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

Order Instituting Investigation into the State of  
competition Among Telecommunications  
Providers in California, and to Consider and  
Resolve Questions raised in the Limited  
Rehearing of Decision 08-09-042

Investigation 15-11-007  
(Filed November 5, 2015)

**NOTICE OF EX PARTE COMMUNICATION OF RESPONDENTS  
CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)  
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES  
FKA SUREWEST TELEVIDEO (U 7261 C)**

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Communications Enterprise Services fka  
SureWest Televideo

September 9, 2016

1 Pursuant to the Commission's Rules of Practice and Procedure, Rules 8.3 and 8.4,  
2 Consolidated Communications of California Company (U 1015 C) and Consolidated  
3 Communications Enterprise Services fka SureWest Televideo (U 7261 C) (collectively,  
4 "Consolidated") hereby submit this notice of the following *ex parte* communication:

5 On Wednesday, September 7, 2016, Michael Shultz, Vice President - Regulatory & Public  
6 Policy at Consolidated Communications, Inc., and Patrick Rosvall and Sarah Banola of Cooper,  
7 White & Cooper LLP, outside counsel for Consolidated (collectively, the "Consolidated  
8 Representatives") met with Mr. John Reynolds, advisor to Commissioner Peterman, at 10:00 a.m.  
9 for approximately forty minutes. The meeting was initiated by Consolidated and took place in a  
10 conference room on the fifth floor of the California Public Utilities Commission building at 505  
11 Van Ness Avenue, San Francisco, California.

12 The Consolidated Representatives emphasized the highly-competitive nature of  
13 Consolidated's service territory, with reference to Consolidated's opening and reply briefs.  
14 Consolidated noted that whether the market is defined or analyzed on a broad or granular basis,  
15 Consolidated faces robust competition from numerous competitors.

16 The Consolidated Representatives emphasized that Consolidated's service territory is  
17 competitive based on each of the factors identified in the Scoping Memo for this proceeding.  
18 First, an evaluation of service availability makes the competitive nature of the service territory  
19 clear. The Consolidated Representatives explained that Consolidated serves an approximately  
20 eighty square mile service territory that is generally flat, ranging from northeast Sacramento to  
21 Folsom Lake, so there are no barriers to entry for competing carriers. With reference to the  
22 California Broadband Availability Map, the Consolidated Representatives showed that  
23 Consolidated faces competition from facilities-based wireline providers throughout its territory.  
24 The Consolidated Representatives also noted that Consolidated's service area is entirely covered  
25 by fixed wireless. As the Consolidated Representatives showed, the same is true for mobile  
26 wireless, as there is no doubt that all four major wireless carriers serve the area and provide both  
27 voice and data service, including virtually ubiquitous 4G-LTE. The Consolidated Representatives  
28 also noted that the area is flat with no material obstructions, which obviates Intervenors' counter-

1 arguments about service limitations on wireless platforms.

2           Second, the Consolidated Representatives demonstrated that market share data supports the  
3 competitive nature of its service territory. The Consolidated Representatives pointed out that  
4 Consolidated has only a fraction of the total customers that the Office of Ratepayer Advocates  
5 attributes to Consolidated's service territory. The remainder of the households likely have service  
6 with Consolidated's competitors, as the Consolidated Representatives explained.

7           Third, line loss since the advent of the Uniform Regulatory Framework supports the  
8 competitive nature of Consolidated's service territory. Using publicly-available information, the  
9 Consolidated Representatives pointed out that its total access lines have dramatically reduced  
10 since 2006. As the Consolidated Representatives explained, Consolidated's access lines have  
11 significantly declined from approximately 138,000 lines in 2006 to 37,000 today.

12           Fourth, there are no barriers to entry in Consolidated's service territory. The Consolidated  
13 Representatives noted that Consolidated offers data-only broadband service throughout its  
14 territory at competitive rates, so customers can and do choose to take voice service from "over the  
15 top" providers like Skype and Vonage. Further, the Consolidated Representatives noted that  
16 Consolidated remains subject to wholesale and unbundling requirements under 47 U.S.C. Section  
17 251. Consolidated's competitors have not chosen to request UNEs as a way to compete, however,  
18 because competitors already have their own facilities – including entirely separate wireline  
19 networks – in Consolidated's service territory.

20           Fifth, the Consolidated Representatives explained the profound size differential between  
21 Consolidated's competitors and Consolidated. Competitors like Comcast, Verizon Wireless, and  
22 AT&T have resources, economies of scale, national branding, and marketing abilities that far  
23 exceed those of Consolidated. As the Consolidated Representatives noted, these factors  
24 significantly impact the market and underscore the robustness of the competitive alternatives in  
25 Consolidated's service territory.

26           Sixth, the Consolidated Representatives demonstrated that Consolidated's behavior in the  
27 market underscores the competitive nature of the service territory. Consolidated's price increases  
28 since URF have been minimal and less than inflationary increases. Consolidated has a strong

1 service quality record, which the Consolidated Representatives explained is key to Consolidated's  
2 ability to compete. The Consolidated Representatives also emphasized that that Consolidated has  
3 overbuilt other carriers' territories in both residential and business markets and referenced  
4 Consolidated's responses to TURN's data requests showing residential overbuilding that were  
5 included in Dr. Roycroft's testimony.

6 The Consolidated Representatives also discussed ORA and TURN's analyses of  
7 competition in Consolidated's service territory. The Consolidated Representatives noted that  
8 nothing in the Intervenors' briefs contradicts the service availability data that Consolidated  
9 summarized in its briefs. Further, the Consolidated Representatives showed that if ORA's and  
10 TURN's metrics for measuring the market are properly focused and calibrated to Consolidated's  
11 area, Consolidated would be shown to be undeniably competitive.

12 Double-sided copies of Consolidated's opening and reply briefs, dated August 12 and  
13 August 26, 2016, respectively, were provided to Mr. Reynolds. No other handouts were provided.  
14 Copies of Consolidated's opening and reply briefs are attached to this notice.

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24 By:           /s/ Patrick M. Rosvall            
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26 *Attorneys for Consolidated Communications of*  
27 *California Company and Consolidated*  
28 *Communications Enterprise Services fka*  
*SureWest Televideo*

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# ATTACHMENT

Opening Brief Of Consolidated  
Communications of California  
Company and Consolidated  
Communications Enterprise  
Services

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Investigation 15-11-007  
(Filed November 5, 2015)

**OPENING BRIEF OF RESPONDENTS  
CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)  
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES F/K/A SUREWEST  
TELEVIDEO (U 7261 C) (“CONSOLIDATED”)**

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August 12, 2016

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1 **I. INTRODUCTION**

2 Pursuant to the schedule outlined in the July 1, 2016 Scoping Memo and Ruling of  
3 Assigned Commissioner and Administrative Law Judge (“Scoping Ruling”), and using the  
4 common briefing outline identified in the Scoping Ruling, Consolidated Communications of  
5 California Company (U 1015 C) and Consolidated Communications Enterprise Services f/k/a  
6 Surewest Televideo (U 7261 C) (“Consolidated”) hereby submit their opening brief. This brief  
7 summarizes the legal standards, public policy principles, and jurisdictional limitations that govern  
8 the Commission’s consideration of the issues in this proceeding. Viewing the evidentiary record  
9 through the lens of these authorities, this brief also focuses the “ultimate question” in this  
10 investigation, which is “whether intermodal competition . . . has offered sufficient discipline to  
11 produce just and reasonable prices for traditional landline services.” Scoping Ruling, at 2. The  
12 record evidence shows that the voice market is robustly competitive, and this conclusion is  
13 inescapable as applied to Consolidated’s particular service area.

14 In this proceeding, Consolidated has submitted certain pleadings as part of a broader  
15 industry coalition, but Consolidated submits this separate brief to emphasize the competitive  
16 dynamics in play in its specific service territory. Consolidated (formerly “SureWest”) is an  
17 Incumbent Local Exchange Carrier (“ILEC”) in the Sacramento area, but Consolidated is a small  
18 company compared to substantially all of its principal competitors, which include Comcast and  
19 each of the major wireless carriers. As an ILEC, Consolidated serves only a single exchange in an  
20 83-square mile area that is almost entirely urban or suburban. *In Matter of Application of*  
21 *Roseville Tel. Co.*, 70 CPUC 2d 88 (Dec. 20, 1996), D.96-12-074. The California Broadband Map  
22 confirms that this area is approximately 99% covered by cable companies who provide full  
23 competitive alternatives to Consolidated’s voice and broadband offerings. *See* Appendix A hereto.  
24 The area is also 99% covered by each of the large wireless carriers, who collectively provide  
25 nearly ubiquitous 3G or 4G-LTE in the area. *Id.*; *see also* Ex. 69, *Consolidated 6/1 Supplemental*  
26 *Responses* at 10:9-10. As a consequence, almost every single customer location in Consolidated’s  
27 service territory has at least two wireline options for voice and data, and at least four wireless  
28 alternatives for voice and data.

1           Based on these facts alone, without even considering the impacts of smaller wireless  
2 providers, fixed wireless, satellite providers, or Competitive Local Exchange Carriers (“CLECs”),  
3 the evidence points to only one conclusion – Consolidated’s service territory is highly  
4 competitive. In this environment, Consolidated cannot raise its prices without creating significant  
5 risks that customers will take service from intermodal competitors. Moreover, Consolidated’s  
6 pricing behavior under the Uniform Regulatory Framework (“URF”) is consistent with the  
7 competitive nature of its territory. Consolidated’s standalone basic residential rate was \$18.90  
8 when URF was initiated, and this rate has only increased incrementally during the intervening  
9 decade. Consolidated’s current basic residential rate is only \$21.99, which is less than an  
10 inflationary increase over that timeframe. D.06-08-030 (the “URF Decision”), at 144; Ex. 69,  
11 Consolidated 6/1 Supplemental Responses at 7. Consolidated’s circumstances show that robust  
12 competition exists and that competition is constraining prices.

13           The joint briefing outline in the Scoping Ruling calls upon parties to address numerous  
14 specific issues regarding market definition and competitive dynamics, but under any configuration  
15 of the market and any reasonable view of consumer choice, Consolidated’s service territory is  
16 demonstrably competitive. Consolidated addresses the issues in the briefing outline as they  
17 pertain to its particular circumstances. Regarding the market more generally, Consolidated  
18 supports the arguments presented in the Respondent Coalition’s Opening Brief, and Consolidated  
19 incorporates those arguments by reference herein.

20           In 2006, the Commission comprehensively analyzed the market based on a full record and  
21 four days of evidentiary hearings.<sup>1</sup> That proceeding resulted in the URF Decision, which found

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22  
23 <sup>1</sup> Consolidated herein renews its objection to the Commission’s refusal to hold evidentiary hearings or  
24 permit sufficient time for submission of full testimony on the subjects being addressing in this proceeding.  
25 Assigned Commissioner and Administrative Law Judge Ruling Regarding Evidentiary Hearing and  
26 Denying Related Party Motions (filed July 13, 2016). If the Commission reverses any of the competitive  
27 findings of URF in this proceeding, its findings will violate Public Utilities Code Sections 1708 and  
28 1708.5(f), which exist precisely to prevent a procedural “end run” on Commission findings adopted  
following hearings. *See Respondents’ Request for Rehearing of Scoping Memo Ruling on Evidentiary  
Hearings* (July 11, 2016); *see also Southern California Edison Co. v. Public Utilities Commission*, 101  
Cal.App.4th 982, 994 (2002) (confirming Commission argument that Public Utilities Code 1708 and  
1708.5(f) entitle parties to a hearing before “amend[ing] . . . a regulation” or “alter[ing] . . . any order or  
decision” that was adopted following hearings).

1 that the ILECs “lack the market power needed to sustain prices above the levels that a competitive  
2 market would produce” and that ““this result holds throughout their service territories.” D.06-08-  
3 030 at 117. Consolidated’s experience under URF, and the competitive characteristics of its  
4 service territory today, provide further confirmation for the Commission’s findings. Consolidated  
5 is a mid-sized, pure wireline provider besieged by numerous well-endowed, diversified  
6 competitors in a densely-populated area where competitive entry is unconstrained and wireless  
7 signals are strong and ubiquitous. Nothing in the record contradicts these facts, and nothing  
8 presented in this proceeding can upset the findings of URF as applied to Consolidated.

9 **II. THE COMMISSION’S ANALYSIS OF COMPETITION MUST COMPORT WITH**  
10 **STATUTORY DIRECTIVES AND RESPECT THE BOUNDARIES OF THE**  
11 **COMMISSION’S JURISDICTION AND THE SCOPE OF THIS PROCEEDING.**

12 Any findings reached in this proceeding must be consistent with the statutory and  
13 jurisdictional framework in which this inquiry arises. First, various federal and state statutes  
14 outline the policy objectives that must guide the Commission’s analysis. The Scoping Ruling  
15 correctly identifies the “ultimate question” in this proceeding as “whether intermodal competition .  
16 . . has offered sufficient discipline to produce just and reasonable prices for traditional landline  
17 services.” *Scoping Ruling*, at 2. As this core inquiry reflects, the Commission has a responsibility  
18 to ensure that its telecommunications regulatory framework is designed to ensure “just and  
19 reasonable rates.” However, as the URF Decision recognized, the Commission should “rel[y] on  
20 competition as a means to ensure that rates are ‘just and reasonable’ . . . wherever possible.”  
21 D.06-08-030, at 33 (emphasis added). The examination of competition in this proceeding should  
22 be conducted with an understanding that an open and competitive market is the preferred method  
23 for complying with the Commission’s duty to ensure “just and reasonable” rates.

24 It is equally important that the Commission not lose sight of the other statutory objectives  
25 that inform its analysis. In addition to facilitating rate reasonableness, the Commission’s policies  
26 must “promote economic growth, job creation and the substantial social benefits that will result  
27 from the rapid implementation of advanced information and communications technologies . . . .”  
28 Pub. Util. Code § 709(e). The Commission must “encourage the development and deployment of  
new technologies and the equitable provision of services in a way that efficiently meets consumer

1 need . . . .” Pub. Util. Code § 709(c). As recognized in the Telecommunications Act of 1996, the  
2 Commission’s policies should also be designed to “promote competition and reduce regulation in  
3 order to secure lower process and higher quality services . . . and encourage the rapid deployment  
4 of new telecommunications technologies.” 47 U.S.C., Preamble. The Telecommunications Act of  
5 1996 also encourages states to adopt policies that “are necessary to further competition in the  
6 provision of telephone exchange service” as long as those requirements are not inconsistent with  
7 federal law. 47 U.S.C. § 261. The URF Decision correctly observed that “state and federal  
8 telecommunications policies direct [the Commission] to promote and rely upon competitive  
9 markets wherever possible.” D.06-08-030, at 36. The same is true today.

10 Second, the Commission’s inquiry must be faithful to the limitations imposed by the  
11 defined scope of the proceeding as reflected in the Scoping Memo and the OII. *Southern*  
12 *California Edison v. Pub. Util. Comm’n*, 140 Cal.App.4th 1085 (2006) (annulling Commission  
13 decision where it deviates from the issues defined in the Scoping Memo). The Scoping Memo  
14 makes clear that this proceeding is strictly “a data gathering and data analysis exercise” and that  
15 “no rules or regulations will be adopted (or repealed) in this phase of the proceeding.”<sup>2</sup> *Scoping*  
16 *Ruling*, at 7. Any findings derived from this proceeding must therefore be limited to factual  
17 propositions regarding the state of competition. No policy recommendations or proposed rule  
18 changes should be considered or advanced as part of any decision in this proceeding.

19 Third, the Commission’s analysis of competition is constrained by the limitations of its  
20 jurisdiction. The Commission has authority to examine the state of competition for “traditional  
21 landline services,” and it is reasonable to consider the effect of intermodal alternatives on these  
22 services. *See Scoping Ruling* at 2. However, the Legislature has expressly restricted the  
23 Commission’s “exercise [of] regulatory jurisdiction or control” over “Voice over Internet Protocol  
24 and Internet Protocol enabled services.” Pub. Util. Code § 710. Insofar as the Commission’s

25 \_\_\_\_\_  
26 <sup>2</sup> Consolidated notes that the Scoping Ruling refers to there being no adoption or repeal of rules in this  
27 “phase” of the proceeding. Consolidated reserves the right to object to the adoption or repeal of rules in  
28 any phase of this proceeding, as extending the scope of the proceeding into a rulemaking context would  
exceed the scope of the OII and commit further violations of Public Utilities Code Sections 1708 and  
1708.5, which require evidentiary hearings before findings or rules can be altered from previous  
Commission decisions that were adopted following hearings.

1 assessment of competition addresses competitive dynamics specific to broadband markets, it  
2 would be improper and in excess of the Commission’s authority under Public Utilities Code  
3 Section 710. *See* Pub. Util. Code § 1757(a)(1) (Commission decisions are subject to annulment if  
4 the Commission acts "without, or in excess of, its power or jurisdiction."). Similarly, if the  
5 Commission’s consideration of competition involves an examination of VoIP service other than as  
6 an intermodal alternative to traditional wireline service, the Commission would exceed the  
7 boundaries of this proceeding and its jurisdiction.

8           The URF Decision outlined a thoughtful and lawful framework for analyzing competition  
9 and its impact on regulated voice services. This proceeding purports to address the same subject  
10 matter, so it should examine the issues within the same legal and policy paradigm.

11 **III. UNDER ANY REASONABLE DEFINITION OF THE MARKET,**  
12 **CONSOLIDATED’S SERVICE TERRITORY IS ROBUSTLY COMPETITIVE.**

13           The common briefing outline calls upon parties to examine competitive dynamics using  
14 specific analytical constructs and to parse competitive markets into specific components. None of  
15 this is necessary to see that Consolidated’s service territory is fully competitive and that this  
16 competition acts to constrain Consolidated’s regulated voice prices. Under any definition of the  
17 market, and using any competitive rubric, Consolidated’s service territory is undeniably  
18 competitive.

19           The Commission does not need to look any further than its own records to confirm that  
20 Consolidated is blanketed with numerous wireline and wireless competitors, all of whom offer  
21 competitive substitutes to Consolidated’s regulated voice service. Salient portions of the  
22 Commission’s Broadband Availability Map reflecting Consolidated’s service territory are attached  
23 hereto as Appendix A. The August 8, 2016 Administrative Law Judge (“ALJ”) Ruling confirmed  
24 that the Commission intends to take official notice of all of the items in Appendix A the OII  
25 except for certain reports that were “listed without specificity.” *August 8, 2016 ALJ Ruling*, at 6  
26 (Ordering Paragraph (“O.P.” 2); *Scoping Ruling*, at 17, fn. 29. The Broadband Availability Map is  
27 among the items that are subject to official notice.

28           Appendix A to this brief includes a series of maps from the California Broadband

1 Availability Map that display the extensive competition in Consolidated’s service area. The first  
2 map reflects Consolidated’s service footprint, with the area where its services are available  
3 highlighted in medium green.<sup>3</sup> The second series of maps reflect broadband coverage from cable  
4 providers in the area, with the overall cable footprint shown in dark green. A juxtaposition of the  
5 Consolidated map with the cable company map confirms that essentially all of Consolidated’s  
6 current and potential customers have competitive alternatives from a cable company.  
7 Conservatively, cable companies serve approximately 99% of customer locations in  
8 Consolidated’s area.

