change to the APA that it is my hope those in the room who have looked at this will support, including the commission, although they are here to represent their own interests. And those counsel who have participated in the drafting of this, many of whom are here, can also speak if they wish to do so. We hope that you will consider this as part of a clarification, an important clarification, protecting the due process interests of all clients, of all parties quite frankly before the commission, as part of a way to clarify what has become kind of an interesting impasse over the last several years as we have all been assiduously trying to figure out a way to resolve the issue. With that, I'd be happy to answer any questions. And thank you again for your time and for prioritizing my testimony. Thank you. [LR539]

SENATOR SMITH: Senator Seiler. [LR539]

SENATOR SEILER: Thank you, Chairman. Just so I understand, the intervention rules for the commission is that once they file a notice you've got so many days to enter your appearance or you're out? [LR539]

LOEL BROOKS: That's correct. [LR539]

SENATOR SEILER: The APA rules say that you can right up until five days before trial. Looks to me like both of them have a defect. The first one, everybody files, because you don't know where that lawsuit is going to go in the commission rules. In the other one, the APA, you only got five days to appear for a trial. That could be a monster in and of itself. [LR539]

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LOEL BROOKS: I think that's...I agree with part of your point, Senator Seiler. I think that we feel that the rules of...the commission has adopted and operated under are very familiar with everyone. The application, when filed, is published, notice of publication, so everyone who has an interest in it has a chance to read the application and determine the nature of the issues that are involved. And if there is an issue that is of concern to that particular interested party, they have a chance to file and intervene. [LR539]

SENATOR SEILER: Let me ask you this. [LR539]

LOEL BROOKS: Sure. [LR539]

SENATOR SEILER: How often do they change direction from that initial filing? [LR539]

LOEL BROOKS: I think it's... [LR539]

SENATOR SEILER: And if they do, do you get a chance to come back in, even though you didn't participate in the first? [LR539]

LOEL BROOKS: Well, I think it's not uncommon. It's not as common as it used to be for proceedings to have interventions and be contested in the context that it's stated in the statute. It used to be almost everything was contested, but that has changed by virtue of routine developments throughout the jurisdiction of the commission. Our sense is that if there is something that really is of concern, that affects a carrier, that there are others who are also interested and they may also intervene. And that's the nature of how the dispute is resolved. At that point, everyone's been engaged on what the topics are, there is a planning conference for how to proceed and the production of evidence, as it would in the court. [LR539]

SENATOR SEILER: Right. [LR539]

LOEL BROOKS: And that hearing is set in which the litigants can come in and speak. It is also a hearing in which those who are not official parties and participating can also make a statement from the public or it can file as an informal intervenor... [LR539]

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SENATOR SEILER: Oh, okay. [LR539]

LOEL BROOKS: ...and add their concerns on a specific point. So there is an opportunity later for the presentation of information. But it's not participation in the entire evidentiary trial process. [LR539]

SENATOR SEILER: Right. Thank you for the explanation. [LR539]

LOEL BROOKS: Sure. [LR539]

SENATOR SMITH: Senator Brasch. [LR539]

SENATOR BRASCH: Thank you, Chairman Smith. I'm also curious, and this is sounding extremely legal to me, I'll just...full disclosure here. [LR539]

LOEL BROOKS: I'm sorry, it is. [LR539]

SENATOR BRASCH: Okay. But when you talk about interested parties, are those parties state agencies or are they individuals that come before the state agencies at public hearings or say to the Revenue Department or to Game and Parks or to whoever is holding? [LR539]

LOEL BROOKS: These...the intervenor can be any generally private entity. It's...that's what happens because all of the parties who appear in front of the commission are generally private enterprises; not exclusively, but all of them are private parties who provide some kind of service that's pursuant to the regulation of the PSC. So if, for example, we were involved in telecommunications and I had a wireless carrier who provided an application for a certain kind of authority through the state and another carrier, whether wireless or wire line, opposed that or felt concerned about it, that party could intervene and we could discuss the issues that are contested between the two parties, both in terms of their interests and the policies of the commission. So it would be parties to parties with interests in the same general topic who would be intervening in the case. And that's where the jurisdiction of the commission comes through.

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And that could be natural gas, it could be telecommunications, it could be a number of different topic areas. [LR539]

SENATOR BRASCH: And the problem is the two differing periods of time. [LR539]

LOEL BROOKS: Yes. [LR539]

SENATOR BRASCH: One is 30 days, the other is 5 days? [LR539]

LOEL BROOKS: The intervention time for...under the Public Service Commission rules provides a notice that allows everyone with an interest in the particular proceeding to become a party. [LR539]

SENATOR BRASCH: And this is a published notice? [LR539]

LOEL BROOKS: Yes, it's a published notice, which is required by law. [LR539]

SENATOR BRASCH: Okay. Yes. [LR539]

LOEL BROOKS: Once someone is engaged as a party within that 30-day period then they're a party to a proceeding, and it is not unlike a trial. And so both parties get a chance to present evidence to the commission as to what their interests are and requesting certain relief from the commission. And that's part of their quasi-judicial role. [LR539]

SENATOR BRASCH: Okay. [LR539]

LOEL BROOKS: The time from the intervention period until the hearing could be months, it could be a year, and has been a year. During that time, the parties are engaged in discovery, in oral arguments, in briefing certain legal points if that's necessary. So the hearing could be many, many months away. Under the APA rules...I don't want to get too much into the weeds. [LR539]

SENATOR BRASCH: Okay. All right. [LR539]

