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March 13, 2015

Mr. Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101

**Re: In the Matter of a Rulemaking to Consider Possible Amendments to  
Minnesota Rules, parts 7810.4100 through 7810.6100  
Docket No. P-999/R-14-413**

Dear Mr. Wolf:

Enclosed for filing are the following regarding the above-referenced matter:

1. Reply Comments of CenturyLink; and
2. Supplemental Affidavit of Robert Brigham.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosures

cc: Service List



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

**In the Matter of a Rulemaking to  
Consider Possible Amendments to  
Minnesota Rules, parts 7810.4100  
through 7810.6100**

**Docket No. P-999/R-14-413**

**CENTURYLINK'S REPLY COMMENTS**

CenturyLink submits these Reply Comments to the Minnesota Public Utilities Commission ("Commission") in response to the Commission's December 24, 2014 Notice of Reply Comment Period. CenturyLink continues to urge the Commission to adopt rules that adhere to the following principles:

- Rules should be appropriate in a competitive marketplace;
- Rules should be sufficiently flexible to accommodate a marketplace served by continually evolving technology;
- Rules should be applied in a competitively-neutral manner; and
- Rules should only be adopted if evidence establishes that they are necessary and that the particular requirements of the rule will meet the statutory goals that govern this Commission.

The current rules were adopted in a monopoly environment that no longer exists due to monumental changes in competition and technology. Incumbent providers now serve a small percentage of Minnesota residential customers due to significant and widespread competition. Customers now receive service through a variety of technologies from a myriad

of competitors. The Commission should be certain that any rules it adopts actually provide benefit to consumers in this changed environment.

CenturyLink does not believe the current service quality rules reflect what customers demand today. It has filed data demonstrating the competition that exists in Minnesota today and has incorporated evidence into the record demonstrating the adverse impact certain requirements have on providers' ability to meet the needs of customers.<sup>1</sup> The Minnesota Telecom Alliance ("MTA") and Citizens Telecommunications Company of Minnesota, LLC and Frontier Communications of Minnesota, Inc. ("Frontier") have filed information establishing that this situation exists on a statewide basis. To the extent any question remains on that issue, CenturyLink files additional competitive data with these comments.

By contrast, comments that advocate maintaining the current rules are devoid of any factual data upon which to base the notion that maintenance of the current service quality standards are necessary to protect consumers. Instead, they make sweeping generalizations supported by neither data nor specifics. The world has changed in the last several decades, and service quality rules should be eliminated unless evidence demonstrates that they are crucial to today's consumer and the consumers of the future.

To do otherwise undermines the ability of providers to meet customer needs. Providers do not have the luxury of simply recovering their compliance costs from an ever increasing customer base. Instead, customers vote with their feet. Approximately 70% of

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<sup>1</sup> See Affidavit of Robert Brigham dated December 12, 2014 ("Brigham Affidavit") and Affidavit of Dr. Brian K. Staihr dated December 12, 2014 ("Staihr Affidavit"). CenturyLink also incorporates by reference the Affidavit of Patrick Haggerty ("Haggerty Affidavit") filed in Docket No. P-421/AM-14-255 on May 21, 2014 available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={2EBD21C7-E1EC-4C18-A9BF-0DE5C8B28F5D}&documentTitle=20145-99744-03>.

Minnesota customers have made the decision to obtain service from a provider that is either not subject to the rules at all (wireless and VoIP) or is subject to rules enforced on a complaint basis (CLECs).

In most cases, CenturyLink believes the rules are obsolete and can be eliminated. CenturyLink continues to advocate for the elimination of most of the rules (7810.4100, 7810.4300, 7810.4900, 7810.5100, 7810.5200, 7810.5300, 7810.5400, 7810.5900, and 7810.6100) and believes the Commission should maintain only basic protections related to adequacy of service (7810.5000), transmission requirements (7810.5500), interruptions in service (7810.5800) and safety programs (7810.6100). This approach provides basic protection to consumers while giving regulated providers an adequate opportunity to compete with unregulated market participants.

### **DISCUSSION**

The comments of CenturyLink, Frontier and the MTA demonstrate that (1) effective competition exists throughout Minnesota; (2) current standards are obsolete and inconsistent with customer demands; and (3) the outdated nature of the current standards has a negative impact on the experience of Minnesota consumers. Each set of comments recommends substantial changes to the rules.

By contrast, the Office of Attorney General (“OAG”) and the Telecommunications Consumer and Small Business Coalition (“TCSBC”) argue that the current service quality rules “ensure that customers in Minnesota can enjoy high quality, low cost telephone service

in the absence of effective competition.”<sup>2</sup> The OAG alleges that because CenturyLink “acknowledges that the Service Quality Rules affect the level of service it provides to its customers; therefore, without the Rules the quality of CenturyLink’s service would likely be degraded.”<sup>3</sup>

The OAG identifies no factual basis for its assertions. The OAG’s position is inconsistent with the evidence. It is also inconsistent with the conclusions reached by the Minnesota House Research Department which reviewed the impact of similar legislative changes in other states, and concluded that in the three years since the passage of the majority of bills limiting commission jurisdiction: “... Customer complaint levels appear to be holding steady, either because customers have adjusted to changes in service quality (for example, wireless dropped calls) or, more likely, because carriers simply continue to “do the right thing” in response to market needs.”<sup>4</sup>

This Commission should base its decision on facts and not the speculation of the parties. CenturyLink, Frontier and the MTA have provided the Commission with ample facts justifying their proposed rules. Opponents base their opposition on opinion and conjecture that is inconsistent with incontrovertible data. This Commission should act to modernize its service quality rules in light of the competitive environment, the customer demands and the technology used to offer service today.

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<sup>2</sup> Comments of the Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG Comments”), p. 4; Comments of the Telecommunications Consumer and Small Business Coalition (“TCSBC Comments”), pp. 1-5.

<sup>3</sup> *Id.*

<sup>4</sup> House Research Memo re: Inventory of state telecommunications deregulation laws, from Bob Eleff, Legislative Analyst to Representative Sheldon Johnson, dated October 2, 2014, attached hereto as Exhibit 1.

**I. Rules Adopted By This Commission Must Be Supported By Substantial Evidence.**

The Comments of the OAG suggest that CenturyLink has a burden of proof in this proceeding but cites no authority for this proposition.<sup>5</sup> The OAG cites no authority suggesting that the current rules should be presumed valid and offers no evidence to demonstrate their validity. While Minnesota law requires that an agency rule be supported by substantial evidence, it does not dictate who has a burden of proof.<sup>6</sup> Accordingly, the Commission should determine appropriate rules based on the information in the record, and reject efforts by the OAG to insert a burden of proof concept.

In this proceeding, no party has offered any evidence that the current rules set the appropriate service quality standards, beyond bald assertions that they do. Agency decisions are reversed when they reflect an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.<sup>7</sup> The positions of the OAG and the TCSBC would lead the Commission to violate this standard. The OAG offers broad general assertions without any evidentiary foundation such as:

The Service Quality Rules are the reason that everyday consumers are not concerned about whether the wireline telephone system will work correctly. The Rules ensure that the system works, and without them CenturyLink will not have sufficient incentive to continue the level of service that is required for a basic necessity like telephone service.<sup>8</sup>

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<sup>5</sup> See, e.g., OAG Comments, p. 6, “CenturyLink must meet a high burden . . .”

<sup>6</sup> Minn. Stat. § 14.69.

<sup>7</sup> Minn. Stat. § 14.69; *Sunstar Foods, Inc. v. Uhlendorf*, 310 N.W.2d 80, 84 (Minn.1981); *Crookston Cattle Co. v. Minnesota Dep’t of Natural Resources*, 300 N.W.2d 769, 777 (Minn.1980); *Signal Delivery Service, Inc. v. Brynwood Transfer Co.*, 288 N.W.2d 707, 710 (Minn.1980).

