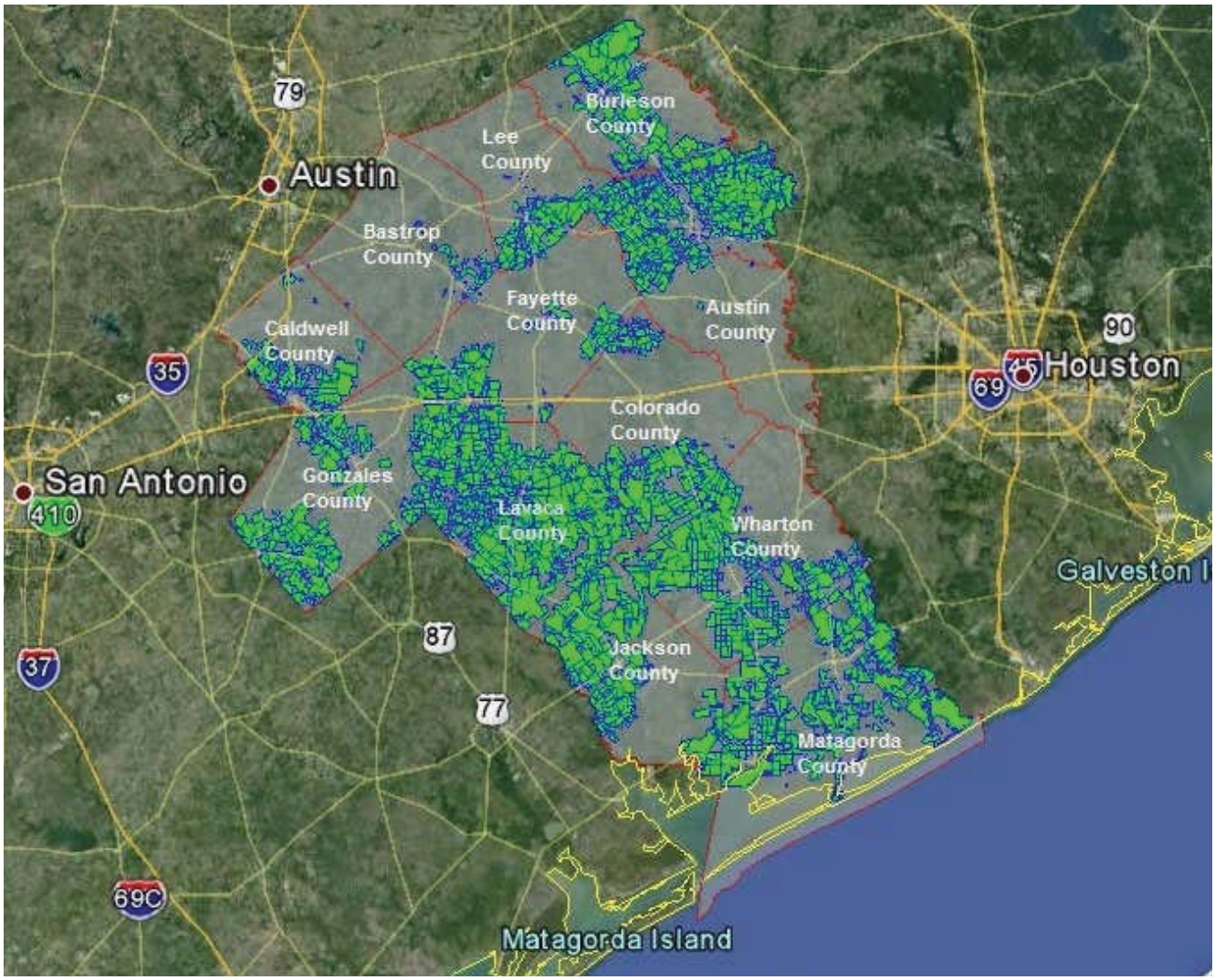
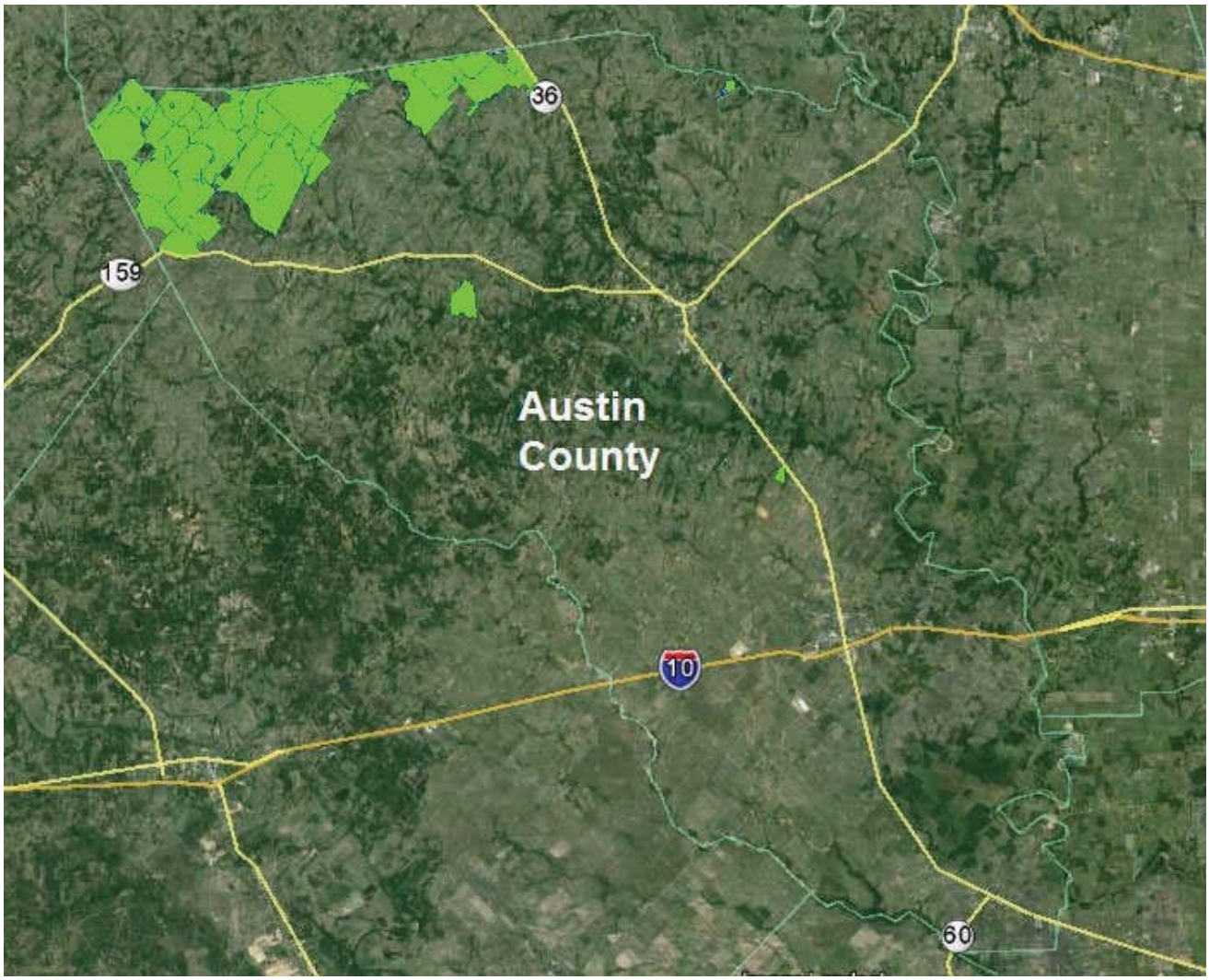