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LOEL BROOKS: The APA considers any filing to be a contested case. And so they view intervention slightly differently in that context than we do at the commission. But the rules provide that if we have a case going forward and there's a hearing established that an interested party can come in five days before a hearing and the commission is not required to rule on the application for intervention until 24 hours before the hearing. So as an example, there could have been hearing and evidentiary procedures and oral arguments going on for months and months and months, but yet a party could come in on the last day and be a full party to the proceeding. That would be extremely damaging, or could be, to every party who has been advocating their interest throughout the course of this period, and we feel that's a very substantial due process problem that is not necessary to be opposed on the Public Service Commission because they have rules in place that provide a procedure which prevents that. It's not appropriate notice, no one has a chance to really ascertain what the interests of the late-file party would be or how to engage them in a completely, nearly, adjudicated proposition remaining only the hearing. So we feel that it's really fundamentally unfair in our context to have such an opportunity for late-file interventions as a party. Comments from the public at the hearing, which are allowed under other forms...other rules of the commission, allow comments to be taken, but it doesn't engage them as parties in the entire process that's held before the Public Service Commission. [LR539]

SENATOR BRASCH: Thank you for the further explanation. [LR539]

LOEL BROOKS: My pleasure. [LR539]

SENATOR SMITH: Mr. Brooks, before you leave the testifier table, I want to tap into your experience a little bit and if we could just go up a little bit higher level and kind of a broader view. As an institution, I know you've been around for many, many years and you've worked with the PSC, but some general observations as to how the PSC has evolved over a number of years. And beyond this very specific item that you're recommending changes to, do you see any other issues on the horizon that we need to be mindful of? [LR539]

LOEL BROOKS: Well, I think there has been enormous evolution of the commission, particularly in the last 20 years, in terms of their expertise, in terms of their professionalism, in terms of their willingness and ability to adjudicate all sides of a topic. I think that's been

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remarkable within the last 20 years particularly. In 1987, at the end of the old regime of the commission, I don't think I could say that. But the commissioners are very diligent, and as is the staff, about creating an environment where you can express your interests and your positions and have something adjudicated in a fair and reasonable way that is subject to due process issues and requirements. Certainly I think as the commission continues to move forward, Mike talked about a couple of areas where the commission's authority has been expanded, and I think their NG911 expansion is incredibly important. It is probably one of the most important areas I think that we have in the state to attend to, both for public safety and for economic development. And I applaud the commission for taking on in this and the Legislature for adopting a framework in which the commission can begin to develop a framework for deploying 911. I think it's incredibly important. It will take an enormous amount of work to do that. It's a very complex task. Legislation may be required to follow up on that, as I think you may expect, by virtue of our December time frame. But it's critically important there be an agency that has oversight over the entirety of NG911, public safety, and the deployment of telecommunications throughout the state. So to me, that is of paramount interest to the state and I think the Public Service Commission, through this legislation, is poised to be in a very...play a very important role in how this is structured and how it's effected throughout the state. So that would be where I think that the most significant evolution of the commission has come and where it needs to go. [LR539]

SENATOR SMITH: All right, very good. Thank you, Mr. Brooks, for your time. [LR539]

LOEL BROOKS: Thank you for prioritizing my appearance. Thank you. [LR539]

SENATOR SMITH: You're very welcome. Okay, now we would like to open it up to anyone wishing to provide us comments as related to LR539. Welcome, Commissioner Rhoades. [LR539]

CRYSTAL RHOADES: (Exhibits 5 and 6) Thank you. Good afternoon, Chairman Smith and members of the committee. My name for the record is Crystal Rhoades, C-r-y-s-t-a-l, last name R-h-o-a-d-e-s, and I am a commissioner with the Nebraska Public Service Commission, representing the 2nd District. I really appreciate this hearing and you giving us the opportunity to come in and visit with you about how the commission can better provide services to the public.

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Oftentimes we are too scared to come and ask for what we need. And so being able to highlight some of the issues that I have observed as being really critical, I am very grateful for that opportunity. I believe that we do a great disservice to our constituents when we don't ask for the things that we need to best serve them. I'm...Commissioner Schram is going to give you a very comprehensive overview of what is going on in the commission, but there were a couple of areas that I really thought that it was important to highlight. Our transportation department has been doing a lot of work with very few resources. We are responsible for motor carrier transportation of passengers for hire, household good movers, transportation network companies, and the department also processes applications for certificates and permits, issues commission plates and cab cards, sets rates charged by carriers, establishes tariffs used by the household good movers, and secures compliance with insurance requirements, and provides information to motor carriers and the public. The department currently has two investigators that are commissioned as state deputy sheriffs and serve as our enforcement arm in the department. And those investigators ensure compliance with state statutes, commission rules and regulations, and they also investigate complaints received by the public. There are currently 68 household good movers, 179 passenger carriers that hold an active certificate of public convenience and necessity, there are 2 TNC companies that are holding permits authorizing operation in our state, and since November 1 of 2015, our department has issued 1,905 plates to different carriers. Those department inspectors also inspect every taxicab fleet on an annual basis and an approximate total of 395 taxicabs statewide. As time permits, those inspectors also inspect the fleet of other passenger carriers across the state, including vans, wheelchair and ambulatory vehicles, and railroad crew transportation vans. So you can see why having only two investigators is quite challenging for them. Our railroad department, which is contained within that transportation department, is responsible for services, facilities, equipment, and rail safety; and the department consists of one rail car safety inspector that's responsible for inspecting the power and equipment, such as brakes, locomotives, etcetera. The inspector is certified by the Federal Railroad Administration, the FRA, which gives the ability to write violations against railroads based upon the result of those inspections. The commission has been a participant with the FRA in that state program since 1976. But since 2014, there have been 24,905 motive, power, and equipment unit inspections, resulting in 713 defects and 41 FRA violations. The inspector also conducts inspections in partnership with the FRA, providing field training for new inspectors, and since 2014, that inspector completed 14,093 FRA-accompanied unit inspections that resulted

