

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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**In the Matter of the Petition of
CenturyLink QC to be Regulated
Pursuant to Minn. Stat. § 237.025:
Competitive Market Regulation**

Docket No. P-421/AM-16-496

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Docket No. P-421/AM-16-547

REPLY BRIEF OF CENTURYLINK QC

March 23, 2017

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INTRODUCTION

On March 9, 2017, Qwest Corporation dba CenturyLink QC (“CenturyLink” or “Company”), the Minnesota Department of Commerce (“Department”), and the Office of Attorney General Residential Utilities and Antitrust Division (“OAG”) filed Initial Briefs in this matter.

The parties broadly agree on certain key issues. Specifically, the briefs agree on the appropriate statutory test, which CenturyLink has referred to as the “Track 1” requirements. Minnesota Statute § 237.025, subd. 4 (the “Statute”) provides:

The commission shall approve a petition under this section if a petitioning local exchange carrier demonstrates to the commission’s satisfaction that: (1) it serves fewer than 50 percent of households in an exchange service area, and at least 60 percent of households in the exchange service area can choose voice service from at least one additional unaffiliated competitive service provider.”¹

Thus, the only relevant question for the Minnesota Public Utilities Commission (“Commission”) in certain challenged exchanges is whether CenturyLink has met its burden of demonstrating the exchange meets the Track 1 test.

The parties further agree that the vast majority of exchange service areas qualify for reduced regulation under Track 1.² This agreement reflects not only the record but the reality of today’s competitive marketplace.

¹ Initial Brief of the OAG (“OAG Initial Brief”) at 14-15; Initial Brief of the Department (“Department Initial Brief”) at 5.

² OAG Initial Brief at 15, Table 1 (summarizing exchange service areas that the OAG argues do not meet the statutory standard and recommending that the Commission determine that CenturyLink’s Petition fails for those 15 exchanges); Department Initial Brief at 48-51 (recommending that the Commission not approve the Petition for the exchanges listed in Tables 2 and 3).

Despite broad agreement with CenturyLink on major issues, the Department and the OAG argue that the Commission should not approve CenturyLink’s Petition in 19 and 15 exchange service areas, respectively. The Department relies on affidavits from Wes Legursky and Joy Gullikson for evidence in support of its positions. The OAG submitted no evidence and bases its positions on the evidence presented by the Department. Thus, this Reply Brief will primarily focus on the arguments of the Department but applies equally to the positions of both parties.

In support of their positions, the Department and OAG ask the Commission to impose statutory requirements that do not exist and misinterpret statutory language and evidence. In contrast, CenturyLink has presented overwhelming evidence from a variety of perspectives that demonstrates it meets both prongs of the Track 1 test in all 109 exchange service areas. This Reply Brief will identify the areas of dispute between the parties and explain why the Commission should adopt CenturyLink’s position.

I. APPLICABLE LAW

Track 1, by its terms provides a simple, two part “bright line” test: “[t]he commission shall approve a petition under this section if a petitioning local exchange carrier demonstrates to the commission’s satisfaction that: (1) it serves fewer than 50 percent of the households in an exchange service area, and at least 60 percent of households in the exchange service area can choose voice service from at least one additional unaffiliated competitive service provider . . .”³

³ Minn. Stat. § 237.025, subd. 4.

A. The Commission Will Not Undermine Consumer Protections By Granting This Petition

The Department and OAG suggest that the Commission take public interest concerns into account,⁴ including quality of service, consumer protection and universal service.⁵ These concerns, however, have already been considered by the Legislature and are reflected in the language of the Statute. With respect to universal service, Subdivision 9 specifically maintains existing obligations:

Subd. 9. Obligation to serve. Nothing in this section affects the obligation of a local exchange carrier that petitions the commission to be regulated under this section to provide service to customers, when requested, in accordance with this chapter, commission rules, and its duly authorized tariffs.

With respect to service quality, it is clear that the Commission's quality of service rules will continue to apply to the Company if it obtains relief.⁶ Thus, granting relief in this proceeding would not present a risk to these considerations. In fact, consumer protection was a critical consideration in the negotiation of the language of this Statute, which passed with broad participation and eventual support by consumer groups (including Legal Services Advocacy Project ("LSAP") and AARP), the Department, and industry representatives. Based on these negotiations, significant consumer protection language was added to the Statute, including: Subdivision 6, which clarifies that nothing in the section exempts the provider from consumer protection provisions in Chapter 237 and Commission Rules; Subdivision 8, which provides price and service requirements for basic local service; and the aforementioned

⁴ The OAG's position is unclear. It acknowledges that the Commission's review is limited here. OAG Initial Brief, 16 (acknowledging "the commission may not consider public interest or other economic tests" in applying the Track 1 Test) but also urges the Commission to take such interests in reviewing the evidence. *Id.* at 16-22.

⁵ Department Initial Brief at 7, OAG Initial Brief, 16-22.

⁶ See Minn. Rules, Chapter 7810 (which apply to all telecommunications carriers)

Subdivision 9, which maintains existing obligations to serve. These provisions were added to the Statute to specifically address concerns that the OAG and others, including LSAP and AARP, raised in 2015.⁷

B. The Department And OAG Proposed Modifications To The 50% Test Should Be Rejected

The Department and OAG urge the Commission to adopt positions that would essentially amount to changes to the test as set forth in the Statute. Specifically, the Department and OAG ask the Commission to: interpret “50% of households” as “40% of households” by imposing a “margin” for meeting the test; by considering factors beyond those set forth in the Statute; by counting households receiving service from other providers as CenturyLink customers because CenturyLink owns the facilities underlying the service; and by requiring CenturyLink to count lines servicing “housing units” that are not “households” as lines serving “households.”

1. There Is No “Margin” In The 50% Test

The Statute provides a bright line test for satisfaction of the first criterion of Track 1—whether CenturyLink “serves fewer than 50 percent of the households in an exchange service area.”⁸ The Department, however, urges the Commission to deny the Petition with respect to exchange service areas that, in its view, only “marginally” meet the 50% standard, and has arbitrarily set a 40% standard as the cutoff for determining that

⁷ Compare HF 1066, 1st Engrossment from March of 2015 https://www.revisor.mn.gov/bills/text.php?number=HF1066&version=1&session=ls89&session_year=2015&session_number=0 with the final version of the bill posted on May 5, 2016 https://www.revisor.mn.gov/bills/text.php?number=HF1066&version=2&session=ls89&session_year=2015&session_number=0 (adding sections addressing consumer protection).

⁸ Minn. Stat. § 237.025, subd. 4(1).

CenturyLink has “marginally” satisfied the test.⁹ The Legislature has determined that the Commission “shall” grant a petition where both aspects of the Track 1 test have been satisfied, leaving little doubt that the Legislature intended the values in Track 1 to be applied as bright line rules, not as suggestions or guidelines.¹⁰ The Commission should reject any effort to alter the Legislature’s intent by substituting another value for that chosen by the Legislature.¹¹

2. Public Interest And Other Service Requirements Play No Role In The Statutory Test

The Department also urges the Commission to layer a number of additional requirements not identified in the Statute into the test, such as public interest and certain service requirements, and suggests that the Commission adjust the evidence to account for these requirements.¹² However, Minn. Stat. § 237.025 says nothing about the public interest or the additional requirements identified by the Department. Although it discusses public interest considerations, the OAG apparently agrees that the Statute does not allow consideration of such issues. It identifies the two prongs of Track 1 as “the only two inquiries that the Commission is allowed to consider under the statute,”¹³ and asserts that “the

⁹ Department Initial Brief at 16, 49-50.

¹⁰ Minn. Stat. § 237.025, subd. 4.

¹¹ In support of its advocacy for a “margin,” the Department cites the affidavit of its witness, Ms. Gullikson. Ms. Gullikson appears to contend that the Commission has the ability to alter the Legislature’s determination and deny CenturyLink relief solely because CenturyLink has not provided an accounting of households that purchase business lines without purchasing any residential service. Affidavit of Joy Gullikson (“Gullikson Aff.”), ¶ 39, Department Initial Brief at 16. The Commission should give no credence to the Department’s speculation that some business lines exist that serve as the sole voice services for a household. Speculation is not evidence, and the Commission cannot base its decision here on speculation.

¹² Department Initial Brief at 7-8, 41.

¹³ OAG Initial Brief at 8.

commission may not consider the public interest or other economic tests when making its final determination under this subsection.”¹⁴

3. Wholesale Lines Are Not “Served” By CenturyLink And Should Not Be Counted Under The 50% Test

The Department alleges that resold and UNE-P¹⁵ lines should be counted as served by CenturyLink under the 50% test.¹⁶ UNE-P and resold lines are provided by CenturyLink to a wholesale provider (not a household or end consumer). The wholesale provider is in charge of the relationship with the retail customer, including sales, billing, and customer service.¹⁷

The Department’s position that CenturyLink provides “service” here is inconsistent with the statutes governing telecommunications. “Telecommunications service” is defined as “offering of telecommunications for a fee *directly to the public . . . regardless of the facilities used.*”¹⁸ The Department’s focus on the owner of the facilities as the provider of “service” is inconsistent with statute.

Further, the Commission’s decisions in this area have demonstrated the Commission’s long-standing policy that a wholesale purchaser of resold services or unbundled network elements is the provider of “service” to the retail customer. The Commission investigated CenturyLink’s predecessor Qwest based on allegations that that Qwest retail representatives interfered with the wholesale purchaser’s customer relationships.

¹⁴ OAG Initial Brief at 16.

¹⁵ For UNE-P lines, CenturyLink believes they are primarily used to serve business customers although it does not have access to specific CLEC proprietary information to determine the issue.

¹⁶ Department Initial Brief at 12-13.

¹⁷ Department Initial Brief at 13.

¹⁸ Minn. Stat. § 237.01, subd. 6a (emphasis added).

It ordered Qwest to make systems and procedural changes “for ensuring retail service representatives are properly separated from the Company’s wholesale operations . . .”¹⁹

The Commission has also issued orders imposing significant limitations on CenturyLink’s marketing activity directed towards wholesale customers:

CenturyLink shall prohibit any mass market mailings intended to solicit CLEC end-user customers, or any Vendor communications (written or verbal) to CLEC end user customers, that relate to CenturyLink’s position as a wholesale supplier, *including written or verbal communications to CLEC end user customers that state or imply that the CLEC relies in whole or part upon CenturyLink for the CLEC’s provision of services to its end user customers.* Such prohibited statements include, but are not limited to:

- a. References to the CLEC as a “middle man,” “in-between party,” “agent” or “reseller;”
- b. References to the CLEC’s service as “indirect;” and
- c. Statements that CenturyLink “owns the equipment” used to serve the CLEC’s customer or that the CLEC uses or resells CenturyLink’s lines or services.²⁰

In the same proceeding the Commission imposed a strict “standard of conduct” on CenturyLink technicians:

Standard of Conduct. CenturyLink technicians who are performing service calls for CLECs are prohibited from leaving any CenturyLink branded materials. The CenturyLink technician will limit any communication with CLEC End User Customers to that necessary to gain access to premises and

¹⁹ *In the Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, Order Finding Service Inadequate and Requiring Compliance Filing (July 30, 2003) at 9.