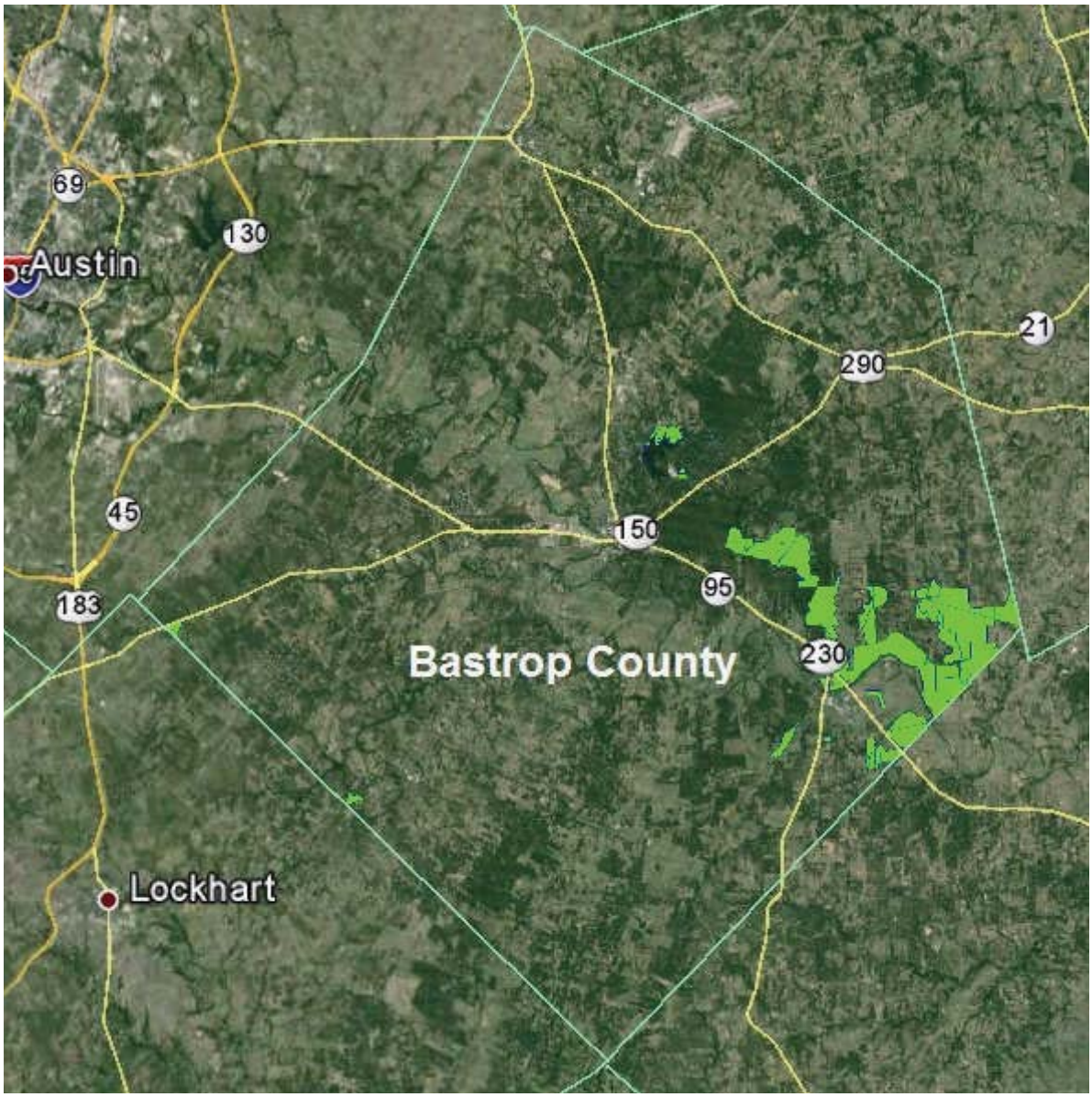
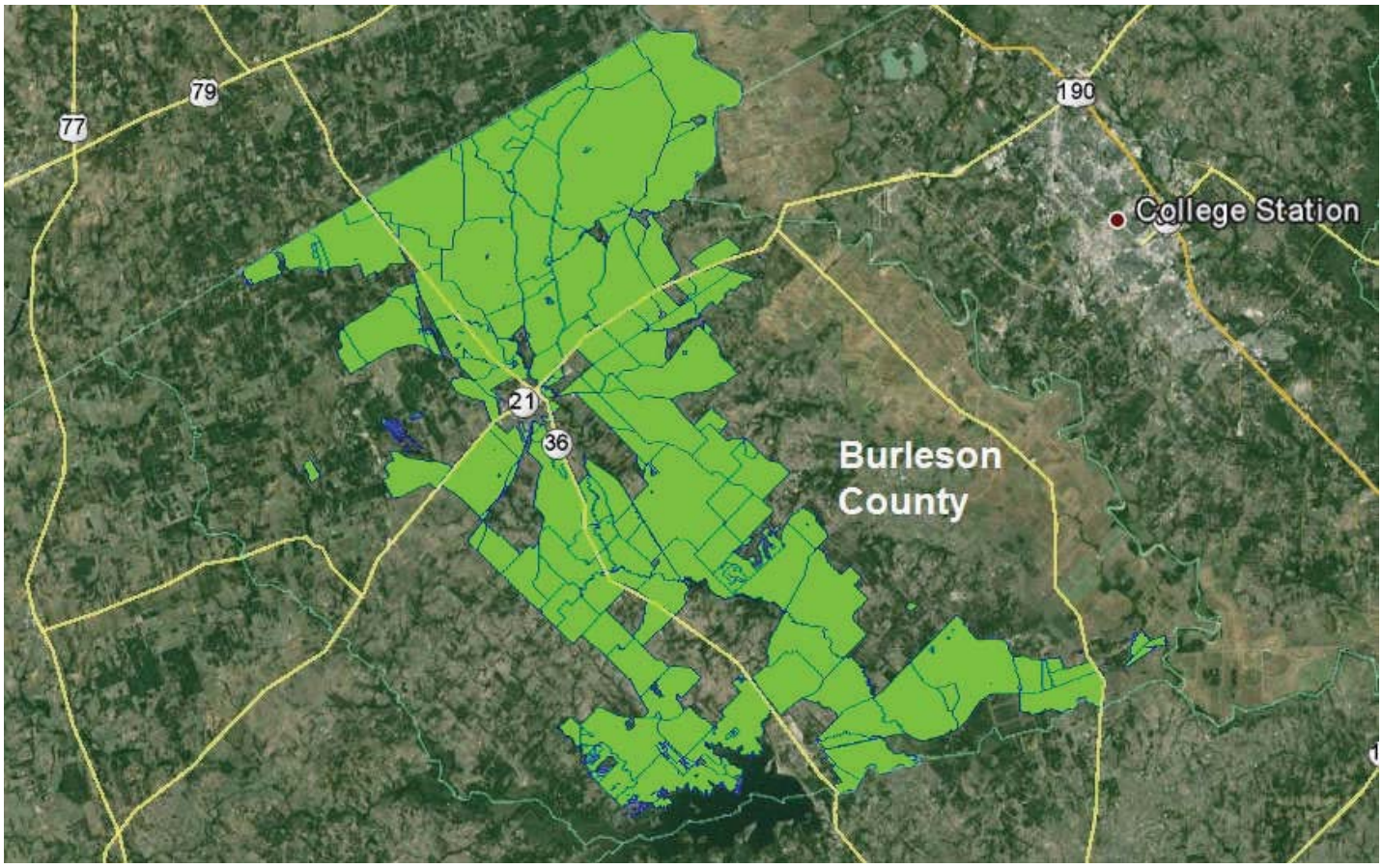