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in 552 defects and 604...excuse me, 64 FRA violations. There were four accident investigations that were conducted, and in addition to the inspection responsibilities, that inspector assists the public with a variety of railroad issues and complaints--also a very busy department. Nebraska is the third highest in the entire country in terms of trains moving through our state by tonnage. So we have a lot going on in terms of rail. Partially funding our department through cash funds could be used to help offset administrative costs and enforcement of the Motor Carrier Act and lessen the department's reliance on General Funds. Funding can come from fees that are collected from the industry for plates every year and application fees as well. The department is short-staffed. In regards to railroad, we have asked for funding for a track inspector position since 2011. And since our last inspector has left the commission, we have been unable to refill that position due to not having funds allocated for that. The FRA has recommended to the commission that there could potentially even be enough workload to add one or two additional inspectors in addition to the one that we currently do not have filled. We should also have at least three passenger carrier inspectors who could split the inspection duties between the eastern part of the state, the middle section of the state, and the western portion of the state. We would also envision an additional position that would act as a floater inspector or a primary investigator for consumer and/or industry complaints. As of now, the two gentlemen that we have working for us do the best that they can, but quite frankly, there's only two of them and there are literally thousands of vehicles that need to be inspected. The last thing in transportation that I want to visit with you about is jurisdiction over the brokerage services of IntelliRide. Having jurisdiction over that particular brokerage firm may centralize some of the regulations that carriers have to deal with in conducting their business, instead of having to deal with several entities at once when providing one type of service. It would also give the public peace of mind knowing that there is one agency that is tasked with investigating their complaints. The way it is currently structured is that because they're a brokerage company, if there is mismanagement in any way, shape, or form, and the commission has seen a number of dockets come to us because of the way that they are operating, we have absolutely no ability to help anyone remedy those problems, whether they be billing or service or consumer complaints, because we only have jurisdiction over the carrier. And if the carrier isn't actually the problem, the actual problem is the brokerage service that is assigning the rides, we have no ability to intervene or to assist in resolving the issues in any way. I also want to talk to you briefly about our grain department. The commission's grain warehouse and grain dealer department is responsible for licensing and

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examining grain warehouses and licensing grain dealers. That department administers the moisture meter program to ensure that the moisture meters are appropriately calibrated. Regarding the grain warehouse and dealer department, one issue of significance for the commission and our staff is the measurement of the protein content of wheat. The value of wheat is directly impacted by the protein content of the wheat crop and wheat that does not meet the minimum protein content cannot be sold for food-grade products but must be sold at a significant reduction to the animal feeders. The problem is that no federal or state agency, body, or board is currently tasked with ensuring that the equipment that's being used by the elevator to measure the protein content in the wheat is accurate. And with no verification of standards or official calibrations, as with the moisture meters, producers must either rely on whatever readings the machine at the elevator provides or submit samples for testing at a federal grain inspection service location at the producer's expense. And it's pretty...it takes a significant amount of time. This could be the difference between making a profit or not even covering the cost of production for the wheat for farmers. And the commission already tests and calibrates the moisture meters. Adding similar duties for protein testers could provide stability and reliability measures for the grain industry. I do know that we are heading into a budget shortfall and that we need to tighten our belt and do what we...the best that we can with the limited resources that we have. I am suggesting that one of the ways that we can accomplish some of these tasks would be to create a statutory structure to cash fund more of these programs. We've been operating on a very lean budget for many, many years and it's my view, and that of many of my staff, that we are actually harming consumers by not asking you for what we need to do our jobs most effectively. I would like to thank all of you for examining these issues and for...and Loel spoke very, I think, elegantly, much more so than I could, to the APA, and so I'm not going to rehash that for you. But I would echo his sentiment that it is very difficult for us to do our job, given the way that the law is currently written. And I want to thank all of you for your time and for allowing me to speak. And if there are any questions, I'd be happy to take them. [LR539]

SENATOR SMITH: Senator Murante. [LR539]

SENATOR MURANTE: Thank you, Senator. Thank you very much for coming down. I have a question that emanates as a cross-section of my work here on the Transportation Committee and my work as the Chairman of the Government, Military and Veterans Affairs Committee. And in

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that committee, we deal in large measure with the Nebraska Accountability and Disclosure Commission and the regulation of political activity. And one of the items of jurisdiction under the Nebraska Public Service Commission is the regulation of automatic dialing devices, robo calls, which gets into political activity that happens from time to time. What is becoming an increasing concern is that the language that is placed in the statutes, as it relates to these devices, between the Accountability and Disclosure (Commission) statutes and the Public Service Commission statutes are almost identical, but the two agencies interpret the almost identical language in different ways. So the first question I have for you is, when interpreting the statutes or creating rules and regulations from within the Public Service Commission, how often do you consult with the Nebraska Accountability and Disclosure Commission to talk about how they interpret the rules so that the same activity is regulated in the same way? [LR539]

CRYSTAL RHOADES: That's a really great question. And so we did have this come up just this year and these were concerns that we shared and so the commission opened a docket to review and to try to work with the Accountability and Disclosure Commission to make sure that both agencies were working cooperatively and that their standards were aligned with each other and with the statute. And so we held a workshop, we have put out for comments some minor changes to the way the rules and regs read so that they're much more clear, have requested comments on those. And those are...we just actually had a hearing last week asking for public comment on that, we got none, and so we are likely to proceed with a few modifications to that. And the goal of that was to harmonize between those two agencies how we treat those calls. The jurisdiction of those two agencies is a little bit different in terms of what we have to do versus what they have to do. But to the extent that we can match up and align so that it's less confusing for the campaigns, that's really the goal. It really is not our goal to create...I mean, we're all elected too. It's not our goal to create an unnecessary barrier for the campaigns. But at the same time, we want to be very respectful of the statutes that the Legislature has enacted and make sure that we're doing everything we can to comply with the laws that you've created. [LR539]

SENATOR MURANTE: And I appreciate that. I would say perhaps I'll reach out to you and Commissioner Schram as well because there have been examples of definitions and terms which are interpreted differently between the two agencies. And I think it's incumbent on all of us to make sure that they're interpreted the same way. As a matter of philosophy, we as a Legislature