<sup>8</sup> OAG Comments, p. 6.



Because of Rule 7810.5800, consumers in Minnesota, including our isolated rural customer, can expect to have outages repaired within 24 hours in the vast majority of circumstances.<sup>9</sup>

By seeking to initiate the current proceedings, CenturyLink is essentially stating that it no longer desires to meet these basic requirements. Put differently, if the Rules are repealed, consumers will no longer be able to expect that CenturyLink will connect their call in a reasonable amount of time or that their calls will be free of interference.<sup>10</sup>

Similarly, the TCSBC asserts that customers will be “adversely affected by any reduction in service quality standards.”<sup>11</sup> These assertions are not based on a sworn affidavit, and neither party offers any basis upon which to believe that their assertions are accurate.<sup>12</sup>

These unsupported opinions do not withstand scrutiny in light of the evidence CenturyLink, the MTA and Frontier have provided. That evidence establishes (1) the negative impact that the current service quality standards have on customer service quality; (2) the competitive pressures that compel incumbents to provide high quality service; (3) the significant competition that exists; and (4) the harmful impacts on consumers associated with substituting artificial regulatory requirements for the flexibility to provide to customers the services they demand.

CenturyLink has incorporated its affidavit from Patrick Haggerty filed in its waiver petition that details both CenturyLink’s commitment to high quality service and the inconsistencies that exist between customer demands and the regulatory standards that exist.<sup>13</sup>

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<sup>9</sup> *Id.*, p. 5.

<sup>10</sup> *Id.*, p. 6.

<sup>11</sup> TCSBC Comments, p. 2.

<sup>12</sup> The Department of Commerce offers no comments or evidence at all, thereby depriving other parties of the ability to respond to positions it develops.

<sup>13</sup> *See* Haggerty Affidavit.

CenturyLink has submitted ample evidence that competitive pressures will compel it to continue to provide high quality service without service quality standards. As to competitive pressure, CenturyLink presented the Affidavit of Robert Brigham, which states:

- Since 2001, CenturyLink's access lines have decreased from 2,251,637 to 737,283, a decrease of over 67%.<sup>14</sup> At the same time, Minnesota's population has increased by approximately 10.7%.<sup>15</sup>
- In the same time period, the percentage of households CenturyLink serves has decreased from close to 100% to approximately 28%.<sup>16</sup>
- Competition is significant in every wire center CenturyLink serves. Non-incumbent providers serve more than 50% of the households in 201 of 219 wire centers.<sup>17</sup>
- Wireless providers dominate the Minnesota voice market, providing 67.5% of voice connections.<sup>18</sup>
- Wireless communication is the primary method of placing 911 calls, with the FCC reporting that 70% of 911 calls are placed from wireless phones.<sup>19</sup>
- 37.2% of Minnesota customers relied only on wireless services and that percentage continues to increase.<sup>20</sup>
- Wireless service is available in nearly all areas of Minnesota.<sup>21</sup>
- Non-ILEC wireline providers provide more access lines in Minnesota than do ILECs.<sup>22</sup>

Dr. Brian Staihr has filed an affidavit that demonstrates:

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<sup>14</sup> Brigham Affidavit, ¶ 6.

<sup>15</sup> *Id.*, ¶ 7.

<sup>16</sup> *Id.*, ¶¶ 8, 14.

<sup>17</sup> *Id.*, ¶¶ 9-10.

<sup>18</sup> *Id.*, ¶ 12.

<sup>19</sup> FCC Consumer Guide, 911 Wireless Services (Oct. 29, 2014), available at <http://www.fcc.gov/guides/wireless-911-services>.

<sup>20</sup> Brigham Affidavit, ¶ 15, Ex. RHB 5.

<sup>21</sup> *Id.*, ¶¶ 25-35.

<sup>22</sup> *Id.*, ¶ 12.

- Wireless providers impose significant competitive pressure in Minnesota.<sup>23</sup>
- Competitive pressures in Minnesota are real and significant.<sup>24</sup>
- Competitive pressures lessen the need for regulatory mandates addressing service quality.<sup>25</sup>
- Regulatory roles must change in a competitive marketplace, or risk harming the level of competition, the competitors, and the consumers.<sup>26</sup>

Finally, CenturyLink has filed service quality data with this Commission demonstrating that the current standards have no impact in areas where customer demands require superior performance to those contained in current standards.<sup>27</sup>

In short, ample data suggests that the existing service quality standards need to be significantly modified and, in most cases, can be eliminated without any deleterious effect on customers. Additionally, the results summarized above demonstrate that the concerns of the OAG and TCSBC are misplaced. Consumers have and continue to choose to purchase their communications services from providers not subject to the Commission's rules. Clearly, in the absence of service quality regulation, consumers have found the service characteristics of CenturyLink's competitors more than acceptable. The Commission should eliminate standards that are no longer relevant and maintain more general standards as a backstop to allow the Commission to investigate where concerns arise.

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<sup>23</sup> Staihr Affidavit, pp. 15-18.

<sup>24</sup> *Id.*, p. 2.

<sup>25</sup> *Id.*, pp. 17-22.

<sup>26</sup> *Id.*, p. 22.

<sup>27</sup> See, e.g., 2014 Service Quality Report, *In the Matter of a Petition of Qwest Corporation for Approval of its Second Revised Alternative Form of Regulation Plan*, Docket Nos. P-421/AR-09-790 and P-421/AR-13-498, filed February 17, 2015 (showing performance that significantly exceeds certain service quality standards).

## **II. CenturyLink Has Demonstrated Effective Competition Throughout Minnesota.**

The Commission requested evidence establishing the level of competition in Minnesota. The OAG sets forth the following test for determining whether or not the market is effectively competitive: “these principles place the burden on CenturyLink to demonstrate that its wireline customers are willing and able to substitute wireless or VoIP service if the circumstances warrant.”<sup>28</sup>

CenturyLink has demonstrated that this precise situation exists. CenturyLink’s market share of the Minnesota consumer marketplace was 27% in the third quarter of 2014 and is declining each quarter.<sup>29</sup> Over 37.2% of landline customers have chosen to forgo wireline service entirely, a number that has steadily increased over the last several years.<sup>30</sup> On the wireline front, CenturyLink has provided evidence that over 32% of consumers have obtained service from an alternate wireline provider and that this percentage is increasing. It is difficult to conceive of more robust evidence that customers are willing and able to substitute wireless or wireline service if the circumstances warrant. Under the OAG’s proposed test, it is clear that the Minnesota consumer marketplace is competitive.

The OAG cites the DOJ complaint in the AT&T Wireless and T-Mobile Merger<sup>31</sup> as support for the viewpoint that wireless and wireline services occupy different markets. This argument is without merit. The question in that proceeding was whether wireline service should be considered a substitute for wireless service, and thereby constrains the prices and service quality of wireless services. The DOJ argued in that proceeding that because

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<sup>28</sup> OAG Comments, pp. 7-8.

<sup>29</sup> Brigham Affidavit, Ex. RHB-2.

<sup>30</sup> *Id.*

<sup>31</sup> OAG Comments, p. 13.

wireline service is not mobile, that wireline service does not effectively restrict wireless pricing:

. . . Because neither fixed wireless services nor wireline services are mobile, they are not regarded by consumers of mobile wireless telecommunications services as reasonable substitutes.<sup>32</sup>

Even if one concedes that this allegation is accurate, it bears no relevance to this case. This proceeding involves the opposite question – whether wireless services serve as an alternative for wireline services. Wireless services offer the ability to place voice calls. Both the FCC and this Commission have concluded that such services can qualify for ETC funding.<sup>33</sup>

Consumers can choose from either wireline or wireless services as their lifeline alternative. The fact that such services are also mobile increases, rather than decreases, the strength of wireless as a competitive alternative and explains why wireless companies have been so successful in convincing customers to cut the cord.