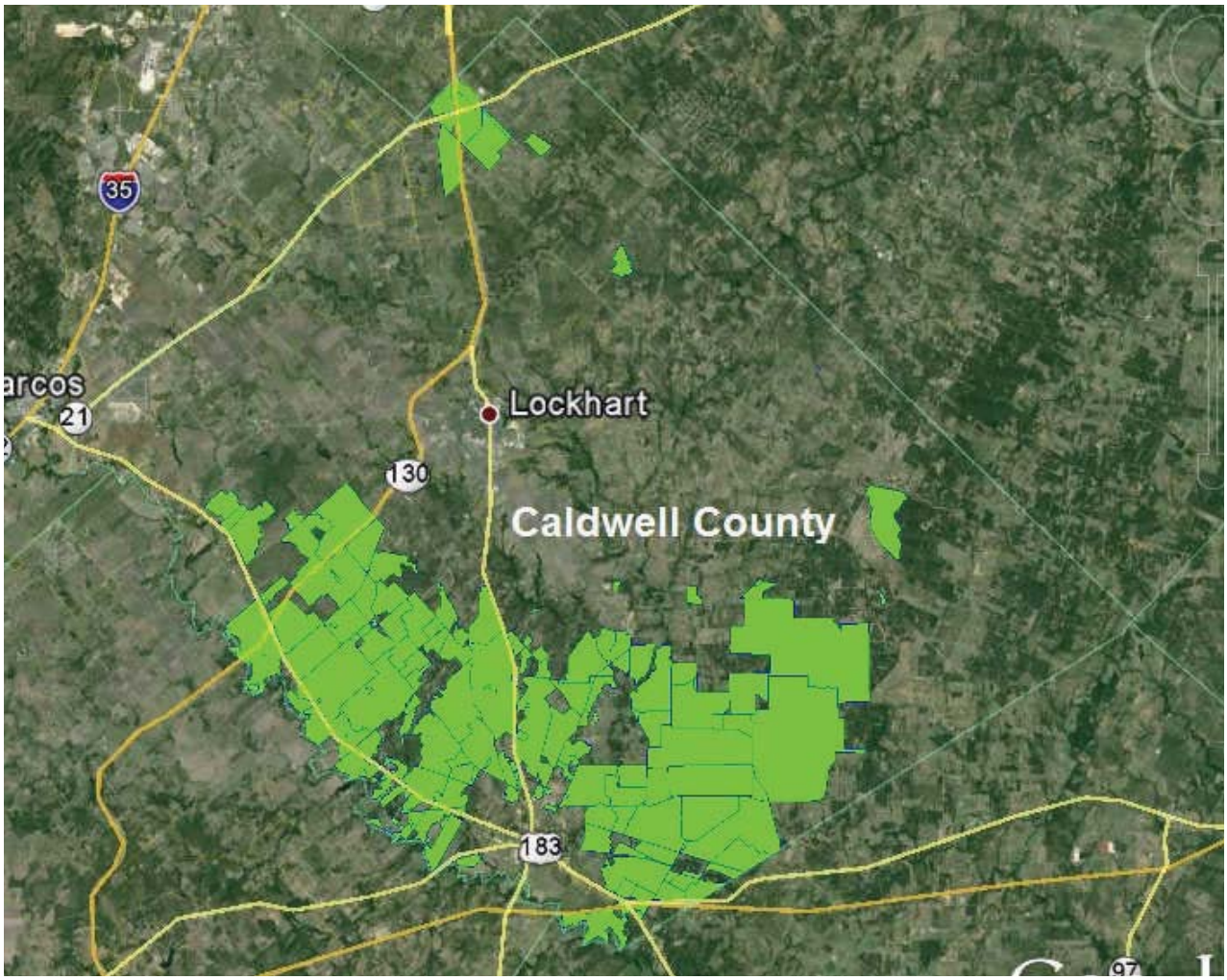
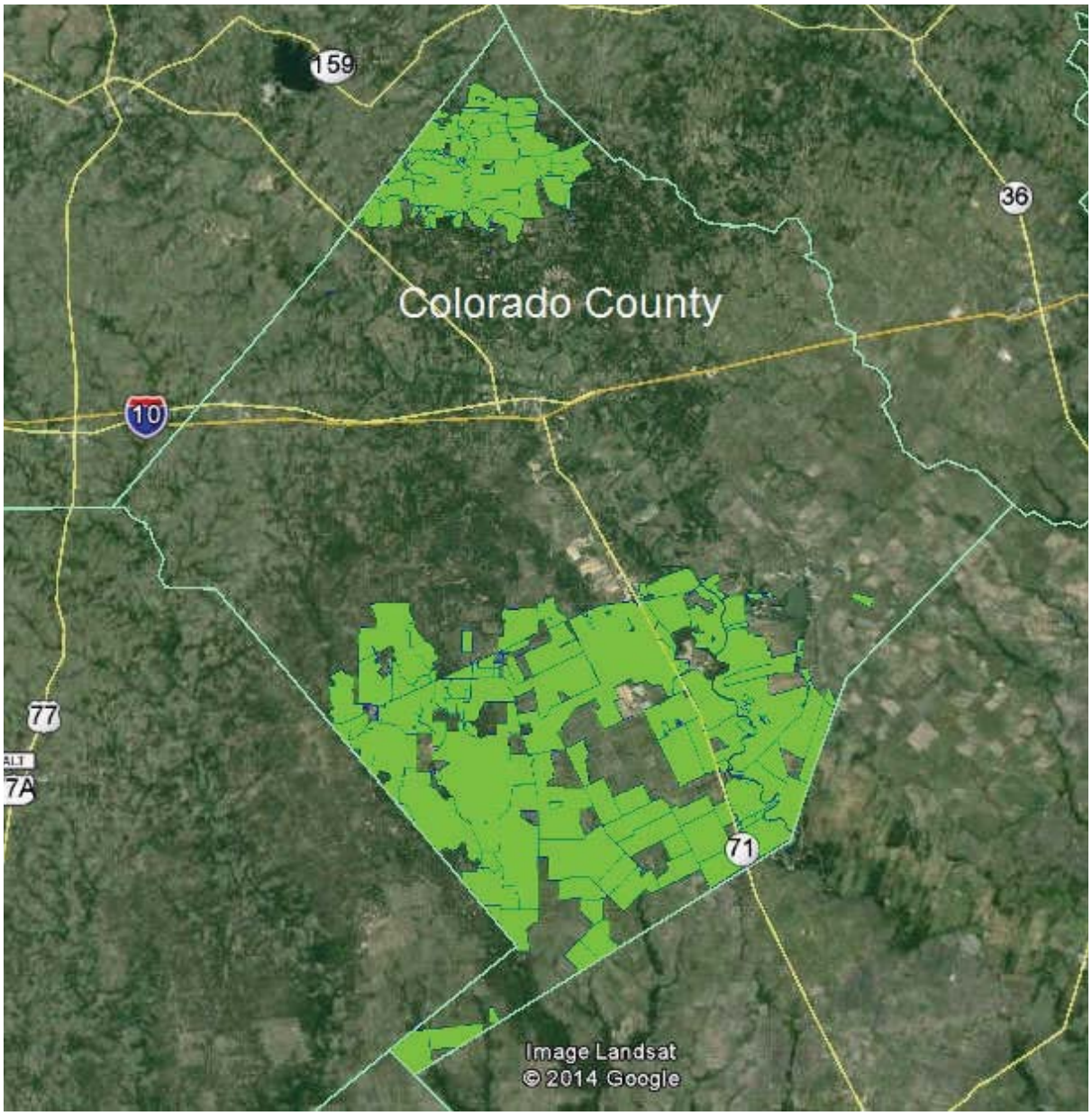