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in state policy have as a broad rule determined that political activity is best regulated by nonpartisan commissions, people who are detached and actually statutorily prohibited from participating in partisan activities. Do you think it's appropriate for a constitutional office, which is partisan by nature, to be regulating political activity? [LR539]

CRYSTAL RHOADES: I think that that's a decision best made by the Legislature and I think that we're just trying to do the best that we can to follow the statutes that were handed to us. So I don't mean to...I'm not being coy with you; what I'm telling you is we'll do what you tell us to do. The statutes are pretty cut and dry in terms of what's required. Our rules and regs are directly designed from what the law requires us to do. It is difficult I think for people who also have to be elected and who also have to enact...it's an uncomfortable position...that's the best way to say it, it's an uncomfortable position. [LR539]

SENATOR MURANTE: In your view, do you think that...there's not a statutory firewall between the political parties or candidates and the Public Service Commission who are regulating these political activities. There's no statutory firewall. Do you believe that there exists a practical firewall, a self-imposed firewall of Public Service Commissioners between the political parties and candidates running for office and (inaudible)... [LR539]

CRYSTAL RHOADES: I don't know that I'm sure I know what you're asking. [LR539]

SENATOR MURANTE: Do you think that there is...the problem, and why so many states have veered away from partisan officers like a secretary of state regulating political activity, is because the temptation is going to be there for whichever party that officer resides in to be a contributor to that political party and use that office for that purpose. So what I'm asking you is, not withstanding whether a law exists, because there is no law mandating a sort of firewall where you cannot communicate to a political party or to a candidate the information you receive as part of your office, what I'm asking you is as a practical matter do you believe that the commissioners do practically not communicate that information as part of the role that they have? [LR539]

CRYSTAL RHOADES: I think...no, so...no, I don't actually. I think that what happens is that the information comes in, commissioners get calls about what's coming in, in terms of what the

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scripts say and whether or not the robo dialer was registered and who paid...all of those things are statutorily defined and public records. [LR539]

SENATOR MURANTE: Right. [LR539]

CRYSTAL RHOADES: And so if you get a call and someone says, I heard that someone was making a robo call in my district, I'd like to see the script, you don't have any choice but to disclose that because that's how the law is written. If the Legislature doesn't...no longer wants to consider those a public record, then I think that's really a legislative decision then. And if that's what the rule is, then of course we wouldn't disclose that. I don't know that that would change...I don't know that the disclosure requirement would change if it were moved to another commission, a nonpartisan commission. That again is up to the purview of the Legislature. [LR539]

SENATOR MURANTE: Okay. I'll probably have more questions for Commissioner Schram later, but thank you very much for your answering those questions. [LR539]

CRYSTAL RHOADES: Okay. You're very welcome. [LR539]

SENATOR SMITH: If I may follow up on the question you were just asking, so whenever you get those phone calls, you directly are disseminating that information or do you rely on staff to disseminate the information according to some standard? [LR539]

CRYSTAL RHOADES: It depends. So if the caller is making a complaint, that goes to staff, that's not something that comes to me, I direct them to staff. If they just ask for a copy of the script then that's something I can just send because that's just something we have to disclose. Now we could require that they go through and make a formal records request, but honestly that creates a lot more work within the commission than is probably necessary. [LR539]

SENATOR SMITH: But may be, appearancewise, better? [LR539]

CRYSTAL RHOADES: Perhaps. [LR539]

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SENATOR SMITH: Okay. All right. Thank you. [LR539]

SENATOR MURANTE: Let me ask another question a slightly different way. So from the perspective of the people of Nebraska, if we've stipulated that now we have political parties and candidates seeking this information from a partisan body which is regulating political activity, I'm trying to look at...a question we always ask ourselves in the Government Committee is, what is the legitimate public policy? What benefit comes to the people of Nebraska for having that sort of relationship? So I'll ask you that question. What good comes to the people of Nebraska to have that kind of relationship between a political party and a regulatory body? [LR539]

CRYSTAL RHOADES: I think that I would say that the premise is flawed in that it's not necessarily a benefit to the political party per se. There are often times where you're getting a call from a constituency that has nothing to do with a political party, that is issue based, that wants to know, you know, the media who is saying we're getting these poll results, do you have the questions that they asked; was it a push poll, was it an actual academic poll, could we see those scripts. And so the presumption...I would say that the presumption that it is always to the benefit of the candidate who is requesting it is not...is actually...that's not actually where most of the questions stem from. What we do is what we were directed by the Legislature to do, which is to receive and record what those scripts are and to make those available to the public; to make sure that the dialers are registered; to make sure that the callers are aware of who is making the call. But we don't have any regulatory authority over the content, we don't have any ability to stop the call because the calls are scheduled after, so even if they use a dialer that isn't registered. And it also protects the industry to a large extent, not...it protects them in that you must register, you must file, you must comply with the rules and regulations of operation. And those vendors I think don't want anybody to be able to log on to the Internet and make calls and cut into their business. And so I think that that is, as I understand it...of course these rules and laws were passed long before I was a part of the commission. The commission doesn't really have a dog in the fight in terms of what we're...I mean, in terms of what the candidates are doing. Our job is to make sure the dialers are registered, that the language that's required by the statute is included in the call, that they file those scripts. That's what we're...that's what our mandate is. [LR539]

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SENATOR MURANTE: And, okay, so do you believe that the individual commissioners have a mandate that anyone who seeks that information, those individual commissioners are obligated to provide that information? [LR539]

CRYSTAL RHOADES: I think that anyone that asks for a public record, as an elected official, I am obligated to provide it, yes. And whether it comes from me or it comes from my staff is immaterial. I will tell you that what prompted...the commissioners are sent copies of every single robo call that comes to our office, and what prompted that was that we had a slew of bad actors who were not complying with the "paid for by" disclosures, that were not complying with the time limitations, that were not complying with even making sure that their dialers were registered. And so in order to kind of curb that, we said we're going to look at these. It's not our...we don't want to go around finding people or making it unnecessarily difficult or giving them a bad time, but when you know that the rules are largely not being enforced, and it's your responsibility to enforce them, what then happened was we said, okay, we need to pay closer attention to this. And once we started paying closer attention to it, what we found was that there was a lot more compliance with the rules, even absent us taking any action against anyone who is making the calls. [LR539]