²⁰ *In the Matter of a Commission Investigation into Qwest Corporation’s Provision of Network Elements to CLECs and into Related Marketing Practices Targeting CLEC Customers*, Order Accepting Partial Settlement as Modified, MPUC Docket No. P-421/CI-09-1066 (Mar. 6, 2014) (emphasis added) (accepting settlement filed by the parties available at <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B2FC4D15-D5C9-46DE-963A-9200BA3E7542}&documentTitle=20141-95476-0>).

perform the work. Specifically, *the CenturyLink technician will not engage in any discussion regarding CenturyLink's products and services with CLEC End User Customers* and will not make statements prohibited by section 9.4. Further, *CenturyLink technicians will refer to the CLEC any CLEC End User Customer questions* other than those related to the CenturyLink technician's gaining access to the premises and performing the work. *If the CenturyLink Technician has questions or concerns other than those necessary to gain access to premises and perform the work, the CenturyLink technician will discuss those questions or concerns with the CLEC and not the CLEC's End User Customer.* Notwithstanding the foregoing, if a CLEC End User Customer initiates a discussion with the CenturyLink technician about CenturyLink's products or services and requests such information, nothing in this Agreement prohibits the CenturyLink technician from referring the CLEC End User Customer to the applicable CenturyLink retail office and providing the telephone number and/or web site address for that office to the CLEC End User Customer."²¹

The Department advocated for all of these requirements.²² By its prior decisions, the Commission has made clear that the CLEC End User customer receives "service" from the CLEC. These Commission decisions were in place at the time the legislation at issue in this proceeding was adopted.

The Commission should decline to adopt the Department's proposed interpretation here. The Department's contention that CenturyLink "serves" customers of wholesale providers is inconsistent with the Track 1 Test in Minn. Stat. § 237.025, the language of Minn. Stat. § 237.01, subd. 6.a, and prior Commission determinations.

C. CenturyLink's Adjustments To Its Line Counts In Exchanges Where The Number Of Housing Units Greatly Exceeds The Number Of Households Are Appropriate

All parties agree that the 50% test of Track 1 requires a determination of the percentage of households served by CenturyLink in each exchange service area. The Department disputes CenturyLink's efforts to apply this standard in areas with many

²¹ *Id.*, Settlement Agreement, Section 9.8A (emphasis added).

²² Order Accepting Partial Settlement at 2.

vacation homes.²³ In making its argument, the Department falsely interprets CenturyLink’s Petition as advocating that the term “households”²⁴ should be interpreted as “housing units.”²⁵ This misstates the adjustment made by CenturyLink.

CenturyLink provides primary residential service to both households and housing units that are not households. In three of the exchange service areas in contention, Cook, Grand Marais and Tofte, there are a significant number of second or vacation homes that do not meet the Census Bureau’s definition of households. In Minnesota overall, 94% of housing units are also households. In Cook, that percentage is 45%, in Grand Marais it is 54%, and in Tofte it is 28%. CenturyLink’s records do not distinguish between service to households and service to housing units. A calculation of primary lines served, which includes both housing units as well as households, divided by households alone would significantly overstate CenturyLink’s market share in those exchanges. To reflect the realities of occupancy patterns in these exchanges, CenturyLink adjusted its line counts to reflect the percentage of housing units that are households in each exchange.²⁶ The Department disputes this adjustment.

As an illustration, Figure 1 shows a hypothetical exchange service area in a location with a large number of vacation or second homes, similar to Cook, Tofte, or Grand Marais.

²³ CenturyLink’s adjustment methodology is extensively described in the Initial Brief of CenturyLink, 7-11, and First Lubeck Affidavit, ¶¶ 8-9.

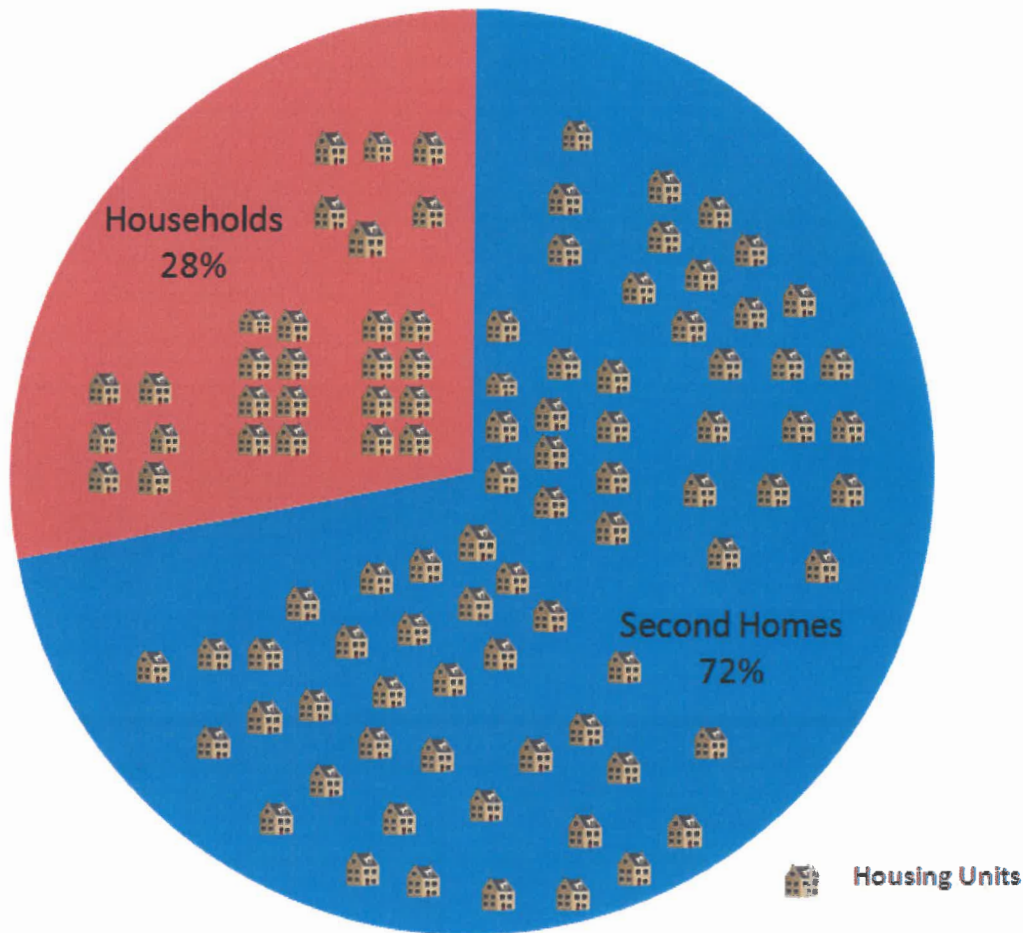
²⁴ A household includes all the people who occupy a housing unit *as their usual place of residence*. A household includes the related family members and all the unrelated people, if any, who share the housing unit. *The count of households excludes group quarters.* <https://www.census.gov/glossary/>. *Households do not include vacant housing units.* Lubeck Aff., p. 4, fn.4. DOC Initial Brief, n25.

²⁵ A housing unit is a “vacant housing unit” if no one is living in it at the time of enumeration, which is April 1 of each year when the census is taken. <https://www.census.gov/glossary/>. DOC Initial Brief, n28.

²⁶ Affidavit of Al Lubeck (“First Lubeck Affidavit”)(Nov. 18, 2016), ¶ 8.

This hypothetical exchange area contains 100 housing units, 28 of which are households. The remaining housing units are classified as “vacant” by the Census Bureau, which in this area means that they primarily consist of vacation homes or cabins. CenturyLink serves 16 of the 100 housing units.

FIGURE 1 – HYPOTHETICAL EXCHANGE

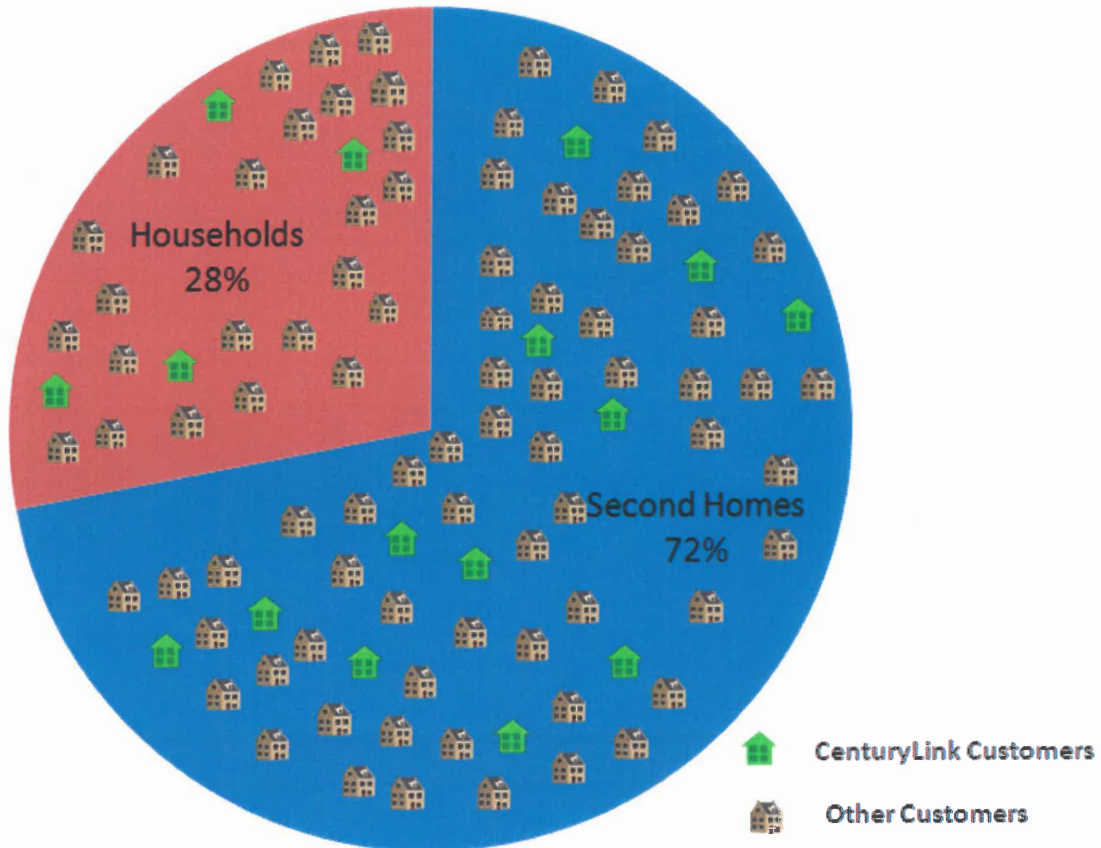


CenturyLink serves 16 of those housing units, but does not know whether or not the housing units it serves constitute households.²⁷ In order to determine the percentage of households served, CenturyLink proposes assigning those 16 in proportion to the percentage of housing