79
Austin
Burleson County
Lee County
Bastrop County
Fayette County
Austin County
Caldwell County
35
90
Houston
69
Colorado County
San Antonio
410
Gonzales County
Lavaca County
Wharton County
Galveston I
87
37
Jackson County
77
Matagorda County
69C
Matagorda Island


36
159
Austin
County
10
60

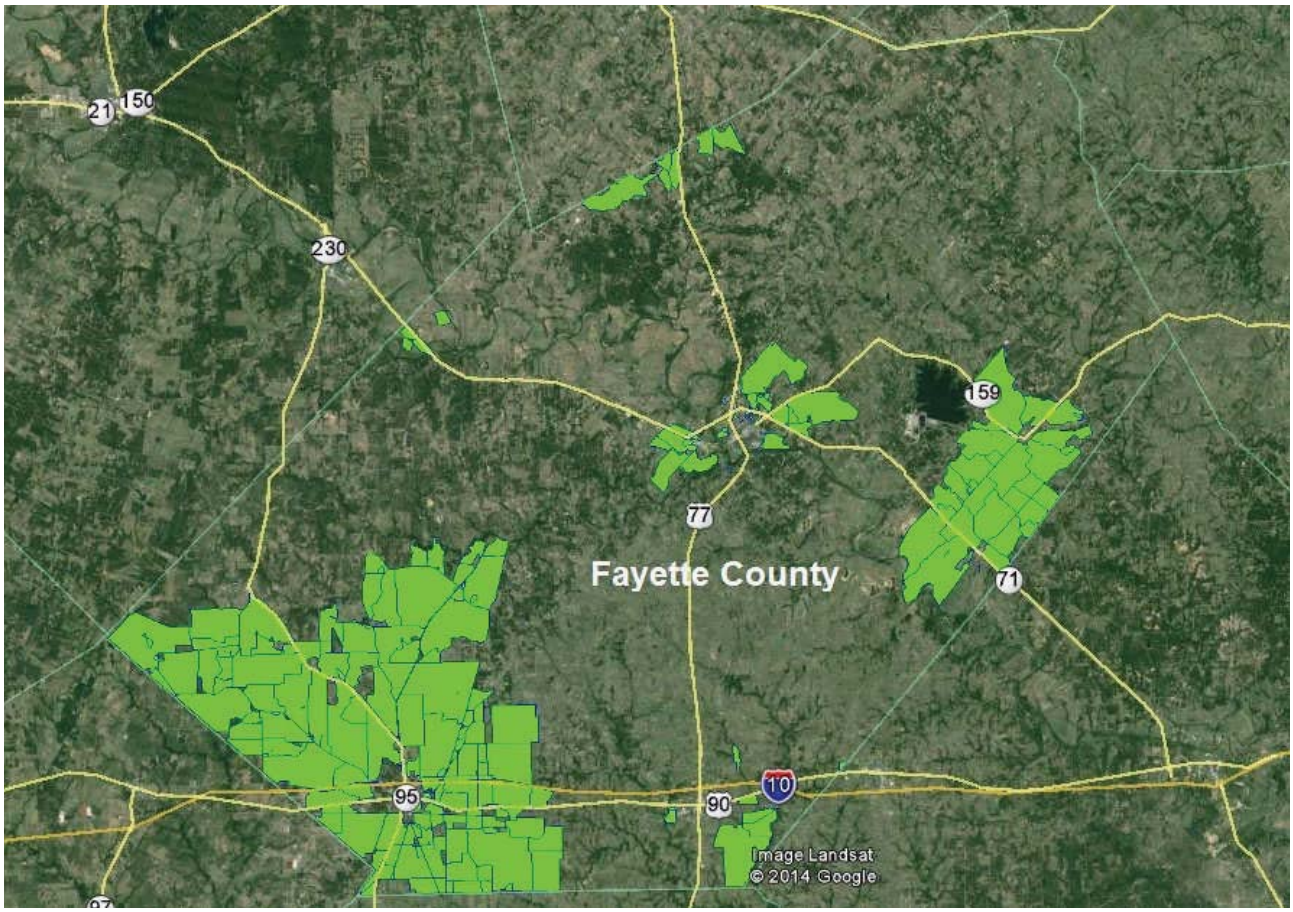

69
130
Austin
21
290
45
150
95
183
Bastrop County
230
Lockhart


79
77