SENATOR MURANTE: So I'll just have one last question for you. [LR539]

CRYSTAL RHOADES: Okay. [LR539]

SENATOR MURANTE: And then I'll move on to another victim. So let's do this by way of contrast, like Frank Daley is the executive director of the Nebraska Accountability and Disclosure Commission. If Frank Daley were to, say, voluntarily provide information to one political party but not another, that would be a violation of his contract and he would be in violation of state law, he would lose his job. Do you see any sort of statutory requirement among Public Service Commissioners to abide by that same principle? [LR539]

CRYSTAL RHOADES: Yeah, I don't know. I actually don't know, that's not a question that I've ever been asked and it's certainly not one that staff has ever been brought, so it's not...I don't know what the answer to that is. What I can tell you is that the information that is being provided

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out of our office has been requested and so I think we do have a constitutional responsibility to honor those requests. If the Legislature deems it appropriate to require us to always have a formal public record request, I think that is certainly up to you. [LR539]

SENATOR MURANTE: Okay. Thank you. [LR539]

SENATOR SMITH: I think maybe to sum up what I'm hearing Senator Murante saying, and please tell me, Senator Murante, if I mistake what you've said, not necessarily a difference of opinion in an obligation to provide public information upon request but rather are you taking the necessary steps to avoid the appearance of any type of bias. Assuming that we as elected officials are points of influence and we have an institutional...an institution's reputation to uphold, so not to say it's...there's wrongdoing there, but rather is there a way that it could be executed in such a way that it's more of a standard? [LR539]

CRYSTAL RHOADES: Yeah, I do think that that's a fair point and I do think that that's part of what we're trying to do is to develop policies to address that. If I had my druthers and we had the money, it would all be on-line, all of our dockets would be searchable, all of the records that we keep would be easy for the public to access, and would be right there so that you would never have to be concerned about whether or not there was any undue influence by any commissioner or any staff member. It would all just be there for the public to see without having to make any request, in the same way that our minutes or agendas are. I'd like to see all of our dockets and all of the information that we are required to collect to be as transparent as we can make it. [LR539]

SENATOR SMITH: Okay. Well, thank you very much for your time before the committee and appreciate your earlier testimony. I know many of those items dealt on appropriations and so I assume that you will be back before the Legislature early next year, perhaps before the Appropriations Committee making those asks. [LR539]

CRYSTAL RHOADES: We certainly will. Thank you very much for your time. [LR539]

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SENATOR SMITH: Thank you. Anyone else wishing to testify? We promise we will not be long-winded with you. All right, I see no one else. Commissioner Schram? Except with you, Commissioner Schram, we may be long-winded with you. [LR539]

TIM SCHRAM: Understood. [LR539]

SENATOR SMITH: Welcome. [LR539]

TIM SCHRAM: (Exhibits 7 and 8) Thank you. Good afternoon, Chairman Smith and members of the Transportation and Telecommunications Committee. My name is Tim Schram, spelled first name T-i-m, last name S-c-h-r-a-m. I am the current chairman of the Nebraska Public Service Commission, representing the 3rd District. Thank you for the opportunity to discuss the commission's structure and jurisdictional issues. I am here today to provide some information to the committee for its record relative to LR539 and to answer any questions you may have. The mission of the Nebraska Public Service Commission is to promote high-quality, safe, and reliable public services for all Nebraskans at fair and affordable rates. The commission has a wide range of responsibilities: it oversees privately owned natural gas providers; grain warehouses and dealers; the manufactured modular home industry; recreational vehicles; passenger carriers and household goods movers; railroads, including locomotive and track safety; and the telecommunications industry, where the commission works to foster a competitive marketplace to provide affordable access to basic and advanced telecommunication services and ensure access to emergency services. The commission holds weekly public meetings and conducts hearings in a quasi-judicial, legislative, and administrative capacity. The industries we regulate are constantly changing; accordingly, our priorities must change along with it. Here are some of the examples of what we are working on. First, in the communications, shortly after the 1996 Telecom Act was passed, the commission's priority was the developing competitive markets. We saw an influx of new entrants and we resolved disputes between incumbents and competitors over access to networks and we promoted choice in the market. Over the years, we have shifted our focus to meet the demands and expectations of a broadband world. These challenges include the infrastructure, bandwidth, and accountability. Now more than ever, a data-driven process is necessary to answer consumer expectations. Consumers want to know who their providers are, what services they can receive, and what happens when those