²⁷ First Lubeck Affidavit, ¶ 8-9.

units that are also households.²⁸ Four customers would then be “households” and twelve would not. Figure 2 illustrates this approach:

FIGURE 2 – CENTURYLINK APPROACH
Hypothetical Exchange – CenturyLink Approach



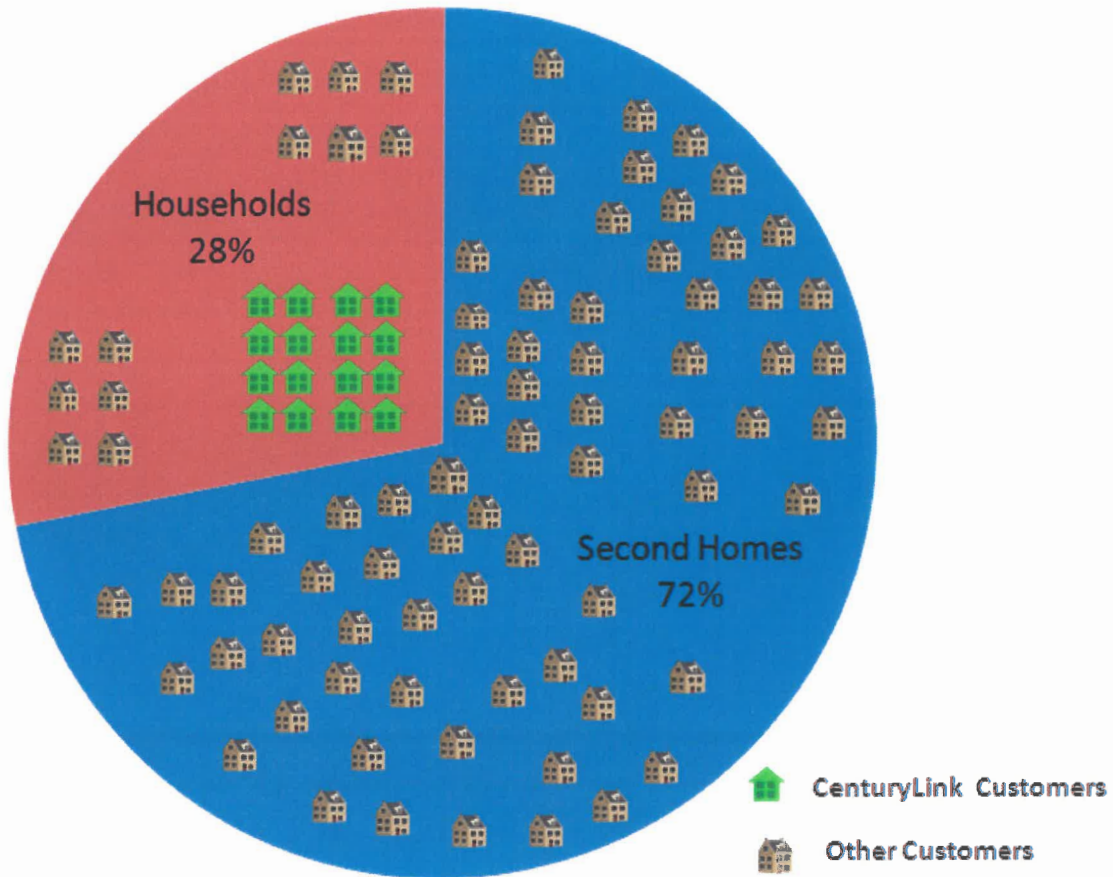
The Department, by contrast, proposes assigning all of the customers to the 28% of housing units that constitute households. The Department therefore urges the Commission to assume that no customer has a land-line telephone at their vacation unit and that such lines are all

²⁸ *Id.*

provided to households.²⁹ The following Figure 3 illustrates the Department’s proposed approach.

FIGURE 3 – DEPARTMENT APPROACH

Hypothetical Exchange – Department Approach



CenturyLink’s approach is much more likely to reflect actual conditions than the approach of the Department. Many Minnesotans certainly choose to have landlines at lake cabins. The Department’s own wireless expert, Mr. Legursky, is an example of a customer choosing to

²⁹ Department Initial Brief, 16-32.

obtain landline service at a housing unit that is not a household.³⁰ CenturyLink’s approach recognizes and appropriately adjusts for this situation. The Department’s approach would count Mr. Legursky’s landline service as being delivered to a household (even though his cabin is not a “household” under the definition agreed to by the parties), and would therefore inflate CenturyLink’s market share. The dispute over the appropriate way to calculate CenturyLink’s market share in these three exchanges is not a dispute over the legal standard, but rather over how to apply the legal standard given the available evidence.

On the evidentiary issue, CenturyLink’s approach is by far the more reasonable approach. In the exchanges at issue, CenturyLink’s approach results in percentages that are well below the 50% threshold in the disputed exchange service areas, with Tofte at **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, Grand Marais at **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** and Cook at **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. Even if CenturyLink’s methodology understates its share of households to some extent, it is unlikely to understate the amount to such an extent so as to make a difference with respect to the 50% standard.

The Department does not provide any evidence that would provide a better resolution here. While CenturyLink bears the burden, Minnesota law does not require a party to present definitive information to prove it meets a legal standard. In civil trials, Minnesota Jury

³⁰ Affidavit of Wes Legursky (“Legursky Aff.”), ¶ 7.

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instructions provide that a fact can be proved directly and by inference.³¹ CenturyLink has done so. It has provided the best information available and has applied that information in a reasonable fashion.

D. The Department And OAG Proposed Modifications To The 60% Test Should Be Rejected

The Department also asks the Commission to ignore the statutory language and legislative intent with respect to the competitive criteria, or 60% test in Track 1. The Commission should decline to adopt these positions.

1. There Is No Margin In The 60% Criterion, Either.

As with the first criterion, the Statute provides a bright line test for satisfaction of the second criterion of Track 1—whether “at least 60% of the households in the exchange service area can choose voice service from at least one additional unaffiliated competitive service provider.”³² The Department, however, urges the Commission to deny the petition with respect to exchange service areas that, in its view, only “marginally” meet the 60% standard.³³ The Legislature has determined that the Commission “shall” grant a petition where both aspects of the Track 1 test have been satisfied, leaving little doubt that the Legislature intended the values in Track 1 to be applied as bright line rules, not as

³¹ Minnesota Jury Instruction Guide, CIVJIG 12.10; *citing Illinois Farmers Ins. Co. v. Brekke Fireplace Shoppe, Inc.*, 495 N.W.2d 216, 220-221 (Minn. App. 1993).

³² Minn. Stat. § 237.025, subd. 4(1)(i).

³³ Department Initial Brief at 16, 49-50.

suggestions or guidelines.³⁴ The Commission should reject any effort to alter the Legislature’s intent by substituting another value for that chosen by the Legislature.³⁵

2. The Department’s Extraordinary Interpretation Of The Statutory Term “Competitive Service Provider” Must Be Rejected

The Department misinterprets the statutory term “competitive service provider” (CSP) as requiring a wireline provider to (1) own the last-mile or loop facilities delivering service to a majority of households in an exchange service area³⁶ and (2) serve a majority of households in an exchange area.³⁷ The statutory language and structure of the Statute, however, demonstrate that neither of these attributes is required. The Statute defines the term as follows:

(a) Except as otherwise provided in this subdivision, a “competitive service provider” means:

(1) a wireless voice service provider; or

(2) any other provider of local voice service who owns a substantial proportion of the last-mile or loop facilities delivering service to a majority of households in an exchange service area, without regard to the technology used to deliver the service.³⁸

³⁴ Minn. Stat. § 237.025, subd. 4.

³⁵ In support of its advocacy for a “margin,” the Department cites the affidavit of its witness, Ms. Gullikson. Ms. Gullikson appears to contend that the Commission has the ability to alter the Legislature’s determination and deny CenturyLink relief solely because CenturyLink has not provided an accounting of households that purchase business lines without purchasing any residential service. Gullikson Aff., ¶ 39, Department Initial Brief at 16. The Commission should give no credence to the Department’s speculation that some business lines exist that serve as the sole voice services for a household. Speculation is not evidence, and the Commission cannot base its decision here on speculation.

³⁶ Department Initial Brief at 23.

³⁷ Department Initial Brief at 25-26.

³⁸ Minn. Stat. § 237.025, subd. 1(a).

CenturyLink disagrees with this novel interpretation of the definition. Notably, the Department uses ellipses to delete the phrase “a substantial proportion of,” from the phrase “a substantial proportion of the last-mile or loop facilities delivering service to a majority of households in an exchange service area.”³⁹ The Statute does not, as misleadingly suggested by the Department, require ownership of all of these facilities.

The Department’s claim that a wireline CSP must serve the majority of the households in the exchange is likewise inconsistent with the Statute. If CSP was defined in this way, there would be no need for the 50% test under Track 1, because in any exchange where a CSP existed, CenturyLink would, by definition, serve fewer than 50% of the households in that exchange area.⁴⁰ The Department’s interpretation is inconsistent with Minnesota law regarding the interpretation of statutes. It is a fundamental axiom of construction that “general words are construed to be restricted in their meaning by preceding particular words.”⁴¹ Here, the term “majority of households in an exchange” modifies “substantial portion of last-mile or loop facilities.” In any event, the Department’s interpretation would lead to absurd results. For example, three cable companies could serve an entire exchange service area with facilities and yet, under the Department’s interpretation, the Commission would be required to decide that no wireline CSP existed in that exchange service area. “The legislature does not intend a result that is absurd, impossible of execution,

³⁹ Department Initial Brief at 23.

⁴⁰ Minn. Stat. § 645.17(2) provides “the legislature intends the entire statute to be effective and certain.”

⁴¹ Minn. Stat. § 645.08(3).

or unreasonable.”⁴² The Department’s interpretation invites the Commission to follow such a course.