9 A detailed review of the Broadband Availability Map data underscores the vigorous nature  
10 of the competition in this area. The principal cable competitors in Consolidated’s service territory  
11 are Comcast and Wave Broadband, and the map depicts that they each provide ubiquitous  
12 broadband speeds of approximately 50 Megabits per second (“Mbps”) to 100 Mbps. Although 1  
13 Mbps speed would be more than enough to enable VoIP service, which would be sufficient to  
14 constitute a voice alternative throughout Consolidated’s territory, the speeds offered by the cable  
15 companies mean that even if competition were focused on broadband service, the area is  
16 undeniably competitive. Ex. 5, *AT&T (Aron) 6/1 Testimony* at 32; Ex. 28, *Cox (Gillan) 6/1*  
17 *Testimony* at 14:8-13; Ex. 41, *Joint Respondents (Topper) 6/1 Testimony* at 23:19-20, 26:17-21.  
18 In such an environment, if Consolidated were to raise its prices beyond reasonable levels,  
19 customers could – and would – pursue other alternatives for voice or data service.

20 The wireless data tell a similar story. The third series of maps included in Appendix A  
21 show that overall wireless coverage is ubiquitous, likely approximating 99% coverage in the  
22 service territory at levels sufficient to make voice calls. This coverage is unsurprising given that  
23 the service territory is almost uniformly flat. Ex. 69, *Consolidated 6/1 Supplemental Responses* at  
24 3:20-21. Even when viewed in terms of broadband availability, coverage is extensive, with speeds  
25 of 25 Mbps or greater available in the vast majority of the area. In the URF decision, the  
26

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27 <sup>3</sup> The map shows Consolidated’s broadband footprint for ADSL2, but Consolidated offers broadband at  
28 nearly 100% of its customer locations, so this map is also a reasonable proxy for its voice footprint. See  
Ex. 67, *Consolidated 3/15 Initial Responses*, IR 2, Confidential.

1 Commission found that wireless service is a competitive substitute for wireline service, and that  
2 view has been further confirmed based on the record presented in this proceeding. D.06-08-030 at  
3 124, 128-30, 274 (Conclusion of Law (“COL”) 13; Ex. 5, *AT&T (Aron) 6/1 Testimony* at 31, fn.  
4 53. Again, if customers are unsatisfied with voice or data service offered by Consolidated,  
5 virtually any of them can subscribe to one of four wireless alternatives that will offer service at the  
6 customer’s premises and throughout the service territory. When this wireless competition is  
7 layered onto the cable competition that Consolidated faces, a powerful picture of the competitive  
8 environment emerges in which Consolidated must scrutinize any price adjustments relative to its  
9 competitors’ services. This is particularly true for Consolidated because Consolidated does not  
10 have a wireless affiliate; when Consolidated loses a customer to wireless, that customer and the  
11 associated revenue is completely lost.

12 The impact of the competitive alternatives in Consolidated’s service territory is further  
13 compounded by the size, scope, and diversification of its principal competitors. Comcast, AT&T,  
14 and Verizon are hundreds of times bigger than Consolidated; and Sprint and T-Mobile are dozens  
15 of times bigger than Consolidated.<sup>4</sup> Comcast and each of the major wireless carriers have large,  
16 national footprints, which enables them to enjoy far larger economies of scale. This gives these  
17 companies access to national advertising, marketing, and branding opportunities that far exceed  
18 anything Consolidated would be able to access, let alone afford. AT&T and Verizon, in particular,  
19 are highly-diversified companies that have wireless and wireline service platforms and are major

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21 <sup>4</sup> Comcast Corporation:  
22 <https://www.sec.gov/Archives/edgar/data/902739/000119312516659869/d193217d10q.htm>, at 2;  
23 AT&T Inc.:  
24 [https://www.sec.gov/Archives/edgar/data/732717/000073271716000195/q2\\_10q.htm](https://www.sec.gov/Archives/edgar/data/732717/000073271716000195/q2_10q.htm), at 2;  
25 Verizon Communications Inc.:  
26 <https://www.sec.gov/Archives/edgar/data/732712/000119312516664131/d211980d10q.htm>, at 3;  
27 Sprint Corporation:  
28 <https://www.sec.gov/Archives/edgar/data/101830/000010183016000080/sprintcorp6-30x1610q.htm>, at 2;  
T-Mobile US, Inc.:  
<https://www.sec.gov/Archives/edgar/data/1283699/000128369916000100/tmus06302016form10-q.htm>, at  
4;  
Consolidated Communications Holdings, Inc.:  
<https://www.sec.gov/Archives/edgar/data/1304421/000155837016007531/cnsl-20160630x10q.htm>, at 1.  
Consolidated respectfully requests that the Commission take official notice of the above-cited financial  
reports filed with the Securities and Exchange Commission.

1 players in the wholesale and middle mile arenas.<sup>5</sup> Comcast is also highly diversified by virtue of  
2 its position in the video market and its access to video content.<sup>6</sup> All of these factors—and many  
3 others—give Consolidated’s competitors distinct advantages over Consolidated in the voice  
4 market and the market for bundles that include voice.

5 For Consolidated, the effects of intermodal competition are profound and pervasive.  
6 Although the presence of Comcast and each of the major wireless carriers is more than enough to  
7 find that the area is competitive, Consolidated also faces competition from CLECs, fixed wireless  
8 providers, niche and prepaid wireless providers, and satellite companies. Ex. 69, *Consolidated 6/1*  
9 *Supplemental Responses* at 3:18-4:4, 13:2-3; California Broadband Map, available at  
10 <http://www.broadbandmap.ca.gov/>. In addition, Consolidated offers “data only” broadband  
11 service throughout its service territory at levels that are sufficient to enable VoIP, so any customer  
12 could choose an “over the top” VoIP alternative and drop Consolidated’s wireline voice service.  
13 See Ex. 5, *AT&T (Aron) 6/1 Testimony* at 32; Ex. 28, *Cox (Gillan) 6/1 Testimony* at 14:8-13; Ex.  
14 41, *Joint Respondents (Topper) 6/1 Testimony* at 23:19-20, 26-27. This consumer choice is the  
15 essence of competition, and the multiplicity of options in Consolidated’s service territory make  
16 clear that its area is competitive.

17 The Scoping Ruling poses a number of specific questions about the telecommunications  
18 market, including nuanced questions about the definition of the market and the interplay between  
19 various competitive platforms. Although Consolidated does not believe that markets operate on a  
20 census block level, every census block in its territory is fully served by at least two wireline  
21 providers and at least four wireless providers. See Appendix A. Whatever substitutability theories  
22 are considered, the fact remains that Consolidated had approximately 135,986 regulated access  
23 lines in 2002, and it has approximately 37,000 lines as of December 31, 2015. Ex. 67,  
24 *Consolidated 3/15 Initial Responses*, IR 2, Confidential; D.05-08-004 at 32. Nothing in the record  
25 contradicts these facts.

26 Consolidated believes that the broader telecommunications market is highly competitive,

27 <sup>5</sup> See generally *Id.*

28 <sup>6</sup> *Id.*

1 and Consolidated supports the brief submitted by the Respondent Coalition addressing the state of  
2 competition more generally. However, regardless of those global assessments, any finding that  
3 Consolidated's service territory is not competitive would be a grievous factual error, and no such  
4 conclusion could be reached based on the record in this proceeding. Moreover, it would be  
5 damaging to the market in Consolidated's service territory for the Commission to reverse critical  
6 competitive findings that led to pricing flexibility for Consolidated.

7 **IV. SPECIFIC DISCUSSION TOPICS IN COMMON BRIEFING OUTLINE.**

8 As directed in the Scoping Ruling, Consolidated addresses the issues presented in the  
9 common briefing outline. Consolidated does not necessarily address every issue, but organizes its  
10 specific discussion according to the issues in the common briefing outline. Consolidated joins in  
11 the Respondent Coalition Opening Brief as to each of these specific issues, but highlights some of  
12 the most important points below.

13 **1. Defining the Market(s)**

14 **a. One Unified Market, One Market With Sub-markets? Separate Markets?**

15 For the purpose of this proceeding, the relevant market is voice service, and the market  
16 analysis should include any service that exerts a competitive pressure on voice service. The URF  
17 Decision correctly identified the voice market as a "single market" and concluded that "the  
18 relevant market is voice communications services regardless of technology." D.06-08-030, at 124,  
19 164, 192. The Scoping Ruling confirms this focus by identifying the chief concern in this  
20 proceeding as "whether intermodal competition . . . has offered sufficient discipline to produce  
21 just and reasonable prices for traditional landline services." *Scoping Ruling*, at 2. To correctly  
22 assess this question, the market must be considered as a whole.

23 **i. Are mobile services a substitute for wireline services?**

24 Every reasonable measurement of consumer activity suggests that mobile services are a  
25 substitute for wireline services. The URF Decision correctly identified wireless service as a  
26 competitive substitute for wireline service, and concluded that wireless service exerts significant  
27 competitive pressure on regulated wireline voice service. D.06-08-030 at 124, 128-30, 274 (COL  
28 13). Consumer activity since the URF Decision further confirms the Commission's judgment.

1 According to FCC Local Competition Reports, wireless carriers increased subscriptions by 22%  
2 from 2006 to 2013, while ILEC total access lines (including VoIP lines) declined by 47%. Ex. 69,  
3 *Consolidated 6/1 Supplemental Response* at 3:9-12 (citing FCC 2006 and 2013 FCC Local  
4 Competition Reports). The “cord-cutting” trend since 2006 confirms that consumers regard  
5 wireless and wireline service as substitutable. From 2006 through 2015, the CDC estimates that  
6 the number of adults in California living in wireless only households grew from 8% to almost  
7 47%.<sup>7</sup> If significant numbers of customers are utilizing wireless service to the exclusion of  
8 wireline service, it is clearly a substitute.

9 **ii. The impact of bundles on how we define the market?**

10 The URF Decision properly concluded that the market is “dominated by  
11 telecommunications sold through bundled services.” D.06-08-030 at 75. This remains true today,  
12 and it is consistent with Consolidated’s experience in the market. Ex. 41, *Joint Respondents*  
13 *(Topper) 6/1 Testimony* at 33; Ex. 5, *AT&T (Aron) 6/1 Testimony* at 43-52 & Appendix; *see also*  
14 Ex. 69, *Consolidated 6/1 Supplemental Response* at 7 (“For bundles, there are even more  
15 competitive choices, and customers have flocked toward bundles to take advantage of pricing  
16 efficiencies that they permit.”).

17 **iii. Define in terms of facilities-based services only, or all**  
18 **services (including “over-the-top” services)?**

19 There is no reason to limit an analysis of competition to facilities-based services. The  
20 URF Decision considered “over the top” VoIP as part of its analysis of the market, recognizing  
21 that “pure-play VoIP providers . . . add a voice communications service to any broadband  
22 connection.” D.06-08-030 at 4. This remains true today, and in Consolidated’s case, broadband  
23 connections are amply available throughout the service territory at levels that will support “over

24 \_\_\_\_\_  
25 <sup>7</sup> National Center for Health Statistics, “National Health Interview Survey Early Release Program,” Table 1  
26 (rel. Aug. 2016) (issued by Centers for Disease Control), available at [www.cdc.gov](http://www.cdc.gov); CDC, “Wireless  
27 Substitution: Early Release of Estimates Based on Data from the National Health Interview Survey, July-  
28 December 2006,” available at [www.cdc.gov](http://www.cdc.gov); *see also* Ex. 41, *Topper/Joint Respondents 6/1 Testimony* at  
17-20; Ex. 5, *Aron/AT&T 6/1 Testimony* at 30 & Fig. 8. The ALJ has already officially noticed the 2011  
CDC Report and Consolidated requests that it also officially notice this more recent report. The CDC  
reports are a well-recognized authorities regarding cord-cutting, and provide a consistent benchmark. Ex.  
7, *Aron/AT&T 6/1 Testimony* at 4:4-5:7.

1 the top” VoIP. *See* Appendix A.

2 **b. Define by technology?**

3 There is no reason to segment the market by technology. Any technology that enables  
4 voice service must be considered as part of the same market analysis in assessing the competitive  
5 alternatives to regulated wireline voice service. There are not meaningfully separate markets for  
6 wireline voice, VoIP offered over cable facilities, wireless voice, “over the top” VoIP, fixed  
7 wireless, satellite voice, or other voice services. These services all enable voice calling of one  
8 form or another, and consumer behavior makes clear that they must be considered together. *See*  
9 Ex. 42, *Joint Respondents (Topper) 7/15 Testimony* at 8, 30; *see also* D.06-08-030 at 74-76, 124,  
10 157, 164; CPUC Communications Division, “Market Share Analysis of Retail Communications in  
11 California June 2001 through June 2013” (Jan. 5, 2015) at 6.

12 **c. Define by geography?**

13 Markets do not operate on a census block or neighborhood level. Competitive offerings  
14 are not developed or marketed on such a granular basis. *See, e.g.,* Ex. 41, *Topper/Joint*  
15 *Respondents 6/1 Testimony* at 10:7-8 (noting that “[p]ricing, marketing and advertising decisions  
16 are generally made at a state or national level, and certainly not at a census block level”); Ex. 28,  
17 *Gillan/Cox 6/1 Testimony* at 13:4-9 (“[P]rice levels are established based on national, and not  
18 localized, conditions.”). The Commission found in the URF Decision that markets are  
19 appropriately analyzed on a broader basis, and the same is true today. D.06-08-030 at 74.  
20 However, even if the Commission were to consider competition on the most granular possible  
21 level, Consolidated’s territory remains thoroughly competitive on both a voice and broadband  
22 basis. *See* Appendix A.

23 **d. Define by demographics?**

24 The URF Decision correctly found that “there is no compelling reason to segment the  
25 market further by user characteristics, such as income or use characteristics.” D.06-08-030 at 76.  
26 There is no evidence that providers provide different service to different demographic groups, so  
27 these cannot be considered sub-markets for the purpose of this proceeding. There is certainly no  
28 evidence that such sub-markets exist in Consolidated’s territory, where services are offered to the

1 public by numerous providers throughout the service area. *See* Appendix A.

2 **2. Measuring the Market(s)**

3 **a. Deployment – Service Availability**

4 As discussed in Section III, above, Consolidated operates in a service area that is 99%  
5 served by facilities based cable alternatives and also 99% covered by four different wireless  
6 alternatives. *See* Appendix A. This means that customers in Consolidated’s service territory have  
7 at least two facilities-based wireline options, and at least four facilities-based wireless options.  
8 Services are amply deployed in this area, which makes it highly competitive.

9 **b. Market Share**

10 Market share is not in itself an appropriate touchstone for competition, and it can be  
11 misleading in rapidly-evolving markets. D.06-08-030 at 126-128. If competitive alternatives  
12 exist, it should not be necessary to prove that specific providers have specific shares of the market.  
13 As noted above, national statistics from the FCC’s Local Competition Reports confirm that ILECs  
14 are losing significant numbers of lines relative to their competitors. Ex. 69, *Consolidated 6/1*  
15 *Supplemental Response* at 3 (citing FCC 2006 and 2013 FCC Local Competition Reports).  
16 Consolidated’s specific experience is similar, as its access lines have dropped from 135,986 to  
17 37,000 from 2002 to 2015. Ex. 67, *Consolidated 3/15 Initial Responses*, IR 2, Confidential; D.05-  
18 08-004 at 32.

19 **3. Analyzing the Market(s)**

20 **a. What constitutes a competitive telecommunications market or**  
21 **markets?**

22 A competitive market is one in which no provider can exercise “the market power needed  
23 to sustain prices above the levels that a competitive market would produce.” D.06-08-030 at 117.  
24 As Dr. Katz noted, markets are competitive if there is “effective competition.” Ex. 1.5, *AT&T*  
25 *(Katz) 3/15 Testimony* at 4, 8-9 . Markets do not need to be “perfectly competitive” to restrain  
26 prices. D.06-08-030 at 132. As long as consumers have sufficient competitive options to deny  
27 market power to any given provider, the market is competitive.  
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**b. Metrics to determine competition**

**i. Deployment/availability – how many choices to consumers in a given area have? Substitutability of different options?**

Availability of substitutable service in the relevant market is the critical inquiry in assessing competition. In Consolidated’s service territory, there are at least two facilities-based wireline options and four major wireless carrier options available to all customers. Appendix A. These competitive options are more than sufficient to constitute a competitive market.

**1. Do service speed and or data caps impact the availability of a particular service?**

Service speed of broadband connections is only relevant insofar as the speed is sufficient for customers to access VoIP service. That threshold is extremely low, as the evidence indicates that VoIP can operate at speeds as low as 100 Kbps. The broadband availability in Consolidated’s service territory far exceeds that level, so no such concern exists in Consolidated’s area. Data caps have no particular relevance to competition because there is no evidence that these caps would interfere with VoIP service.

**ii. Market concentration – HHI, CR2/CR4, other?**

As noted above, market share analysis can be misleading in the context of rapidly-changing markets. D.06-08-030 at 128. However, Communications Division resources indicate that the market concentration in the intermodal voice market overall has declined since 2006 when URF was adopted. CD 2015 Report at 14-15 & Chart 4. This trend is consistent with Consolidated’s experience, as Consolidated has continued to lose access lines since 2006. Ex. 67, *Consolidated 3/15 Initial Responses*, IR 2, Confidential; D.05-08-004 at 32.

**c. Special considerations for wholesale markets**

Wholesale markets should not have any impact on the analysis of retail competition because significant aspects of the market for wholesale access are regulated. As such, access to wholesale inputs is open and access is available at regulated rates. *See, e.g., 47 C.F.R. § 51.319(d)* (establishing dedicated transport as a regulated service). In addition, there are many options for wholesale service in the marketplace. Ex. 5, *AT&T (Aron) 6/1 Testimony*) at 54-56, Table 1; Ex.

1 41, *Joint Respondents (Topper) 6/1 Testimony* at 43-48.

2 **d. Market Performance and Development Over Time**

3 **i. Have speeds increased?**

4 Since 2006, broadband speeds have continued to increase. *See Ex. 17, Clark/ORA 6/1*  
5 *Testimony* at II-5 (“[W]ireline broadband with speeds of at least 25/3 Mbps is available to 94% to  
6 California’s households.”); *see also Ex. 41, Topper/Joint Respondents 6/1 Testimony* at 29:13-17;  
7 *Ex. 42, Topper/Joint Respondents 7/15 Testimony* at 31:2-4. However, the speeds available in the  
8 broadband market are not directly relevant to the analysis of the competitive landscape for voice  
9 service. As long as broadband connections are sufficient to enable VoIP, those broadband  
10 connections can facilitate competitive alternatives to regulated voice offerings. Nevertheless, in  
11 Consolidated’s service territory, as the California Broadband Availability Map confirms,  
12 numerous providers provide service well in excess of 25 Mbps download. *See Appendix A.*

13 **ii. Has service quality improved?**

14 Service quality is not relevant to this proceeding, but Consolidated has generally strong  
15 service quality, as reflected in G.O. 133 reports. *Ex. 19, Gallardo/ORA 6/1 Testimony* at 12:15-  
16 21, 14:2, 608, 15:4, 16:15.