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services don't work the way they're supposed to. The FCC expects states to fill the gaps where needed and provide them with information relative to the services and providers within our borders. We need to compile and analyze more data than ever before. The communications department continues to field and resolve subscriber service and billing complaints; review and approve new entrants; collect, process, and display broadband deployment data on our publicly available Web site; process boundary change applications; transfers of control; monitor rates, as well as oversee numbering issues; administer the Telecommunications Relay and the Nebraska Internet Enhancement Fund programs with a staff of five. The telecommunications information and public safety department has six staff members. Its responsibilities include administering the following Nebraska Universal Service Fund programs: high cost; telehealth; dedicated wireless fund; Lifeline; and broadband adoption. I will talk more in depth about telecommunications issues at the hearing on Wednesday, but I would like to highlight four of our key priorities: (1) next-generation 911--there is an urgent need to improve our 911 system and the Legislature recognized that with the passage of LB938; (2) contribution reform--we need to stabilize the fund in a way that is fair to consumers and providers; (3) universal broadband access--we are working on reform which complements changes in the federal universal service support mechanism in a way that it highly targeted to avoid duplication with federal funds and in a way that provides greater accountability; (4) Lifeline reform--we need to ensure low-income consumers have a continuing voice service in addition to broadband in recent light of recent changes made by the FCC last April. This department also oversees Enhanced (Wireless) 911 Fund, the program which funds the deployment of enhanced wireless 911 services. This department's priorities have also evolved because of the changing way we communicate. In May of 2012, for example, Verizon Wireless announced plans to deploy text-to-911 capability through its nationwide network in 2013. The commission opened a proceeding to determine what we could do to transition stakeholders to a text 911 platform. In 2014, the commission approved cost recovery for the text-to-911 rollout in Nebraska. We also know that 911 operation centers are achieving efficiencies on their own during the transition to integrate next-generation 911 functionality into their systems. Some jurisdictions are working collectively to leverage technical expertise and equipment resources. We recognize there are a number of challenges that 911 centers will encounter over the next few years. We need to help 911 centers meet these challenges by providing them with the financial, operational, and technical tools needed to transition to an all-IP world. Subsequent to the passage of LB938, we have hired a next-

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generation 911 director, an attorney, and are close to hiring a public information officer and GIS coordinator. There are a few more positions that we need to fill; however, we are moving ahead expeditiously. We will also try and rely on our consultant, Mission Critical Partners, to assist the commission in development of the master plan. A collaborative and productive dialogue with the stakeholders is underway and we are on track to provide the committee with a report by February 1, 2017. Our transportation department has five staff members, including the two transportation investigators and one railroad investigator. This department is required to annually inspect all passenger carrier vehicles, conduct driver background checks, regulate household goods movers, investigate complaints, process new authority and rate applications, and oversee insurance and driver requirements for transportation network companies like Uber and Lyft. The commission's natural gas department has three dedicated staff members. With the recent acquisition of SourceGas by Black Hills Energy, the natural gas department faces a number of challenges. Even successful system transitions, due to the complexity of programming, testing, and merging diverse business practices, requires significant oversight and accountability. There are a number of key decisions that will need to be made by Black Hills that will directly impact customers. These include decisions regarding possible changes to the Choice Gas program in central and western Nebraska, cost recovery for maintenance and upgrades that need to be performed on farm taps in eastern Nebraska, and the 2018 Black Hills/SourceGas rate case to just name a few. For the foreseeable future, Black Hills intends to operate the legacy Black Hills and SourceGas territories as two separate regulatory entities while they work to fully establish a consolidated vision for Black Hills as one united entity. In addition to the traditional cost of service model that has been historically used by regulatory agencies to set utility rates, promotes asset growth, needs to change, the commission may need to investigate and develop incentive-based rate-making policies that reward a utility for: (a) safely operating their facilities; (b) finding ways to cost-efficiently utilize existing infrastructure versus building new; (c) controlling lost and unaccounted-for gas; and (d) serving as a catalyst for economic development within Nebraska. The commission's grain warehouse and grain dealer department employs a staff of seven. The department is responsible for licensing grain warehouses and dealers, calibrating and inspecting moisture meter devices, and conducting soybean audits on behalf of the Nebraska Soybean Board. Each warehouse and dealer license must be renewed annually after a financial review. Further, every licensed warehouse receives an on-site examination at least annually. This year, the department has the highest licensed warehouse capacity in the history of the program, with

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525 million bushels currently licensed with the commission. The department also inspects over 1,500 moisture meters each year to ensure accurate pricing for grain sales. With grain production continuing to reach new highs, we anticipate steady and increasing workloads for the department. Finally, the commission's manufactured home and recreational vehicle department is staffed by three with assistance of contract employees that work on an as-needed basis. This department provides an average of 950 home inspections each year, an average of 700 home model plans are reviewed each year, more than 4,000 new recreational vehicles are sold in Nebraska each year, and approximately...work on this department remains steady. With the continued use of contract employees, we are able to more easily adapt to changes in the housing market. Let me close by addressing one of the issues raised by the study and that is operating under the umbrella of the Administrators (sic) Procedure Act, the APA. This act recently came into focus when the commission was required to update its rules of commission procedure. The commission has longstanding rules which have required a protest or intervention to be filed within 30 days of the date of publication. The APA, however, permits an individual or company to intervene in cases as late as five days prior to the hearing. The commission has been advised by the Attorney General's Office that our rules need to be consistent with the APA and that we must permit interventions be filed up to five days before the hearing. The commission is prepared to follow the framework required by the APA; however, it also does not oppose a legislative solution to the issues raised by those parties that raise due process concerns. Again, I appreciate the opportunity to be here today and I am happy to answer any questions you may have. [LR539]

SENATOR SMITH: Thank you, Mr. Chairman. I appreciate it very much. Questions from committee members? I do have a couple questions for you. And you've been with the commission now for...? [LR539]

TIM SCHRAM: Took office in January of 2007. [LR539]

SENATOR SMITH: In 2007, and appreciate your service, I know you've done a fantastic job of leadership over at the commission. So a lot of changes have taken place and we heard a little bit from Mr. Brooks earlier the change and the evolution of the commission. I wanted to get at just a little bit on the workload as well and maybe in...this is in terms of your experience as a

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commissioner. Dealing with the workload of the commissioners, what's the time spent on formal commission business, in your opinion, by the commissioners? [LR539]

TIM SCHRAM: I brought some facts with me, Mr. Chairman. In 2015, we had 46 regular commission meetings; those are voting meetings where we actually vote on dockets that we previously had hearings on. And in 2016, we've had 39 year to date. In 2015, we had 44 hearings; in 2016 year to date, we've had 32 hearings. And we've had two workshops each year for total commission activity of 92 in 2015 and currently 73 in 2016. Now let me clarify, some of the hearings are informal and they're annual rate review. At a lot of those hearings we don't have a lot of appearances by legal counsel or parties, a lot of them are formality-type hearings. Also, if they're contested hearings, such as telecommunications, natural gas, transportation, those hearings consume more time than our administrative-structured hearings. So to give you some idea, our weekly meetings can range...some weeks we don't have a lot on our agendas, we're done in 15 minutes. Some weeks, if we have presentations by staff, we may be half-hour, 45 minutes per regular meeting. [LR539]