Building on this shaky foundation, the Department then argues that CenturyLink “presented no data from which the Commission can determine that any of the cable or other wireline companies to which CenturyLink points actually own facilities delivering service to more than half . . . of the households in each exchange . . .”⁴³ This is an argument that CenturyLink’s Petition is incomplete. This proceeding started nearly nine months ago. The parties have filed several rounds of comments addressing the completeness of CenturyLink’s Petition, the appropriate procedure for the docket and the sufficiency of CenturyLink’s evidence. Until now, no party has advanced the Department’s proposed interpretation or argued that CenturyLink’s petition was incomplete because of this issue. Even now, the OAG has not advanced such a position.

In any event, the Department’s assertion that CenturyLink failed to provide evidence regarding the presence of wireline competitive service providers is incorrect. Mr. Lubeck provided estimates of wireline availability from federal filings. He provided an estimate of cable availability in Exhibit AL-4. He provided breakdown of cable availability by provider in Exhibit AL-5. He provided a map with a breakdown of cable availability in Exhibit AL-6. He provided an estimate of availability from other wireline providers in Exhibit AL-7 and broke that availability down by provided in Exhibit AL-8. He then provided a chart with the percentage of other wireline availability and the major providers in Exhibit AL-9. He

⁴² Minn. Stat. § 645.17(1).

⁴³ Department Initial Brief at 23.

summarized his findings in Exhibit AL-10. The Commission should decline to adopt the Department's strained reasoning here.

3. Minnesota Statute § 237.025 Does Not Require That A Competitive Service Provider Offer A Minimum Level Of Service Or Affordable Prices

The Department argues that certain wireline carriers should be excluded from the Commission's analysis of the availability of competition because it alleges that the carriers do not offer Telephone Assistance Plan assistance or because the rates they offer are either not affordable or bundled with other services.⁴⁴ This argument has no relevance to the Track 1 test, which simply asks whether the customer "can choose voice service from at least one unaffiliated competitive service provider." The definition of CSP does not include any such service requirements.

In an attempt to shoehorn these additional requirements into the Statute, the Department cites broad telecommunication goals in Minn. Stat. § 237.011 and a variety of provisions in Minn. Stat. § 237.16 related to universal service and affordable rates.⁴⁵ The Commission must reject these arguments in the face of the specific Track 1 standard provided by the Legislature.

4. The Commission Cannot Second Guess The Legislative Determination That Wireless Is A Substitute For Landline

The Department urges the Commission to impose a series of requirements related to quality of service with respect to wireless CSPs.⁴⁶ Specifically, the Department suggests that certain service quality requirements, access to Telecommunications Relay Service and argues

⁴⁴ Department Initial Brief at 36-39.

⁴⁵ Department Initial Brief at 36.

⁴⁶ Department Initial Brief at 41-43.

that the Commission should choose indoor signal strength as the standard for whether or not a customer can choose voice service.⁴⁷ This is all based on the Department’s contention that the public interest in maintaining the existing quality of service must be preserved, and its implied contention that, if the Commission grants this Petition, that public interest will be impaired. The Department’s argument ignores a key aspect of this proceeding—if the Petition is granted, CenturyLink still has an obligation to serve.⁴⁸ This Petition focuses on option available to consumers, and will not mandate that any consumer change his or her telecommunication provider. Because CenturyLink will continue to serve all of the exchange areas at issue in the Petition, “access” to voice-grade service will continue to exist, despite the Department’s contention to the contrary.

The Department’s position suggests that the Commission could, if it wished, decline to consider wireless availability under the Statute. It cannot do so. The Legislature has determined that wireless providers are competitive service providers.⁴⁹

CenturyLink has presented evidence of the extent of the availability of voice broadband speeds in each exchange as reported by the Minnesota Office of Broadband Development, the Federal Communications Commission (“FCC”), and through a wireless study from two providers of one of fifteen frequencies over which a wireless provider can offer service. Regardless of the standard the Commission applies, the evidence in this case mandates a finding that wireless coverage exists in every exchange service area.

⁴⁷ Department Initial Brief at 43.

⁴⁸ Minn. Stat. § 237.025, subd. 1.

⁴⁹ Minn. Stat. § 237.025, subd. 1(a)(1).

E. The OAG's request for notice and reporting requirements should be rejected.

The OAG advocates that CenturyLink be required to (1) provide another customer notice about its changed regulatory status if this petition is successful⁵⁰ and (2) require regular filings by CenturyLink file data addressing whether it still meets the competitive test.⁵¹ Both of these suggestions should be rejected. The commission has already addressed the notice issue. With respect to filing additional data, such a process would involve a tremendous waste of resources. The competitive trends discussed in this proceeding have been in place for a long period of time. There is no reason to anticipate changes in the near future. The data the commission has required in this proceeding is very expensive to obtain (for example a wireless study) and litigating the issues is a tremendous task. There is no reason to believe another proceeding will be necessary. If a party has some reason to think circumstances have changed, the party will always have the right to request that the Commission open an investigation pursuant to Minn. Stat. § 237.025, Subp. 11. Prejudging whether such a proceeding will be necessary does not make sense.

II. RECORD EVIDENCE

The record in this matter demonstrates that CenturyLink has shown that all 109 exchanges at issue qualify for regulation under the Statute. The evidentiary issues raised by the Department here do not change the outcome compelled by the Statute.

⁵⁰ OAG Initial Brief, 18-22.

⁵¹ OAG Initial Brief, 23.

A. The Department's Concerns Over Erroneous Line Counts In A Single CenturyLink Exhibit Are Overblown

The Department makes much of a so-called discrepancy between the residential line numbers presented in a single exhibit to the Affidavit of Robert Brigham (RHB-3) and Exhibit 2 to the Affidavit of Al Lubeck (AL-2).⁵² The Department fails to note that two exhibits to the Brigham Affidavit, RHB-2 and RHB-4, contain Residence Primary Access Line numbers that align with those presented in AL-2. CenturyLink has now served a new RHB-3 that contains the corrected numbers in a supplemental discovery response and can make the revised exhibit available to the commission if it is necessary.

B. CenturyLink Has Provided The Best Available Information On Wireline Competition

The Department contends that CenturyLink's methodology of treating all households located in census blocks that FCC data shows as "served" is not supported by evidence, citing FCC's disclaimer about the use of its data.⁵³ As discussed throughout the life of this matter, CenturyLink does not have access to proprietary data of its competitors to show definitively the extent of each party's capability to provide service. CenturyLink has used the best publicly available data to identify where competitors can and do provide service, the FCC's Form 477 data. Contrary to the Department's statements, this is neither a failure on CenturyLink's part, nor is it disingenuous for CenturyLink to use this data. The competitive provider verifies to the FCC where it provides service. In every census block where the competitive provider told the FCC that it served customer(s), CenturyLink counted that census block as competitive.

⁵² DOC Initial Brief, 13-15.

⁵³ DOC Initial Brief, 26-33.

In response to the Department's discovery on this point, CenturyLink noted in its response to the Department's Information Request Number 35 that the median area of a census block in CenturyLink service areas is 0.028 square miles, and in response to the Department's Information Request Number 85, that based on downtown Minneapolis city blocks, that 0.028 square miles would be about three to four city blocks. For locations served by competitors within a three to four city block area, it is appropriate to suggest that competitive providers would normally serve, or be able to serve, more than a single household. The Department used the Chisholm exchange as an example, contending that the Commission must assume that only one household in every census block denoted as "served" by the FCC actually is capable of receiving service. Given CenturyLink's explanation of its basis for determining that it is reasonable to assume that all houses would be served by a provider in a census block that is the size of three to four city blocks due to the expense of building infrastructure to support such services, CenturyLink's position is much more reasonable than the Department's. In response to the Department's follow-up information request, CenturyLink provided additional information, specifically focusing on the Chisholm exchange. That response is attached to this Brief as Attachment 1.

CenturyLink simply cannot provide the Commission with household-by-household information as to where its competition provides services because it does not have access to its competitor's proprietary information. CenturyLink provided the lists of competitors that it knew about and provided the number of households in census blocks where those competitors reported to the FCC they provided service. The Department has not pointed to any better publicly-available data to inform these calculations. If the Commission determines that CenturyLink is required to use proprietary information from its competitors

to demonstrate competitive availability, the Commission will have established an impossible standard not intended by the Legislature.

C. The Department's Evidence Regarding The Availability Of Voice Service In Areas Where A Competitor Offers Broadband Does Not Impact CenturyLink's Analysis Of Wireline Competition

Using investigatory authority not available to CenturyLink,⁵⁴ the Department investigated whether CSPs offer voice where they offer broadband in in Minnesota. It reported on its investigation in the Affidavit of Joy Gullikson and identified five providers that indicated they did not provide voice service in all areas broadband service was available.⁵⁵

Mr. Lubeck reviewed those responses and concluded that they had no impact on CenturyLink's analysis. In each instance, the competitor either offers voice service in the areas served by CenturyLink or another provider offers service in this area.⁵⁶ Mr. Lubeck provided the Commission with a chart of background information that suggests broadband providers do in fact offer voice service in areas where broadband is available and the Department has identified some exceptions to that assumption. Those exceptions, however, do not change the analysis with respect to the presence of competition under the Statute in any exchange service area.

⁵⁴ While the Department lambasts CenturyLink for its inability to provide its competitors' proprietary information, it should be noted that if any party had the ability to gather this information, it was the Department. *See* Minn. Stat. § 216A.07, Subd. 1(3) and (4)(giving the Commissioner of Commerce the authority to inspect documents and take depositions related to regulated business).

⁵⁵ Gullikson Aff., ¶¶ 54-55.

⁵⁶ Second Affidavit of Al Lubeck ("Second Lubeck Affidavit")(Feb. 23, 2017), ¶¶ 27-29.

D. The Department Ignores Relevant Sources of Information Regarding Wireless Coverage In Minnesota

The Department continues to misconstrue CenturyLink's evidence on wireless coverage as limited to marketing maps provided by Mr. Brigham and the analysis of Mr. Nelson.⁵⁷ It ignores the supplemental analysis provided by Mr. Lubeck in his first affidavit and ignores the significant changes in methodology employed by the FCC in determining the extent of wireless coverage.