17 **iii. Is the market innovating?**

18 There has been significant innovation in the market since 2006. As Dr. Topper explained,  
19 “California residential and business consumers can choose among a wide range of traditional and  
20 innovative voice products and services offered by multiple wireless providers, multiple facilities-  
21 based and over-the-top VoIP providers, CLECs, and satellite providers.” *Ex. 41, Joint*  
22 *Respondents (Topper) 6/1 Testimony* at 54:6-9.

23 **iv. New market entrants & technologies**

24 **1. Barriers to entry?**

25 There are no barriers to entry in Consolidated’s service territory. Consolidated serves a  
26 densely-populated area of Placer and Sacramento Counties where numerous competitors have  
27 already entered the market. The area is also flat, so mobile and fixed wireless face no discernible  
28 obstacles to entry. In addition, Consolidated is subject to Unbundled Network Element and

1 wholesale requirements pursuant to 47 U.S.C. 251, and Consolidated must fulfill any reasonable  
2 requests for such wholesale service at regulated prices.

3 **v. Specific trends over time**

4 A review of the FCC Local Competition Reports make the trends in the overall market  
5 clear. As discussed above, wireless carriers increased subscriptions by 22% from 2006 to 2013,  
6 and ILEC total access lines (including VoIP lines) declined by 47% over that same period. Ex. 69,  
7 *Consolidated 6/1 Supplemental Response* at 3:9-12 (citing FCC 2006 and 2013 FCC Local  
8 Competition Reports).

9 **e. Has intermodal competition succeeded in producing “just and  
10 reasonable” prices?**

11 **i. How should the Commission determine whether the  
12 prices of telecommunications services are just and  
13 reasonable?**

14 The Commission does not need to separately determine that rates are “just and reasonable”  
15 if it finds the market in which those prices are advanced to be competitive. The record  
16 demonstrates that competition exists in the market overall, and this finding is clear in  
17 Consolidated’s service territory. In addition, Consolidated’s rates only increased from 18.90 to  
18 21.99 over the past decade, which is a small increase when adjustments for inflation are accounted  
19 for over that same period. *See* Ex. 5, *AT&T (Aron) 6/1 Testimony* at 66.

20 **f. What are the metrics and sources of data that you believe would  
21 be most useful and useable by the Commission to measure  
22 competition in both the retail and wholesale markets?**

23 Service availability is a reasonable metric for measuring the state of competition, and  
24 availability data shows the market to be competitive. This finding is especially undeniable in  
25 Consolidated’s service territory.

26 **g. How can the Commission, consistent with its jurisdiction and  
27 authority, promote competition and reduce barriers to entry?**

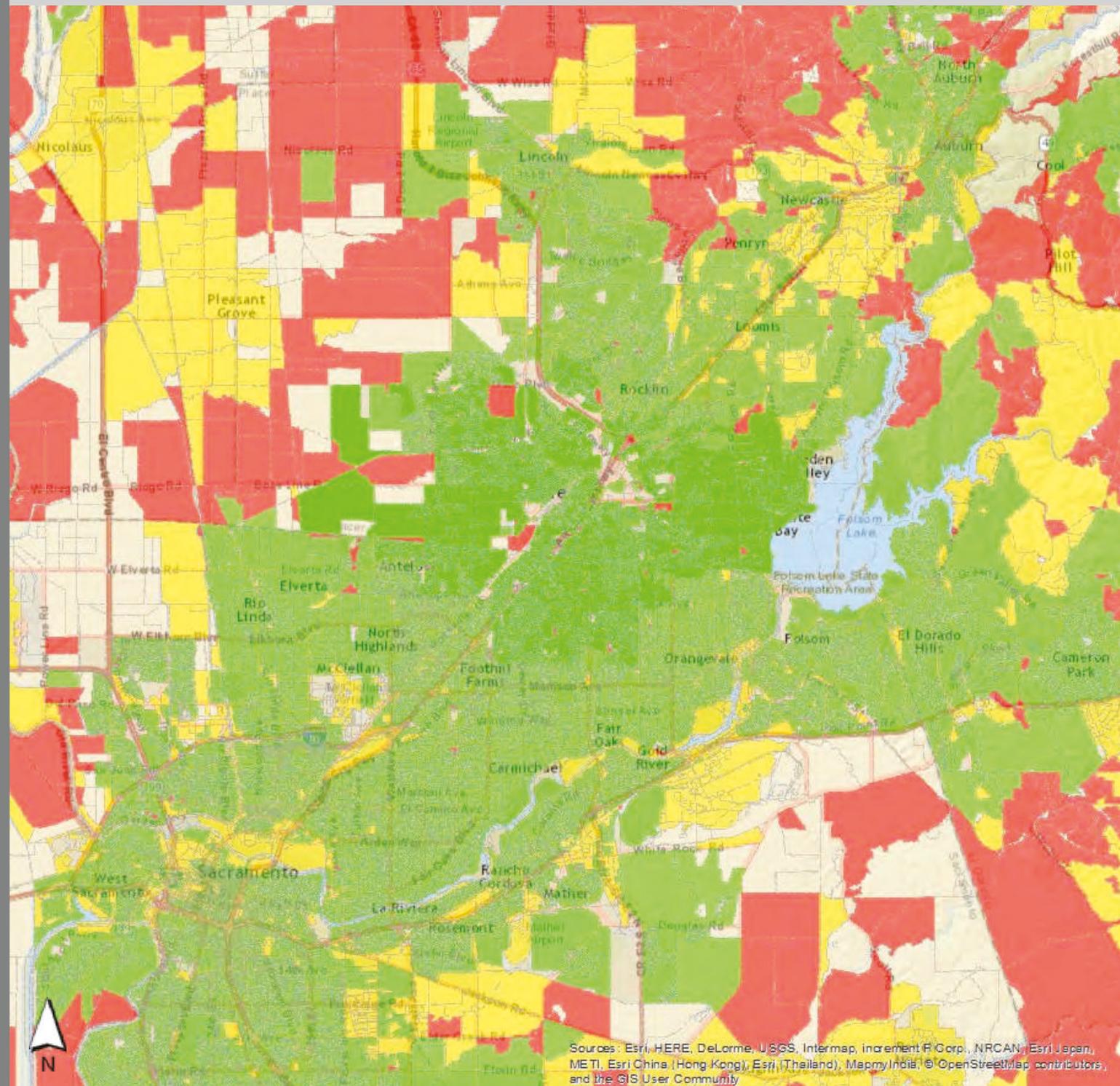
28 The best way for the Commission to promote competition is to retain the pricing flexibility



# EXHIBIT A

# Consolidated Communications

# Provider-Consumer Consolidated ADSL2



## Census Blocks 2010



## Wireline Served Status

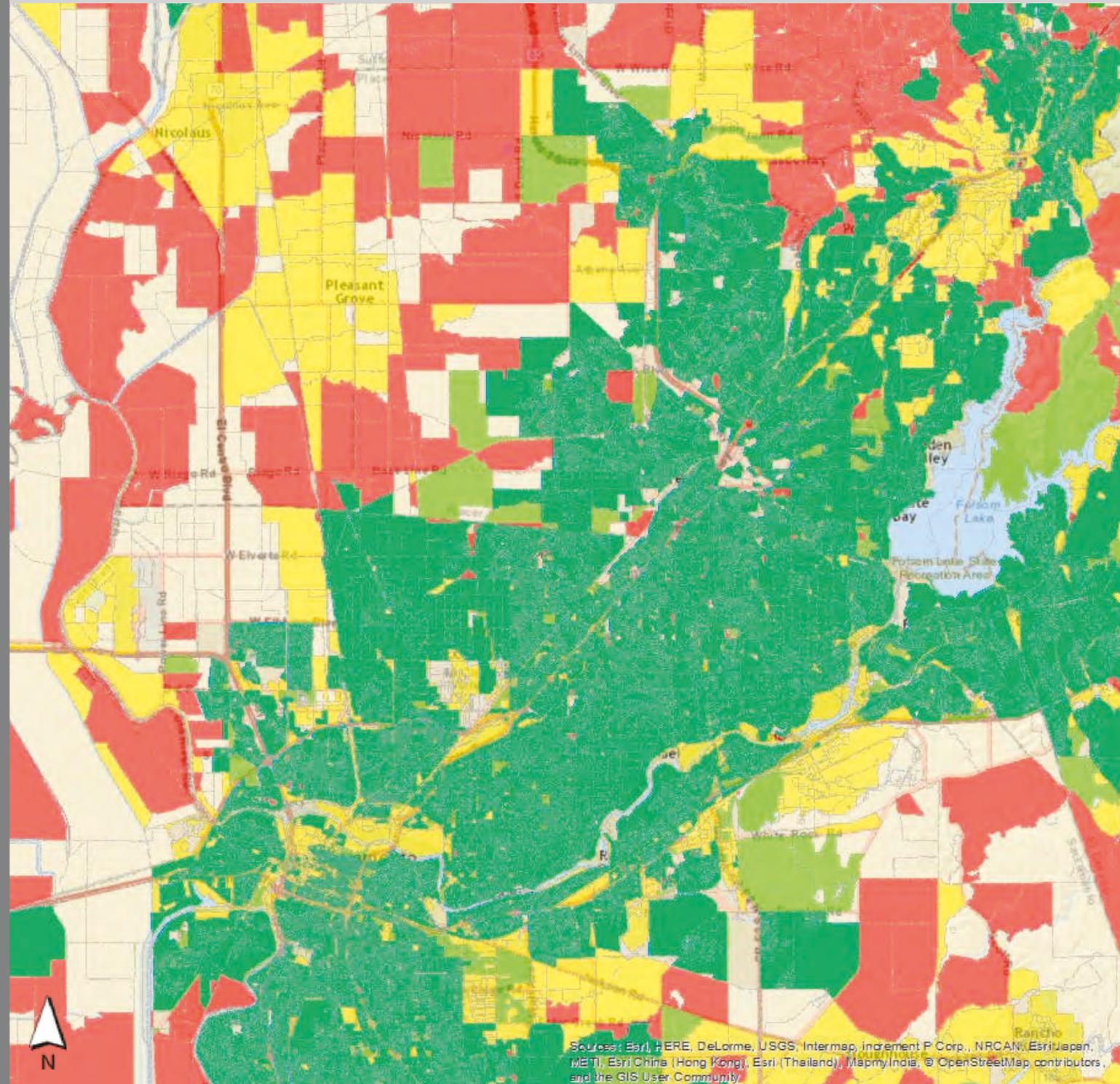
- Served
- Underserved
- Unserved

## Consolidated Communications 11

- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
- $\geq 25$  Mbps < 50 Mbps
- $\geq 10$  Mbps < 25 Mbps
- $\geq 6$  Mbps < 10 Mbps
- $\geq 3$  Mbps < 6 Mbps
- $\geq 1.5$  Mbps < 3 Mbps
- $\geq 768$  Kbps < 1.5 Mbps

# Cable Competitors

# Technology/Cable DOCSIS 3.0



## Census Blocks 2010



## Wireline Served Status

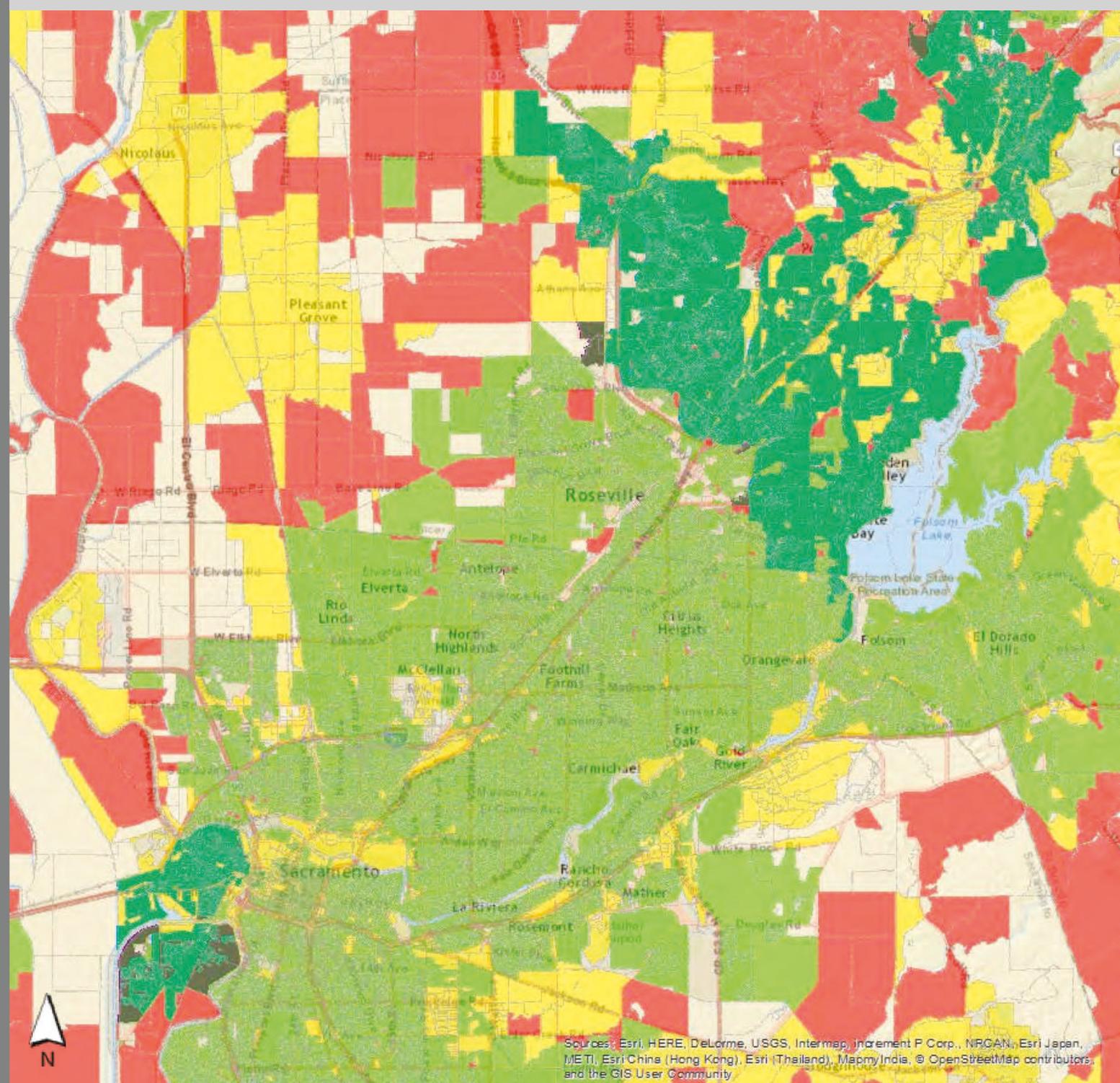
- Served
- Underserved
- Unserved

## Cable Modem DOCSIS 3.0

- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
- $\geq 25$  Mbps < 50 Mbps
- $\geq 10$  Mbps < 25 Mbps
- $\geq 6$  Mbps < 10 Mbps
- $\geq 3$  Mbps < 6 Mbps
- $\geq 1.5$  Mbps < 3 Mbps
- $\geq 768$  Kbps < 1.5 Mbps

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

# Provider-Consumer Wave Broadband DOCSIS 3.0



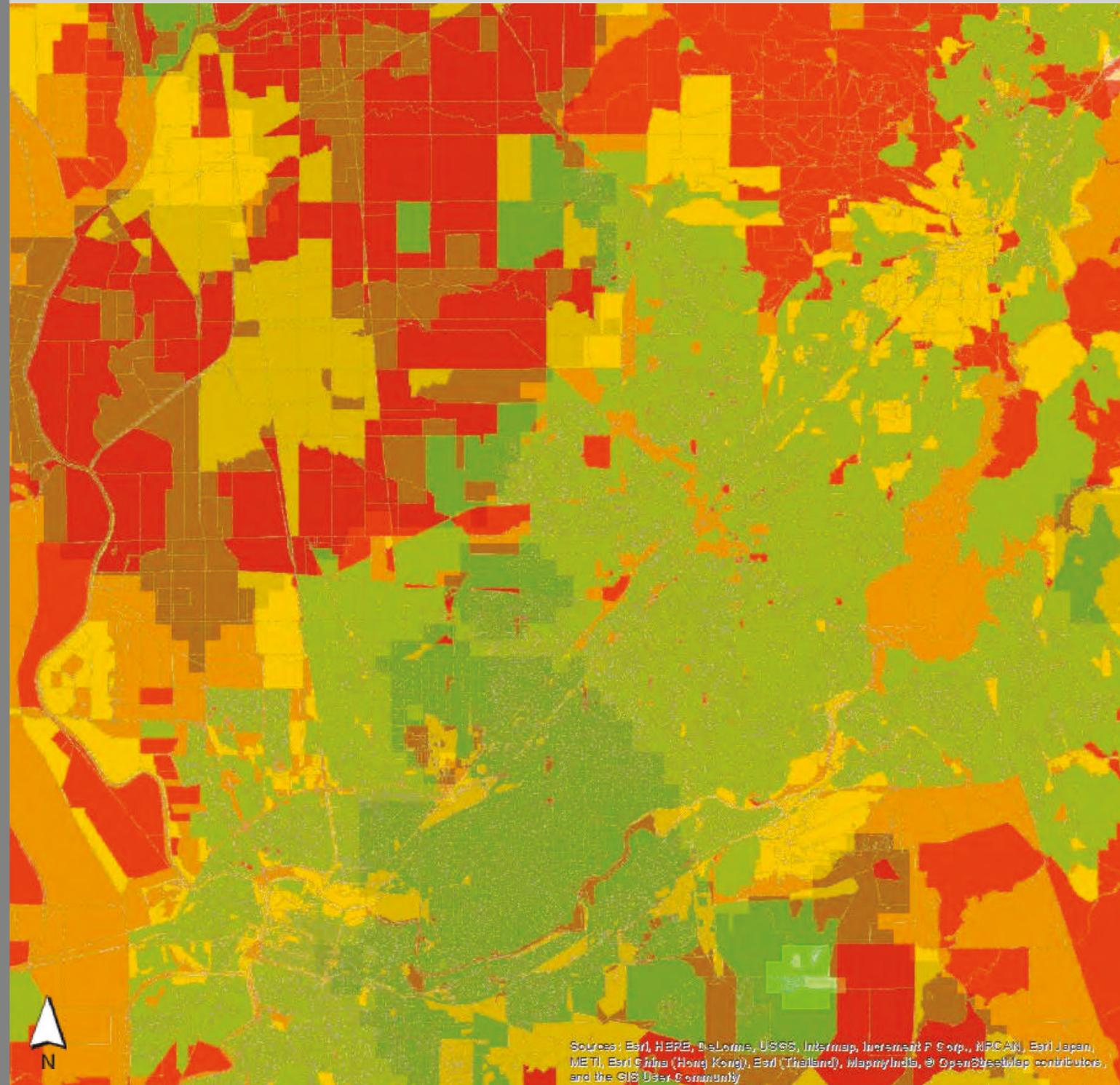
- Census Blocks 2010**
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- Wireline Served Status**
- Served
- Underserved
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- WaveBroadband 42 PURPLEDOWN**
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- WaveBroadband 42**
- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
- $\geq 25$  Mbps < 50 Mbps
- $\geq 10$  Mbps < 25 Mbps
- $\geq 6$  Mbps < 10 Mbps
- $\geq 3$  Mbps < 6 Mbps
- $\geq 1.5$  Mbps < 3 Mbps
- $\geq 768$  Kbps < 1.5 Mbps