SENATOR SMITH: I know it's hard to put it into number of hours, but overall would you say probably under 100 hours, 700...let's say, 500 to 700 hours a year is kind of...? [LR539]

TIM SCHRAM: Yeah, as far as meeting times, if you'd average weekly meetings at a half-hour and our hearings, if you would use and subject to check, looking at duration of meetings, if you would say a half-hour on hearings...like I said, sometimes transportation hearings, where we have lots of witnesses, or natural gas hearings, you know, it all depends on the amount of witnesses. But would you repeat your number again, please, Chairman? [LR539]

SENATOR SMITH: I don't know, I just threw out a number--500 hours a year. [LR539]

TIM SCHRAM: Yeah. And I will tell you that a lot of what...my own self as a commissioner, not speaking for my colleagues, a lot of it depends, too, how much you engage at the national level. Our National Association of Regulatory Utility Commissioners, they have national meetings, if you engage on their committees and if you're a moderator of a panel or working on a committee...currently I'm serving on a national 911 board as a representative for the National

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Association of Regulatory Commissioners, that was an appointment by the FCC. And so if you engage in those national activities, you spend more than your normal duties. [LR539]

SENATOR SMITH: And then each commissioner is assigned a certain area of responsibility or expertise, or maybe they just assume that. [LR539]

TIM SCHRAM: Correct. [LR539]

SENATOR SMITH: And so it kind of gets spread over the commissioners. Do you see the workload increasing or decreasing for the commissioners? For example, like in the natural gas area of your jurisdiction, with the acquisition of SourceGas by Black Hills, is that...you know, that might be a driver in the direction of involvement with the natural gas industry. So overall, increasing, decreasing, or about the same? [LR539]

TIM SCHRAM: That acquisition just happened so I'm going to reserve and let us get a little history under our belt. I would say that you're not going to have as many rate cases that affect the consumers, but you're seeing with the Legislature's approval the SSIR, the safety and integrity rider that allows a gas utility, instead of doing it through a normal rate case, if they have to replace infrastructure, we can use the SIR...SSIR method to do that. As we see more competition in telecommunications and in transportation, I think where there's a competitive market you're going to see less regulatory work for state commissions. I think that would be an accurate statement. [LR539]

SENATOR SMITH: Okay. The commission sometimes operates I guess administratively, but it also operates legislatively and as a judicial branch. [LR539]

TIM SCHRAM: Quasi-judicial. [LR539]

SENATOR SMITH: Yes. So can you describe each one of those and how that works exactly from the Public Service Commission? When do you operate in each of those roles? [LR539]

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TIM SCHRAM: When there's a contested case it goes to a quasi-judicial in that we have to exercise ex parte. We have to... [LR539]

SENATOR SMITH: And for...I know you looked at Senator Seiler when you said that. He's the attorney at the table. Make certain you let the rest of us know what that means. [LR539]

TIM SCHRAM: Okay, I'll do that. So but once a case is contested and there's multiple parties, we do abide by ex parte. We do discovery, we normally have a planning conference with all the hearing officers appointed, and then there's a planning conference that we engage all the parties as far as the time line for discoveries, interrogatories, and schedule proceedings, and then set its hearing date. Legislative format, those are informal hearings, more informational type hearings where it may be just staff updating the commission on a budget item or a rate setting. If there's no intervenors and...you know, we go with the legislative format where there's no cross-examination. [LR539]

SENATOR SMITH: So when you're in a judicial role, you have to make certain you've set yourself apart as needed. [LR539]

TIM SCHRAM: Correct. [LR539]

SENATOR SMITH: And recusing, that's sometimes a necessity if there's a concern there with bias? [LR539]

TIM SCHRAM: Yes. If there is a conflict of interest it's...there...or even a potential conflict of interest, it's that their recusal is appropriate. [LR539]

SENATOR SMITH: Does that become a problem with the size of the commission and...or do you have any experience with how other states handle that? I mean, we have a...I know some commissions are as small as three members, we have a five-member commission. Is that a problem when recusing comes into play? [LR539]

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TIM SCHRAM: I haven't experienced it myself. I haven't recused myself from any of the dockets that's been before the commission since I've been there. [LR539]

SENATOR SMITH: But that's more or less kind of self-regulated, isn't it? [LR539]

TIM SCHRAM: Correct. It's up to the individual commissioner to make the determination if there's been a bias implicated as far as, you know, something that may have been stated on the record that would have biased against one of the parties. [LR539]

SENATOR SMITH: Okay. And I know something...I've heard some comments made about the subpoena power, that that has come up from time to time. What is the authority of the commission as it relates to issuing subpoenas? [LR539]

TIM SCHRAM: Under the current statute, any individual commissioner can ask the staff to seek for a subpoena. And so right now it's up to...it doesn't have to be the hearing officer, which typically if a subpoena is required or needed, it's usually at the direction of the hearing officer of that docket. But as I read the statute, and I will disclose I'm not an attorney, that our current statute allows for any individual commissioner to ask staff to seek for a subpoena. [LR539]

SENATOR SMITH: Okay. And again, you know, with kind of in the past the commission working as a unit and to protect its reputation and to make certain it remains unbiased, what would be the harm in allowing the commission to issue subpoenas where there's multiple commissioners necessary to do so, as opposed to relying on a single? Or is there a basis for it relying on a single commissioner to issue a subpoena? [LR539]

TIM SCHRAM: I would prefer that it would be a majority vote of the commission. [LR539]

SENATOR SMITH: Three out of five? [LR539]