As Mr. Lubeck pointed out, CenturyLink's position is supported by the following sources glossed over by the Department:

- **Minnesota Office of Broadband Data – conclusion – almost all of Minnesota covered**

The Minnesota Office of Broadband Development publishes, and provides on its web site, a map that shows the availability of broadband services throughout the State of Minnesota. On this web site,⁵⁸ a user may view detailed maps that show broadband access throughout all areas of the State. This includes landline access via fiber, DSL and Cable, as well as access via mobile and fixed wireless systems. If one pulls up the map at <http://map.connectmn.org/>, and selects the 'maps/data' tab and then selects 'access,' a menu of access types appears. A click on 'Mobile Wireless Broadband' will yield the mobile broadband coverage map (at least 4 MB down/1 MB up) for the State. The user can zoom in to see the wireless geographic coverage for any community.⁵⁹

⁵⁷ Department Initial Brief at 40-41.

⁵⁸ See: <https://mn.gov/deed/programs-services/broadband/>.

⁵⁹ First Lubeck Affidavit, ¶ 19.

- **FCC Form 477 Data – Conclusion 100% coverage in all exchange areas but three. Of those three the lowest is 94%. Uses the actual area coverage methodology to examine coverage within each census block.**

Second, the FCC requires all mobile wireless providers to submit mobile voice coverage data via its Form 477. According to the Form 477 instructions (Exhibit AL-3), a mobile wireless provider must upload a “shapefile” of its voice coverage area to the FCC to meet Form 477 requirements.⁶⁰

On September 30, 2016, the FCC released new “*Data On Mobile Broadband Deployment As Of December 31, 2015 Collected Through FCC Form 477.*” This new data employs a methodology that the FCC describes as much more accurate than the previous wireless coverage data that was criticized by the Department. The new FCC data is described in the document provided as Exhibit AL-17: *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis.*⁶¹

An FCC blog describes this process as follows:

Now, with the best available data we have today, FCC staff has finely honed our analytics to go beyond the centroid method and identify where unsubsidized mobile broadband service is available *within* each census block. In other words, we can now utilize Form 477 data to produce “actual area coverage.” Using the actual geographic area coverage based on the Form 477 data provides a significantly more detailed basis than the prior centroid method for reforming universal service support for mobile services to provide more targeted support where it is needed.⁶²

The Department ignores these sources of information entirely, and by extension suggests that the Commission also ignore the analysis of the Minnesota Department of Economic

⁶⁰ First Lubeck Affidavit, ¶ 20.

⁶¹ See: http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0930/DOC-341539A1.pdf.

⁶² See: <https://www.fcc.gov/news-events/blog/2016/09/30/mobility-fund-ii-improving-data-we-use-identify-close-mobile-coverage>, entire document provided as Exhibit AL-18.

Development and the FCC. In fact, these sources alone provide the Commission with ample justification for approving CenturyLink's application in all exchange service areas.

E. Mr. Nelson's Affidavit Represents A Conservative Estimate

The Department reiterates its position that Mr. Nelson's coverage map should be considered an upward bound of coverage.⁶³ It relies on the opinions of Mr. Legursky as support for this position. Mr. Legursky's testimony indicates little, if any, experience relevant to the issues in this case⁶⁴ and his technical opinions primarily rely on five pages of one book.⁶⁵

Mr. Nelson has explained why his analysis is conservative.⁶⁶ First, it only looks at one technology because public information about the location, size and other salient attributes of antennas for other frequencies are not available. Second, it looks solely to two providers, when at least four have certified to the FCC that they offer service to most Minnesota households. Third, the analysis makes assumptions consistent with industry recommendations for Minnesota terrain and signal loss associated with receiving a wireless signal inside a building, and takes into account weather factors that vary with time. Fourth, it makes conservative assumptions about the locations of households, by randomly assigning them to locations within a census block rather than the more likely assumption that more population exists in areas of the census block where more population is present. Mr. Nelson opines that: "[i]t is possible that [Federal Engineering's] coverage model represents a more conservative estimate than that used by commercial wireless carriers, and that the real-world

⁶³ Department Initial Brief, 43-45.

⁶⁴ Legursky Aff., Curriculum Vitae, Attachment 1.

⁶⁵ *Id.*, footnotes 1-8 citing Paul Bedell *Cellular Networks: Design and Operation, A Real World Perspective* (Outskirts Press, 2014).

⁶⁶ Affidavit of Adam Nelson ("Second Nelson Affidavit") (Feb. 23, 2017), ¶¶ 4-14.

coverage from these 800 MHz cellular systems may be greater than predicted in this assessment.”⁶⁷

The record in this case simply does not support the contention of the Department that Mr. Nelson’s wireless coverage analysis should be considered an “upper bound.”

F. The Minor Differences In Household Count Between the Lubeck And Nelson Affidavits In Two Exchanges Do Not Change Any Outcomes

The Department criticizes the difference in household counts between Mr. Lubeck and Mr. Nelson and argues that the difference might have been an effort to make the numbers fit for Comstock and Nashwauk. The numbers submitted in CenturyLink’s IR response in Attachment 76B were incorrect, however, as the numbers from column G should have been taken from Table 5 of the Nelson Affidavit but were taken from Table 4. CenturyLink has submitted a corrected Attachment 76B that demonstrates that the use of Lubeck numbers for the Nelson indoor coverage calculations do not change any exchange’s satisfaction of the competitive prong by wireless.

a. Comstock

If the Lubeck household numbers are used, the percentage of indoor coverage for Comstock dropped from 70.5% to 66.04%. As discussed above, there is no “margin” in the statute—because Comstock’s wireless coverage remains above 60%, it meets the 60% requirement. Further, as discussed above, because CenturyLink only serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of Comstock households. If UNE-P and resold lines are included, which they should not be, the percentage reaches **[HIGHLY SENSITIVE NOT PUBLIC**

⁶⁷ Affidavit of Adam Nelson (“First Nelson Affidavit”) (Nov. 21, 2016), Ex. AN-2, 22.

DATA BEGINS **HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. It is apparent that at least 60% of Comstock households have access to a competitive provider for voice.

b. Nashwauk

If the Lubeck household numbers are used, the percentage of coverage in Nashwauk dropped from 62.7% to 60.3%. As discussed above, there is no “margin” in the statute—because Nashwauk’s wireless coverage remains above 60%, it meets the 60% requirement. The wireline coverage for Nashwauk is 57%. CenturyLink serves [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS** **HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of Nashwauk households. If UNE-P and resold lines are included, which they should not, the number reaches [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS** **HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. It is evident that given all of the factors here, as well as those discussed below, that at least 60% of households in Nashwauk have access to a competitive service provider.

III. THE RECORD DEMONSTRATES THAT THE COMMISSION SHOULD GRANT RELIEF WITH RESPECT TO ALL OF THE DISPUTED EXCHANGES IDENTIFIED BY THE DEPARTMENT

CenturyLink sought regulatory relief for 109 exchanges. The Department has identified, at most,⁶⁸ nineteen (19) exchanges that it contends fails one of the two prongs of

⁶⁸ The Department’s list of allegedly non-qualifying exchange areas has been a moving target. First, even after CenturyLink’s response to DOC IR 4F which stated that the residential primary lines in RHB-3 were in error and that the lines in RHB-2 (same as the lines presented in AL-2) were correct, the Department devotes substantial space in its brief to discussing its confusion over whether the numbers presented in the Brigham Affidavit or the Lubeck Affidavit should be considered to be correct. Department Initial Brief at 13-15. The numbers presented in Mr. Lubeck’s Affidavit are correct, and the Department seems to have accepted those numbers in specifying those exchanges that it does not believe satisfy

the Track 1 test. OAG has identified fifteen (15) exchanges in dispute. Here, each of the exchanges identified by the Department in its Initial Brief as not qualifying is discussed individually.

A. CenturyLink Serves Fewer Than 50% Of The Customers In All Exchange Areas That The Department Identified As Not Satisfying This Prong Of Track 1

The Department identified nine exchanges for which it contends the Commission should deny relief under the Statute solely because CenturyLink serves more than 50% of the customers in that exchange area, or because CenturyLink demonstrated that the exchange area only marginally satisfied that part of the Track 1 test. This category includes the following exchange areas: Tofte, Grand Marais, Swanville, Silver Bay/Finland, Coleraine, Pine City, Rush City, Mora, and Ogilvie.⁶⁹ Rather than restate the arguments made above with respect to the Department's methodology, this section identifies the competing positions and the arguments applicable to each exchange.

1. Tofte

- CenturyLink determined that it served [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in the Tofte exchange.⁷⁰

Track 1. *See* Department Initial Brief at 50-51, Tables 2 and 3; Gullikson Aff. ¶ 79. Even putting aside whatever confusion may have resulted from CenturyLink's initial filing of incorrect customer numbers, the Department has still advanced inconsistent information as to the exchanges it believes do not qualify for relief. In the Gullikson Affidavit, the Department's witness identified thirteen (13) exchanges that did not meet the Track 1 requirements, including those that, in the Department's opinion, "marginally" met the requirements. Gullikson Aff., ¶ 79. Here, the Department contends that nineteen (19) exchanges do not qualify. The Department has not provided an explanation for this increase.

⁶⁹ *See* Department Initial Brief at 50, Table 2. Those exchange areas that the Department contends fail both prongs of the test are discussed separately.

⁷⁰ First Lubeck Affidavit. Ex. AL-2.

- The Department contends that CenturyLink serves [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Tofte exchange.⁷¹
 - The Department rejects CenturyLink’s adjustment of its line counts to account for the low percentage of housing units that are households (28%). As discussed above, this adjustment is appropriate.
 - The Department also contends that wholesale (UNE-P and resale lines) should be included in CenturyLink’s line count. As discussed above, CenturyLink does not serve those customers and this argument should be rejected.

2. Grand Marais

- Century Link contends that it serves [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Grand Marais exchange.⁷²
- The Department contends that CenturyLink serves [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Grand Marais exchange.⁷³
 - The Department rejects CenturyLink’s adjustment of its line counts to account for the low percentage of housing units that are households (54%). As discussed above, this adjustment is appropriate.
 - The Department also contends that wholesale (UNE-P and resale lines) should be included in CenturyLink’s line count. As discussed above, CenturyLink does not serve those customers and this argument should be rejected.

3. Swanville

- CenturyLink determined that it served [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Swanville Exchange.⁷⁴

⁷¹ Errata to the Affidavit of Joy Gullikson (“Gullikson Aff. Errata”) (Feb. 22, 2017) to Attachment 6.

⁷² First Lubeck Affidavit, Ex. AL-2.

⁷³ Gullikson Aff. Errata to Attachment 6.

⁷⁴ First Lubeck Affidavit, Ex. AL-2.

- The Department contends that CenturyLink serves [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Swanville exchange.⁷⁵
- The Department contends that wholesale lines should be included in CenturyLink’s line total. This argument should be rejected.