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



# Wireless Competitors

# Technology/Mobile



## Census Blocks 2010



## Wireline Served Status

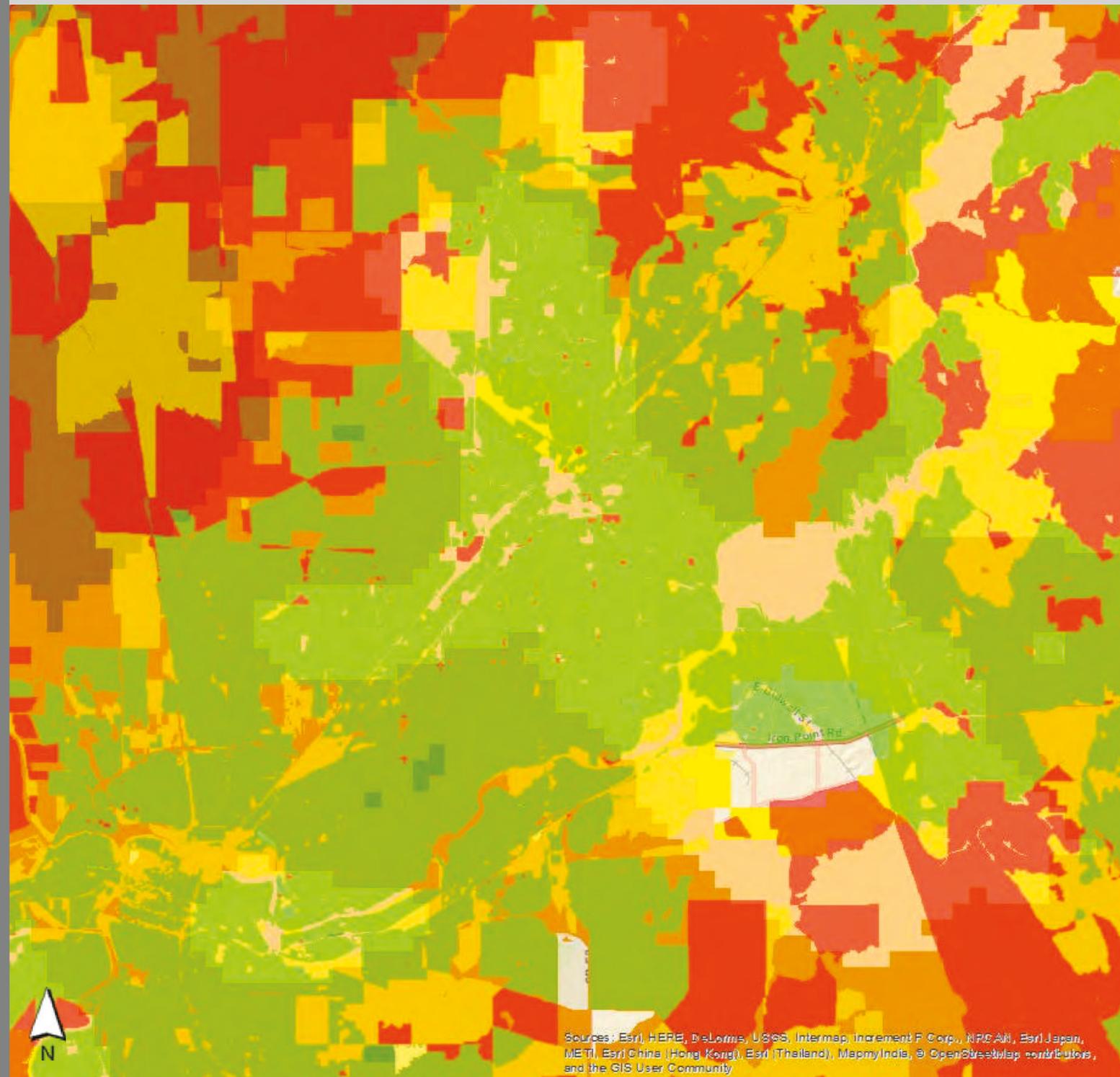
- Served
- Underserved
- Unserved

## Mobile

- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
- $\geq 25$  Mbps < 50 Mbps
- $\geq 10$  Mbps < 25 Mbps
- $\geq 6$  Mbps < 10 Mbps
- $\geq 3$  Mbps < 6 Mbps
- $\geq 1.5$  Mbps < 3 Mbps
- $\geq 768$  Kbps < 1.5 Mbps

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

# AT&T Mobility



## Wireline Served Status

- Served
- Underserved
- Unserved

## AT&TMobility 89

- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
- $\geq 25$  Mbps < 50 Mbps
- $\geq 10$  Mbps < 25 Mbps
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- $\geq 3$  Mbps < 6 Mbps
- $\geq 1.5$  Mbps < 3 Mbps
- $\geq 768$  Kbps < 1.5 Mbps

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

# Sprint Map



## Census Blocks 2010



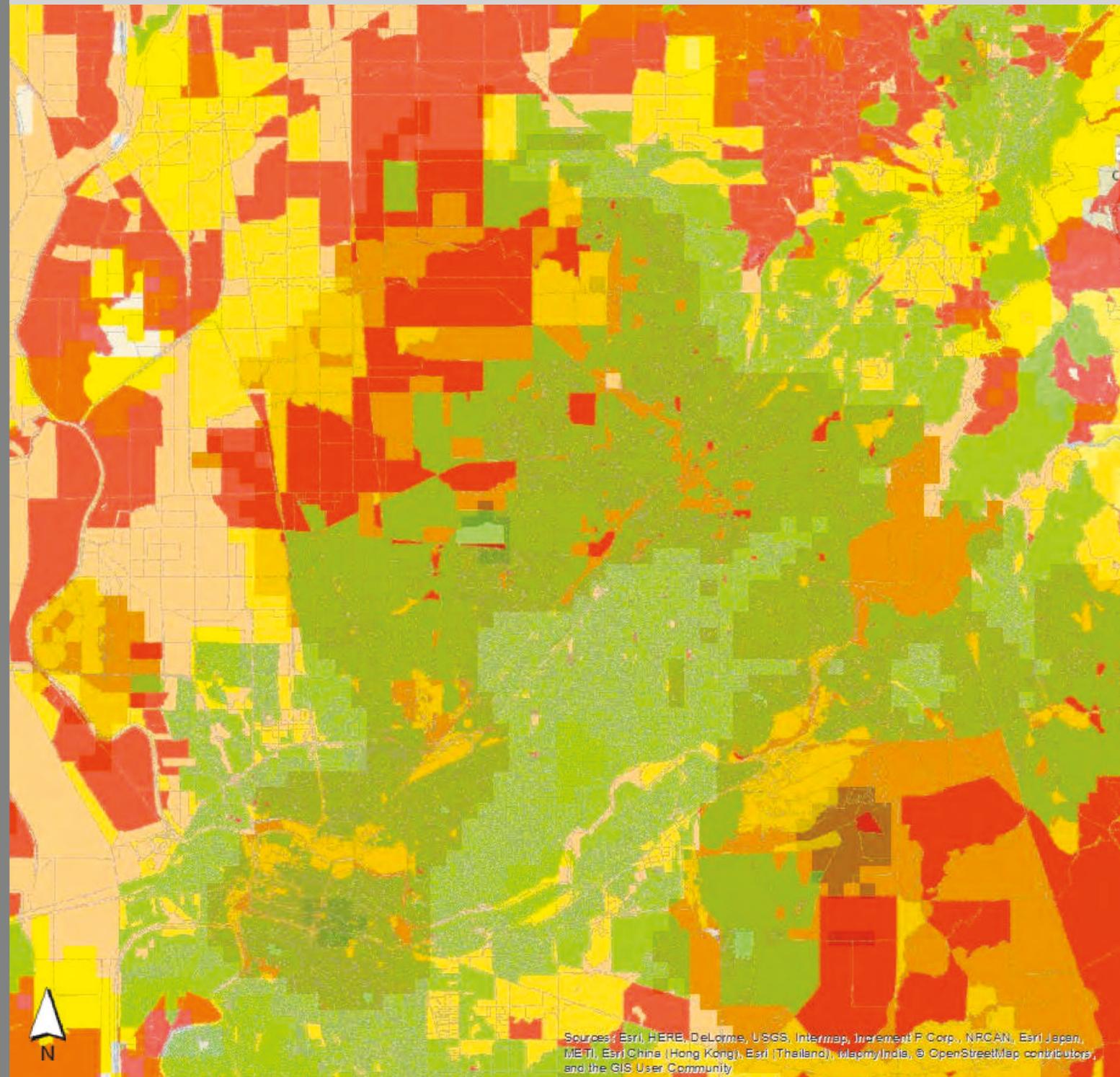
## Wireline Served Status

-  Served
-  Underserved
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## Sprint 89

-   $\geq 2$  Gbps
-   $\geq 1$  Gbps < 2 Gbps
-   $\geq 500$  Mbps < 1 Gbps
-   $\geq 100$  Mbps < 500 Mbps
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-   $\geq 768$  Kbps < 1.5 Mbps

# T-Mobile Map

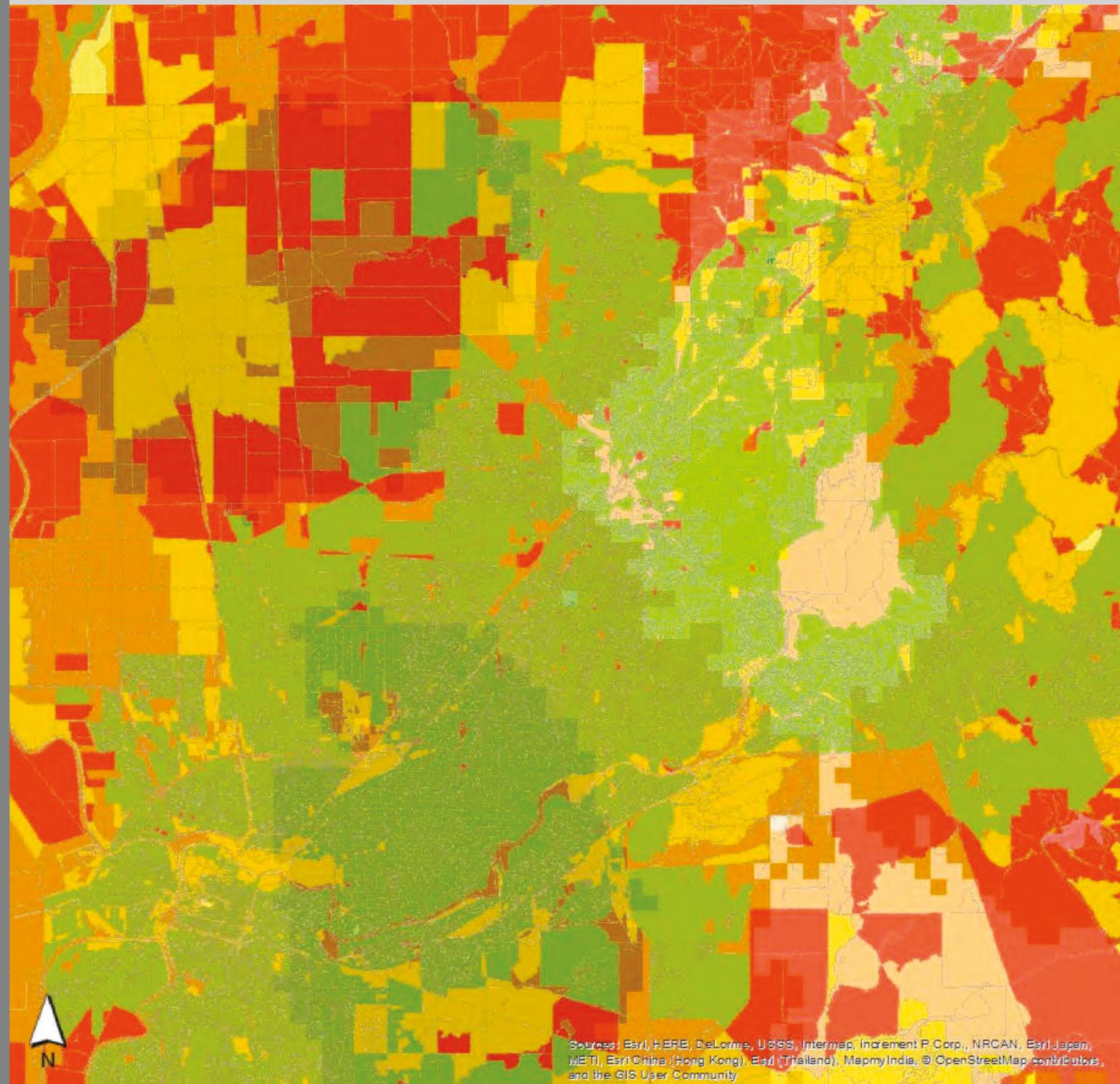


- Census Blocks 2010**
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- Wireline Served Status**
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- T-Mobile 89**
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  - $\geq 1$  Gbps < 2 Gbps
  - $\geq 500$  Mbps < 1 Gbps
  - $\geq 100$  Mbps < 500 Mbps
  - $\geq 50$  Mbps < 100 Mbps
  - $\geq 25$  Mbps < 50 Mbps
  - $\geq 10$  Mbps < 25 Mbps
  - $\geq 6$  Mbps < 10 Mbps
  - $\geq 3$  Mbps < 6 Mbps
  - $\geq 1.5$  Mbps < 3 Mbps
  - $\geq 768$  Kbps < 1.5 Mbps



Sources: Esri, HERE, DeLorme, USGS, Intermap, Inetrent F Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), Swmap/India, © OpenStreetMap contributors, and the GIS User Community

# Verizon Map



## Census Blocks 2010



## Wireline Served Status

- Served
- Underserved
- Unserved

## VerizonWireless 89

- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
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- $\geq 6$  Mbps < 10 Mbps
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# ATTACHMENT

## Reply Brief Of Consolidated Communications of California Company and Consolidated Communication Enterprise Services

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

Order Instituting Investigation into the State of  
competition Among Telecommunications  
Providers in California, and to Consider and  
Resolve Questions raised in the Limited  
Rehearing of Decision 08-09-042

Investigation 15-11-007  
(Filed November 5, 2015)

**REPLY BRIEF OF RESPONDENTS**

**CONSOLIDATED COMMUNICATIONS OF CALIFORNIA COMPANY (U 1015 C)  
CONSOLIDATED COMMUNICATIONS ENTERPRISE SERVICES F/K/A SUREWEST  
TELEVIDEO (U 7261 C) (“CONSOLIDATED”)**

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August 26, 2016

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1           **I.       INTRODUCTION**

2           Pursuant to the schedule outlined in the July 1, 2016 Scoping Memo and Ruling of  
3 Assigned Commissioner and Administrative Law Judge ("Scoping Ruling"), and using the  
4 overall outline of the issues identified in the Scoping Ruling, Consolidated Communications of  
5 California Company (U 1015 C) and Consolidated Communications Enterprise Services f/k/a  
6 SureWest TeleVideo (U 7261 C) ("Consolidated") hereby submit this reply brief.<sup>1</sup> Consolidated  
7 also supports the arguments made in the Respondent Coalition's reply brief and incorporates them  
8 by reference herein, but separately submits this reply to highlight the pervasive and intense  
9 competition present in Consolidated's service territory.

10           Intervenors offer a misleading portrayal of the state of competition in the retail landline  
11 voice market by defining this market in an narrow and granular manner that does not comport with  
12 observable market dynamics or any valid economic theory. Intervenors disregard the significance  
13 of mobile wireless, "over the top" Voice over Internet Protocol ("VoIP"), fixed wireless and other  
14 intermodal technologies in defining the market, which is especially inaccurate as applied to  
15 Consolidated's service territory. Intervenors compound this error by advancing erroneous market  
16 concentration measurements. When correctly applying these measurements to Consolidated's  
17 territory, it shows that Consolidated's area is highly competitive. In addition, Intervenors suggest  
18 that the Commission consider several factors, such as ILEC's earnings, service quality and  
19 wholesale inputs, that are irrelevant to the Commission's inquiry on "whether intermodal  
20 competition, in the decade after URF, has offered sufficient discipline to produce just and  
21 reasonable prices for traditional landline services." *Scoping Memo* at 2, 7

22           Intervenors ignore the competitive aspects in Consolidated's service territory that would  
23 undermine their conclusory arguments that competition is insufficient to produce just and  
24 reasonable prices for landline services. Specifically, Intervenors ignore or misstate the following

25

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26 <sup>1</sup> Although the Scoping Memo directed the parties to use a common briefing outline, several  
27 Intervenors did not follow that outline in their opening briefs and instead, used only the broad  
28 categories from the outline. Accordingly, Consolidated also uses the broad headings to respond to  
Intervenors' claims.

1 evidence:

- 2 • ORA's and TURN's claims of monopolistic price increases for wireline voice disregard  
3 the fact that Consolidated's rate increases for basic residential service since 2006 have  
4 risen less than inflation.
- 5 • ORA's Market Dominance Index ("MDI") and supporting Table 13 misstates  
6 Consolidated's actual subscription figure and when the actual figure is used, it shows  
7 that Consolidated has faced fierce competition from its competitors, leaving  
8 Consolidated with 0% of the market that ORA has defined.
- 9 • TURN's analysis of competitive options for consumers in various counties fails to  
10 include Consolidated's specific territory, which would reflect the highest percentage of  
11 two and three provider options—approximately 99% in both categories, even without  
12 considering mobile wireless.
- 13 • Both ORA and TURN ignore Consolidated's consistently strong service quality when  
14 improperly claiming that alleged poor service quality among some URF ILECs  
15 indicates ineffective competition.
- 16 • TURN's claim that carrier's "stick to their turf" and do not overbuild ignores the  
17 evidence produced to TURN in response to its data requests showing that Consolidated  
18 has significantly overbuilt in other Frontier's and AT&T's territories.

19 When the market is properly defined, measured, and analyzed, there is no doubt that it is  
20 competitive, especially in Consolidated's service territory.