190
College Station
21
36
Burleson
County

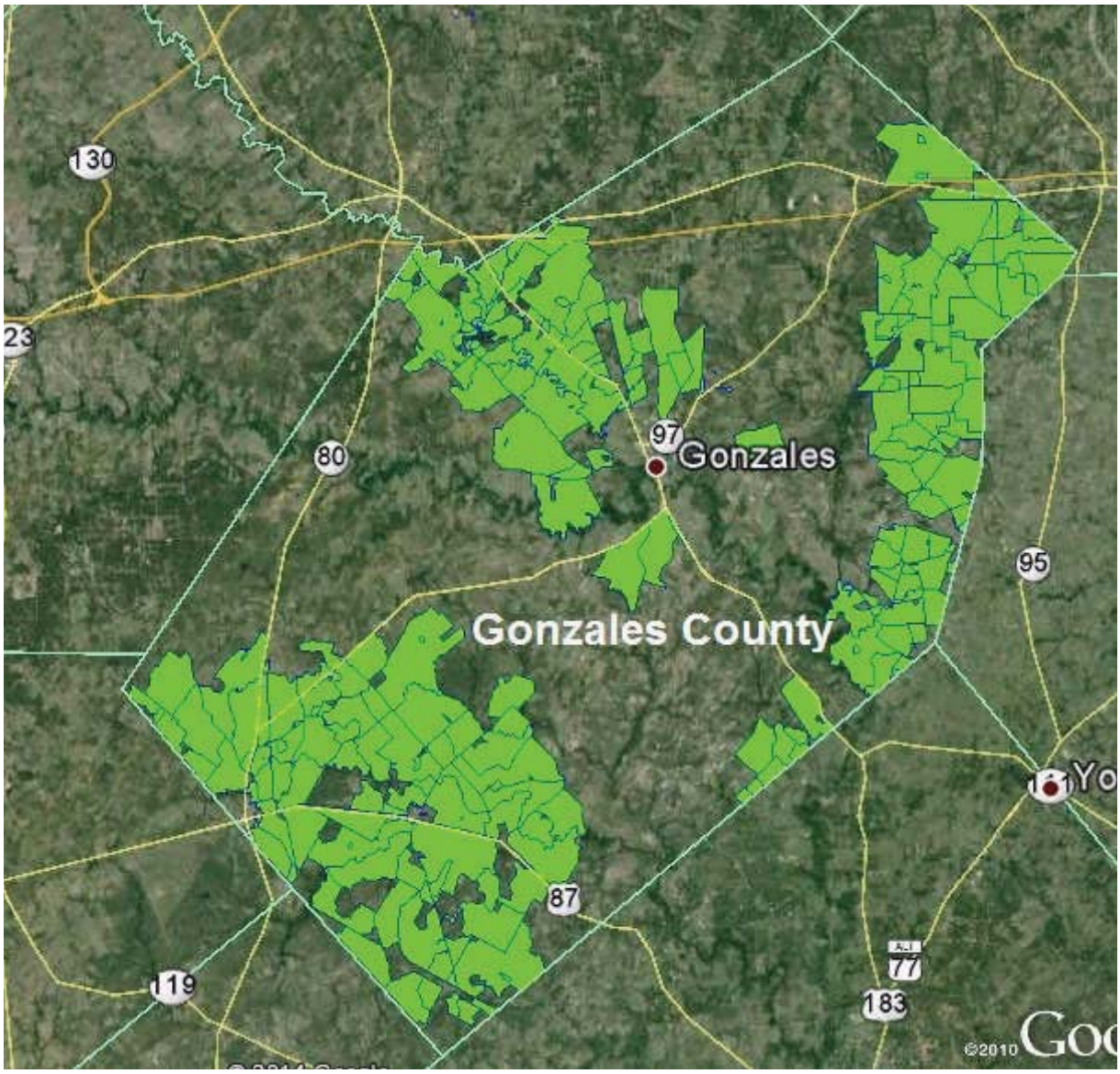

35
arcos
21
Lockhart
130
Caldwell County
183



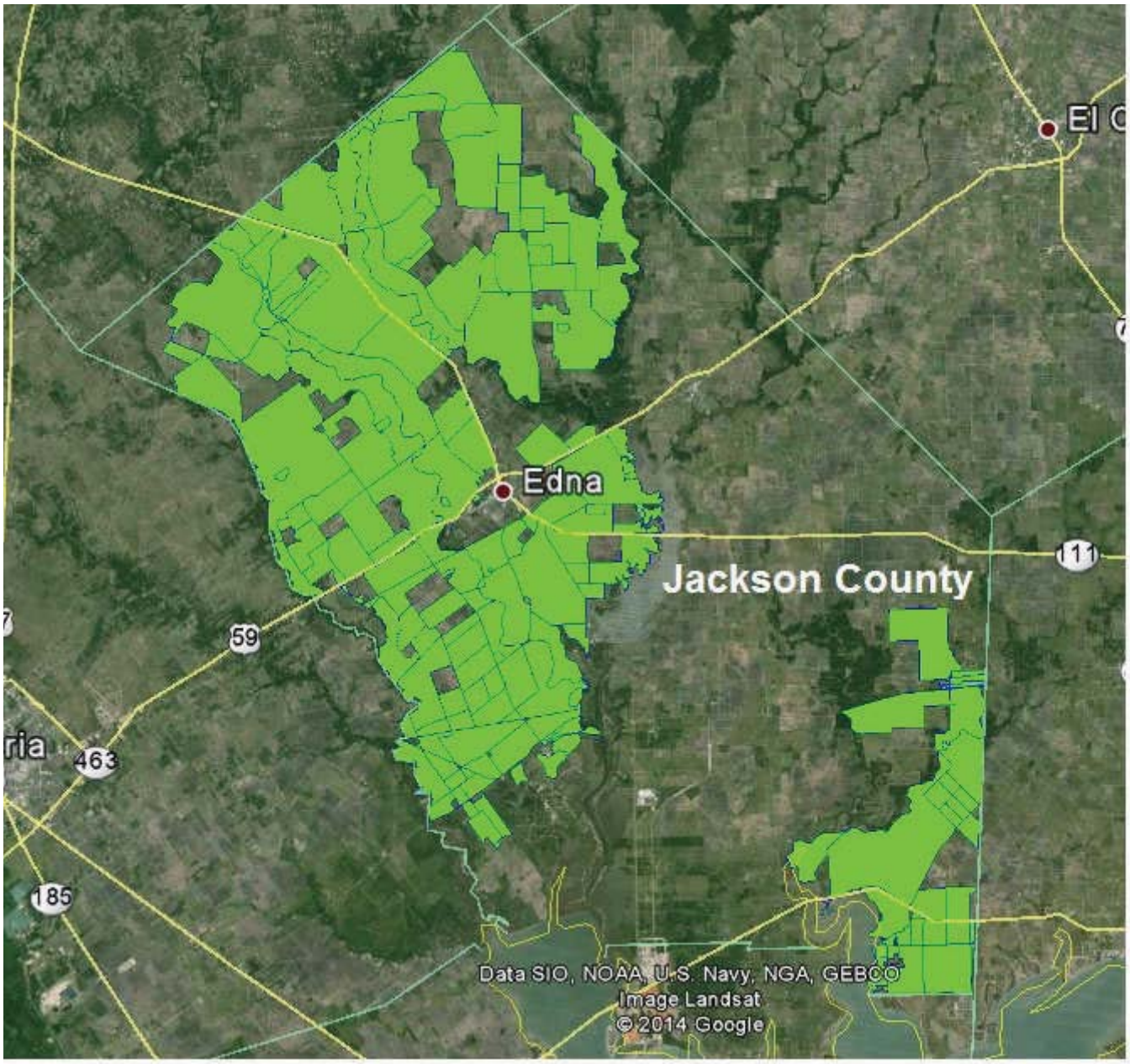
1

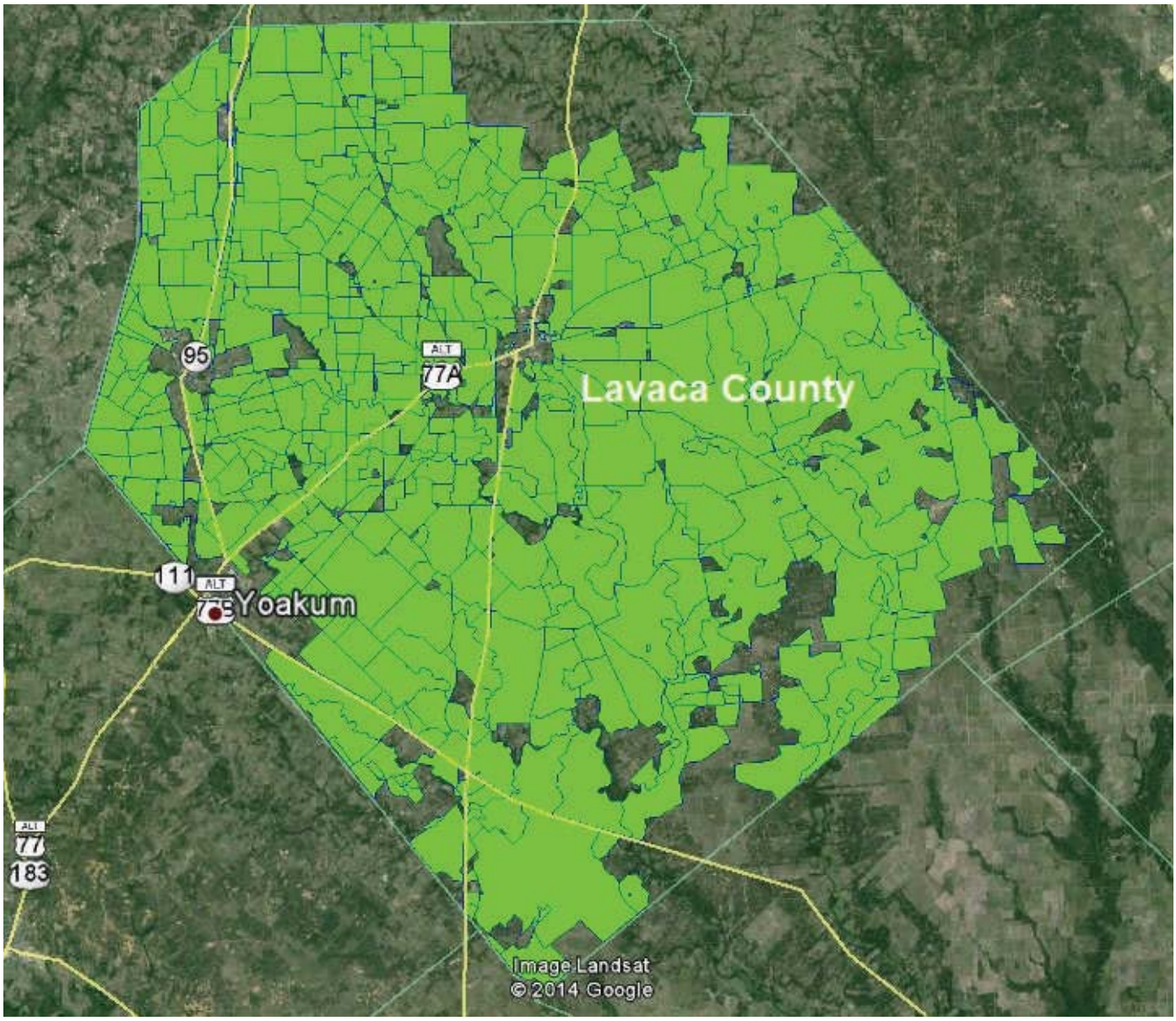

21
150
230
159
77
Fayette County
71
95
90
10
Image Landsat
© 2014 Google

1

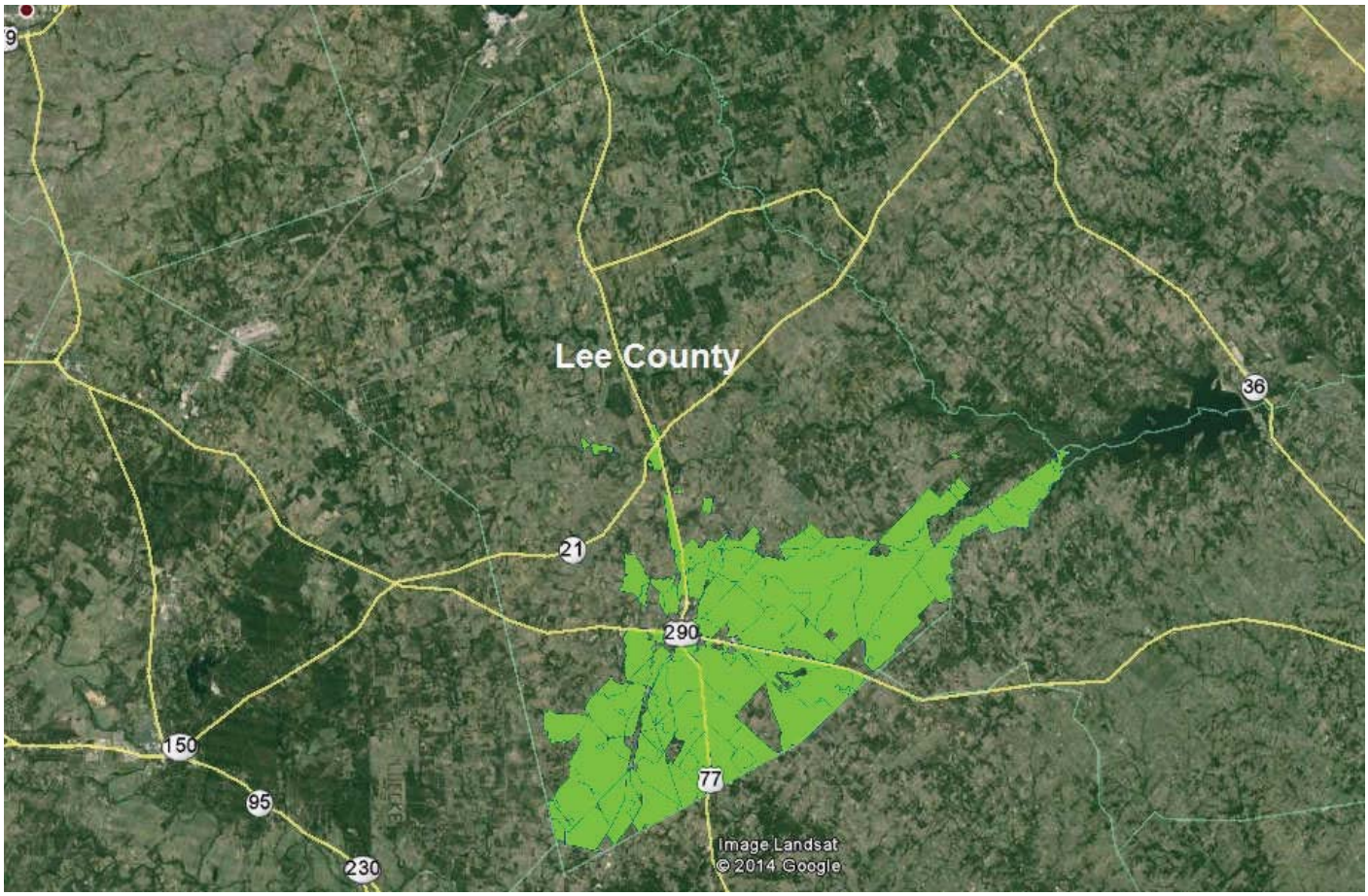


1

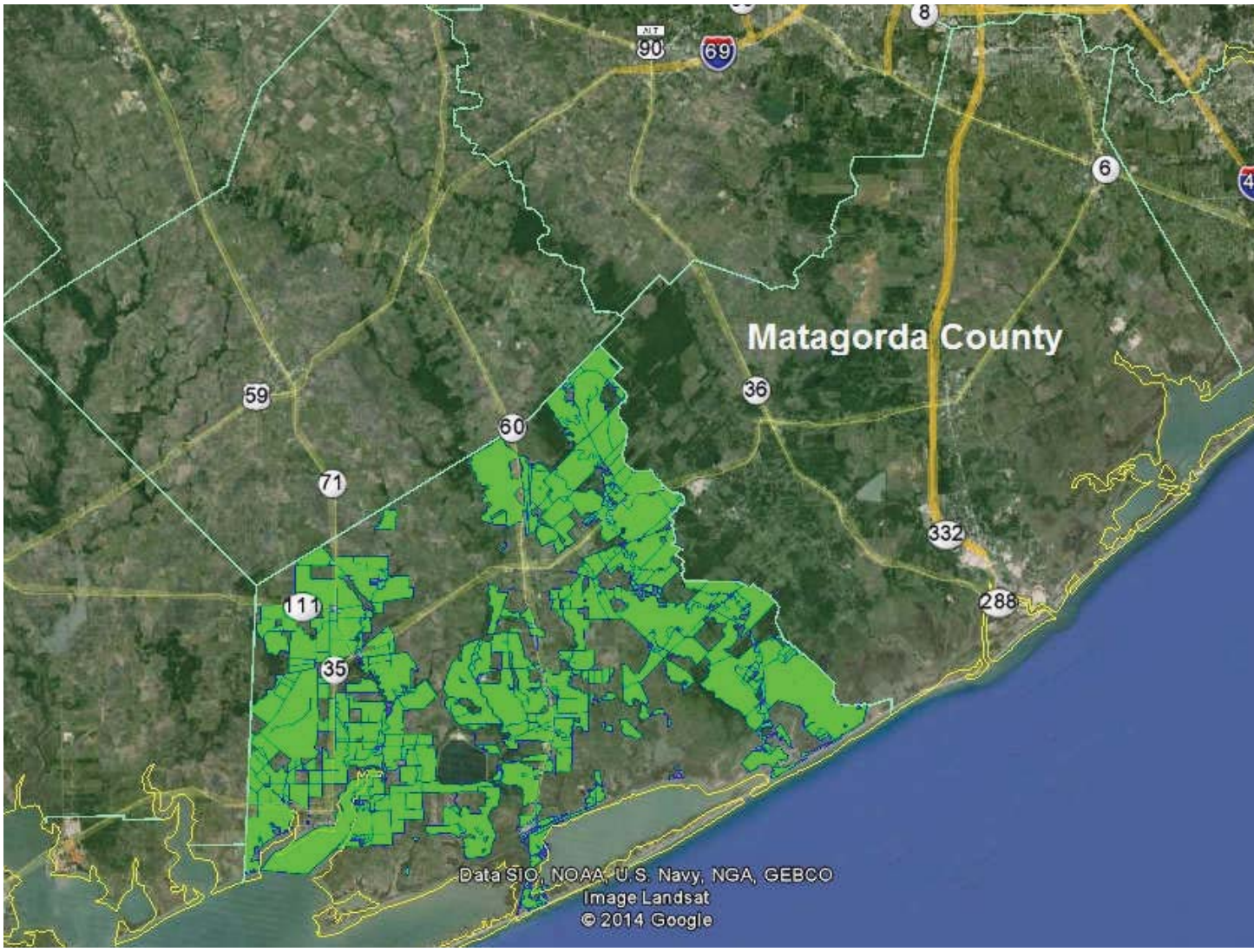

El C
Edna
Jackson County