4. Silver Bay/Finland

- CenturyLink determined that it served [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of customers in the Silver Bay wire center and [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the customers in the Finland wire center.⁷⁶ These two wire centers constitute a single exchange.
- The Department admits that CenturyLink has met the 50% standard with respect to the Silver Bay/Finland exchange service area by contending that CenturyLink serves [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Silver Bay wire center and [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] of the households in the Finland wire center.⁷⁷
 - The Department contends that wholesale lines should be included in CenturyLink’s line count. This argument should be rejected.
 - The Statute provides a bright line test with no “margin.” [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] and [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] are still both less than 50%.
- The Department’s witness did not identify Silver Bay/Finland in the list of exchanges that do not meet the standard in Paragraph 79 of her Affidavit.⁷⁸

⁷⁵ Gullikson Aff. Errata to Attachment 6.

⁷⁶ First Lubeck Affidavit, Ex. AL-2.

⁷⁷ Gullikson Aff. Errata to Attachment 6.

⁷⁸ Although Ms. Gullikson indicated that the Silver Bay and Finland wire centers does not meet the 50% standard if the numbers from the Brigham Affidavit are used and characterized both wire centers as “marginal” at [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS**] (Silver Bay) and [**HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE**

The Department's brief does not provide any reasoning for its sudden inclusion of Silver Bay/Finland on this list, and given the evidence compels a finding that CenturyLink meets the standard, the Department's position here should be rejected.

5. Coleraine

- CenturyLink determined that it served **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of customers in the Coleraine exchange.⁷⁹
- The Department admits that CenturyLink has met the 50% standard with respect to the Coleraine exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.⁸⁰
 - The Department contends that wholesale lines should be included in CenturyLink's line count. This argument should be rejected.
 - The Statute provides a bright line test with no "margin." **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
- The Department's witness did not identify Coleraine in the list of exchanges that do not meet the standard in Paragraph 79 of her Affidavit. The Department's brief does not provide any reasoning for its sudden inclusion of Coleraine on this list. Given that the evidence compels a finding that the standard has been met, the Department's position here should be rejected.

6. Pine City

- CenturyLink determined that it served **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of customers in the Pine City Exchange.⁸¹
- The Department admits that CenturyLink has met the 50% standard with respect to the Pine City exchange service area by contending that CenturyLink

NOT PUBLIC DATA ENDS] (Finland) if the numbers from the Lubeck affidavit are used, she did not, in the end, include Silver Bay/Finland in her list of exchanges that failed to meet the test. Gullikson Aff., ¶¶ 72, 79. The Department has provided no explanation for its change of position.

⁷⁹ First Lubeck Affidavit, Ex. AL-2.

⁸⁰ Gullikson Aff. Errata to Attachment 6.

⁸¹ First Lubeck Affidavit, Ex. AL-2.

serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS
HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.⁸²

- The Department contends that wholesale lines should be included in CenturyLink’s line count. This argument should be rejected.
- The Statute provides a bright line test with no “margin.” **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
- The Department’s witness did not identify Pine City in the list of exchanges that do not meet the standard in Paragraph 79 of her Affidavit. The Department’s brief does not provide any reasoning for its sudden inclusion of Pine City on this list, and absent any evidentiary support, the Department’s position here should be rejected.

7. Rush City

- CenturyLink contends that it serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the Rush City exchange.⁸³
- The Department admits that CenturyLink has met the 50% standard with respect to the Rush City exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.⁸⁴
 - The Department contends that wholesale lines should be included in CenturyLink’s line count. This argument should be rejected.
 - The Statute provides a bright line test with no “margin.” **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
- The Department’s witness did not identify Rush City as one of the exchanges not meeting the 50% test.⁸⁵
- The OAG concedes that Rush City meets the Track 1 requirements.

⁸² Gullikson Aff. Errata to Attachment 6.

⁸³ First Lubeck Affidavit, Ex. AL-2.

⁸⁴ Gullikson Aff. Errata to Attachment 6

⁸⁵ Gullikson Aff., ¶ 72.

**PUBLIC DOCUMENT-HIGHLY
SENSITIVE PROTECTED DATA-
HAS BEEN EXCISED**

8. Mora

- CenturyLink contends that it serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the Mora exchange.⁸⁶
- The Department admits that CenturyLink has met the 50% standard with respect to the Mora exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.⁸⁷
 - The Department contends that wholesale lines should be included in CenturyLink's line count. This argument should be rejected.
 - The Statute provides a bright line test with no "margin." **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
- The Department's witness did not identify Mora as one of the exchanges not meeting the 50% test.⁸⁸
- The OAG concedes that Mora meets the Track 1 requirements.

9. Ogilvie

- CenturyLink contends that it serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the Ogilvie exchange.⁸⁹
- The Department admits that CenturyLink has met the 50% standard with respect to the Ogilvie exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.⁹⁰
 - The Department contends that wholesale lines should be included in CenturyLink's line count. This argument should be rejected.

⁸⁶ First Lubeck Affidavit, Ex. AL-2.

⁸⁷ Gullikson Aff. Errata to Attachment 6.

⁸⁸ Gullikson Aff., ¶ 72.

⁸⁹ First Lubeck Affidavit, Ex. AL-2.

⁹⁰ Gullikson Aff. Errata to Attachment 6.

**PUBLIC DOCUMENT-HIGHLY
SENSITIVE PROTECTED DATA-
HAS BEEN EXCISED**

- The Statute provides a bright line test with no “margin.” **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
 - The Department’s witness did not identify Ogilvie as one of the exchanges not meeting the 50% test.
 - The OAG concedes that Ogilvie meets the Track 1 requirements.
- B. In Those Exchanges That The Department Identified As Not Meeting The Competitive Prong of Track 1, At Least 60% Of The Households Can Choose Voice Service From At Least One Additional Unaffiliated Competitive Service Provider**

The Department identified five exchanges for which it contends the Commission should deny relief under the Statute solely because, in its view, CenturyLink failed to demonstrate that the exchange satisfied the requirement that at least 60% of the households in that exchange area can choose voice service from an unaffiliated competitive service provider, or the exchange only “marginally” satisfied that requirement. This category includes the following exchange areas: Marble, Sabin, Staples, Holdingford and Comstock.⁹¹

The Department seeks to disqualify four of these exchanges because they only “marginally” satisfy the requirements. As discussed above, the Department here improperly encourages the Commission to disregard the plain language and intent of the Statute in making its decision, and therefore the Department’s contentions on this point with respect to Marble, Sabin, Holdingford and Comstock should be dismissed out of hand, as the Department admits that each of these exchanges meet this requirement with respect to either wireline competition, wireless competition, or both. CenturyLink discusses each of these exchanges below.

⁹¹ See Department Initial Brief at 51, Table 3. Those exchange areas that the Department contends fail both prongs of the test are discussed separately.

1. Marble

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to indoor wireless service.
- The Department contends that Marble should be rejected because compliance is “marginal.” The Statute provides a bright line test. **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is greater than 60%.
- CenturyLink’s wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink’s market share in the Marble exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.⁹²
- The Connect Minnesota Map shows that there is 100% broadband coverage in the Marble exchange, and individual coverage maps for wireless carriers show 100% (or close to 100%) coverage in Marble.⁹³
- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.⁹⁴

2. Sabin

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to competitive wireline service

⁹² Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink’s share of the market in the Marble exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**.

Gullikson Aff. Errata to Attachment 6.

⁹³ First Lubeck Affidavit, ¶ 19.

⁹⁴ First Lubeck Affidavit, ¶ 21.

- The Department contends that Sabin should be rejected because compliance is “marginal.” The Statute provides a bright line test. **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is greater than 60%.
- CenturyLink’s market share in the Sabin exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.⁹⁵
- The Connect Minnesota Map shows that there is 100% broadband coverage in the Sabin exchange.⁹⁶
- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.⁹⁷

3. Holdingford

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to indoor wireless service.
- CenturyLink’s wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink’s market share in the Holdingford exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.⁹⁸

⁹⁵ Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink’s share of the market in the Sabin exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. Gullikson Aff. Errata to Attachment 6.

⁹⁶ First Lubeck Affidavit, ¶ 19.

⁹⁷ First Lubeck Affidavit, ¶ 21.

⁹⁸ Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink’s share of the market in the Holdingford exchange is **[HIGHLY SENSITIVE**

- The Connect Minnesota Map shows that there is 100% broadband coverage in the Holdingford exchange, and individual coverage maps for wireless carriers show 100% (or close to 100%) coverage in Holdingford.⁹⁹
- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.¹⁰⁰

4. Comstock

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to indoor wireless service.¹⁰¹
- The Department contends that Comstock should be rejected because compliance is “marginal.” The Statute provides a bright line test. **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is greater than 60%.
- CenturyLink’s wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink’s market share in the Comstock exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.¹⁰²

NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]. Gullikson Aff. Errata to Attachment 6.

⁹⁹ First Lubeck Affidavit, ¶ 19.

¹⁰⁰ First Lubeck Affidavit, ¶ 21.

¹⁰¹ As discussed above, even if the Lubeck household numbers for this exchange are used, over 60% of the households in the Comstock exchange still have access to indoor wireless service.

¹⁰² Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink’s share of the market in the Comstock exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS].** Gullikson Aff. Errata to Attachment 6.

- The Connect Minnesota Map shows that there is 100% broadband coverage in the Comstock exchange, and individual coverage maps for wireless carriers show 100% (or close to 100%) coverage in Comstock.¹⁰³
- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.¹⁰⁴
- The Department's contention that a difference between the way CenturyLink's witnesses Lubeck and Nelson calculated the number of households in each exchange changes the outcome on the point of the Track 1 test with respect to Comstock should be rejected.
- The Department's witness did not include Comstock in its initial list of exchanges not meeting the Track 1 requirements.

5. Staples

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to indoor wireless service.
- CenturyLink's wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink's market share in the Staples exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.¹⁰⁵
- The Connect Minnesota Map shows that there is 100% broadband coverage in the Staples exchange, and individual coverage maps for wireless carriers show 100% (or close to 100%) coverage in Staples.¹⁰⁶

¹⁰³ First Lubeck Affidavit, ¶ 19.

¹⁰⁴ First Lubeck Affidavit, ¶ 21.

¹⁰⁵ Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink's share of the market in the Staples exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**.

Gullikson Aff. Errata to Attachment 6.

¹⁰⁶ First Lubeck Affidavit, ¶ 19.

- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.¹⁰⁷
 - The Department’s apparent contention that an exchange must meet the 60% test entirely by wireless or wireline is not consistent with the Statute.
 - A review of the totality of the available evidence demonstrates that over 60% of the households in Staples have access to voice service through a CSP.
- C. CenturyLink Has Satisfied Both Prongs Of Track 1 In Those Exchanges That The Department Identified As Not Meeting Either Prong**

The Department identified five exchanges for which it contends the Commission should deny relief because, in its view, CenturyLink failed to demonstrate that the exchange area satisfied either prong of the Track 1 test. This category includes the following exchange areas: Cook, Biwabik, Carlton, Isanti and Nashwauk.¹⁰⁸

1. Cook

a. CenturyLink Serves Fewer Than 50% Of The Households In The Cook Exchange

- CenturyLink determined that it served [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in the Cook exchange.¹⁰⁹
- The Department contends that CenturyLink serves [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in the Cook exchange.
 - The Department rejects CenturyLink’s adjustment of its line counts to account for the low percentage of housing units that are households (45%). As discussed above, this adjustment is appropriate.
 - The Department also contends that wholesale (UNE-P and resale lines) should be included in CenturyLink’s line count. As discussed above, CenturyLink does not serve those customers and this argument should be rejected.

¹⁰⁷ First Lubeck Affidavit, ¶ 21.

¹⁰⁸ See Department Initial Brief at 50-51, Table 2. Those exchange areas that the Department contends fail both prongs of the test are discussed separately.

¹⁰⁹ First Lubeck Affidavit, Exh. AL-2.

b. At Least 60% Of The Households In The Cook Exchange Have Access To Voice Service From A Competitive Service Provider

- CenturyLink's market share in the Staples exchange is below [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS], and therefore, more than [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in that exchange have access to, and have already chosen, competitive voice service.¹¹⁰
- The Connect Minnesota County Map shows that there is wireline broadband coverage over 83% of St. Louis County, where the Cook exchange is located.
- The Connect Minnesota Map shows that there is 100% broadband coverage in the Cook exchange.¹¹¹
- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.¹¹²
- The Department's apparent contention that an exchange must meet the 60% test entirely by wireless or wireline is not consistent with the Statute.
- A review of the totality of the available evidence demonstrates that over 60% of the households in the Cook exchange have access to voice service through a CSP.

2. Biwabik

a. CenturyLink Serves Fewer Than 50% Of The Households In The Biwabik Exchange

- CenturyLink contends that it serves [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in the Biwabik exchange.
- The Department admits that CenturyLink has met the 50% standard with respect to the Biwabik exchange service area by contending that CenturyLink serves [HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in the exchange.

¹¹⁰ Second Lubeck Affidavit, ¶ 39.

¹¹¹ First Lubeck Affidavit, ¶ 19.

¹¹² First Lubeck Affidavit, ¶ 21.

**PUBLIC DOCUMENT-HIGHLY
SENSITIVE PROTECTED DATA-
HAS BEEN EXCISED**

- The Department contends that wholesale lines should be included in CenturyLink’s line count. This argument should be rejected.
- The Statute provides a bright line test with no “margin.” **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.

b. At Least 60% Of The Households In The Biwabik Exchange Have Access To Voice Service From A Competitive Service Provider

- CenturyLink’s market share in the Biwabik exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, demonstrating that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange have already chosen voice service from a competitive provider.¹¹³
- If only an additional **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of CenturyLink’s customers already have wireless, or could access wireless, Biwabik meets the 60% test.
- CenturyLink’s wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- The Connect Minnesota County Map shows that there is wireline broadband coverage over 83% of St. Louis County, where the Biwabik exchange is located.¹¹⁴
- A review of the totality of the available evidence demonstrates that over 60% of the households in the Biwabik exchange have access to voice service through a CSP.

3. Carlton

a. CenturyLink Serves Fewer Than 50% Of The Households In The Carlton Exchange

- CenturyLink contends that it serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the Carlton exchange.

¹¹³ Second Lubeck Affidavit, ¶ 39.

¹¹⁴ First Lubeck Affidavit, ¶ 19.

- The Department admits that CenturyLink has met the 50% standard with respect to the Carlton exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.
 - The Department contends that wholesale lines should be included in CenturyLink’s line count. This argument should be rejected.
 - The Statute provides a bright line test with no “margin.” **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
 - The Department’s witness did not identify Carlton as one of the exchanges not meeting the 50% test.¹¹⁵
 - The OAG concedes that Carlton meets the Track 1 requirements.

b. At Least 60% Of The Households In The Carlton Exchange Have Access To Voice Service From A Competitive Service Provider

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to indoor wireless service.¹¹⁶
- The Department contends that Carlton should be rejected because compliance is “marginal.” The Statute provides a bright line test. **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is greater than 60%.
- CenturyLink’s wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink’s market share in the Carlton exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**.

¹¹⁵ Compare Gullikson Aff. Errata to Attachment 6 to Department Initial Brief, Table 2.

¹¹⁶ As discussed above, even if the Lubeck household numbers for this exchange are used, over 60% of the households in the Comstock exchange still have access to indoor wireless service.

NOT PUBLIC DATA ENDS] of the households in that exchange have access to, and have already chosen, competitive voice service.¹¹⁷

- The Department’s witness did not identify Carlton as one of the exchanges not meeting the 60% test.¹¹⁸
- The OAG concedes that Carlton meets the Track 1 requirements

4. Isanti

a. CenturyLink Serves Fewer Than 50% Of The Households In The Isanti Exchange

- CenturyLink contends that it serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the Isanti exchange.
- The Department admits that CenturyLink has met the 50% standard with respect to the Isanti exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange.
 - The Department contends that wholesale lines should be included in CenturyLink’s line count. This argument should be rejected.
 - The Statute provides a bright line test with no “margin.” **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
 - The Department’s witness did not identify Isanti as one of the exchanges not meeting the 50% test.¹¹⁹

b. At Least 60% Of The Households In The Isanti Exchange Have Access To Voice Service From A Competitive Service Provider

¹¹⁷ Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink’s share of the market in the Comstock exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. Gullikson Aff. Errata to Attachment 6.

¹¹⁸ Compare Gullikson Aff. Errata to Attachment 6 to Department Initial Brief, Table 2.

¹¹⁹ Compare Gullikson Aff. Errata to Attachment 6 to Department Initial Brief, Table 2.

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area has access to indoor wireless service.¹²⁰
- The Department contends that Isanti should be rejected because compliance is “marginal.” The Statute provides a bright line test. **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is greater than 60%.
- CenturyLink’s wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink’s market share in the Isanti exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.¹²¹

5. Nashwauk

The Department’s expert conceded in her Affidavit that the Nashwauk exchange met both the 50% test and also met the competitive criterion based on wireless access.¹²²

a. CenturyLink Serves Fewer Than 50% Of The Households In The Nashwauk Exchange

- CenturyLink contends that it serves **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the Isanti exchange.
- The Department admits that CenturyLink has met the 50% standard with respect to the Nashwauk exchange service area by contending that CenturyLink serves **[HIGHLY SENSITIVE NOT PUBLIC DATA**

¹²⁰ As discussed above, even if the Lubeck household numbers for this exchange are used, over 60% of the households in the Comstock exchange still have access to indoor wireless service.

¹²¹ Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink’s share of the market in the Comstock exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. Gullikson Aff. Errata to Attachment 6.

¹²² Gullikson Aff., ¶¶ 72, 77.

BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS] of the households in the exchange.

- The Department contends that wholesale lines should be included in CenturyLink's line count. This argument should be rejected.
- The Statute provides a bright line test with no "margin." **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is less than 50%.
- The Department's witness did not identify Isanti as one of the exchanges not meeting the 50% test.¹²³

b. At Least 60% Of The Households In The Nashwauk Exchange Have Access To Voice Service From A Competitive Service Provider

- CenturyLink has demonstrated that at least **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in the exchange area have access to indoor wireless service.¹²⁴
- The Department contends that Nashwauk should be rejected because compliance is "marginal." The Statute provides a bright line test. **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** is greater than 60%.
- CenturyLink's wireless analysis was conservative, resulting in conclusions that likely understated wireless availability in the relevant exchanges.
- CenturyLink's market share in the Nashwauk exchange is below **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**, and therefore, more than **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]** of the households in that exchange have access to, and have already chosen, competitive voice service.¹²⁵

¹²³ Compare Gullikson Aff. Errata to Attachment 6 to Department Initial Brief, Table 2.

¹²⁴ As discussed above, even if the Lubeck household numbers for this exchange are used, over 60% of the households in the Comstock exchange still have access to indoor wireless service.

¹²⁵ Using the numbers from the Lubeck Affidavit and adding the UNE-P and resale lines, CenturyLink's share of the market in the Comstock exchange is **[HIGHLY SENSITIVE NOT PUBLIC DATA BEGINS HIGHLY SENSITIVE NOT PUBLIC DATA ENDS]**. Gullikson Aff. Errata to Attachment 6.

- The Connect Minnesota Map shows that there is 100% broadband coverage in the Nashwauk exchange, and individual coverage maps for wireless carriers show 100% (or close to 100%) coverage in Comstock.¹²⁶
- FCC Form 477 Data shows 100% (or close to 100%) coverage in this exchange.¹²⁷
- The Department's contention that a difference between the way CenturyLink's witnesses Lubeck and Nelson calculated the number of households in each exchange changes the outcome on the point of the Track 1 test with respect to Nashwauk should be rejected.

CONCLUSION

CenturyLink has provided the best available evidence it can identify to demonstrate that for each of the 109 exchange service areas at issue it (1) serves less than 50% of households and (2) at least 60% of households can choose voice service from a competitive service provider as defined in Minn. Stat. 237.025. The Department attempts to alter the 50% standard by (1) counting wholesale lines as "served" by CenturyLink despite Minnesota statutes and Commission rulings that state otherwise; (2) speculating on an unlikely scenario involving retail customers purchasing business lines instead of far less expensive retail lines, (3) ignoring adjustments that must be made in order to apply the statutory formula in areas with large numbers of vacation homes and (4) arguing that the Commission ignore the bright-line standard in the statute and deny relief if the CenturyLink serves an arbitrary number of customers that is relatively close to the 50% standard. All of the Department's arguments with respect to the 50% standard should be rejected.

The Department attempts to alter the 60% standard by (1) ignoring wireless data certified to the FCC as being accurate by wireless carriers, (2) ignoring wireless data

¹²⁶ First Lubeck Affidavit, ¶ 19.

¹²⁷ First Lubeck Affidavit, ¶ 21.

compiled by the Minnesota Department of Economic Development; and (3) mischaracterizing the conclusions reached by Mr. Nelson as an “upper bound” despite the fact that Mr. Nelson (a) analyzed one of fifteen wireless frequencies available to carriers because public data is not available for the remaining carriers ; (b) only analyzed the coverage of two wireless carriers because the other two major carriers use different wireless frequencies and do not make the necessary information available to the public to allow it to perform the analysis; (c) followed industry guidelines in modeling for issues raised by the department such as terrain, ground cover and geographic data, and (d) opined that his analysis may understate the coverage that it analyzed.