21 **II. INTERVENORS EMPLOY UNREASONABLE MARKET DEFINITIONS  
22 THAT ARE ESPECIALLY MISPLACED AS APPLIED TO CONSOLIDATED**

23 Intervenor's briefs attempt to broaden and segment the market in ways that deviate from  
24 the Commission's principal inquiry here, which is "whether intermodal competition . . . has  
25 offered sufficient discipline to produce just and reasonable prices for traditional landline services."  
26 *Scoping Ruling* at 2. To be useful in answering the Commission's "ultimate question," and to  
27 remain within the Commission's jurisdiction, the market definition must be tailored to assess the  
28 competitive pressures at work on "traditional landline services." Market definition should not be  
based on aspirational policy objectives or incentives; it should be focused on what is actually  
happening in the market. Similarly, there is no reason to assess the broader "telecommunications  
ecosystem" if doing so skews the "ultimate question" regarding wireline voice service. *TURN  
Opening Brief* at 13. Bifurcating the market into granular geographic or demographic units that  
have no relevance to overall market dynamics is equally flawed. *See Ex. 6, AT&T (Katz) 6/1*

1 *Testimony* at 8:18-9:21; *see also* D.06-08-030 (URF Decision) at 76, 131 (repudiating the basis for  
2 granular segmenting of the market).

3 The Commission should dismiss Intervenors' attempts to complicate and politicize what  
4 should be a data-driven inquiry. Both as a matter of the Commission's jurisdiction and a matter of  
5 sound economic principles, the market should be defined with reference to the services that exert  
6 pricing pressure on wireline voice service. As part of this inquiry, the Commission should ensure  
7 that all relevant services exerting such pressure are included. At least as applied to Consolidated's  
8 service territory, Intervenors' exclusion of mobile wireless, fixed wireless, over-the-top Voice over  
9 Internet Protocol ("VoIP") is baseless, and, if followed, would lead to inaccurate conclusions for  
10 this service territory. The Commission should adopt a market definition that is designed to test the  
11 competitiveness of the voice market and reach accurate results for Consolidated and other URF  
12 ILECs. Intervenors' proposals do not accomplish that goal.

13 **A. Intervenors' Focus on Broadband Markets Is Inconsistent With the Scope of**  
14 **the Proceeding and the Limitations on the Commission's Jurisdiction.**

15 Intervenors attempt to frame the relevant market in a manner that exceeds the  
16 Commission's jurisdiction and which is not useful to the "ultimate question" in this proceeding.  
17 Both TURN and ORA argue that the broadband market is a relevant market to be examined, but  
18 neither shows how broadband relates to "whether intermodal competition . . . has offered sufficient  
19 discipline to produce just and reasonable prices for traditional landline services." *Scoping Ruling*  
20 at 2. TURN and ORA both admit that broadband is a separate market from voice, but they  
21 nevertheless devote significant portions of their analyses to competitive dynamics that relate only  
22 to the broadband market. *TURN Opening Brief* at 14 ("[t]here is no question that broadband  
23 technology is appropriately classified as a market separate from voice"); *ORA Opening Brief* at 20  
24 ("there are two relevant product markets in California's telecommunications market").

25 Intervenors fail to supply any connective tissue to make their broadband arguments  
26 relevant to the "ultimate question" about voice. TURN claims that broadband and voice services  
27 are all part of the same "telecommunications ecosystem," but one page later, TURN undermines  
28 this characterization by insisting that there is "no question" that "broadband" is "separate from

1 voice." *TURN Opening Brief*, at 13-14. TURN argues that bundling practices in the market make  
2 broadband relevant to voice offerings, but TURN offers no explanation for how competing  
3 standalone broadband offerings could be pertinent to the voice market. *TURN Opening Brief* at  
4 14. ORA does not even attempt to make this connection, but nevertheless proceeds to analyze  
5 broadband-only market dynamics. *See e.g., ORA Opening Brief* at 20, 22-33. While a  
6 consideration of bundles that include voice and the availability of broadband sufficient to enable  
7 VoIP are important factors in assessing the competitive pressures on wireline voice service  
8 providers, broadband-specific market mechanics do not relate to the voice market.

9 To the extent that Intervenors urge the Commission to analyze broadband markets for their  
10 own sake, this also exceeds the Commission's lawful authority. ORA advances numerous  
11 arguments seeking to establish Commission jurisdiction over broadband, but none can avoid the  
12 prohibition on Commission intrusion into the broadband arena imposed by Public Utilities Code  
13 Section 710, nor the restrictions on Commission authority over services that are purely interstate.  
14 Pub. Util. Code § 710 ("[t]he commission shall not exercise regulatory jurisdiction or control over  
15 . . . Internet Protocol enabled services" except pursuant to specified exceptions not applicable  
16 here); Pub. Util. Code § 202 (commission authority "shall not apply to . . . interstate commerce");  
17 *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, 30 FCC Rcd.  
18 5601, at ¶¶ 281, 433 ("*2015 Open Internet Order*"). In the *2015 Open Internet Order*, the FCC  
19 "announce[d] [its] firm intention to exercise our preemption authority to preclude states from  
20 imposing obligations on broadband service that are inconsistent with the carefully tailored  
21 regulatory scheme we adopt," adding that "we will act promptly, whenever necessary, to prevent  
22 [*sic*, preempt] state regulations that would conflict with the federal regulatory framework or  
23 otherwise frustrate federal broadband policies." *Id.*

24 Each of ORA's attempts to expand the Commission's jurisdiction into the broadband  
25 market is unavailing. First, ORA argues that that an examination of the broadband market can be  
26 justified under Public Utilities Code Section 701, which permits the Commission to do "all things .  
27 . . . necessary and convenient in the exercise of [its] power and jurisdiction." *ORA Opening Brief*,

28

1 at 10; Pub. Util. Code § 701. However, this statutory provision only affects the *extent* of the  
2 Commission's authority over matters that are already within its jurisdiction; by its terms, it does  
3 not expand the Commission's jurisdiction into new arenas, let alone those where the Commission  
4 is expressly forbidden from regulating. *See Assembly of State of California v. Public Utilities*  
5 *Commission*, 12 Cal. 4th 87, 103-04 (1995) ("Whatever may be the scope of regulatory power  
6 under this section, it does not authorize disregard . . . of express legislative directions to it, or  
7 restrictions upon its power found in other provisions of the act or elsewhere in general law.");  
8 *Motion Picture Ass'n of Am., Inc. v. FCC*, 309 F.3d 796, 806 (D.C. Cir. 2002) (observing that an  
9 equivalent provision of the Federal Communications Act, 47 U.S.C. § 154(i), "is not a stand-alone  
10 basis of authority and cannot be read in isolation" and that it "is more akin to a 'necessary and  
11 proper' clause" than an affirmative grant of authority).

12         Second, ORA claims that investigatory authority over broadband could be justified under  
13 Public Utilities Code Section 314(b), because that provision permits the Commission to inspect  
14 data from "any business that is a subsidiary or affiliate" of a public utility. *ORA Opening Brief*, at  
15 10; Pub. Util. Code § 314(b). ORA's citation to this statute is misleading, as it omits the critical  
16 limiting language that immediately follows the verbiage quoted in ORA's brief. Public Utilities  
17 Code Section 314(b) is limited to "any *transaction* between the . . . telephone corporation . . . that  
18 might adversely affect the interests of the ratepayers of the . . . telephone corporation." *Id.*; *see*  
19 *D.96-07-059 (Roseville Telephone)*, at 20-12 (confirming the limited nature of 314(b) to  
20 transactions and matters that might adversely affect ratepayers; *see also* Assembly Bill No. 116  
21 (1985-1986 Reg. Sess.). No such transaction is under consideration in this proceeding, and ORA  
22 has identified none. Accordingly, Section 314(b) is simply inapplicable.

23         Third, ORA cites to the Commission's generic discovery authority, none of which expands  
24 the Commission's jurisdiction into the province of IP-enabled services such as broadband. *ORA*  
25 *Opening Brief*, at 10-11. ORA references Resolution ALJ-195, which includes a general reference  
26 to the Commission's authority to "obtain information from public utilities" and "those who deal  
27 with them." Res. ALJ-195. To the extent that ORA is implying that "those who deal with them"

1 includes unregulated broadband affiliates or service divisions, this suggestion is incorrect.  
2 Resolution ALJ-195 does not—and could not—change the statutory restrictions on the  
3 Commission's authority. In any case, Resolution ALJ-195 pre-dates Public Utilities Code Section  
4 710, which would foreclose ORA's suggested reading of the resolution. ORA's reference to  
5 Public Utilities Code Section 582 is equally misplaced, as that statute confers no authority over  
6 broadband services or public utility affiliates. *ORA Opening Br.* at 11.

7 Fourth, ORA claims that Public Utilities Code Section 710 itself contains exceptions that  
8 empower the Commission to examine broadband markets, but ORA's view would cause the  
9 exceptions to swallow the rule. *ORA Opening Br.* at 11. ORA proffers Public Utilities Code  
10 Section 710(f), but this sub-section is extremely narrow, relating only to the Commission's ability  
11 to "monitor and discuss VoIP services" for the purpose of reporting VoIP-related complaints to the  
12 Legislature and/or the FCC and to "respond informally to customer complaints." Pub. Util. Code  
13 § 710(f). Nothing in this exception permits the Commission to regulate, investigate, or analyze  
14 VoIP services except related to the reporting and resolution of complaints. ORA also cites Public  
15 Utilities Code Section 710(c)(4), but that sub-section only concerns forbearance petitions  
16 submitted to the FCC that fall within Public Utilities Code Section 716. Pub. Util. Code §§ 710,  
17 716. No such petition is pending and none has been cited in this proceeding as relevant to the  
18 issues being addressed here.

19 Fifth, ORA offers a tortured interpretation of the FCC's *2015 Open Internet Order*  
20 whereby ORA concludes that "Broadband Internet Access Service" may be regulated by  
21 California because the FCC deemed that service a "telecommunications service." *ORA Opening*  
22 *Br.* at 11. This interpretation is at odds with the plain language of the *2015 Open Internet Order*,  
23 which unequivocally deems BIAS an interstate service. *2015 Open Internet Order*, ¶¶ 431, 433  
24 ("Today, we reaffirm the Commission's longstanding conclusion that broadband Internet access  
25 service is jurisdictionally interstate for regulatory purposes."). Moreover, the term  
26 "telecommunications service" does not relate to the statutory framework under which the  
27 Commission's public utility authority is derived. A "telephone corporation" is not the same as a

1 provider of "telecommunications service," and the FCC's reclassification of BIAS has no impact  
2 on the meaning of "telephone corporation" under California's statutory scheme. *See* 47 U.S.C.  
3 § 153(50) (definition of "telecommunications service"); Pub. Util. Code § 234 (definition of  
4 "telephone corporation"). ORA's citations to opinions in other jurisdictions pertaining to the  
5 regulatory classification of VoIP under those states' own statutory schemes have no bearing on the  
6 meaning of California's scheme, which includes an explicit bar on regulation of VoIP and IP-  
7 enabled services. Pub. Util. Code § 710.

8 Sixth, ORA cites to broad language from Public Utilities Code Section 709 by which the  
9 Legislature has articulated some of the Commission's regulatory objectives. *ORA Opening Br.* at  
10 12. None of these statements of Legislative intent suggest that the Commission can—or should—  
11 reach beyond its jurisdiction to pursue these objectives. Indeed, the Commission should try to  
12 "encourage the development and deployment of new technologies" and "remove barriers to open  
13 and competitive markets," but these goals must be pursued within the Commission's lawful  
14 authority. Pub. Util. Code § 709.

15 Seventh, and finally, ORA suggests that that the Commission has independent authority to  
16 regulate broadband pursuant to 47 U.S.C. Section 1302(a) (also known as "Section 706" of the  
17 Telecommunications Act of 1996). ORA's reliance on this provision is misguided, as any  
18 Commission actions under Section 706 must be consistent with the Commission's subject matter  
19 jurisdiction and not in conflict with other federal or state laws. Although ORA principally relies  
20 on the D.C. Circuit's decision in *Verizon v. FCC* construing that provision (*Verizon v. FCC*, 740  
21 F.3d 623 (D.C. Cir. 2014), ORA misconstrues and exaggerates this authority. *ORA Opening Br.* at  
22 13. The holding of the *Verizon v. FCC* case pertained to the legality of the FCC's first *2010 Open*  
23 *Internet Order*, which was largely vacated; its holding cannot be read to support wide-ranging  
24 broadband regulation such as what ORA and TURN are proposing here. *Verizon*, 740 F.3d at 637.  
25 Section 706 does not give state commissions the power to adopt rules for services that are not  
26 within their subject matter jurisdiction—*i.e.*, services that they do not already regulate. *In re*  
27 *Preserving the Open Internet*, GN Docket No. 09-191, *Report and Order*, FCC 10-201 (rel. Dec.

1 23, 2010), at ¶ 119 (hereinafter, "2010 Open Internet Order").

2 By its plain terms, Section 706(a) applies to "[t]he [FCC] and each State commission *with*  
3 *regulatory jurisdiction* over telecommunications services" and only permits state commissions to  
4 use "regulating methods" already available to them. 47 U.S.C. § 1302(a) (emphasis added). The  
5 Commission's subject matter jurisdiction is limited to intrastate services and expressly excludes  
6 interstate services such as broadband and VoIP. *See* Pub. Util. Code § 202; 47 U.S.C. §§ 151-152;  
7 *Louisiana Public Serv. Comm'n v. FCC*, 476 U.S. 355, 360 (1996); *Ivy Broad. Co. v. AT&T Co.*,  
8 391 F.2d 486, 490 (2d Cir. 1968) ("this broad scheme for the regulation of interstate service by  
9 communications carriers indicates an intent on the part of Congress to occupy the field to the  
10 exclusion of state law"); D.82-03-070 (acknowledging jurisdictional limitations in resolving  
11 TURN complaint case against Pacific Telephone). In any case, actions under Section 706 would  
12 have to be tailored to "encourage deployment . . . of advanced telecommunications capability[ies]"  
13 by seeking to "promote competition" and "remove barriers to infrastructure investment." 47  
14 U.S.C. § 1302(a). ORA's proposals to reverse URF would have the opposite effect, so Section  
15 706 is inapplicable.

16 Both as a matter of law, based on unavoidable limitations on the Commission's authority,  
17 and as a consequence of how the Commission has framed the "ultimate question" in this  
18 proceeding, an investigation of broadband is categorically irrelevant. ORA and TURN's  
19 broadband arguments should be ignored to the extent that they deviate from the goal of evaluating  
20 competitive pressures on traditional wireline service.<sup>2</sup>

21 **B. Intervenor Unreasonably Discount the Significance of Mobile Wireless**  
22 **Competition In Defining the Voice Market.**

23 In defining the voice market, ORA and TURN both rely on the astonishing proposition that  
24 mobile wireless service is not a relevant factor in the voice market. Even though it flies in the face  
25 of common sense and any realistic economic assessment, Intervenor's cling to this view because  
26 their characterizations of the market as uncompetitive could never be sustained with wireless

27 <sup>2</sup> Without waiving the positions presented herein regarding limitations on the Commission's  
28 jurisdiction, Consolidated has nevertheless demonstrated that its broadband market is robustly  
competitive.

1 included. If wireless carriers are included in defining Consolidated's service territory, for  
2 example, ORA and TURN would have to admit that there are at least *five well-established*  
3 *facilities-based alternatives* to Consolidated's voice service. ORA and TURN's attempts to  
4 exclude mobile wireless service from the voice market should be resisted to ensure that an  
5 accurate picture of Consolidated's market is considered.

6         Intervenors offer somewhat different justifications for their views that mobile wireless is a  
7 distinct market, but none is persuasive. TURN presents a novel theory that wireless is only a  
8 "one-way" substitute for wireline service, but even if this were true, TURN reaches the wrong  
9 conclusion. *TURN Opening Br.* at 10. Whether or not wireline and wireless substitution is  
10 symmetric, TURN's admission that "[w]ireless competes with wireline voice" is sufficient to find  
11 that the wireless service is a substitute for wireline service, thereby exerting competitive pressure  
12 and pricing constraints on wireline service. *Id.* at 9; *see also Ex. 54 TURN (Roycroft) 6/1*  
13 *Testimony* at 33:1-4 ("wireless voice services place a competitive constraint on wireline voice  
14 service providers."). Even under TURN's view, wireless service is a substitute in the only "way"  
15 that matters for this proceeding—it is a clear alternative if consumers are unhappy with wireline  
16 service. Indeed, if substitution is only uni-direction, and wireline service cannot be an effective  
17 substitute for wireless, that only makes wireless an even more powerful competitor. Accordingly,  
18 TURN's theory provides further support for the robust competition that exists in California today,  
19 and especially in Consolidated's territory, where wireless coverage is ubiquitous.

20         Intervenors also assert that wireless is not an effective substitute to wireline service,  
21 because significant portions of the population have chosen to retain both a wireline and wireless  
22 phone. TURN and ORA offer inconsistent figures to support this claim, but in either case, they  
23 ignore the most meaningful data on the question of wireless substitution.<sup>3</sup> The CDC wireless  
24 substitution study demonstrates that the number of "wireless only" households is large and  
25 growing, and that there are only 5.5% of California adults who live in "wireline only" households.

26

27 <sup>3</sup> TURN claims that the number of households who retain both services is 55%, and ORA asserts  
28 that it is "nearly two-thirds." *TURN Opening Br.* at 10; *ORA Opening Br.* at 21.

1 National Center for Health Statistics, "National Health Interview Survey Early Release Program,"  
2 Table 1 (rel. Aug. 2016) (issued by Center for Disease Control), available at www.cdc.gov, relied  
3 on by Ex. 41, *Charter/Comcast (Topper) 6/1 Testimony* at 8, n.14; Ex. 28, *Cox (Gillan) 6/1*  
4 *Testimony* at 7-8. The FCC Local Competition data further confirms that wireless lines are  
5 growing at the expense of wireline lines. Ex. 69, *Consolidated 6/1 Supplemental Response* at 3:9-  
6 12 (citing FCC 2006 and 2013 Local Competition Reports). Some households may choose to  
7 retain both wireline and wireless service, but since the service platforms are functional equivalents  
8 in terms of the ability to make and receive voice calls, the data show that customers can—and will  
9 —shift their usage exclusively to wireless service if they are not satisfied with their wireline  
10 service. These arguments also ignore the sound economic principle that price-constraining  
11 competition only needs to occur at the margin to be an effective constraint. D.06-08-030 (URF  
12 Decision) at 132; Ex. 41, *Comcast/Charter (Topper) 6/1 Testimony* at n.8; Ex. 41, *Cox (Gillan)*  
13 *6/1 Testimony* at 8, 13.

14 The functional equivalency between wireless and wireline voice service is undeniable in  
15 Consolidated's area, which is uniformly flat and covered nearly 100% by the four major wireless  
16 carriers. See Appendix A (USGS Map);<sup>4</sup> Ex. 69, *Consolidated 6/1 Supplemental Responses* at  
17 3:20-21. Essentially every household in Consolidated's service territory could become "wireless  
18 only" and still make and receive calls if Consolidated did not continue to provide reliable, high-  
19 quality, reasonably-priced service. TURN suggests that substitution may be limited by "coverage  
20 gaps," but there are no such gaps in Consolidated's service territory.