The OAG suggests that wireless service is not a substitute for wireline service.<sup>34</sup> This viewpoint ignores market realities and decisions from many jurisdictions. For example, the Pennsylvania Commission recently concluded:

In sum, we believe the credible record evidence proves that *in the eyes of consumers*, the voice services offered by competing providers, including cable telephony and wireless providers in the wire centers subject to the Petition, fulfill the same functions as the ILEC's basic local exchange service. These competing services are "*similar enough*" that consumers are willing and able to switch to them. Therefore we believe these services are like or substitute services to basic local exchange service . . .<sup>35</sup>

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<sup>32</sup> *United States of America v. AT&T, et al.*, No. 11-cv-01560, ¶ 12 (D.D.C., Aug. 31, 2011).

<sup>33</sup> *In the Matter of the Petition of Minnesota Southern Wireless Company d/b/a HickoryTech for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)(2)*, Order Granting Conditional Approval and Requiring Additional Filings, Dkt. PT-6213/M-03-591 (Aug. 14, 2003), p. 9.

<sup>34</sup> OAG Comments, pp. 11-13.

<sup>35</sup> See *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and a Waiver of*

Furthermore, other states have recognized wireless as a competitor, including South Carolina, Colorado,<sup>36</sup> Virginia,<sup>37</sup> Missouri,<sup>38</sup> and Texas.<sup>39</sup> Many other legislatures have concluded that wireline service is competitive without even doing an analysis of the issue.<sup>40</sup> In such states one can reasonably assume that the presence of wireless as a competitor to wireline service is a given.

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*Regulations for Competitive Services*, Joint Motion of Chairman Robert F. Powelson and Vice Chairman John F. Coleman, Jr. (Joint Motion Granting Petition in Part and Denying Petition in Part and directing that the Office of Special Assistants prepare an Opinion and Order) (“Pennsylvania Order”)(<http://www.puc.pa.gov/pcdocs/1344786.pdf>), p. 7 (emphasis in original).

<sup>36</sup> Colorado Public Utilities Commission, Docket No. 12R-862T, Decision No. C13-0203, *Decision denying request for waiver; granting, in part, and denying, in part, rehearing, reargument, or reconsideration; and adopting revised rules*, issued January 30, 2013, ¶ 23.

<sup>37</sup> Commonwealth of Virginia, State Corporation Commission, *Application of Verizon Virginia Inc. and Verizon South Inc. For a determination that Retail Services are Competitive and Deregulating and Detariffing of the Same*, Case No. 2007-00008, Order on Application, issued Dec. 14, 2007, p. 22.

<sup>38</sup> Missouri Revised Statutes, 392.245.5(1) provides:

(1) Commercial mobile service providers as identified in 47 U.S.C. Section 332(d)(1) and 47 C.F.R. Parts 22 or 24 shall be considered as entities providing basic local telecommunications service, provided that only one such nonaffiliated provider shall be considered as providing basic local telecommunications service within an exchange. If the commercial mobile service provider does not designate customers by business or residential class, such provider will be deemed to be providing service to both business and residential customers.

<sup>39</sup> Texas Statutes, Section 65.052(b):

(b) In making a determination under Subsection (a), the commission may not determine that a market should remain regulated if: (1) the population in the area included in the market is at least 100,000; or (2) the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company, there are at least two competitors operating in all or part of the market that: (A) are unaffiliated with the incumbent local exchange company; and (B) provide voice communications service without regard to the delivery technology, including through: (i) Internet Protocol or a successor protocol; (ii) satellite; or **(iii) a technology used by a wireless provider or a commercial mobile service provider, as that term is defined by Section 64.201.** (Emphasis added.)

<sup>40</sup> See Ex. 1 (Eleff Memo), p. 2, identifying Alabama, Florida, Indiana, Michigan, Mississippi, Nevada, North Dakota and Wisconsin as states where the marketplace has been deemed competitive. Similarly, Arkansas, Illinois, Nevada and New Hampshire give carriers the option to be deregulated.

**A. CenturyLink, Frontier And The MTA Have Demonstrated Competition Throughout Minnesota, Even When Measured At The Wire Center Level.**

The OAG argues in the absence of any data that competition in Minnesota is limited to isolated geographic areas and suggests that CenturyLink should produce evidence of localized competition.<sup>41</sup> CenturyLink has presented data demonstrating the amount of cable competition by wire center. That information establishes that cable competitors exist in nearly every wire center in its territory.<sup>42</sup> It has also provided the wireless coverage maps of the major wireless competitors demonstrating that nearly all Minnesota customers have wireless options for service and that the vast majority of the population has multiple options for wireless service.<sup>43</sup>

The OAG conducts no analysis to reach a conclusion regarding the geographic extent of competition in Minnesota. Instead, it simply suggests the Commission conclude that such competition does not exist.<sup>44</sup> In order to support such a position, the OAG should produce evidence supporting its position.

The comments of CenturyLink, the MTA and Frontier all address the widespread nature of competition in Minnesota, both within and outside of CenturyLink's service territory. Mobile wireless providers offer service to almost the entire state. Furthermore,

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<sup>41</sup> OAG Comments, p. 13-14.

<sup>42</sup> Brigham Affidavit, Ex. RHB-3, pp. 1-8.

<sup>43</sup> Brigham Affidavit, ¶ 26, Ex. RHB-5.

<sup>44</sup> OAG Comments, p. 14: "If CenturyLink is able to satisfy the Commission that *it* faces effective competition, another significant problem remains: rolling back the Service Quality Rules would apply to *every* provider of wireline telephone service in Minnesota. It is likely that at least some wireline telephone carriers, particularly those serving rural Minnesotans, do not face effective competition from other providers. Because eliminating or altering the Rules would apply statewide, such a step would result in at least some monopoly telephone providers that no longer have any incentive-regulatory or economic-to maintain service quality for their customers."

fixed wireless providers supplement that coverage, and while our data does not tell us whether or not they offer voice service, such providers have the capability to offer service and therefore constitute a potential market entrant that must be considered a part of the competitive landscape.<sup>45</sup> Finally, cable providers offer voice service in nearly every wire center in Minnesota.<sup>46</sup>

To the extent there is any remaining question regarding the location of competitors in Minnesota, CenturyLink offers the Supplemental Affidavit of Robert Brigham that demonstrates in detail and on a geographic basis the presence of competitors in Minnesota.<sup>47</sup>

**B. The OAG Has Presented No Evidence To Support A Finding That A Duopoly Or Oligopoly Situation Prevails In Minnesota.**

The OAG argues that the presence of oligopoly or duopoly situations do not necessarily insulate customers from anticompetitive business practices.<sup>48</sup> This argument is

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<sup>45</sup> In addition, any customer with Fixed Wireless broadband service can order VoIP service from another provider.

<sup>46</sup> Brigham Affidavit, Ex. RHB-3, pp. 1-8 (identifying cable-served households by wire center).

<sup>47</sup> Supplemental Affidavit of Robert Brigham, filed with these comments (“Supplemental Brigham Affidavit”).