111
59
463
185
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image Landsat
© 2014 Google


95
ALT
77A
Lavaca County
11
ALT
Yoakum
ALT
77
183
Image Landsat
©2014 Google

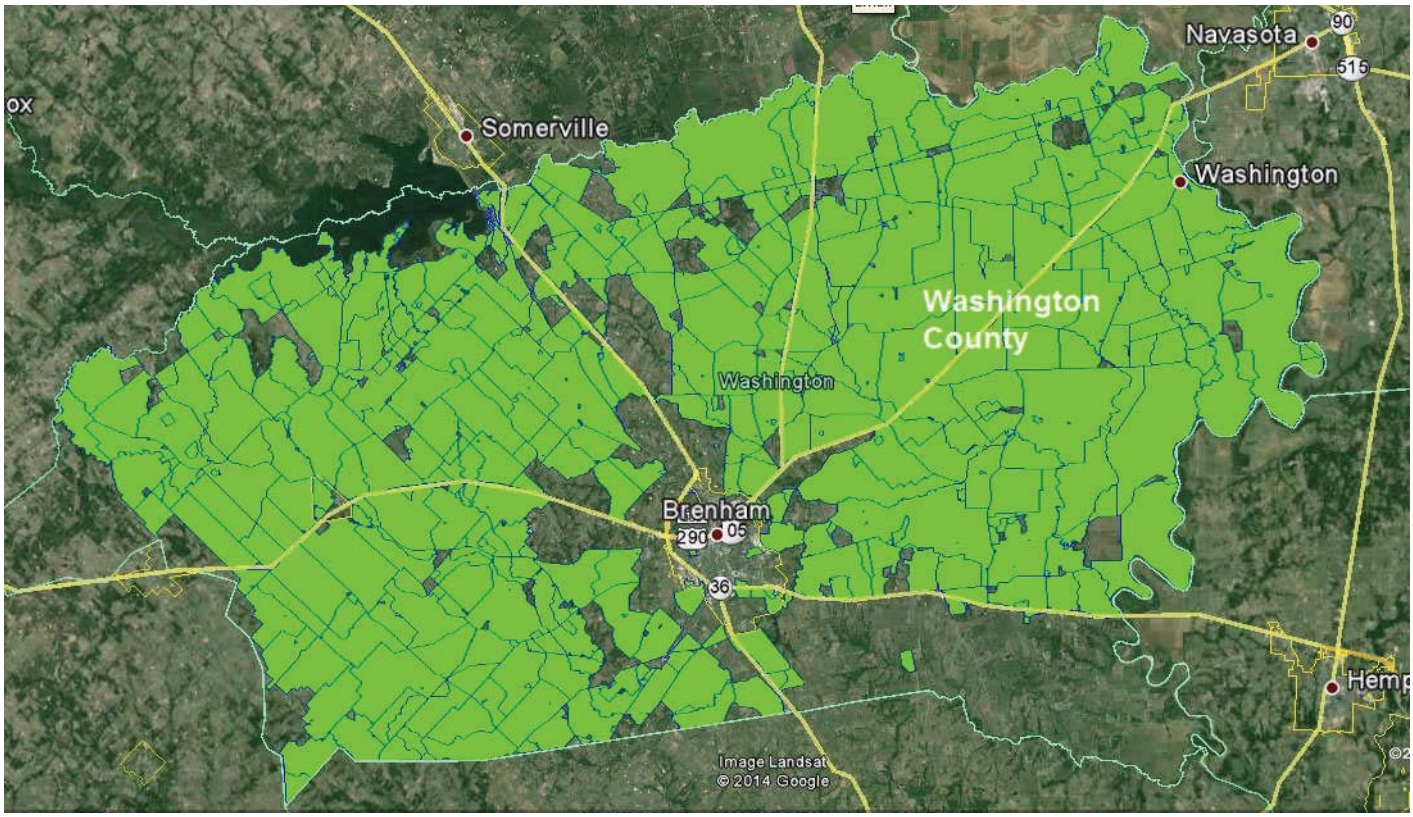
1

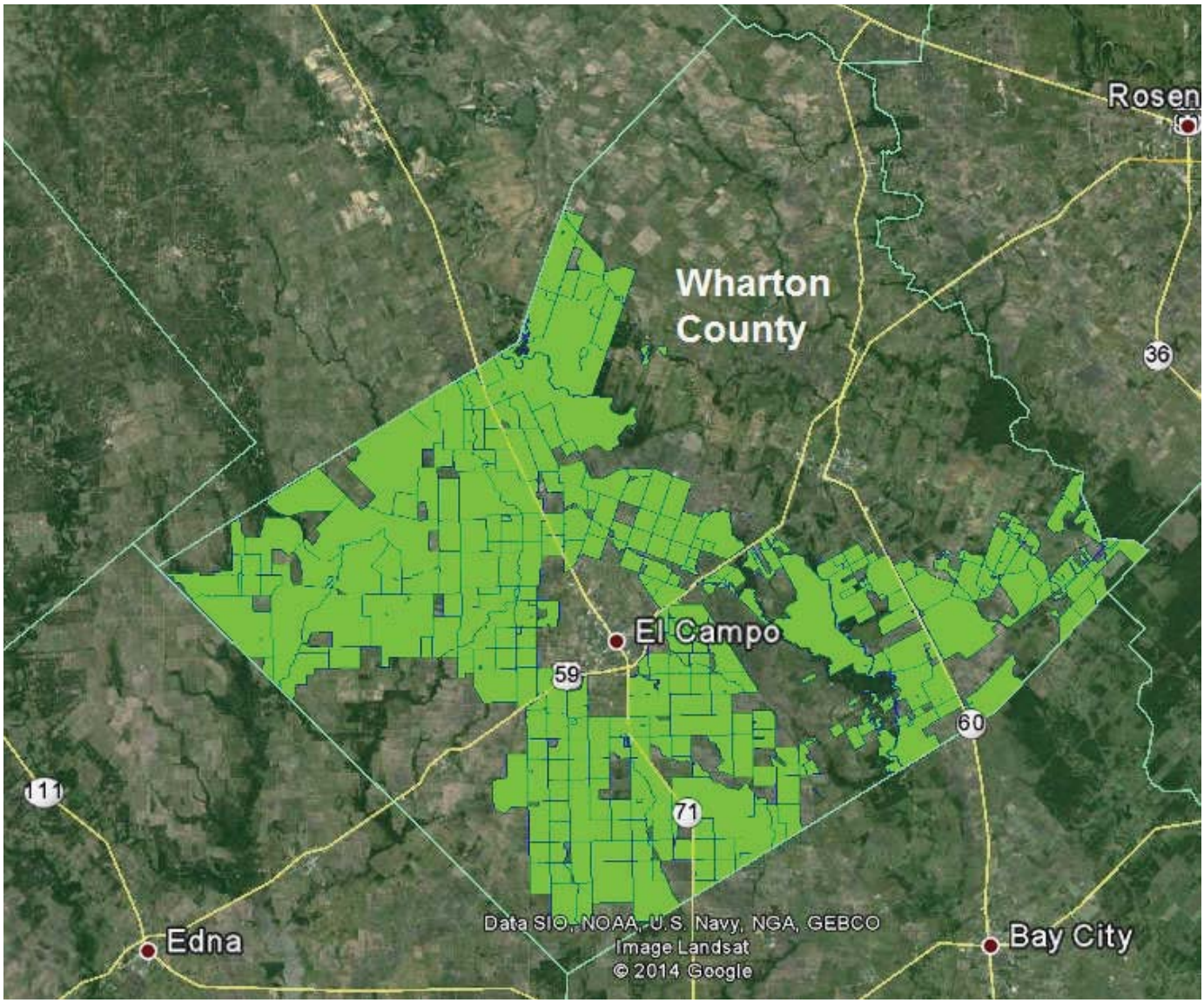


1


Matagorda County
90
69
8
6
59
60
36
71
332
111
288
35
Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image Landsat
© 2014 Google