21 ORA offers blanket statements that wireless broadband speeds are not sufficient to make  
22 mobile broadband a substitute for wireline broadband. *ORA Opening Br.* at 23-25. This argument  
23 relies on an unreasonably narrow and aspirational definition of broadband that fails to grasp the

24 \_\_\_\_\_  
25 <sup>4</sup> Pursuant to the California Evidence Code Section 452, the Commission should take official  
26 notice of this United States Geological Survey map. D.87-12-018 ("The Commission has the  
27 option of taking official notice of all matters which may be judicially noticed in civil court.");  
28 *Union Transp. Co. v. Sacramento County*, 42 Cal.2d 235, 267 (1954) (Courts will take judicial  
notice of topographical map of United States Geological Survey); *Planned Parenthood Shasta-  
Diablo, Inc. v. Williams*, 10 Cal.4th 1009 (1995) (certiorari denied 520 U.S. 1133) (Trial or  
reviewing courts may properly take judicial notice of government maps and surveys.).

1 manner in which consumers are purchasing broadband in the marketplace. However, ORA's  
2 claim is also factually inaccurate as to Consolidated's area. The California Broadband Map  
3 reflects high levels of wireless broadband coverage, with 25 Mbps download available in the vast  
4 majority of the territory. *See App. A to Consolidated Opening Br.*

5 ORA and TURN also rely on conclusory and unfounded statements regarding wireless  
6 substitutability that should be given no weight. ORA claims that "[m]ost consumers subscribe to  
7 both fixed and mobile broadband, and use the latter only when it is impractical to use the former—  
8 e.g. when they are not at home." *ORA Opening Br.* at 28. This argument is offered without  
9 citation and is less likely to be true than the counter-proposition, which is that consumers will use  
10 their wireless devices whenever and wherever they are available. TURN also claims that mobile  
11 devices are complements because they sometimes rely on "Wi-Fi" enabled by wireline technology,  
12 but TURN fails to explain how this makes wireless a "complement." *TURN Opening Br.* at 17.  
13 Rather than showing wireless to be a complement to wireline service, this argument demonstrates  
14 that there is significant overlap between usage of wireline and wireless networks and broadband  
15 usage, such that they can be substitutes for each other in meaningful ways.

16 None of Intervenor's arguments can divert from the strong evidence that customers are  
17 dropping wirelines in large and increasing numbers in favor of mobile wireless service. Especially  
18 in Consolidated's area, where wireless competition is strong and the terrain is flat, the power of  
19 wireless substitutability cannot be ignored.

20 **C. Intervenor's Discounting of Over-The-Top VoIP, Fixed Wireless and Other**  
21 **Technologies Make Intervenor's Market Definition Inaccurate As Applied to**  
22 **Consolidated.**

23 Compounding their myopic views of wireless substitution, Intervenor's market definitions  
24 ignore other competitive technologies that apply significant pricing pressure on Consolidated and  
25 other wireline providers. ORA asks the Commission to completely exclude "over the top" VoIP  
26 from the market definition, but ORA cites absolutely no factual support for this view. *ORA*  
27 *Opening Br.* at 34-35. ORA offers only broad generalizations that fail to support its conclusion.  
28 ORA observes that "the geographic availability of OTT is governed by the availability and pricing

1 of broadband," but ORA fails to explain how this fact would be limiting. *ORA Opening Br.* at 34-  
2 35. If a provider offers broadband-only service throughout its service territory, as Consolidated  
3 does in its service area, then "over the top" VoIP is available everywhere that Consolidated's voice  
4 service is available. There is no competitive disadvantage evident in that situation, especially  
5 where "over the top" VoIP could be accessed through entirely different networks, such as Comcast  
6 and Wave Broadband's networks in Consolidated's area. ORA also claims that the "facilities-  
7 based provider" is in a position to "manage and limit the demand for the competing dependent  
8 OTT service." *ORA Opening Br.* at 35.<sup>5</sup> This argument also fails because the facilities-based  
9 provider could only do that if it hurt its own service platform at the same time. ORA's  
10 speculations are meritless and could not happen in Consolidated's service territory, where there are  
11 multiple competing networks where consumers could turn if they are unhappy with the service  
12 capabilities that might enable "over the top" VoIP. As the Commission noted in the URF  
13 Decision, "over the top" VoIP providers like Vonage and Skype continue to be real competitors to  
14 traditional wireline service, so they cannot be omitted from a valid assessment of the market.  
15 D.06-08-030 (URF Decision) at 4, 74-75.

16 Intervenor's dismissal of fixed wireless is also erroneous, especially as applied to  
17 Consolidated. ORA and TURN allege that fixed wireless should be ignored because it suffers  
18 from limited availability, functional limitations, and low speed. None of these characterizations  
19 are true as to Consolidated's territory, so Intervenor's refusal to consider fixed wireless in their  
20 market definitions leads to inaccurate measurements of the market. The California Broadband  
21 Availability Map shows that Consolidated's service territory is 100% blanketed with fixed wireless  
22 coverage. This information from the California Broadband Map is attached hereto as Appendix  
23 B.<sup>6</sup> Even TURN's fixed wireless availability map shows meaningful fixed wireless coverage in  
24 Consolidated's area. *TURN Opening Br.* at 33. TURN's concern regarding interference with "line

25 <sup>5</sup> If ORA's argument is an oblique reference to "throttling" or other similar data management  
26 practices, those practices have already been addressed by the FCC and are contrary to current law.  
*See, e.g., 2015 Open Internet Order*, at ¶ 4.

27 <sup>6</sup> Fixed wireless providers in Consolidated's territory include CalNet, Central Valley, Digital Path  
28 Inc., RuralNet Wireless LLC and Succeed.Net.

1 of sight” is also misplaced as to Consolidated’s service territory, as the area is almost entirely flat  
2 with few physical obstacles to block signals. Speculations about low speed are also untrue, as the  
3 California Broadband Availability Map confirms speeds of 25 Mbps or higher throughout  
4 Consolidated’s footprint. These facts mean that, contrary to Intervenor’s expectations, there is a  
5 viable fixed wireless platform in southwestern Placer County and Northeastern Sacramento  
6 County, where Consolidated serves as an ILEC.

7 Intervenor’s failure to recognize fixed wireless is at odds with the FCC’s views regarding  
8 fixed wireless platforms. In formulating the FCC’s rules governing reductions in high-cost support  
9 in areas served by an “unsubsidized competitor,” the FCC included fixed wireless in its definition  
10 of "unsubsidized competitor," thereby recognizing that fixed wireless service can provide a valid  
11 substitute for wireline broadband and voice offerings. *USF/ICC Transformation Order*, GN  
12 Docket Nos. 09-51, *Report and Order and Further Notice of Proposed Rulemaking*, 11-161 (Rel.  
13 Nov. 18, 2011). Neither ORA nor TURN offer valid evidence that could upset the FCC’s  
14 conclusion. Where it is available, fixed wireless must be considered a part of the market that  
15 delivers broadband and voice service. If the Commission were to ignore this impact, it would  
16 reach inaccurate conclusions regarding service areas like Consolidated’s territory.

17 Intervenor’s dismissal of the satellite platform is also misplaced, at least as to the  
18 broadband market. *ORA Opening Br.* at 31-33; *TURN Opening Br.* at 18-20. While satellite  
19 service may have certain latency issues that affect certain real-time applications, satellite providers  
20 are significant players in the broadband and video markets, and their large, national platforms and  
21 broad-based branding gives them advantages in selling video and broadband bundles that cannot  
22 be ignored. Ex. 5, *AT&T (Aron) 6/1 Testimony* at 33; Ex. 42, *Charter/Comcast (Topper) 7/15*  
23 *Testimony* at 26:1-10, n.68; Ex. 41, *Charter/Comcast (Topper) 7/15 Testimony* at 28:1-5, n.73,  
24 29:1-3, 30:19-31:2, n.82, 84, 41:22-42:2, n.114, n.115, 54.

25 ORA and TURN define the relevant markets to be examined in a manner that exclude key  
26 market players. These omissions lead to inaccurate conclusions regarding the competitiveness and  
27 dynamics of voice and broadband markets, as discussed below.

1           **D.     ORA Unreasonably Limits The Broadband Market to 25 Mbps Download and**  
2           **3 Mbps Upload.**

3           ORA confines its analysis of the broadband market to a single service: 25 Mbps download  
4 and 3 Mbps upload. In doing so, ORA ignores all other broadband service offerings and all other  
5 features of broadband service that consumers find meaningful in the market. ORA has not shown  
6 that, from a consumer or economic perspective, 25/3 service should be built into the market  
7 definition in assessing broadband markets. This leads to a short-sighted and fundamentally  
8 inaccurate assessment of the competitive pressures that exist in the broadband market, including in  
9 Consolidated's service territory.<sup>7</sup>

10           ORA's only justification for focusing solely on 25/3 is that it is FCC's forward-looking  
11 definition of "broadband." *ORA Opening Br.* at 20. However, the FCC's aspirational broadband  
12 goal is a policy objective, not a basis for defining the broadband market. The record is clear that  
13 the broadband market includes a multiplicity of service offerings at a wide variety of speeds, and  
14 all of these offerings should be part of the "market" in order to get a clear sense of how that market  
15 is operating. *See e.g., Ex 5, AT&T (Aron) 6/1 Testimony* at 32; *Ex. 41, Charter/Comcast (Topper)*  
16 *6/1 Testimony* at 29-31. ORA's focus on 25/3 is not grounded in consumer behavior or economics,  
17 and ignores important evidence that meaningfully impacts the competitive pressures facing voice  
18 and broadband providers.

19           ORA also implies that the parties or the Commission are under a requirement to use 25/3  
20 as the broadband market definition. However, 25/3 is not a "benchmark" speed in the sense that  
21 carriers are required to achieve it. *2015 Broadband Progress Report and Notice of Inquiry on*  
22 *Immediate Action to Accelerate Deployment*, GN Docket No. 14-126, FCC 15-10 (rel. Feb. 4,  
23 2015, ¶ 19 *et seq.* ("Because it is an evolving standard, and there is no single standard for what  
24 should qualify as advanced service, the Commission must exercise discretion when it conducts its  
25 annual inquiry.")). In fact, the FCC's actual broadband benchmark for Connect America Fund

26 <sup>7</sup> ORA's approach conflates "market definition" with "market measurement" and systematically  
27 avoids considering real broadband alternatives that would otherwise be measured. This approach  
28 skews ORA's market evaluation and cannot guide the Commission's consideration of the issues  
here.

1 support and for rural carrier ETC designations is 10 Mbps download and 1 Mbps upload. *See*,  
2 *e.g.*, *Connect America Fund*, FCC 14-190 ¶ 2. By dissociating its current requirements from its  
3 visionary broadband goal, the FCC itself implicitly recognizes that an assessment of the market  
4 would be unreasonable if it focused on only the forward-looking objective rather than the features  
5 of the market as it exists today.

6 If, notwithstanding its jurisdictional limitations, the Commission reaches conclusions in  
7 this proceeding specific to broadband markets, those conclusions must be informed by a market  
8 definition that includes all relevant features. For example, if customers are flocking to 10/1 Mbps  
9 offerings instead of 25/3, that trend cannot be ignored. The market definition should be grounded  
10 in an assessment of what service offerings impose competitive pressure on each other in the  
11 broadband market, and the record is clear that the range of relevant broadband services is far  
12 greater than just the 25/3 offerings when viewed through this lens.

13 **E. Intervenor's Make Unsupported Claims Regarding Geographic and**  
14 **Demographic Differences That Cannot Apply to Consolidated.**

15 Intervenor's also urge the Commission to segment the market into demographic and  
16 geographic units, claiming that specific market failures will emerge if granular analysis is  
17 considered. *See e.g.*, *Greenlining Opening Br.* at 6-13; *CforAT Opening Br.* at 1, 3-10; *TURN*  
18 *Opening Br.* at 2. As the Respondent Coalition has demonstrated, markets do not operate in such  
19 a dispersed or piecemeal manner. *Respondent Coalition Opening Br.* at 11-12 (citing D.06-08-030  
20 (URF Decision), CD 2015 Report, and the FCC Report, *Voice Telephone Services: Status as of*  
21 *June 30, 2015*). The URF Decision correctly concluded that markets operate on a broad scale and  
22 that competitive pressures in the market as a whole will benefit all consumers even if every  
23 competitive offering is not present in every area. D.06-08-030 (URF Decision), at 74, 142.

24 Even if there were a basis to analyze markets at the census-block level, it would not change  
25 the lens through which Consolidated's service territory is examined. The record is clear that  
26 Consolidated serves a specific, regional market in which its service options are offered uniformly  
27 to the public. There is no record evidence of price or service differential within that footprint, and  
28 no evidence of price discrimination or geographic price disparities that would support the need to

1 segment the market. Intervenor's attempts to analyze the voice and broadband markets in a  
2 segmented manner cannot be supported, and is especially unreasonable as applied to  
3 Consolidated's relatively localized, regional service territory.

4 **F. Intervenor's Focus on Wholesale Inputs Is Misplaced.**

5 Intervenor's attempts to include wholesale service in the definition of the market for retail  
6 voice and broadband service confuse the relationship between these markets. The wholesale  
7 market relates to entirely different services from those offered to consumers in the retail market,  
8 and Intervenor has not established an analytical connection between the two. Rather,  
9 Intervenor implies that control of wholesale markets could lead to manipulation of retail markets,  
10 but there is no evidence of this occurring. *Id.* at 142. The discussion of wholesale inputs is a  
11 distraction from any realistic analysis of the retail market.

12 In Consolidated's case, implications about the wholesale market are especially unfounded.  
13 Consolidated is a relatively small player in markets for special access and other wholesale inputs  
14 that certain competitors might utilize. These services are almost universally regulated, so there are  
15 already regulations in place to address the potential for unreasonable limitations on wholesale  
16 inputs, even if there were evidence of such a phenomenon. Moreover, the focus on wholesale  
17 markets is tangential at best as applied to Consolidated because there are facilities-based wireline  
18 providers—who have built their own networks—blanketing 99% of Consolidated's service  
19 territory. In such an environment, wholesale issues are irrelevant. *Ex. 69, Supplemental*  
20 *Responses of Respondents Consolidated to Information Requests 6/1.*

21 **III. INTERVENORS OFFER MARKET MEASUREMENTS THAT ONLY**  
22 **CONFIRM THE COMPETITIVE NATURE OF CONSOLIDATED'S**  
23 **TERRITORY.**

24 If voice and broadband markets are properly defined to include all relevant competitors  
25 and competing services, there can be no doubt that Consolidated's service territory is robustly  
26 competitive. Intervenor's assessments of competition rely on inaccurate information and market  
27 definitions that ignore Consolidated's circumstances. If these errors are corrected, the competitive  
28 nature of Consolidated's service territory is clear even under Intervenor's market measurements.

1           **A.     Nothing In Intervenor’s Briefs Negate the Numerous Competitive Alternatives**  
2           **in the Voice Market in Consolidated’s Service Territory.**

3           In its opening brief, Consolidated summarized significant information from the California  
4 Broadband Availability Map that shows the presence of facilities-based cable competition  
5 throughout Consolidated’s service territory at speeds well above the 25/3 Mbps standard that ORA  
6 uses to define the broadband market. *See App. A to Consolidated Opening Br.* Even ORA admits  
7 that “where there are independent local loop facilities in residential customer promises, then there  
8 exists full facilities based competition that should be included in evaluation of a competitive  
9 market for telecommunications service in California.” *ORA Opening Br.* at 33-34. This is  
10 precisely the situation that exists in Consolidated’s service territory, where a combination of  
11 Comcast and Wave Broadband provide an alternative to Consolidated’s voice and broadband  
12 offerings at essentially every customer location in the area. Nothing in Intervenor’s briefs or  
13 testimony contradicts this reality.

14           The same is true of the wireless data identified in Consolidated’s opening brief.  
15 Consolidated identified clear evidence, backed by the California Broadband Availability Map, that  
16 shows Consolidated service territory is approximately 99% covered by four different wireless  
17 carriers, each of which offer speeds exceeding 25 Mbps download. None of these data points can  
18 be disputed as applied to Consolidated’s service territory.

19           Intervenor’s paint with a broad brush in their indictment of the competitive market, but  
20 even if their views were correct, they fail to correctly assess Consolidated’s service territory,  
21 where the propositions upon which TURN and ORA rely are not true. TURN says that “effective  
22 competition does not exist,” but it clearly does in Consolidated’s area. *TURN Opening Br.* at 3.

23           **B.     Correct Applications of Intervenor’s Market Concentration and Service**  
24           **Availability Models Prove That Consolidated’s Service Territory Is Robustly**  
25           **Competitive.**

26           Both ORA and TURN rely significantly on market share metrics in analyzing the relevant  
27 market, but these market share measurements use inaccurate inputs and reach false conclusions as  
28 to Consolidated. ORA relies principally on a “Market Dominance Index” that Dr. Selwyn appears  
to have invented to measure the extent to which firms’ customer subscriptions deviate from an

1 equal, mathematical division of the market. *ORA Opening Br.* at 40-41. ORA's findings are  
2 summarized in Table 13 to ORA's testimony, and that chart states that Consolidated's market has  
3 an "MDI" of 1.47, with 1.00 being an equal division of the market. Even setting aside the broken  
4 assumptions that inform the MDI model—including that competitive firms will share the market  
5 equally—ORA's application of the MDI is inaccurate as to Consolidated.

6 ORA uses incorrect subscribership data for Consolidated, which grossly overstates the  
7 portion of the 25/3 Mbps customers Consolidated serves in its ILEC territory. This is evident  
8 from a comparison of the figure depicted in column (6) of Table 13 to Dr. Selwyn's testimony  
9 with the underlying source data from Information Requests 6(a), 6(b), and 6(e). In Table 13, ORA  
10 ascribes a subscription figure to Consolidated, but the census block level information in Appendix  
11 B in response to these Information Requests shows this figure to be zero in Consolidated's ILEC  
12 territory.<sup>8</sup> ORA has mistakenly utilized the 25/3 subscribership figures in Consolidated's CLEC  
13 territory for this chart, but those figures should have no bearing on the market share in the ILEC  
14 territory or the extent to which Consolidated's ILEC territory is competitive.