<sup>48</sup> OAG Comments, p. 15:

“Oligopoly Markets, And In Particular Duopolies, Do Not Necessarily Insulate Consumers From Anticompetitive Business Practices Despite The Nominal Competition That Is Present. Even if CenturyLink provides sufficient evidence to establish that it faces effective competition from at least one other telephone provider in a given area, this does not necessarily shield consumers from a degradation in wireline service quality if the market is oligopolistic. An “oligopoly market is one in which a few relatively large sellers account for the bulk of the output.” “With so few sellers, oligopolists find it easier to coordinate their behavior to maintain prices above the normal competitive level. . . . Oligopolists can anticipate with greater certainty how their rivals are likely to react to a price increase. Simply by observing other firms’ conduct, oligopolists can maintain prices at high levels just as effectively as a monopolist or a group of firms engaging in an express price-fixing conspiracy.”



questionable as an economic concept.<sup>49</sup> More fundamentally, the OAG offers no evidence that oligopoly or duopoly conditions exist in Minnesota. As the evidence in this proceeding demonstrates, very few, if any, Minnesota customers have less than three potential providers of service. At a minimum, multiple wireless carriers offer service in each of its exchanges.<sup>50</sup> Beyond that, wireline competitors offer service in nearly every exchange CenturyLink serves and have captured significant market share in these exchanges.<sup>51</sup> Finally, the Affidavit of Brian Staihr demonstrates the price competition that runs rampant between wireless and wireline services.<sup>52</sup>

### **III. CenturyLink Is Not Aware Of Any Wholesale Concerns With Its Proposed Rules.**

The MCCA and Integra filed comments preserving their right to participate to protect any wholesale concerns associated with proposed rule changes. CenturyLink has met with wholesale providers and incorporated their requests for modifications to its proposals in order to address their concerns. CenturyLink is not aware of any wholesale concerns that arise because of its proposals.

## **CONCLUSION**

CenturyLink appreciates the Commission's willingness to review its Minnesota service quality rules. The evidence produced in this proceeding compels a conclusion that pervasive competition exists, and that the current rules serve to impede providers' ability to

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<sup>49</sup>See Dennis L. Weisman, A "PRINCIPLED" APPROACH TO THE DESIGN OF TELECOMMUNICATIONS POLICY, *Journal of Competition Law & Economics*, 6(4) 924, 952-953 (June 4, 2010)(discussing the discipline imposed by a limited number of competitors that successfully take market share).

<sup>50</sup> See Pennsylvania Order.

<sup>51</sup> See Brigham Affidavit, Ex. RHB-3, pp. 1-8.

<sup>52</sup> Staihr Affidavit, pp. 15-18; Brigham Affidavit, Ex. RHB-4.

invest in a manner that best serves customer demand. CenturyLink respectfully requests that the Commission eliminate obsolete rules (7810.4100, 7810.4300, 7810.4900, 7810.5100, 7810.5200, 7810.5300, 7810.5400, 7810.5900, and 7810.6100) and modify four rules to maintain basic protections related to adequacy of service (7810.5000), transmission requirements (7810.5500), interruptions in service (7810.5800) and safety programs (7810.6100).

Dated this 13<sup>th</sup> day of March, 2015.

CENTURYLINK

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# Minnesota House of Representatives

March 13, 2015

## Exhibit 1

TO: Representative Sheldon Johnson

FROM: Bob Eleff, Legislative Analyst (651-296-8961)

RE: Inventory of state telecommunications deregulation laws

This memorandum summarizes salient features of state telecommunications deregulation laws enacted in recent years, based on analysis contained in four recent reports authored by Dr. Sherry Lichtenberg of the National Regulatory Research Institute (NRRI).<sup>1</sup> I have assumed that both the analysis and the brief description of these laws' provisions by NRRI are accurate. Where data was confusing or ambiguous, I reviewed the relevant state statutes. Nevertheless, omissions and inaccuracies may be present. This memorandum is best viewed as presenting the wide array of choices states have made in reducing regulatory oversight of telecommunications services.

I have included in an Appendix a short section from the 2013 NRRI report entitled "Conclusions and Recommendations" which you may find helpful in thinking about potential legislation regarding these issues.

BE/jf

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<sup>1</sup> *The Year in Review: The Status of Telecommunications Deregulation in 2012*, June 2012; *Telecommunications Deregulation: Updating the Scorecard for 2013*, April 2013; *Characterizing Competition: A Look at State Processes*, February 2014; and *Telecommunications Legislation 2014: Completing the Process*, June 2014.

The National Regulatory Research Institute (NRRI) was founded in 1976 by the National Association of Regulatory Utility Commissioners, a nonprofit organization formed in 1889 that is dedicated to representing state public service commissions that regulate utilities that provide energy, water, and telecommunications services. NRRI's mission is: "To serve state utility regulators by producing and disseminating relevant, high-quality research that provides the analytical framework and practical tools necessary to improve their public interest decision-making." State commissions constitute a majority of NRRI's Board of Directors.

Dr. Sherry Lichtenberg, NRRI's Principal Telecommunications Research and Policy analyst, has 25 years of experience in the telecommunications industry, including positions at AT&T, MCI, and Verizon Business.

## **A. How Markets are Determined to be Competitive**

### ***1. Legislative Declaration***

Eight state legislatures have declared all services, carriers, and markets to be competitive without assessing the actual availability of alternative providers in different geographical areas:

**Alabama, Florida, Indiana, Michigan, Mississippi, Nevada, North Dakota, Wisconsin**

In three states, the declaration applies only to markets exceeding a specific size:

**Kansas:** Exchanges with more than 75,000 local access lines

**New Hampshire:** ILECs serving more than 25,000 customers

**Texas:** ILECs serving markets containing a population greater than 100,000

In three states enacting such legislation, basic local exchange service (BLES) or carrier of last resort (COLR) requirements were not deemed to be competitive, and remain under commission jurisdiction:

**Maine, Missouri, (COLR), New Hampshire (BLES, where ILEC has fewer than 25,000 customers)**

### ***2. Carrier Election, Without Commission Review***

**Arkansas, Illinois, Nevada, New Hampshire (ILECs serving fewer than 25,000 customers), North Carolina, Pennsylvania (except for basic local exchange service and switched-access service), Tennessee**

### ***3. Commission Determines Whether Carriers Meet Conditions Set by Legislature***

In addition to the ILEC, one competitor unaffiliated with the ILEC in a market must provide a substitute for local exchange service:

**Delaware, Idaho, South Carolina, South Dakota**

**South Carolina:** one wireline or two wireless competitors must be present

**South Dakota:** an alternate service must be available to at least 50 percent of subscribers in a market

In addition to the ILEC, two competitors unaffiliated with the ILEC in a market must provide a substitute for local exchange service:

**Kansas, Mississippi, Ohio, Texas**

**Kansas:** applies only to exchanges with fewer than 75,000 access lines

**Mississippi:** the competing service must be available to 75 percent of the ILEC's existing customers, or 60 percent if the service is available to both residential and business customers. Alternatively, a carrier may petition to be declared competitive based on "a material reduction in access lines or minutes of use in two consecutive years."

**Texas:** applies only to markets with a population between 30,000 and 100,000; competitors may operate in “all or part of the market.”

#### ***4. Commission Review and Decision***

In 22 states, the commission evaluates the state of competitive markets for telecommunications services based upon evidence submitted by providers and determines, in an adjudicatory hearing, whether the level of competition is sufficient to allow for lessened regulation.<sup>2</sup> Oregon’s statute is typical of the issues that commissions examine in such a proceeding:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which the services of alternative providers are functional equivalent or substitutable at comparable rates and under comparable terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.<sup>3</sup>

**Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Georgia, Iowa, Louisiana, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania (basic local exchange and switched access service), Utah, Virginia, Vermont, Washington West Virginia, Wyoming**

### **B. Regulation of Retail Services is Eliminated in Competitive Areas**

**Alaska, Delaware, Florida, Georgia, Iowa, Kansas, Louisiana, Massachusetts, Nevada, South Carolina, Texas, Virginia, Wisconsin**

**Arkansas, Colorado, Connecticut, Illinois, Indiana, Maine, Michigan, Nebraska:** except for BLES

**New Hampshire:** for ILECs with more than 25,000 lines that elect deregulation

**Idaho:** except for residential customers in noncompetitive areas

**Rhode Island:** wireless service only, except for BLES

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<sup>2</sup> Seven other states, including Minnesota, offer reduced regulation under Alternative Form of Regulation (AFOR) plans, which are negotiated between the commission and individual providers and allow for flexibility. These states are the District of Columbia, Maryland, Massachusetts, Minnesota, Montana, Pennsylvania, and Rhode Island.