1


Navasota
90
515
Somerville
Washington
Washington County
Washington
Brenham
290
05
36
Image Landsat
© 2014 Google



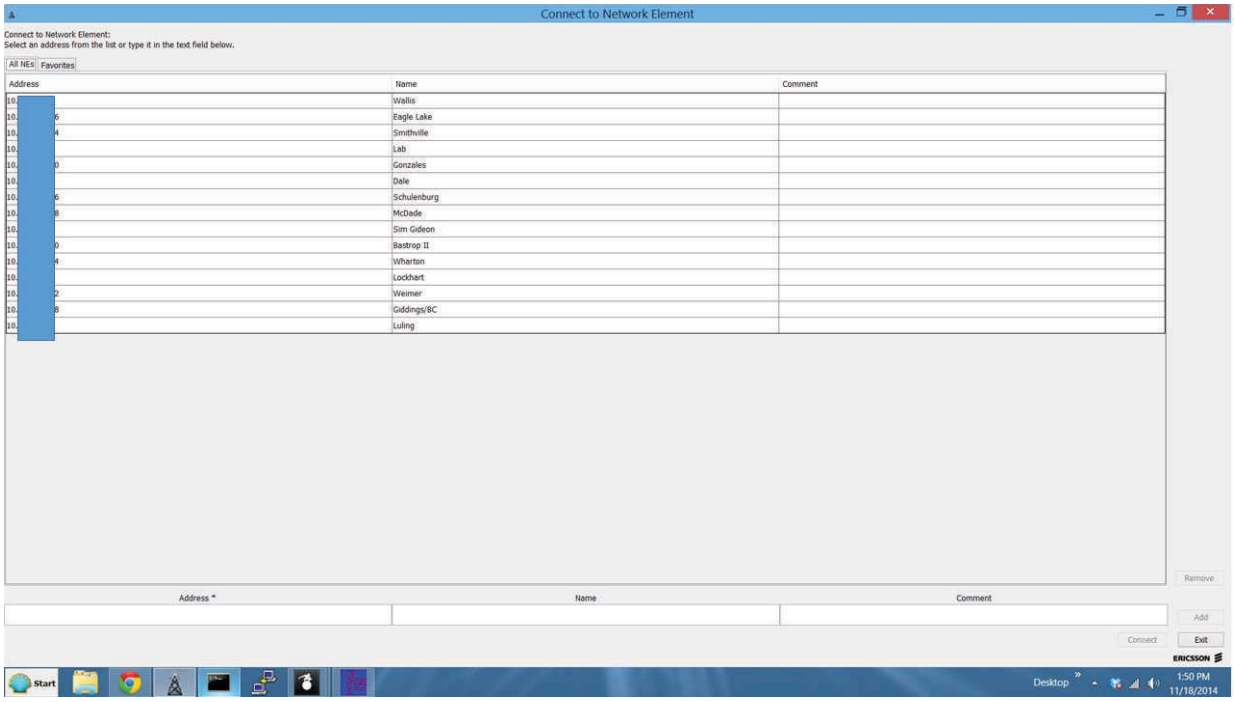
As is obvious by the above, and as reported by the FCC, the WCX CMA still does not have adequate broadband service today.

WCX knew this well before the FCC. We began our build-out in the areas WCX felt had inadequate services in 2012. These areas include Dale, Texas and Wallis, Texas.

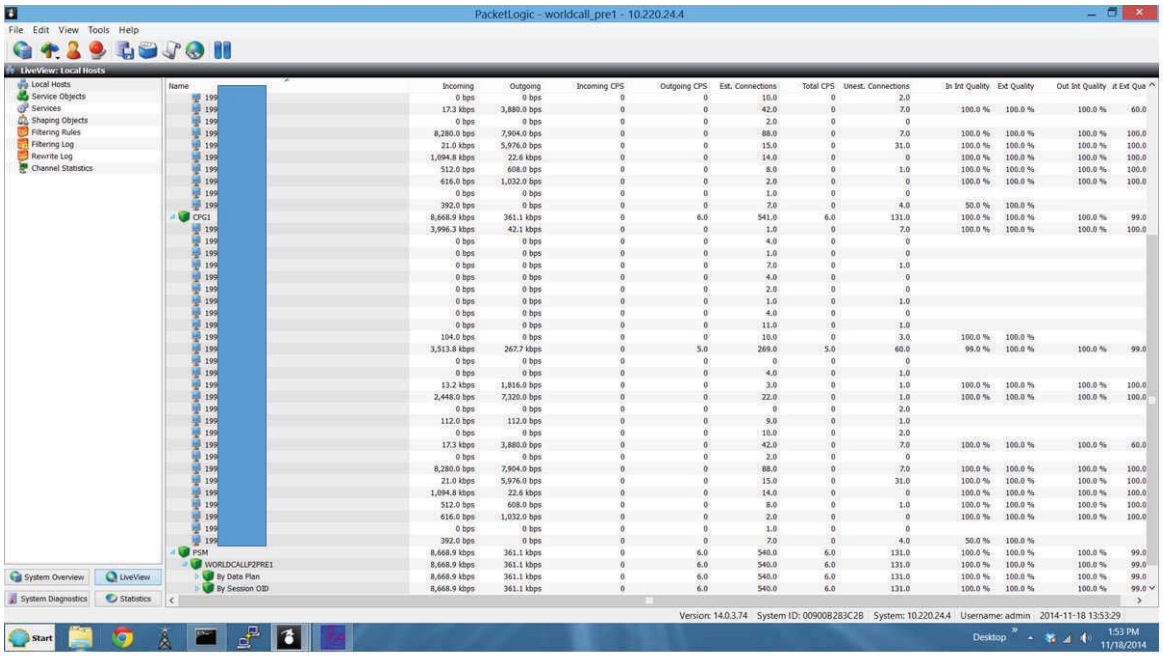
Attached as Highly Confidential Exhibit 3 is a shape file with the WCX coverage area as defined and used by Connected Texas. Connected Texas is the Texas non-profit in charge of mapping broadband for the FCC for Texas.

Prior to this shape file creation by Connected Texas earlier this fall, WCX submitted to Connected Texas all tower locations and heights, specifics on all EnodeBs and radio units with respect to power, and all specifics on all antenna and azimuths. All of these factors were used by Connected Texas to verify the shape file coverage area. As can be seen by the coverage area, WCX today covers approximately 35% of the CMA. AT&T may want to pretend WCX is not providing service, but the Commission has already relied on the fact that it is by taking areas such as Wallis Texas and Dale Texas off of the "unserved broadband" list because WCX provides service to those areas today.

Additionally the following are pictures (with some information redacted) of the equipment inventory of Enode Bs and RRUs I discussed in my first declaration as well as screen shots of the Ericsson Software which manages the deployed Enode Bs and a screenshot of a monitoring system showing active users. The redactions are to cover up live IP addresses.



The above is a screenshot of Ericsson Software showing 15 deployed Enode Bs. I note that one is a Lab.



This is a screenshot of a "Live View" of active retail users connecting via LTE through our network and then, if they choose, out to the Internet.

Current Services

WCX's primary value to customers today is that of a broadband Internet provider. The majority of our current customers use WCX's LTE service as their primary means to connect to the Internet. In addition, WCX has developed and deployed VoLTE capabilities consistent with the GSMA standards. Approximately 75% of our customers subscribe to a VoLTE and data bundle, with the remaining 25% of customers subscribing to just data. They may be using an over the top voice application, or they have some other means to reach the PSTN.

Last month our home customer usage average was 26 GB per user. I expect that is higher than industry average for LTE since most of our users rely on our LTE service for their primary way of accessing the internet.