15 When the actual zero figure is used in Dr. Selwyn's Table 13, what emerges is that  
16 Consolidated has 0% of the market that ORA has defined. This means that 100% of that alleged  
17 market is controlled by Consolidated's competitors. Of the households that ORA alleges (using  
18 publicly-available census data) have access to 25/3 service, Consolidated has none of them.  
19 Indeed, ORA's figures in columns (3) and (4) of Table 13 suggest that there is 100% availability of  
20 25/3 in Consolidated's territory, but all of that availability is from Comcast and Wave Broadband.  
21 The California Broadband Availability Map confirms this result. If followed to its logical  
22 conclusion, and applied without correction, ORA's allegations of market concentration are based

23 \_\_\_\_\_  
24 <sup>8</sup> Subscribership in Consolidated's ILEC service territory can be derived from Appendix B2 in  
25 response to these Information Requests by reviewing the census blocks for Placer County and  
26 Sacramento County as reflected by the third through fifth census block digits of 061 and 067,  
27 respectively. *See Ex. 68, Consolidated's Final Responses to Information Requests 6(a), (b) and*  
28 *(e), App. B, Commission Only; see also Ex. 67, Consolidated's Initial Responses to Information*  
*Request 5, CA ILEC FCC 477\_1214\_Subscribers, Commission Only; CA ILEC FCC*  
*477\_1214\_Deployment; CA ILEC FCC 477\_0615\_Subscribers, Commission Only; CA ILEC*  
*FCC 477\_0615\_Deployment, Confidential and Further Responses to IR 5-6.*

1 on the success of Consolidated's facilities-based competitors. This is a material error that actually  
2 confirms Consolidated's position that its territory is robustly competitive.<sup>9</sup>

3         TURN's metrics for measuring market share would also demonstrate the competitiveness  
4 of Consolidated's service territory if correct and complete data were used in Consolidated's area.  
5 On page 30 of its Opening Brief, TURN presents a list of the number of providers from which  
6 consumers in various counties can choose. Notably, neither Placer County (where Consolidated's  
7 principal ILEC operations reside) nor Consolidated's specific territory is displayed. Based on the  
8 Broadband Availability Map, and counting only the facilities-based providers that offer voice and  
9 broadband, Consolidated's service territory would have the highest percentage of "two provider"  
10 availability on TURN's entire chart (it would be 99%). If fixed wireless, which also covers  
11 substantially all customer locations, were included, Consolidated's area would be the highest by  
12 far on the "three provider" column (again, the result would be 99%). If wireless carriers were  
13 added to this list, as they should be because they compete ubiquitously in both the voice and  
14 broadband markets against Consolidated, Consolidated would be literally "off the chart" on  
15 TURN's availability measurement.

16         A close look at the data inputs and measurement mechanisms advanced by ORA and  
17 TURN reveals that their own metrics would deem Consolidated's territory clearly competitive.  
18 The Commission should carefully scrutinize Intervenors' conclusions about a lack of competition  
19 because they cannot apply to Consolidated.

20         **IV. NONE OF INTERVENORS' MARKET ANALYSIS FACTORS UNDERMINE**  
21         **THE COMPETITIVE NATURE OF CONSOLIDATED'S SERVICE**  
22         **TERRITORY.**

23         As part of their analysis of the voice and broadband markets, ORA and TURN proffer  
24 various indicators that they allege are symptomatic of a non-competitive environment.  
25 Consolidated regards these issues as a distraction because there is no reason to credit indirect  
26 alleged indicators of competition when the purpose of the proceeding is to measure the state of

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27 <sup>9</sup> Even a comparison of Consolidated's actual ILEC subscribership to the total number of  
28 households used in Dr. Selwyn's Table 13 shows a small Consolidated market share. *See Id.*

1 competition directly. Intervenor's claims of monopolistic pricing and market dynamics, their  
2 implications regarding service quality, their unfounded allegations regarding excessive earnings,  
3 and their tangential claims about the wholesale market are not valid substitutes for an examination  
4 of competition. The Commission should focus on quantitative and qualitative measurements of  
5 the state of competition as it is actually experienced for the URF ILECs. To the extent that  
6 TURN's and ORA's heuristics are considered, the Commission should recognize that Intervenor's  
7 provocative propositions are inapplicable to Consolidated. Despite their stated commitments to  
8 data-driven and granular analysis, TURN and ORA both overlook and misconstrue Consolidated's  
9 circumstances by painting with an overly-broad brush.

10 **A. Intervenor's Claims About Monopolistic Pricing Behavior Are Unfounded and**  
11 **Inapplicable to Consolidated.**

12 Both ORA and TURN suggest that ILEC pricing behavior since the URF Decision points  
13 to a lack of competition in the market. *ORA Opening Br.* at 5; *TURN Opening Br.* at 53-55.  
14 These claims are erroneous as to all ILECs, but they are particularly inapplicable to  
15 Consolidated.<sup>10</sup> ORA claims that "basic wireline prices have increased by more than 40% since  
16 2008 . . . ." *ORA Opening Br.* at 5. This broad assertion cannot be attributed to Consolidated,  
17 whose basic residential rate has only risen approximately 16.34% since 2006, which is less than  
18 inflation over that same timeframe.<sup>11</sup> *Ex. 69, Consolidated's Supplemental Responses to*  
19 *Information Requests* at 7. In its zeal to overstate the pricing increases by ILECs since 2008, ORA  
20 excluded Consolidated from the figure on page 44 of its testimony. ORA's Opening Brief (at 44)  
21 and Dr. Selwyn's testimony (*Ex. 16* at 78, *Figure 2*) fail to provide supporting evidence for the  
22 pricing inputs for Dr. Selwyn's figure. If Dr. Selwyn were to include Consolidated's price

23 <sup>10</sup> As noted in the Respondent Coalition's reply brief, ILEC rates were set at artificially low rates  
24 prior to URF, so some increases in price were expected. *Ex. 7, AT&T (Aron) 7/15 Testimony* at 5;  
*Evid. Hr'g. Tr.* at 86-87 (Aron).

25 <sup>11</sup> According to the Consumer Price Index, inflation increased 19.4% from 2006 through 2016.  
26 *See* United States Department of Labor, Bureau of Labor Statistics, The Consumer Price Index  
27 Calculator, available at [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited August 25,  
28 2016). The Commission should take notice of the Consumer Price Index pursuant to California  
Evidence Code section 452. *Mission Springs Water District v. Verjil*, 218 Cal. App. 4th 892 (4th  
Dist. 2013).

1 changes over the equivalent time period, the figure would change significantly. *See* Ex. 67  
2 (Consolidated's Initial Responses to Information Request 8); Ex. 69 (Consolidated's Supplemental  
3 Responses to Information Requests) at 7; *see also* TURN Opening Brief at 56, Figure 2.<sup>12</sup>

4 The reasonableness of Consolidated's pricing behavior since URF is consistent with  
5 TURN's "Figure 2" on page 56 of its opening brief. That chart also shows modest increases in  
6 Consolidated's (formerly SureWest's) rates from 2006 to 2015. None of Consolidated's pricing  
7 adjustments reflect monopolistic behavior or anything other than a company attempting to raise its  
8 prices commensurate with inflationary increase in costs.

9 ORA makes the same argument relative to broadband pricing, alleging that there have been  
10 "steady increases for all of the major wireline broadband providers" since URF. *ORA Opening*  
11 *Brief* at 55. At least as applied to Consolidated, this statement is misleading. ORA's source data  
12 for this claim is Table 14 of Dr. Selwyn's testimony (Exhibit 16), which in turn refers to  
13 information presented to ORA in response to ORA Data Request 1-3. The information in that  
14 table does reflect a price increase for Consolidated's stand-alone broadband offering from 2006 to  
15 2016, but, significantly, it also reflects a sextupling of the applicable download speed attendant to  
16 that offering. A comparison of equivalent speeds reveals that Consolidated's prices actually  
17 decreased over time. For example, Consolidated's stand-alone non-promotional price for high  
18 speed internet at 18/18 *decreased* by \$10 in 2015. Table 14 includes incorrect prices for this  
19 offering in 2015. *See* Ex. A-13, *Consolidated's Attachment to ORA 2-3*, Confidential at Row 111,  
20 attached to Ex. 16 (Selwyn June 1, 2016 Testimony).<sup>13</sup> The notion that prices are increasing is  
21 meaningless unless compared to the advances inherent in the service. Consolidated's stand-alone  
22 broadband pricing has increased since 2006, but the features of the service have radically

23 \_\_\_\_\_  
24 <sup>12</sup> Consolidated requests that the Commission take judicial notice of its website that provides a  
25 summary of URF company rates. California Public Utilities Commission, Communications  
26 Division, URF Carrier Residential Basic Service Rates: 2006-2015, available at  
27 [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-  
\\_Telecommunications\\_and\\_Broadband/URFCarrierBasicServiceRatesbyYear2015.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/URFCarrierBasicServiceRatesbyYear2015.pdf).

28 <sup>13</sup> Table 14 also includes incorrect prices and speeds for Consolidated's offerings in 2006-2007.  
*Id.* at Row 42.

1 advanced, thereby increasing the attractiveness, value, and cost of the service. Accordingly,  
2 customers are paying more, but they are also getting a lot more. A close look at ORA's source  
3 data makes this clear.

4         Although the actual data belie any claim that Consolidated's voice or broadband pricing  
5 has been excessive, TURN also attempts to support its pricing theory by citing to the testimony of  
6 Consolidated's witness, Mr. Shultz, who testified that Consolidated continued to lose overall  
7 access lines at approximately the same rate after raising its standalone voice offering to \$21.99  
8 (the lowest rate of all of the ILECs). *TURN Opening Br.* at 10-11. TURN claims that this  
9 demonstrates the presence of market power, but there are several problems with this claim. First,  
10 Consolidated's rates did not increase significantly enough to result in significant customer  
11 attrition, even in a competitive market. Raising a rate from \$19.99 to \$21.99 that had not been  
12 raised for five years is not a significant enough event to trigger a meaningful demand elasticity  
13 response. *See TURN Opening Br.* at 56 (Figure 2). Second, Mr. Shultz's statement confirmed that  
14 Consolidated continues to lose access lines, and there was no indication as to whether those lines  
15 were for standalone service or from some other service. *Evid. Hr'g.* at 103:8-19. Third, Mr.  
16 Shultz explicitly noted that the increase was related to specific regulatory policy changes, which  
17 undercuts any suggestion that market power was involved in the decision to raise rates. *Evid.*  
18 *Hr'g.* at 102:8-103:4. Fourth, Mr. Shultz noted that the price increase was recent and that the  
19 effects of it had not been fully measured. *Evid. Hr'g.* at 104:1-13. TURN's opportunistic use of  
20 Mr. Shultz's testimony does not support TURN's desired result.

21         Ultimately, there is no need to look at pricing trends where a market is demonstrably  
22 competitive, and Consolidated's market is unquestionably so. Nevertheless, Consolidated's voice  
23 and broadband pricing since URF is entirely consistent with the competitive nature of its service  
24 territory and commensurate with advances in broadband capability over that timeframe.

25         **B. Intervenor's Have Not Identified Any Service Quality Concerns with**  
26         **Consolidated.**

27         Both ORA and TURN suggest that sub-par service quality exists amongst URF ILECs and  
28 that this is a symptom of the lack of a functioning competitive market. *See e.g. ORA Opening Br.*

1 at 46-47; *TURN Opening Br.* at 41-42, 65-69. As the Respondent Coalition explained in its  
2 opening brief, service quality is not a proper consideration in this proceeding because it is not  
3 related to the core competitive questions presented in the Scoping Ruling. *Scoping Memo*, at 3  
4 (citing *Preliminary Scoping Memo*, 13-14). In fact, it is the subject of a separate proceeding. *See*  
5 R.11-12-001.

6 Notwithstanding the fundamental irrelevance of service quality to the questions in this  
7 proceeding, neither ORA nor TURN has identified any service quality problem with Consolidated  
8 that would satisfy the premise that service quality has suffered under URF. To the contrary,  
9 Consolidated's service quality has been consistently strong under URF. *See Consolidated's*  
10 *Opening Brief*, at 14. To the extent that the Commission considers TURN's and ORA's overbroad  
11 statements regarding service quality compliance as part of this proceeding, the Commission should  
12 recognize that these broad-brush propositions do not apply to Consolidated.

13 **C. Intervenor Neither Demonstrate The Relevance of Earnings Information Nor**  
14 **Show That Consolidated Has Excessive Earnings.**

15 Without any factual basis, ORA suggests that there are "indicia of over-earnings" amongst  
16 ILECs. *ORA Opening Br.* at 43. ORA's focus on earnings reflects a misplaced and antiquated  
17 view of how to analyze the competitive market. Where a market is competitive, earnings  
18 regulation and earnings review are unnecessary, as the URF Decision recognized. D.06-08-030  
19 (URF Decision), at 234-235. The purpose of this proceeding is to examine competition directly,  
20 not to review earnings as a proxy for competition. That approach is a relic of rate-of-return  
21 regulation that the Commission has repudiated for decades. *See e.g.*, D.96-07-059 (Roseville  
22 Telephone, Consolidated's predecessor), at n.31a.

23 ORA's assertions are also lacking in any factual basis. ORA's only alleged support for this  
24 claim is its assertion that Frontier paid higher than book value to purchase Verizon's ILEC  
25 operations. *Id.* This argument rests on an unsupported connection between transactional purchase  
26 prices and profits.<sup>14</sup> No such connection has been established on the record, and even if it had,

27 <sup>14</sup> Neither ORA's brief nor its testimony establish any nexus between transactional purchase prices  
28 that exceed book value and current profits. Purchase prices for large telecommunications  
operations are negotiated based on a far more nuanced and complex set of factors than ORA's

1 this would have no bearing on ORA's generalization that ILEC earnings are excessive. There is  
2 absolutely no record support for this proposition, and none which could imply that Consolidated or  
3 any other ILEC is experiencing monopolistic earnings. ORA's claims should be rejected as  
4 baseless.

5 **D. Consolidated's Competitive Entry Undermines TURN's Claim That**  
6 **Incumbents "Stick to Their Turf."**

7 A key element of TURN's assessment of competition in California is that "incumbents  
8 stick to their turf," but TURN's opening brief ignores a compelling example that undermines its  
9 conclusion. *TURN Opening Br.* at 53. The record is clear that Consolidated has overbuilt two  
10 other ILECs in significant portions of the Sacramento metropolitan market. *Consolidated's*  
11 *Supplemental Response to TURN Set 1, Data Request 14*, attached to Ex. 54 *TURN (Roycroft) 6/1*  
12 *Testimony*. Through its CLEC operations, Consolidated has substantially overbuilt Frontier's Elk  
13 Grove exchange, which is the most significant service area of Frontier's legacy operations.  
14 Consolidated has also deployed significant facilities in AT&T's service territory in Sacramento.  
15 These examples of competitive market entry are well documented and displayed clearly on the  
16 California Broadband Map. In fact, Dr. Roycroft acknowledges that Consolidated has not "stuck  
17 to its turf," but TURN's brief fails to correctly assess the ramifications of Consolidated's approach.  
18 Ex. 54, *TURN (Roycroft) 6/1 Testimony* at 96:5-97:10. In fact, Consolidated's competitive  
19 behavior is consistent with a highly-competitive market for all market participants in the  
20 Sacramento area.

21 **E. Intervenors Offer No Evidence That Consolidated Has "Refused to Deal" In**  
22 **Wholesale or Resale Markets.**

23 Both TURN and ORA attempt to leverage their competitive analysis by implying that  
24 ILECs are engaging in anti-competitive behavior in wholesale markets. These assertions are  
25 unfounded and unrelated to the assessment of competition that is the focus of this proceeding.

26 ORA's opening brief includes a section entitled "refusal to deal," but ORA's argument rests  
27 solely upon policy positions that certain ILECs have advanced before regulatory bodies on the  
28 issues of unbundling and wholesale requirements. *ORA Opening Br.* at 45-46. These references  
simplistic analysis suggests.

1 do not establish any "refusal to deal," and no such implication could be applied to Consolidated  
2 based on the record.

3         TURN cites to reflections from CLECs that ILECs control special access and other  
4 wholesale markets. *TURN Opening Br.* at 72-73. The record reflects compelling evidence that  
5 contradicts these views. Ex. 5, *AT&T (Aron) 6/1 Testimony* at 53-56. However, even if they were  
6 true, TURN fails to establish a connection between these propositions and the competitiveness of  
7 the local voice or broadband markets. Special access and many other wholesale offerings must be  
8 provided at regulated rates, so any allegations of differential bargaining power are already  
9 addressed by applicable rules. *See e.g., ALJ-181.*

10         Nothing in the record suggests that Consolidated has attempted to manipulate the special  
11 access or resale market to impair its competitors, nor is there any evidence that Consolidated could  
12 do so. Indeed, the California Broadband Map reflects that Consolidated's principal competitors  
13 have their own networks, so concerns regarding wholesale access in Consolidated's service  
14 territory are minimal at best. Nevertheless, as the URF Decision recognized, CLEC resale and  
15 wholesale access remains possible throughout Consolidated's territory, and special access remains  
16 available at regulated rates. There is no regulatory problem that has been identified in these areas,  
17 let alone one that would compel findings about the competitiveness of the local market.

18         **V. INTERVENOR PROPOSALS FOR POLICY CHANGE ARE OUTSIDE THE**  
19         **SCOPE OF THE PROCEEDING AND WHICH WOULD HARM**  
20         **COMPETITIVE MARKETS.**

21         Ignoring the strictly data-focused nature of the proceeding, Intervenors nevertheless offer  
22 specific policy proposals and proposed changes to Commission regulations. These  
23 recommendations are squarely outside of the scope of this proceeding and should be ignored.  
24 Even setting aside their procedural impropriety, many of these proposals would harm competitive  
25 dynamics in the telecommunications market. Inevitably, if adopted, Intervenors' proposals would  
26 result in new regulatory burdens on regulated wireline providers that further skew the playing field  
27 relative to their competitors.

28         The Scoping Memo makes clear that this proceeding is strictly a "data gathering and data

1 analysis exercise" and that "no rules or regulations will be adopted (or repealed) in this phase of  
2 the proceeding." Scoping Ruling at 7. Statements by Commissioner Peterman and  
3 Administrative Law Judge "ALJ" Bemederfer at the January 2016 Prehearing Conference  
4 confirm the same. January PHC Tr. at 11:15-18 (Commissioner Peterman: "This proceeding is not  
5 a typical quasi-legislative proceeding in that we're not setting rules for the industry or a subset of  
6 the industry."); PHC Tr. at 24:1-9 (ALJ Bemederfer: "But, this proceeding is limited to  
7 information gathering, as the commissioner has pointed out. And the Commission itself has  
8 disclaimed any intention to either make rules or set rates."). For this reason, any findings derived  
9 from this proceeding must be limited to factual propositions regarding the state of competition.  
10 Intervenors' proposals exceed this scope, and the Commission would commit legal error if it  
11 considered those proposals here. *See Southern California Edison v. Pub. Util. Comm'n*, 140  
12 Cal.App.4th 1085 (2006) (annulling Commission decision where it deviates from the issues  
13 defined in the Scoping Memo).