<sup>3</sup> Oregon Revised Statutes, section 759.052.

## **C. The Commission Can Revisit and Overturn a Decision to Deregulate**

Eleven states allow the commission, on its own motion or in response to a petition, to review a decision to deregulate a market, based on new evidence that the market is not competitive.

**Colorado, Delaware, Georgia, Kansas, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, Virginia, Washington**

## **D. Carrier of Last Resort (COLR) Obligations are Eliminated**

### *1. Statewide*

**Colorado** (after July 1, 2016), **Delaware, Florida, Georgia** (if carrier receives no USF funds), **Indiana, Mississippi, North Carolina, South Carolina**

### *2. In Certain Areas*

**Kansas, Missouri:** specific urban areas identified by the legislature

**Texas:** in deregulated markets

**Michigan, Virginia, Nevada:** where one or more alternative providers are present in the market, regardless of their size, type, or quality of service

**Alabama, Maine, Wisconsin, Wyoming:** where carriers petition the commission to withdraw COLR obligations

**Louisiana:** in exchanges where CLEC market share reaches 25 percent

## **E. Providers Are Not Required to Offer Basic Local Exchange Service**

### *1. Statewide*

**Florida, Louisiana, Mississippi, Nevada, Pennsylvania** (after 2017), **Virginia**

### *2. In Certain Areas*

**Delaware, Nebraska, Texas, Wisconsin:** in areas where the commission finds that effective competition exists

**Oklahoma:** in areas with more than 75,000 access lines

**Massachusetts, Michigan** (after 2016): in areas where two carriers provide BLES

### *3. To New Customers*

**South Carolina:** but service to existing customers must continue

#### ***4. If Commission Determines Public Interest Would Not be Harmed***

##### **New Hampshire**

#### **F. Basic Local Exchange Service Continues to be Price-regulated**

**Arkansas** (for a single provider), **California, Connecticut, Louisiana, Maine** (COLR only), **New Jersey, Ohio, Oklahoma**

**Colorado, Delaware, Nebraska, Pennsylvania:** in areas where there is no competition

**South Carolina:** rates may rise with inflation

#### **G. Regulation of service quality**

##### ***1. Eliminated***

**Alabama, Florida, Idaho, Illinois, Indiana, Kansas, Michigan,<sup>4</sup> Tennessee, Texas**

**Arkansas, Louisiana, Missouri, Wisconsin:** in competitive areas only

**Virginia:** commission may monitor individual customer complaints and require appropriate responses

##### ***2. Retained***

**California, Colorado** (until July 1, 2016), **Nebraska**

**Georgia, Illinois:** for rate-regulated carriers only

**Maine, Mississippi, New Hampshire, North Carolina, Ohio:** for basic local exchange service only

#### **H. Commission Monitoring of Service Complaints**

##### ***1. Eliminated***

**Florida, Missouri** (if carriers self-exempt), **Massachusetts, New Hampshire, Rhode Island, Tennessee, Wisconsin<sup>5</sup>**

**Alabama:** carriers petition commission to be removed from complaint process

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<sup>4</sup> Existing service quality rules eliminated, but commission may enact new rules.

<sup>5</sup> In Florida and Wisconsin, complaints are now monitored by the Department of Agriculture and Consumer Affairs. In Massachusetts and Rhode Island, the Attorney General has this responsibility.

## ***2. Retained***

**California, Georgia, Idaho, Indiana, Michigan, Maine (COLR only), Mississippi (residential only), Nebraska, North Carolina, Virginia**

**Colorado, Delaware, Iowa, Ohio:** basic local exchange service only

**Connecticut, Illinois, Louisiana, Missouri:** in areas without effective competition only

**Kansas:** commission may “administer” complaints but may not “regulate carriers”

## **I. VOIP Regulation Prohibited<sup>6</sup>**

**Alabama, Arkansas (except carriers receiving state USF funds), California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Hampshire, Nevada, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Wisconsin, Wyoming**

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<sup>6</sup> The 2013 NRRI report stated (pp. 3, 8) that state bills deregulating VOIP “appear to function as a ‘preemptive strike’ against any potential designation of VOIP or IP-enabled services as . . . [federally-regulated] services. . . [S]ome legislators have viewed the elimination of commission oversight for these IP-enabled services as a way to ‘protect the Internet’ from government intervention.”



## Appendix

Excerpt from National Regulatory Research Institute, *Telecommunications Deregulation: Updating the Scorecard for 2013*, April 2013, pp. 40-42.

### Conclusions and Recommendations

It has only been three years since the majority of the bills limiting commission oversight of retail telecommunications were passed, and the early results seem, if not positive, then at least “palatable.” Carriers have not withdrawn service from their traditional markets, including their rural markets. ILECs have not raised prices significantly or eliminated traditional TDM wireline service offerings (despite AT&T’s plan to “test” such a change in the near future). Customer complaint levels appear to be holding steady, either because customers have adjusted to changes in service quality (for example, wireless dropped calls) or, more likely, because carriers simply continue to “do the right thing” in response to market needs. And commissions are adjusting to their new role in managing a (mostly) deregulated telecommunications ecosystem. In states where deregulation has eliminated many of their traditional tools for responding to customer issues, state commissions are working collaboratively with carriers and their retail and wholesale customers to develop new ways to ensure that carriers’ private behavior remains aligned with the public interest.

Reductions in the oversight of telecommunications will continue and ultimately expand as customers continue to migrate to newer technologies and more companies seek to eliminate their traditional product offerings in favor of non-regulated services such as VoIP and wireless. In states that have not yet passed legislation limiting telecommunications oversight, state commissions can help legislators understand the critical components that such bills should include. For example, state commissions may work with legislators to ensure that they understand the need for continued support for the universal availability of voice and broadband service, even in remote areas. These services are critical to ensure that all end users will be able to reach emergency services when they need them and that carriers continue to provide access for all calls. Because state regulators are “on the ground” with the users of these services, they can provide legislators with a unique perspective on the problems and successes of the technology and regulatory transition.

Even where deregulation has removed direct oversight, regulators should continue to focus on customer requirements and service availability in order to proactively identify problems and propose solutions, including amending legislation as necessary. These areas include universal service, service quality, and network reliability. As the Iowa NOI points out, call completion problems and other issues that limit the ability of customers to communicate with each other remain key areas for state commission focus going forward. Commissions should, therefore, continue to work with state legislatures to ensure that further legislation does not remove or significantly vitiate this critical oversight responsibility.

Quality of service and network reliability will also continue to be key questions for state regulators. In those states where quality requirements remain for basic service or for ETCs, state commissions can use those requirements to drive overall network improvements. One of the key areas for state commission focus is the intersection between the reliability of the electric grid and the availability of the new telecommunications networks. As the network transitions from TDM

service provided by battery-backed central-office switches to VoIP service dependent on commercial power, state regulators will play an important role in coordinating the sharing of responsibility between telecommunications providers and electricity suppliers.

In the long term, collaboration between regulators and carriers of all types will become the key to ensuring that the results of telecommunications deregulation remain more positive than negative. Regulators in states that have already deregulated and those that are still considering deregulation may want to consider the following suggestions for ensuring that this endeavor is successful.

1. States can learn from each other as deregulation continues.

Regulators across the country may want to work together to identify best practices for implementing deregulation, explore the potential pitfalls of reduced regulation, and discuss how best to address emergency access and consumer safety issues.

2. Collaboration and advance planning are key requirements for crafting legislation that responds to the needs of both business and residential customers and providers.

By working together, commissions, legislators, consumer advocates, and companies can identify key areas where oversight will continue to be important, including systemic issues such as universal service, billing, slamming and cramming, E911 connectivity, and network reliability.

3. In areas where regulation has been reduced or eliminated, state regulators may work with other state agencies to fill the gaps left by the reduction in oversight.