In addition to its contortions on wireless data, the Department dismisses out of hand CenturyLink’s wireline data despite (1) it being the best information CenturyLink has available, (2) the Department used its investigatory authority to contest CenturyLink’s positions and failed to identify any alleged flaws that in any meaningful way reduced the wireline coverage CenturyLink provided. All of the Department’s arguments on the 60% standard should be rejected.

It is common sense that if CenturyLink serves less than 40% of the customers in an exchange area, and does not provide wholesale service to other carriers that serve those customers, then those customers are getting service somewhere. Data in the record demonstrates that in Minnesota nearly all customers purchasing service elsewhere are purchasing from a provider that qualifies as a competitive service provider.

Given the record in this case, the statute requires the Commission to grant relief for all 109 exchange service areas for which CenturyLink has requested competitive market regulation.

Dated: March 23, 2017

QWEST CORPORATION DBA
CENTURYLINK QC

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**Minnesota Department of Commerce
Information Request**

Docket Numbers: P421/AM-16-496, P421/AM-16-547 Nonpublic Public
Requested From: CenturyLink Date of Request: 3/16/2017
Response Due: 3/23/2017

Requested by: Bonnie Johnson/Diane Dietz/Joy Gullikson
Email Address(es): bonnie.johnson@state.mn.us
Phone Number(s): 651-539-1880

Request Number: 85

Request:

In response to DOC IR No. 35, CenturyLink stated: "CenturyLink included every census block where the cable company reported to the FCC that it was competing for services in that census block. This approach is appropriate because the median area of census blocks containing households in Minnesota is 0.028 square miles."

- A. Please explain how this approach is appropriate because the median area of census blocks containing households in Minnesota is 0.028 square miles.
- B. Please provide the median size of census blocks (containing households) in each of the following counties: Lake County, Cook County, St. Louis County.
- C. Please explain why the resulting median census block size in Lake County, Cook County, and St. Louis County is or is not appropriate vis a vis CenturyLink's answer to DOC IR No. 35.

Response:

- A. CenturyLink believes this method is appropriate because of the small area of the median area of census blocks in Minnesota. Typically, the more populous areas of a county will have smaller census blocks. The purpose of CenturyLink's analysis was to determine whether at least 60 percent of households in the exchange service area could choose voice service from at least one additional unaffiliated competitive service provider. As you can see, even in relatively lightly populated areas of the state like the three counties for which the data was requested, the median area of a census block with households is roughly the same as the median area in Minnesota in St. Louis County, about double the median area in Minnesota for Lake County and about triple the median area in Minnesota for Cook County. In addition, while city block sizes vary from city to city, a standard city block is about one-tenth to one-twelfth of a mile, or .007 - .01 square miles. Comparing this to the median census block in Minnesota shows that the median census block is roughly 3-4 city blocks. The cable companies reported which census blocks they served to the FCC. While CenturyLink doesn't have access to how many households within a census block are served by the cable company, CenturyLink thought it reasonable to assume that when a cable company built its network, it

To be completed by responder

Response Date:
Response by:
Email Address:
Phone Number:

**Minnesota Department of Commerce
Information Request**

Docket Numbers: P421/AM-16-496, P421/AM-16-547 Nonpublic Public
Requested From: CenturyLink Date of Request: 3/16/2017
Response Due: 3/23/2017

Requested by: Bonnie Johnson/Diane Dietz/Joy Gullikson
Email Address(es): bonnie.johnson@state.mn.us
Phone Number(s): 651-539-1880

would likely serve more than a single household in a census block where the median area is 3-4 city blocks. But even if the cable company only served one household in a census block, it could economically compete for additional households by extending its facilities where it won additional customers within an area of 3-4 city blocks. For example, Chisholm is an exchange within St. Louis County. According to Confidential Exhibit AL-2, there are 3,064 households in the Chisholm exchange, and the 2010 U.S. Census identifies 2,257 households within the city limits of Chisholm (about 74% of the exchange). CenturyLink prepared a map of Chisholm with census blocks and MediaCom coverage overlaid. See Attachment 85A. The map shows that most census blocks containing households within the city limits are a single city block. This stands to reason since the more heavily populated census blocks would likely be smaller than the median and the lightly populated census blocks would likely be larger than the median.

- B. Please see Attachment 85B for the median, minimum and maximum census block areas for each of the three counties. The table lists areas for the whole county, whole county for census blocks with households, then the same two datasets for CenturyLink service areas.
- C. CenturyLink considers its response to DOC IR 35 to be appropriate with respect to all Minnesota counties. Since the reason for providing the cable company analysis is to identify whether or not 60% of the households have an alternative voice service available, and that more populous portions of the county would normally have smaller census block areas than more rural, less populated areas, CenturyLink determined that the median area would be a reasonable indicator of competitive presence where the cable company reported that it served customers. Considering the three counties separately, the median area of a census block in St. Louis County is slightly smaller than the median for the entire state; therefore, CenturyLink's response to DOC IR 35 would be appropriate for the 60% availability test for St. Louis County. Lake County is about double the statewide median area, so a cable company would be serving within a 6-8 city block area. CenturyLink's response would be appropriate for consideration of the 60% availability test for Lake County. For Cook County, while the median area is about triple the statewide median area, whether or not this is a reasonable area within which to extend service is no longer an issue. Mr. Lubeck's Second Affidavit dated February 23, 2017 noted in paragraphs 40 and 41 that Arrowhead Electric Cooperative claims on its website to offer service everywhere in Cook County, which clearly meets the 60% availability test noted in response A above.

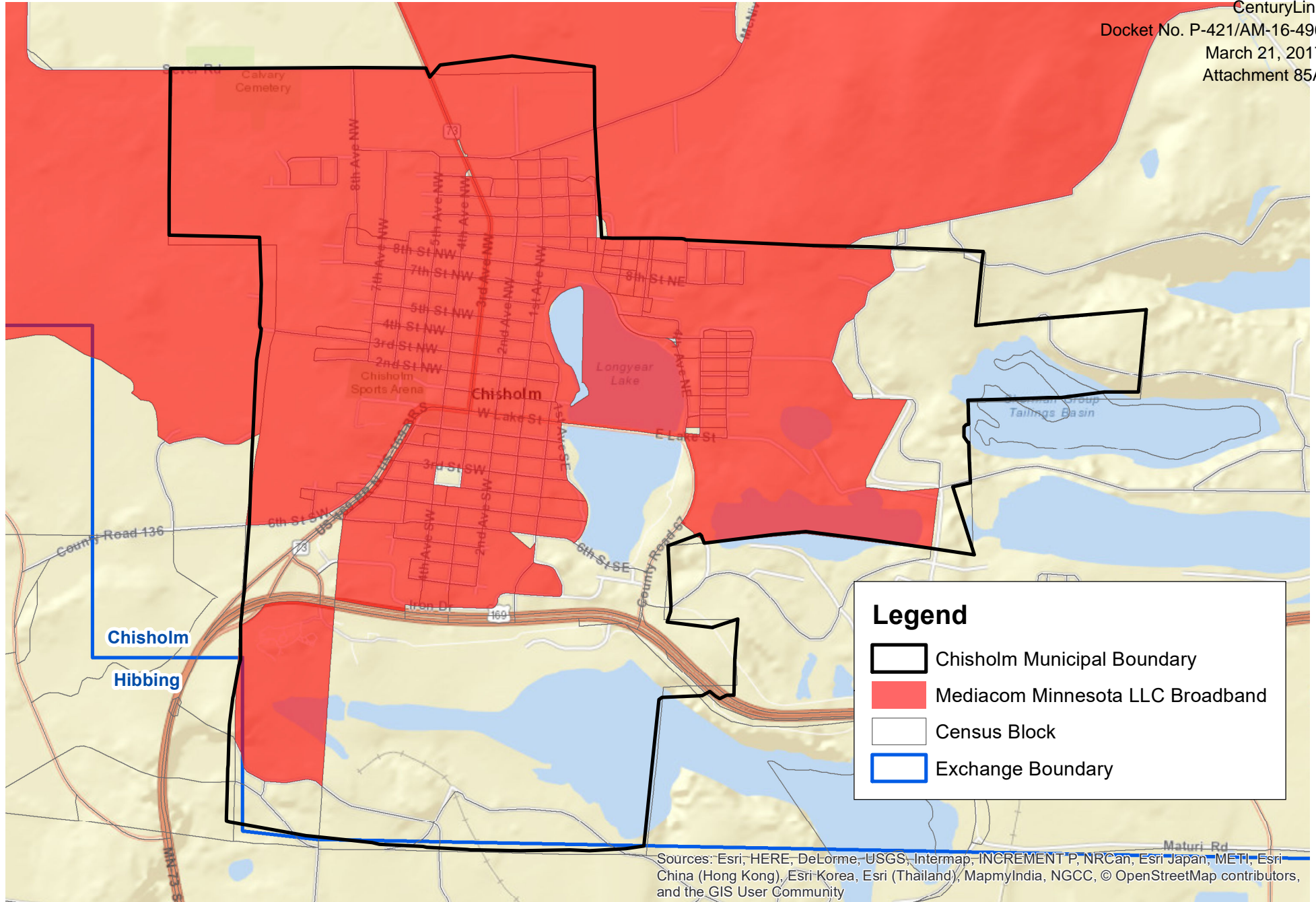
To be completed by responder

Response Date:
Response by:
Email Address:
Phone Number:

Chisholm, Minnesota Mediacom 477 Broadband Coverage



CenturyLink
Docket No. P-421/AM-16-496
March 21, 2017
Attachment 85A



Census Block Area in Square Miles By County

County	Whole County			Whole County - Only Census Blocks with Households			CenturyLink Serving Area Only			CenturyLink Serving Area Only - Only Census Blocks with Households		
	Median	Minimum	Maximum	Median	Minimum	Maximum	Median	Minimum	Maximum	Median	Minimum	Maximum
Cook	0.043323649	0.000106823	698.1253281	0.087235533	0.001321384	150.6493611	0.043428091	0.000106823	698.1253281	0.087235533	0.001321384	150.6493611
Lake	0.055332268	9.94486E-05	250.1220751	0.061719168	0.000270364	250.1220751	0.062386351	0.000177683	250.1220751	0.10369241	0.000672561	250.1220751
St. Louis	0.021510552	9.68448E-05	113.0521618	0.026894539	0.000188352	113.0521618	0.014390012	9.68448E-05	73.98232324	0.015457824	0.000230235	73.98232324