14         Despite acknowledging that this proceeding should be "limited to findings and conclusions  
15 of fact with regards to competition in the market place," ORA devotes significant portions of its  
16 brief to "issues for the next phase." *ORA Opening Brief*, at 64- 74. This construction of ORA's  
17 presentation ignores the fact that currently there is no "next phase" of this proceeding.<sup>15</sup> The  
18 substance of ORA's proposals is also troubling, as ORA seeks to reinstitute various elements of  
19 rate-of-return regulation and then compound them with detailed monitoring requirements that  
20 would impose significant burdens on regulated providers. ORA argues for earnings review and  
21 review of expenses and investments, but these mechanisms are reserved for the rate-of-return  
22 environment, which the Commission rejected for large and mid-sized telephone companies two  
23 decades ago. D.96-12-074 (Roseville).

24         Several Intervenors advocate for enhanced reporting requirements, but jurisdictional

25 \_\_\_\_\_  
26 <sup>15</sup> Although the *Scoping Memo* notes that the Commission will not adopt or repeal rules in this  
27 "phase" of the proceeding, Consolidated objects to the adoption or repeal of rules in *any* phase of  
28 this proceeding as exceeding the scope of the *OII* and violating Public Utilities Code Sections  
1708 and 1708.5, which require evidentiary hearings before findings or rules can be altered from  
prior Commission decisions that were adopted following hearings.

1 limitations would necessarily mean that these reporting obligations would fall uniquely on  
2 regulated providers like Consolidated. *See e.g.*, ORA Opening Brief, at 65-67; TURN Opening  
3 Brief, at 38(regarding Form 477 data); *see generally* Greenling Opening Brief (recommending  
4 data collection of information pertaining to mergers, rates, telecommunications burden, and  
5 telecommunications insecurity). This is an untenable result in a highly-competitive market, which  
6 the Commission would distort if it followed Intervenors' lead.

7       Like the consumer groups, CALTEL's brief advances policy arguments that exceed the  
8 bounds of the proceeding. CALTEL's arguments are doubly problematic in that many of them  
9 pertain to current or previous Commission proceedings, where CALTEL's issues have already  
10 been addressed – or are being addressed – on a record tailored to those issues. These issues  
11 include service quality (which is being addressed in R.11-12-001), copper retirement (which was  
12 addressed in R.08-01-005), and a variety of wholesale issues that are the proper subject of  
13 proceedings resolving any carrier-to-carrier disputes when then areas. *CALTEL Opening Brief*, at  
14 14. CALTEL also asks the Commission to take action regarding IP-based service agreements, but  
15 that issue is beyond the Commission's jurisdiction. *See* 47 U.S.C. § 151; *see also Louisiana Pub.*  
16 *Serv. Comm'n v. FCC*, 476 U.S. 355, 360 (1986) (explaining boundaries of intrastate and  
17 interstate jurisdictions). Indeed, the Commission has acknowledged that “[t]o the extent that the  
18 issues raised address interstate telecommunications service, this Commission has no jurisdiction.”  
19 D.82-03-070 (acknowledging jurisdictional limitations in resolving TURN complaint case against  
20 Pacific Telephone).”

21       The Commission should ignore Intervenors’ attempts to expand the scope of this  
22 proceeding. Parties were directed to confine their briefs to the issues in the proceeding, which has  
23 been defined as a focused, fact-gathering exercise. It would not be equitable to consider concrete  
24 proposals in a proceeding where such proposals have been categorically excluded and other parties  
25 have not had a proper opportunity to present their views.

26       **VI. CONCLUSION**

27       Intervenors present a vision of the telecommunications market in California that does not  
28

1 square with reality, and which bears no resemblance to the robust and pervasive competitive  
2 dynamics in Consolidated's service territory. Intervenor's urge the Commission to define the  
3 market in a narrow and granular manner, but empirical data, prevailing economic theory, and  
4 common sense all militate in favor of a broader market definition. There is no legitimate basis for  
5 excluding mobile and fixed wireless service from the definition of voice and data markets, and this  
6 is especially true in Consolidated's service territory, which is blanketed by coverage from at least  
7 four wireless carriers and from at least one fixed wireless provider. 99% of Consolidated's  
8 customer locations also have a facilities-based wireline alternative to Consolidated's service. All  
9 of these results are evident from the California Broadband Availability Map, and, as to  
10 Consolidated, the competitive picture is irrefutable.

11 The Commission should resist Intervenor's attempts to narrow and segment the market, but  
12 whether Consolidated's service territory is viewed as a whole or as the sum of its parts, the result  
13 is the same – the area is highly competitive. Even ORA's and TURN's own measurements of the  
14 market, if properly calibrated with accurate inputs, prove this to be true. There is no record here  
15 upon which the Commission could conclude that California voice and data markets are not  
16 competitive – let alone reverse URF, as TURN and ORA would like to do. But even if the  
17 Commission reaches different conclusions for the broader market, Intervenor's portrayal of  
18 Consolidated's service territory is incorrect and cannot be supported.

19 Dated this 26<sup>th</sup> day of August, 2016.

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Patrick M. Rosvall  
Attorneys for Consolidated

# APPENDIX A

USGS  
Topographical  
Map

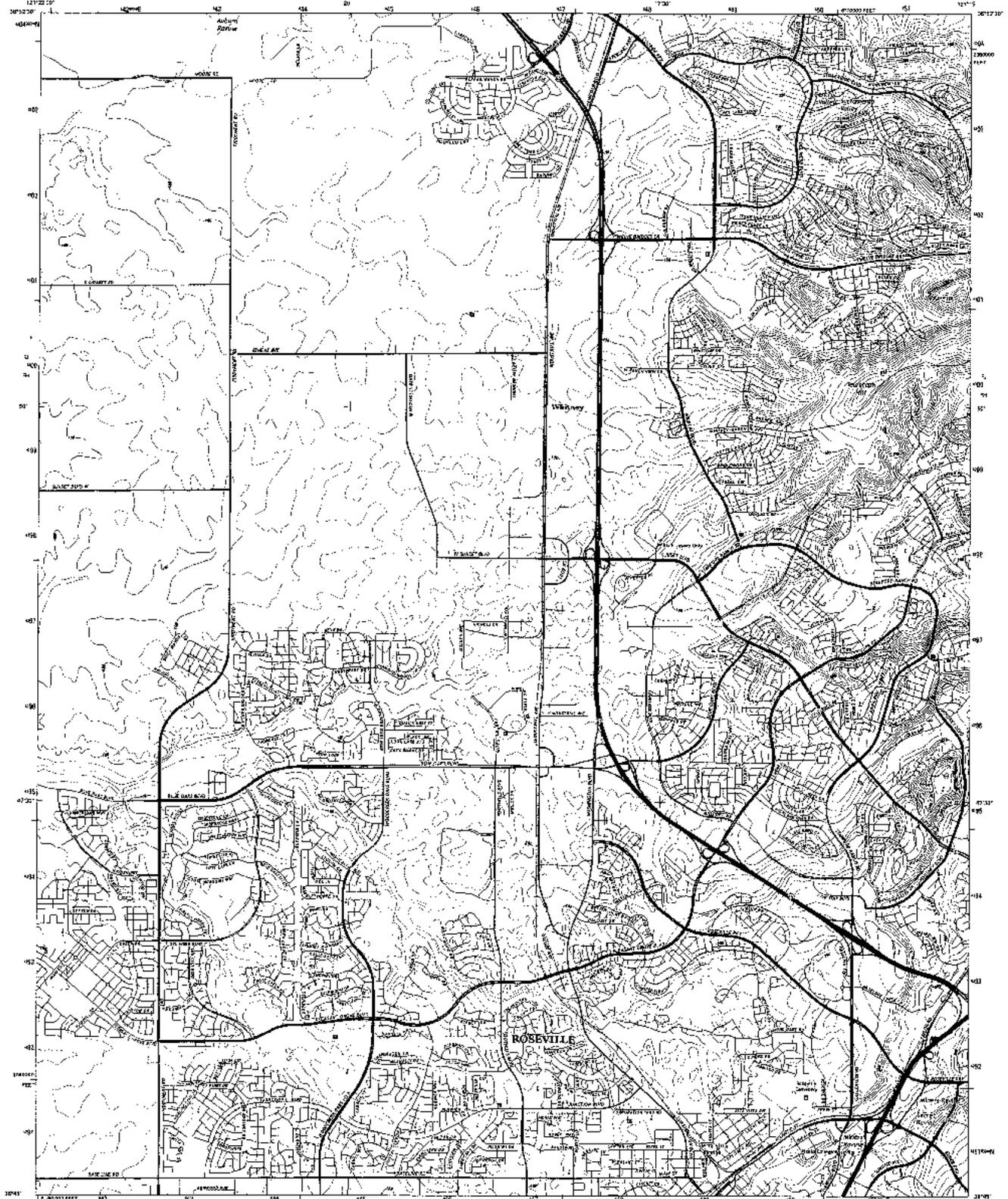
Roseville  
Quadrangle



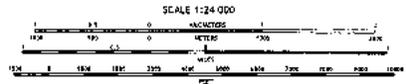
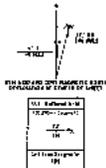
U.S. DEPARTMENT OF THE INTERIOR  
U.S. GEOLOGICAL SURVEY

The National Map  
US Topo

ROSEVILLE QUADRANGLE  
CALIFORNIA PLACER CO.  
7.5-MINUTE SERIES



Produced by the United States Geological Survey  
North American Datum of 1983 (NAD83)  
North Magnetic Decline of 11.6 degrees East  
1:24,000 Scale  
This map is not a legal document. It is for informational purposes only. It is not intended to be used as a legal document. It is not intended to be used as a legal document. It is not intended to be used as a legal document.



ROAD CLASSIFICATION CH

Expressway	Interstate
Freeway	State Route
Major Road	Local Road
Minor Road	Trail
Proposed Road	US Route
	State Route

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50

ROSEVILLE, CA  
2015



USGS  
Topographical  
Map

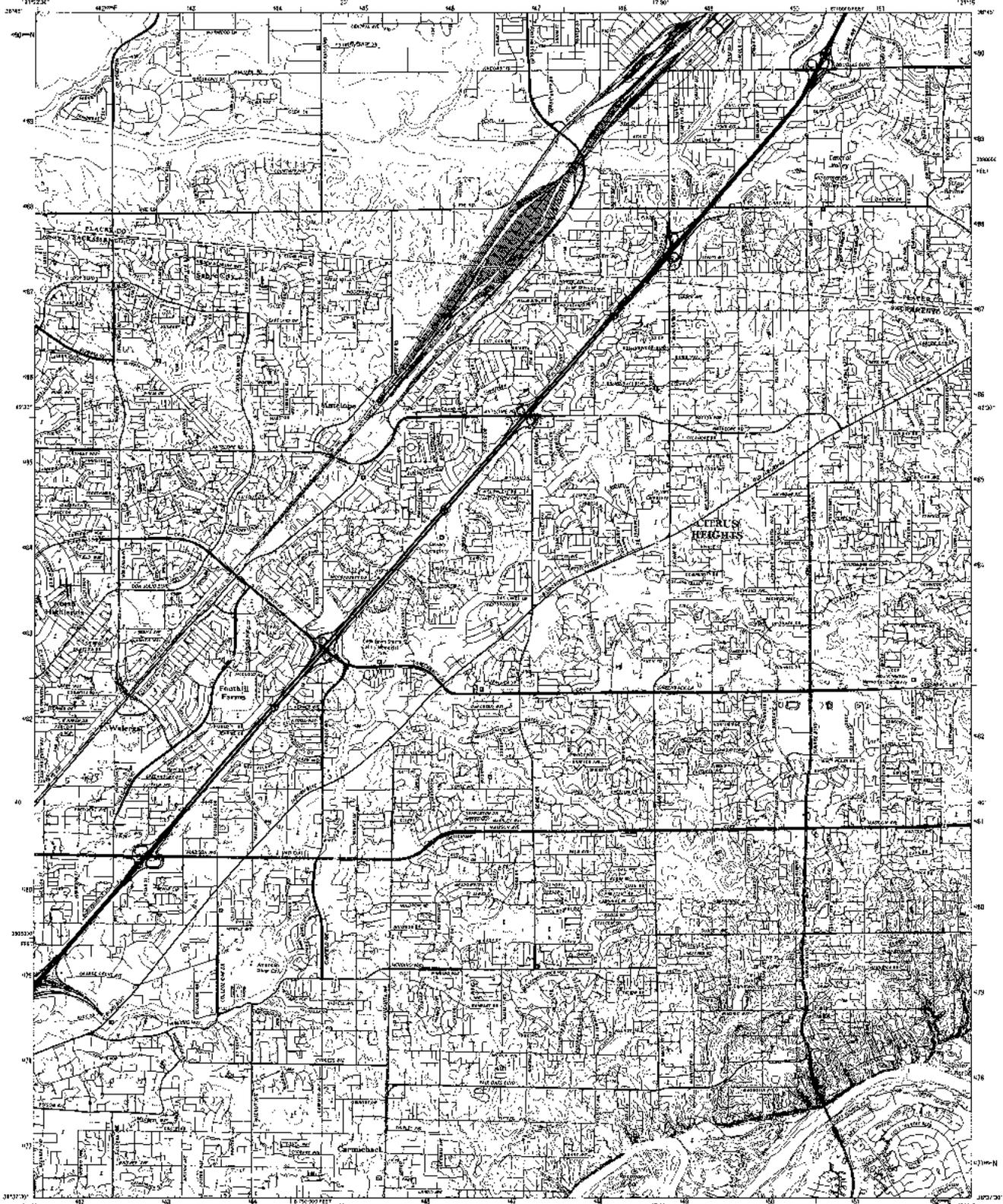
Citrus Heights  
Quadrangle



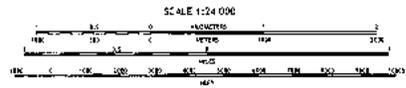
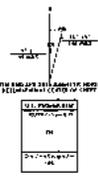
U.S. DEPARTMENT OF THE INTERIOR  
U.S. GEOLOGICAL SURVEY



CITRUS HEIGHTS QUADRANGLE  
CALIFORNIA  
7.5-MINUTE SERIES



Produced by the United States Geological Survey  
with assistance from the following:  
North Carolina Center of the National  
1:50,000-scale (National Topographic Series, 1987)  
1:50,000-scale (National Topographic Series, 1987)  
1:50,000-scale (National Topographic Series, 1987)  
1:50,000-scale (National Topographic Series, 1987)



CONVERSION TABLE  
NORTH AND SOUTH DECIMAL DEGREE  
OF 1983



PCAD (LAPSE) SYMBOLS

Depotway	Small Contour
Interstate Hwy	Small Peak
Highway	Peak
Proposed Road	Peak
Proposed Road	Peak

1	2	3	4
5	6	7	8

CITRUS HEIGHTS, CA  
2013



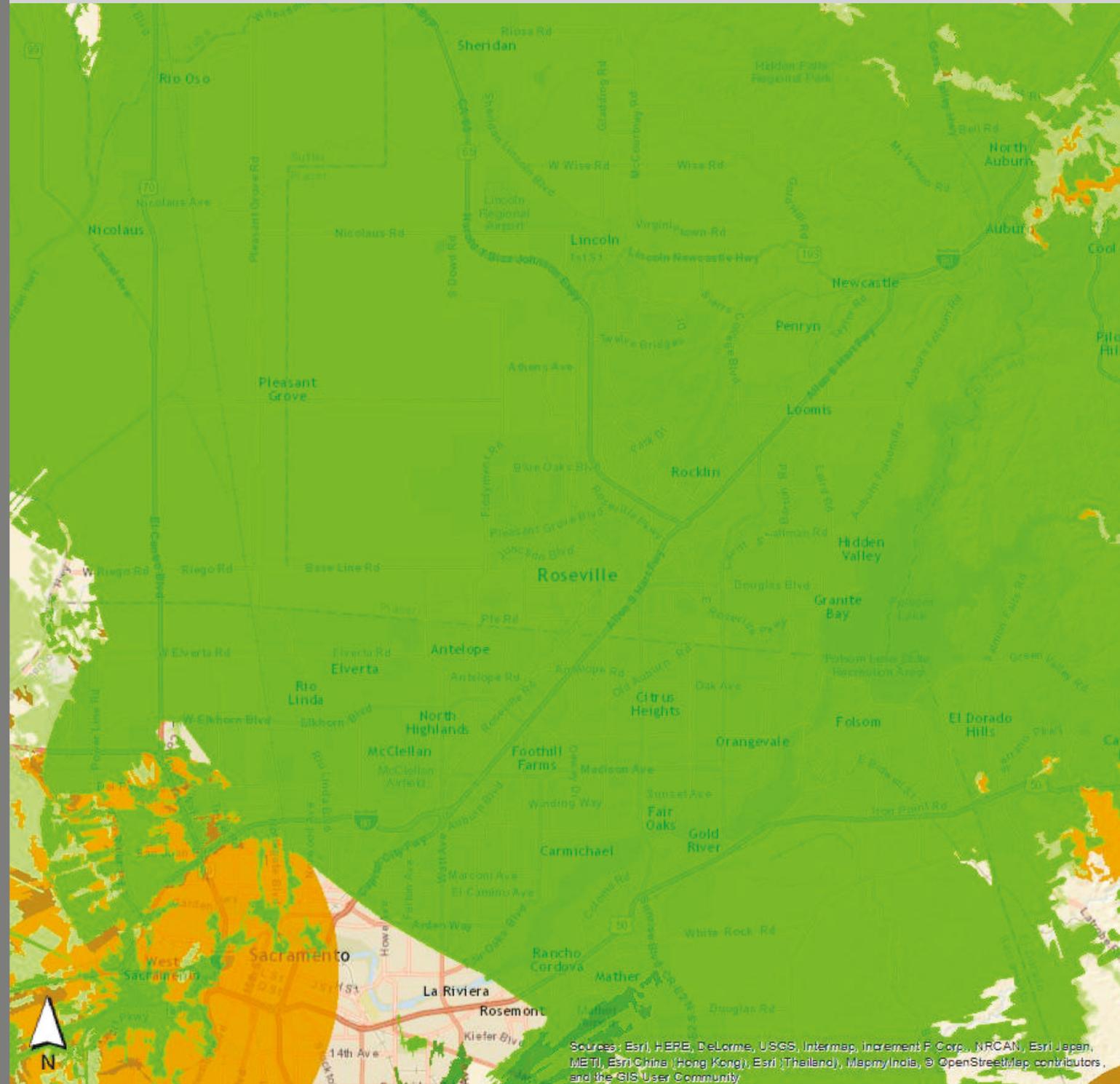
# APPENDIX B

# Fixed Wireless Coverage

# Terrestrial Fixed Wireless Coverage

## Terrestrial Fixed Wireless

- $\geq 2$  Gbps
- $\geq 1$  Gbps < 2 Gbps
- $\geq 500$  Mbps < 1 Gbps
- $\geq 100$  Mbps < 500 Mbps
- $\geq 50$  Mbps < 100 Mbps
- $\geq 25$  Mbps < 50 Mbps
- $\geq 10$  Mbps < 25 Mbps
- $\geq 6$  Mbps < 10 Mbps
- $\geq 3$  Mbps < 6 Mbps
- $\geq 1.5$  Mbps < 3 Mbps
- $\geq 768$  Kbps < 1.5 Mbps



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