State outreach programs can ensure that customers understand the pluses and minuses of the products they may select in an unregulated environment. Consumer-protection groups and the Attorney General may be able to “fill in the blanks” to resolve problems caused by a commission’s inability to resolve consumer complaints.

Deregulation will continue and potentially expand over the next few years, particularly as the network transitions from TDM to new technologies. Regulators will retain an important role in this transition, both to ensure that no user is left behind and to explain this change in terms that all users can understand. By focusing on the end result of limitations on regulation, state commissions can proactively ensure that this transition is successful.

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

<b>Beverly Jones Heydinger</b>	<b>Chair</b>
<b>David Boyd</b>	<b>Commissioner</b>
<b>Nancy Lange</b>	<b>Commissioner</b>
<b>Dan Lipschultz</b>	<b>Commissioner</b>
<b>Betsy Wergin</b>	<b>Commissioner</b>

**In the Matter of a Rulemaking to Consider      Docket No. P-999/R-14-413  
Possible Amendments to Minnesota Rules,  
parts 7810.4100 through 7810.6100**

**SUPPLEMENTAL  
AFFIDAVIT OF ROBERT BRIGHAM**

**MARCH 13, 2015**



have any incentive—regulatory or economic—to maintain service quality for their customers.<sup>1</sup>

I will provide additional competitive data, based in part on the National Telecommunications & Information Administration (“NTIA”) National Broadband Map, demonstrating that there is robust voice competition not only in the CenturyLink serving area, but throughout the rest of Minnesota as well.

3. In 2009, as part of the American Recovery and Reinvestment Act (“ARRA”),<sup>2</sup> Congress allocated funds for the development of a National Broadband Map, to be administered by the NTIA. ARRA granted money to states to collect broadband data, and this data was forwarded to the NTIA, who has been publishing the National Broadband Map every six months since 2010. Detailed broadband location data may be downloaded from the NTIA’s web site; the most recent data available is for end of year 2013. CenturyLink has downloaded the NTIA data, and has developed a series of maps based on this data that show the presence of broadband competitors in the state of Minnesota, including cable, CLEC and fixed wireless competitors, as of December 2013. On these maps, the areas (wire centers) served by CenturyLink are outlined; the locations outside the outlined areas are served by other local exchange providers. In addition, the maps I am providing show the areas (census blocks) where the population is zero. This demonstrates that many of the areas without competitive services have no customers to serve.

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<sup>1</sup> OAG-RUD Comments, December 4, 2014, page 14.

<sup>2</sup> American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law No. 111-5 (Feb. 17, 2009), and the Broadband Data Improvement Act (BDIA), Title I of Public Law No. 110-385, 122 Stat. 4096 (Oct. 10, 2008).

4. Exhibit RHB-6 depicts the presence of cable providers offering broadband services in the state of Minnesota. It may be readily observed that cable providers offer service in nearly all CenturyLink wire centers in Minnesota, but also offer service in many other communities served by other ILECs. While the broadband map data specifically identifies cable providers that offer broadband service, we can safely assume that voice service is also offered where a cable company provides broadband services. As is clear from the map, cable providers generally focus on providing services in populated areas throughout the state, and often do not serve the most rural “out of town” areas. However, Exhibit RHB-6 demonstrates that these cable providers have a substantial presence in the areas of the state served by ILECs other than CenturyLink.

5. Exhibit RHB-7 depicts the presence of Fixed Wireless providers in the state of Minnesota. The exhibit shows that Fixed Wireless providers offer service not only in nearly all CenturyLink wire centers in Minnesota, but also in many communities served by other ILECs, especially in the southern portions of the state. The NTIA’s Broadband Map identifies over 50 fixed wireless providers in Minnesota that offer broadband service, but does not show whether these providers offer voice service. Based on a partial review of FCC Form 477 data and provider web sites, it appears that some Fixed Wireless providers offer voice service and some do not. However, even if the Fixed Wireless provider does not offer voice services, the customer purchasing Fixed Wireless broadband can purchase voice service from an over-the-top VoIP provider such as Vonage. Thus, the presence of Fixed Wireless provides a viable competitive voice option for many customers in more rural areas that are not served by cable providers.

Exhibit RHB-7 shows that Fixed Wireless service is available in most areas that are served by ILECs other than CenturyLink, especially in southern Minnesota.

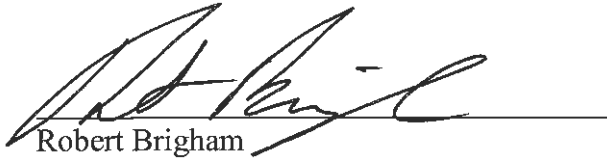
6. In my December 4, 2014 affidavit, I provided a discussion of competition from mobile wireless providers in Minnesota. Exhibit RHB-5 provides a map showing the voice coverage of the major wireless providers in Minnesota, including AT&T, Verizon, T-Mobile and Sprint. These maps, which are based on coverage maps from the carrier websites, show that wireless coverage is not only substantial in the CenturyLink serving area, but in the rest of the state as well. Verizon and AT&T provide service in nearly all portions of the state, excluding only the most rural areas in the northern part of the state—most of which have zero population. Sprint and T-Mobile have smaller footprints, but still cover a large portion of the state. Nearly all customers in Minnesota—including those served by ILECs other than CenturyLink—have multiple wireless voice options.

7. The mobile wireless carriers also report broadband data for the NTIA's National Broadband Map. For Verizon, AT&T and Sprint, the broadband wireless coverage shown on the Broadband Map is almost identical to the coverage shown in Exhibit RHB-5, indicating that these carriers offer broadband service in virtually the same areas where voice service is offered. For T-Mobile, the broadband coverage area is smaller than the voice coverage area. Exhibit RHB-8 provides the total mobile broadband coverage considering all wireless carriers in Minnesota. The data in Exhibit RHB-8 shows the overall mobile wireless broadband coverage in Minnesota, and confirms the accuracy of the data in Exhibit RHB-5 since voice service is offered anywhere that mobile broadband service is offered.

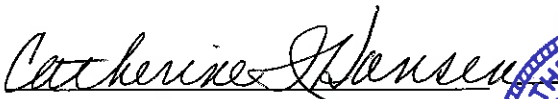
8. The NTIA's Broadband Map also includes broadband coverage for CLECs. However, in many cases it is hard to distinguish between areas served by an ILEC and a CLEC subsidiary of an ILEC. Many ILECS in Minnesota, including Paul Bunyan, Arvig, CTC (Consolidated Telecommunications), Federated Telephone, HBC (Hiawatha Broadband) and Enventis serve a home ILEC area and also provide service in nearby areas as a CLEC. In many cases, they offer voice services in CenturyLink wire centers, as I described in my December 4, 2014 Affidavit. However, they also provide competitive voice services in the home areas of other ILECs.

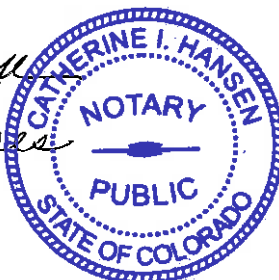
9. In conclusion, it is clear that the portions of Minnesota served by ILECs other than CenturyLink are very competitive, just like areas served by CenturyLink. Exhibit RHB-9 provides a map of the total competitive broadband coverage for the state (Cable, Fixed Wireless and Mobile Wireless but excluding CLECs). It shows that nearly all areas in the state are served by competitive providers, and nearly all the area that is not served has no population. As discussed above, where there is broadband coverage, customers have voice options. Customers throughout Minnesota have viable voice options from cable providers, fixed wireless providers, VoIP providers and mobile wireless providers.

This concludes my affidavit.

  
Robert Brigham

Subscribed and sworn to before me  
this 13th day of March, 2015.