TIM SCHRAM: Three out of five. I think that that would have greater standing if the subpoena is a question in an appeal. [LR539]

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SENATOR SMITH: Very good. And in terms of receiving information when the commission requires or sees it necessary to receive information from third parties, from the regulated companies, what tools are available to you to do so? [LR539]

TIM SCHRAM: The parties can ask the hearing officers for a protective order, and which we do put those documents in a protective order or ask that they be classified as confidential. And we do use that quite a bit in the competitive environment where there may be trade secrets amongst the trade that we do use protective orders to protect the process. [LR539]

SENATOR SMITH: Okay. Senator Murante. [LR539]

SENATOR MURANTE: Thank you, Commissioner Schram. I hope you had an opportunity to listen to the exchange that I had with Commissioner Rhoades, and I'll preface my question to you by saying I don't know Commissioner Rhoades at all. As you know, I've known Commissioner Schram my entire adult life. When I first started running for the Legislature, he and his family was the...for five years, yeah, that's correct--my entire adult life (laughter). So I have nothing but respect for you. My concerns about the regulation of political activity, it's not personal, it's a matter of process, because, as we talk about a lot in the Government Committee, it's not enough to have a fair process, the people of Nebraska need to believe that the process is fair. And I'll ask you the same question I asked her. Do you believe that a partisan body regulating political activity engenders that sort of belief of fairness among the people of Nebraska? [LR539]

TIM SCHRAM: First, I'd like to answer that by saying I do believe that consumers of the state on auto dialers need a level of protection. [LR539]

SENATOR MURANTE: Absolutely. [LR539]

TIM SCHRAM: I'm not here to say what agency in state government should do that, but hours of calling, the nature of the call, I do believe that consumers do need a level of protection with robo calls. To answer your question, I feel that I as a commissioner elected on a partisan ballot and having access to these scripts, the auto-dialer scripts when they're filed with the commission,

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does put me in the position of being an insider political trader. It does expose me to that and I would feel more comfortable not being in that position. [LR539]

SENATOR SMITH: Okay. [LR539]

TIM SCHRAM: Did that answer your question? [LR539]

SENATOR MURANTE: It does, and I appreciate your candor. I appreciate your candor because when there are problems on this front, one of the...our office is one of the first that gets phone calls. And there have been rumors, accusations on this front and I think that it's something that we probably need to have a conversation about and address. [LR539]

TIM SCHRAM: Yeah, and like I said on the record, I firmly believe Nebraska consumers do need a level of protection there of not getting calls at midnight and 1:00 in the morning. [LR539]

SENATOR MURANTE: Right, absolutely. [LR539]

TIM SCHRAM: And they do need a level of protection. Respectfully, I believe it's the legislative body that makes the determination of what agency would more fairly and neutrally, independently handle those situations. [LR539]

SENATOR SMITH: Senator Seiler. [LR539]

SENATOR SEILER: Yes, I'd like to review your hearing process just for...to see how it compares with the old Federal Power Commission. All your...let's say we have a rate case, that was the most common. Is your direct testimony presubmitted by the applicant? [LR539]

TIM SCHRAM: Yes. [LR539]

SENATOR SEILER: Okay. And then the opposed...or other parties who have submitted under the intervention can then have the right to cross-examine by written testimony or do they then call the witness? [LR539]

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TIM SCHRAM: Well, in natural gas cases, those are the ones I'm most familiar with, we do have, prior to going to the hearing, we have direct testimony and there's also rebuttal testimony. [LR539]

SENATOR SEILER: Okay. [LR539]

TIM SCHRAM: And both those testimonies are subject to cross-examination during the proceeding. [LR539]

SENATOR SEILER: And that's all presubmitted, including the experts that are testifying as to the rate calculations? [LR539]

TIM SCHRAM: Yes. Yes, economist, climatologist, all that. [LR539]

SENATOR SEILER: Right, right. [LR539]

TIM SCHRAM: We have that. [LR539]

SENATOR SEILER: That's the way the Federal Power Commission ran. That does speed up the hearings considerably. [LR539]

TIM SCHRAM: Well, in issue of fairness, all the parties have access to it. And not only the parties, but we in our staff, it takes a lot of time to disseminate through those large volumes of information... [LR539]

SENATOR SEILER: Right. [LR539]

TIM SCHRAM: ...and also when we hire consultants to help us on utility rate making. [LR539]

SENATOR SEILER: Does your staff actually conduct the hearing or do they just kind of stand back and watch the parties go after each other until...unless they... [LR539]

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TIM SCHRAM: Staff engages in the hearing. [LR539]

SENATOR SEILER: They do. Okay. On a neutral basis or...? [LR539]

TIM SCHRAM: Yes. They're allowed to ask questions of the parties. [LR539]

SENATOR SEILER: Okay. But then let's say... [LR539]

TIM SCHRAM: And as you're aware, in a natural gas rate case, we have a public advocate that's contracted with the commission. [LR539]

SENATOR SEILER: Oh, besides your staff lawyer there is a public advocate? [LR539]

TIM SCHRAM: Yeah. Yeah, the public advocate acts on behalf of the consumer. [LR539]

SENATOR SEILER: Okay. Okay, thank you for the enlightenment. [LR539]

TIM SCHRAM: Thank you. [LR539]

SENATOR SMITH: Further questions from the committee? [LR539]

TIM SCHRAM: I appreciate the opportunity and I would like to close by saying that I am very fortunate in my capacity as the Public Service Commission to have a dedicated professional staff. [LR539]

SENATOR SMITH: Yes. And I wanted to say thank you as well to not only the commissioners but to the staff of the Public Service Commission. You do a fine job and appreciate your work on behalf of Nebraska. And thank you for being here today, Chairman Schram. [LR539]

TIM SCHRAM: Thank you, Chairman Smith. [LR539]

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SENATOR SMITH: All right. And with that, we will conclude the hearing on LR539. Thank you for being here today. [LR539]