  
Notary Public  
*My commission expires  
July 25, 2016.*

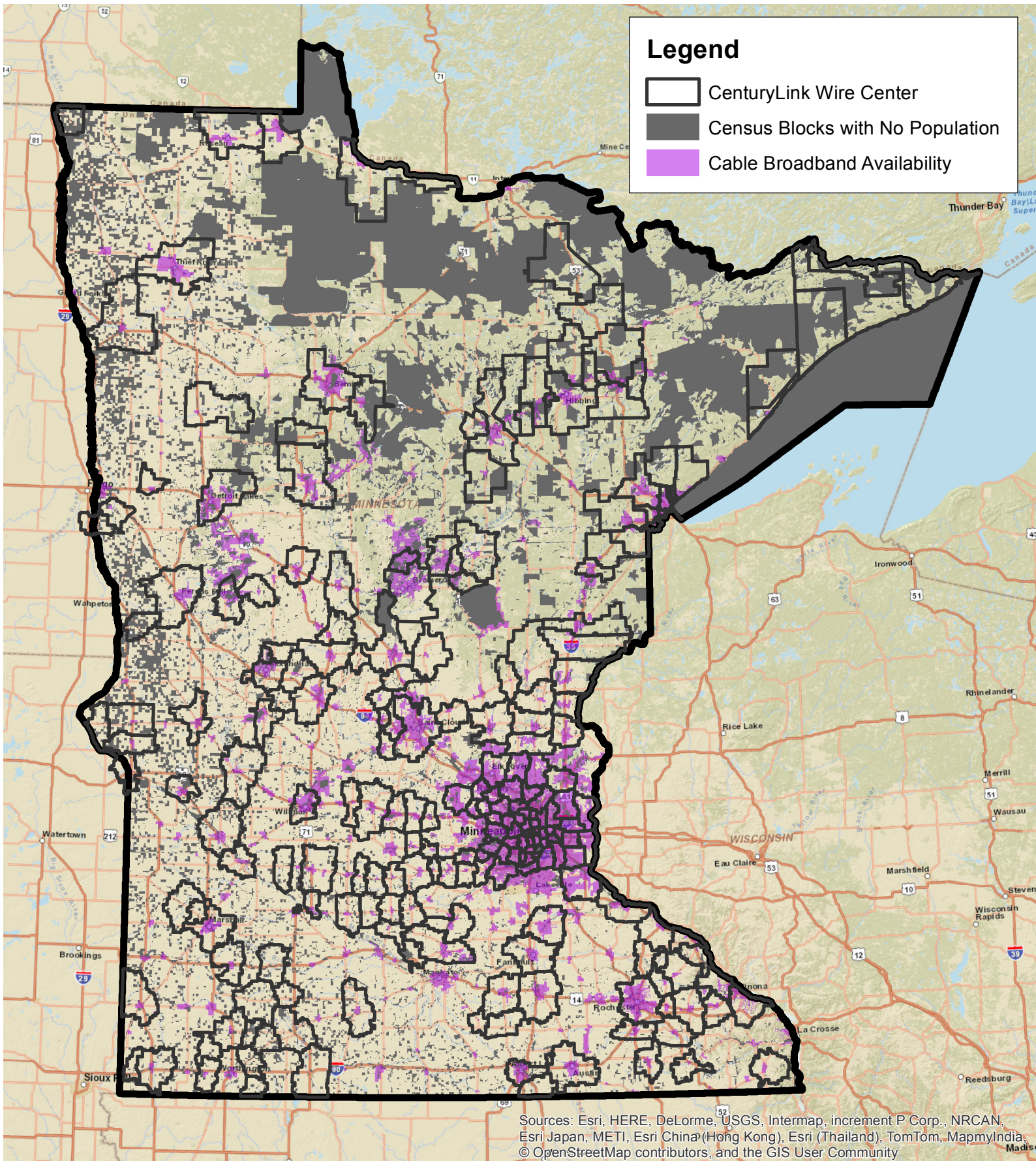




# Minnesota Cable Broadband Competition



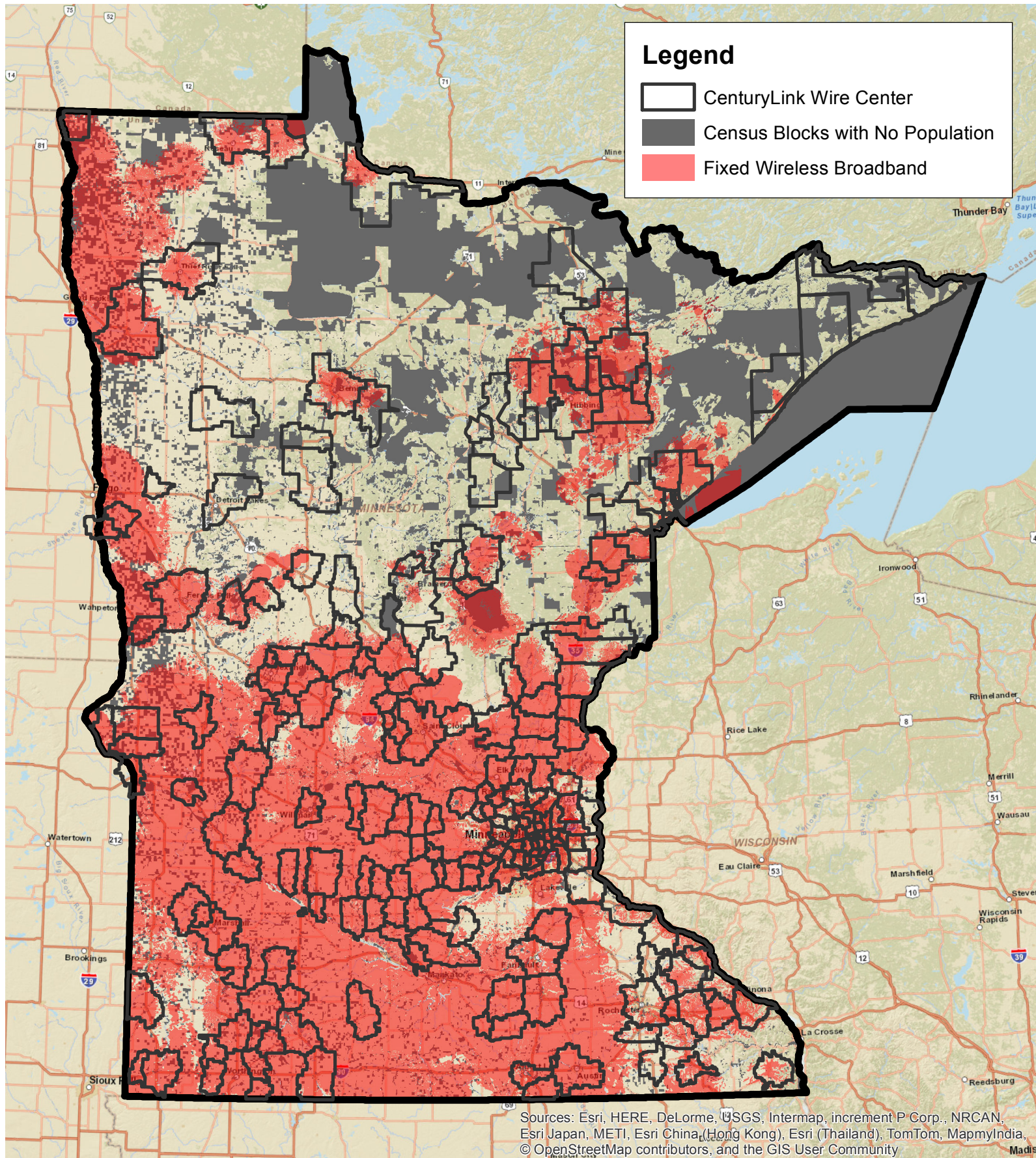
## Exhibit RHB-6



# Minnesota Fixed Wireless Broadband Competition



## Exhibit RHB-7

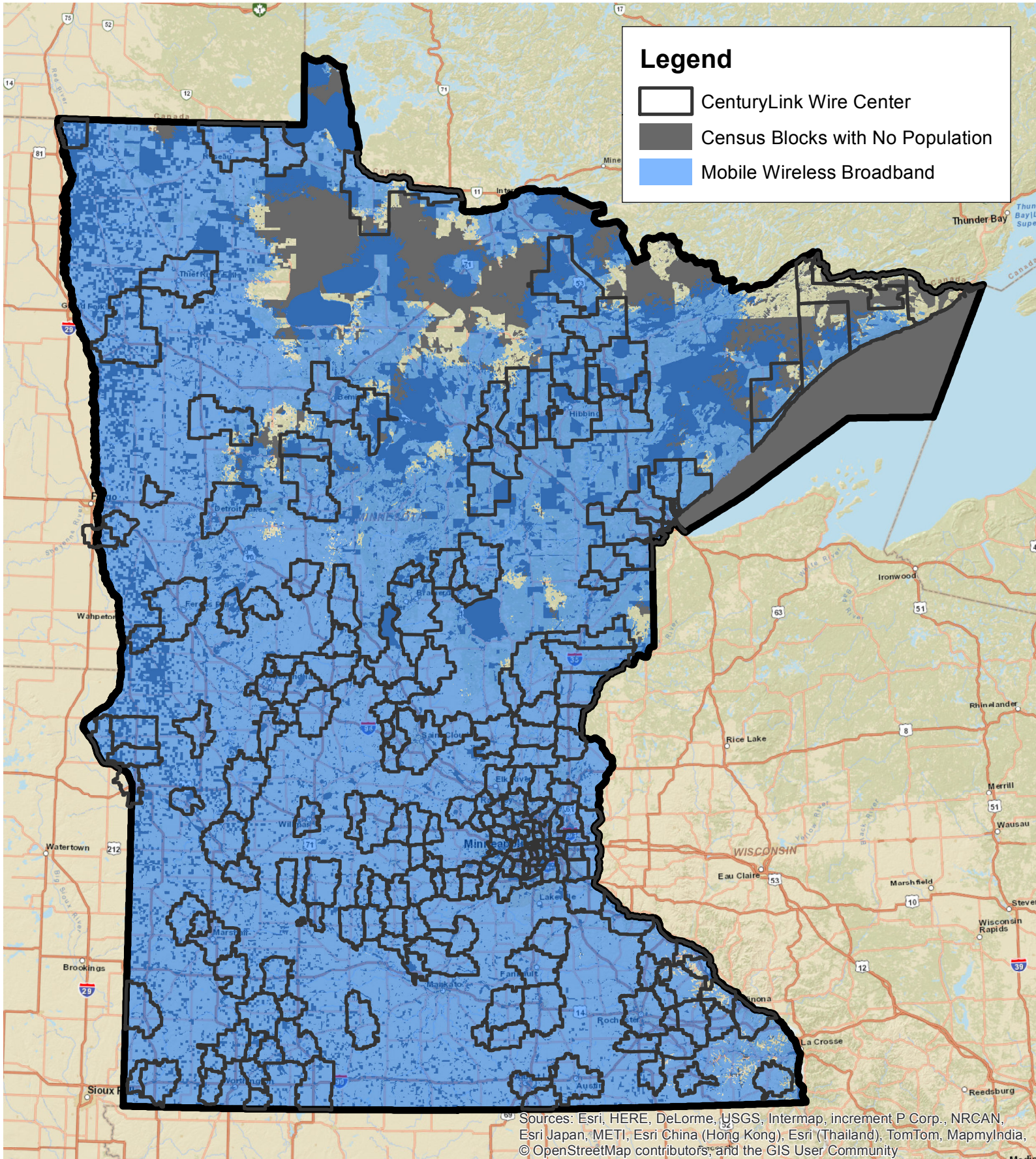


Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

# Minnesota Mobile Broadband Competition



## Exhibit RHB-8

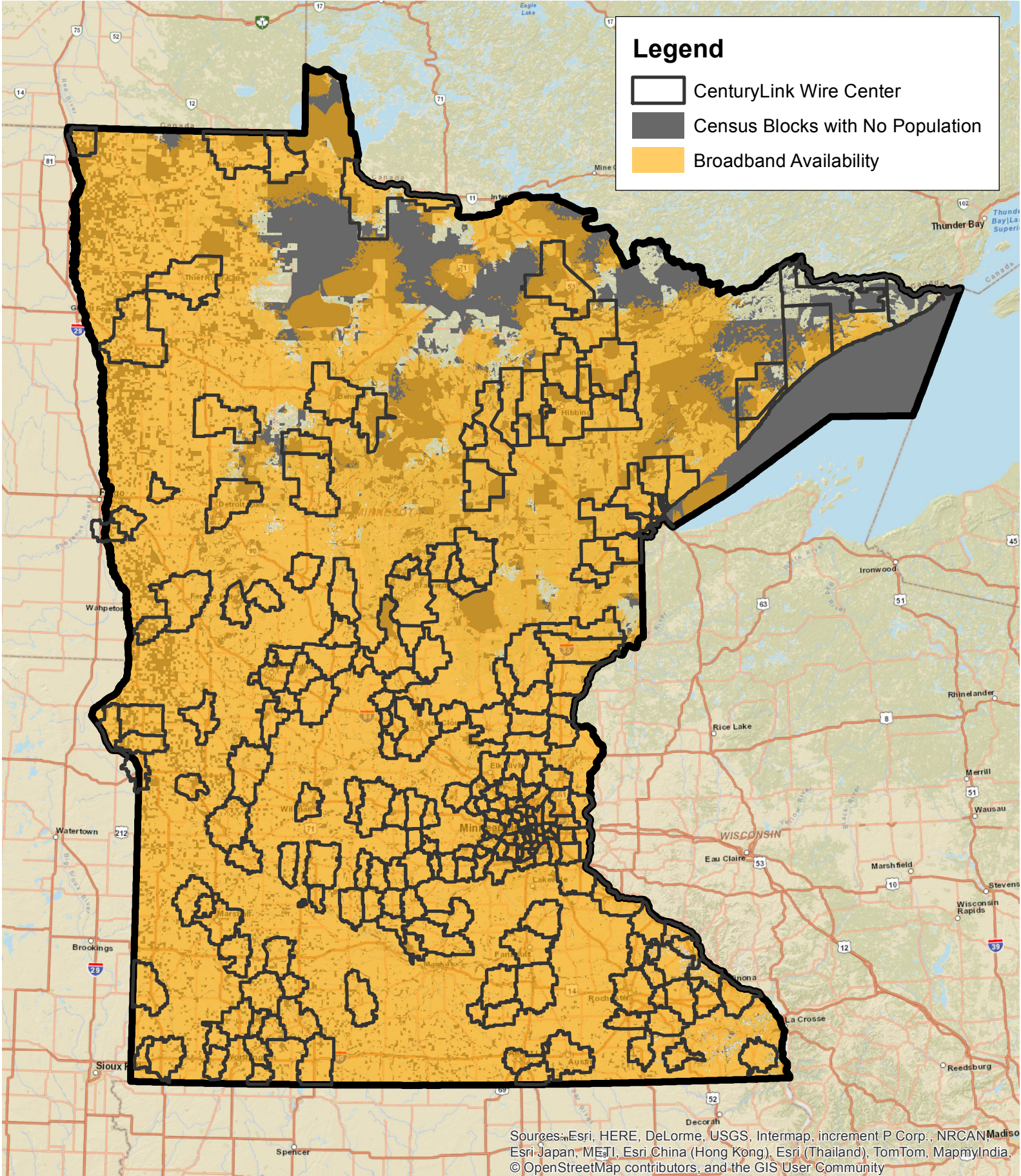


# Minnesota Broadband Competition

All Cable and Fixed and Mobile Wireless Providers



## Exhibit RHB-9



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community