During negotiations with AT&T and Mr. Meadors, I attempted to engage AT&T in discussions about their VoLTE technologies and plans. (See initial Feldman Declaration Documents 12 and 12A filed with the complaint). AT&T refused to engage in negotiations related to VoLTE. VoLTE

interworking is not a pressing issue for WCX, because it will work fine on AT&T's LTE network even without interworking the two companies' managed voice products. Therefore we have not pursued it in this complaint.

AT&T's Answer package asserts that WCX does not provide interconnected service, so AT&T has no obligation to provide automatic roaming under 20.12(d).[23] That is simply and flatly wrong. WCX provides a VoLTE-based voice service that is real-time, two-way and switched. It uses regular phone numbers and can both send and receive calls from the rest of the public switched network. This is an "interconnected service" and the plain and clear words of 20.12(a)(2) and (d) apply. AT&T cannot avoid its duty to provide automatic roaming on the ground it has not yet agreed to interwork its own VoLTE product with WCX's VoLTE product. We may never interwork our respective managed VoLTE products, but AT&T will still always have to provide automatic roaming.

Devices

As I mentioned above in my discussion about M2M, AT&T's Prise touts multiple phones, tablets and hotspots that can have multiple band technology and then lists many in his declaration. He simply concludes all is fine with the competitive world.

I described above that for M2M, WCX is limited in being able to deploy in a viable "ecosystem" and that currently only Band 13 (Verizon) and Band 17 (AT&T) are viable; thus for M2M we are limited today. Band 12 does not yet have an ecosystem. And, again, [redacted]

I will now provide the promised discussion of LTE handset and tablet availability and the difference between unlocked and open devices.

In order for WCX to be able to use a device it must both be "unlocked" and "open" by design.

[23] Answer, ¶19.

AT&T's Expert Prise does not profess to know the difference. This is somewhat surprising since AT&T is the industry's most clever carrier at closing its devices by design so that they are not practical in being used by other carriers. I suspect he does know the difference and chose to ignore the significance.

AT&T is the best, but it is not alone. All the major carriers, including Sprint, T-Mobile and Verizon, engage in purposeful "closing" of devices by design when they are made. What this means is that each of these carriers individually request from the manufactures, such as Asus, Motorola, Pantech, Apple, Samsung, etc. a specialized version of the device to be "made" just for that specific carrier.

When the device is "made" there are sometimes marketing and logo "imprints" embedded into particular aspects of the hardware or software of those devices. Some may seem innocent, such as having the AT&T Logo flash on the screen upon start-up. We have purchased after-market devices that had this logo, and it could not be removed. We decided for legal reasons that we could not offer those devices for sale because it might cause sponsorship confusion, and therefore legal liability. Other things are more technical, such as a particular software dialer or SMS controller embedded into what appears to be the operating system. Still others may seem more devious, like burying customer proprietary tracking information of the users' locations automatically sent back to the carrier without the user noticing. WCX was not interested in devices that report our users' private activity to third parties, and once again there are potential legal liability problems since much of that information could be CPNI. Still other attributes seem to have what at first appear to be good customer service planning like having the ability to push updates to an operating system or to embedded programs such as the aforementioned dialer or a video player. For example, imagine a new codec is created by Netflix and is offered to AT&T as a way to reduce bandwidth use. If AT&T can push the update to all of its devices, it can save huge amounts of bandwidth.

Typically all of these customizations happen in collaboration with the carrier making a commitment to order some number of phones or tablets or hotspots (usually in lots of 10,000) and they utilize a particular operating system to support the devices. The vast majority of all of

the "imprints" are software driven in what the industry has termed the "framework" of the phone. The "framework" is by purpose and design hidden from application developers and is not part of any "unlocking" process. In other words, by design, a closed phone/tablet/hotspot, even if unlocked, can never be "opened."

As a practical consequence there is not a real aftermarket or secondary market for any devices that are designed to be closed, since they are not actually "usable" and supportable by the new carrier. Imagine the prospect of all of your customer's devices suddenly ceasing to work at the same time because AT&T or Sprint pushed an update to the device over the internet. This actually happened when we were testing aftermarket and "unlocked" but still closed LTE "Pantech Element" tablets. The supplier was shocked as well, but there is no practical or inexpensive fix for this issue.

With possibly one exception, none of the phones or devices listed by Mr. Prise are in fact usable by WCX, regardless of the Band Plan because of the "unlocked but still closed" reason. Every phone and every device is tightly tied to one of the major carriers. We are completely powerless in this regard. We cannot open any of them to remove all of the built-in carrier-specific attributes, several of which raise significant privacy or other legal liability concerns.

AT&T expert Prise also notes in paragraph 11 and footnote 12 of his declaration that WCX is using a 2011 version of the Sierra Wireless hotspot and that AT&T is using the more current versions. I was able to get a relatively small quantity of those devices made "generic" and "open" after I personally contacted the CEO of Sierra Wireless. It should be noted that "non-generic" versions designed for AT&T will literally turn themselves off and become "not usable." We know, because we have had customers desire to bring their own "unlocked" AT&T Sierra 754 and use it. What we found was, that depending upon the "build and load" date of the embedded framework on that specific Sierra 754 device, that devices becomes unusable on a competitive network. I say not usable because the customer dissatisfaction of the unlocked device resetting and turning itself off makes the device undesired.

Sierra has since sold its hotspot division to Netgear, and Netgear no longer makes an "open" or "generic" version. Once our current supply of Sierra Wireless hotspots is exhausted we will

have no more of these types of hotspots at all, and no replacements can be purchased on the market – unless we commit to volumes far larger than we could ever use.

AT&T expert Prise also makes reference twice to the Nexus 7 at paragraphs 3 and 11.

The Nexus 7, by design, is *advertised* by Google as "open." I say advertised, because this is where AT&T has gotten exceedingly clever. AT&T has still succeeded in making the Nexus 7 somewhat closed with respect to the Band Plans AT&T operates on. While Google has made an effort to have all of its products "not" follow the market in how it opens and closes specific devices, and says it sells all "generic" devices, Google has nonetheless allowed AT&T to force devices to behave only in the way that AT&T desires.

The Nexus 7 advertises the ability to work on multiple LTE Bands (including Band 17) but it has multiple other capabilities as well. One important one is for the Nexus 7 to serve as a hotspot so other devices such as TVs, Computers and other smartphones can connect to the Internet. The hotspot function is particularly key for WCX since many of our customers use WCX as their primary broadband provider.

AT&T and Verizon, for their own internal reasons, will not allow a Hotspot Function from the Nexus 7. But because Google promised an "open" device, it would not make a unique version for just AT&T or Verizon. So what was the Google/AT&T/Verizon joint solution?

They built into the framework of **all the Nexus 7 devices** <u>a hidden disabling function for the Nexus 7 Hotspot function</u>. The hidden framework disables the hotspot based on the Band Plan request made by the SIM/USIM. This means AT&T and Google (by having ASUS deploy the framework described) have disabled WCX's ability to provide a Hotspot using the Nexus 7, because our network is Band 17. When a SIM or USIM attempts to negotiate a Band 17 LTE connection, the Nexus 7 automatically turns off the hotspot functionality. We cannot disable the automatic disable without Google allowing a rewrite and supporting such a rewrite of their software. The Nexus 7 – a so-called "open" device – is still "closed" in one respect that makes it mostly unusable.

We do have the Nexus 7 in our network today, but it is not favored by a single customer when compared to the 2011 Sierra "Generic" 754 Hotspot. The reason? Customers want a Hotspot.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Future Smartphone Services

[redacted]

1 [redacted]
2 [redacted]
3 [redacted]
4 [redacted]
5 [redacted]
6 [redacted]
7 [redacted]
8 [redacted]
9 [redacted]

10 On October 29, 2014, the Wireline Competition Bureau provided a good estimation of the price
11 WCX will be able to recover service to broadband customers.[24] Paragraph 10 states that the
12 value of a 10 MB download by 1 MB upload plan with 100 GB of home use is $68.35. If and to
13 the extent different bandwidth caps are imposed the benchmark rate changes.

14 In order to qualify as an ETC in Texas, the carrier's voice rates cannot be greater than 150% of
15 the ILEC's local service tariffed rate for the same area. For the WCX areas we must cap our
16 voice component at $18 for each voice capable smartphone.

17 Using the Rate Caps required by the recent order and the Texas PUC requirements that yields
18 the following maximum rates WCX can charge:

Interconnected Smartphones Per Plan	1	2	3	4	5
Plan Rate Cap	$86.35	$105.35	$122.35	$140.35	$158.35

19 If we target 3GB of roaming use per smartphone (which is what WCX expects), the following
20 provides a comparative example of the charges for roaming under the both WCX/RWA proposal
21 and the AT&T proposal:

[24] Report and Order, *In the Matter of Connect America Fund*, WC Docket No. 10-90, (rel. October 29, 2014, Wireline Competition Bureau) (adopting "a specific methodology for calculating reasonable comparability benchmarks for fixed broadband services").

Interconnected Smartphones Per Plan	1	2	3	4	5
WCX Proposed Roaming Charges	$ 30.00	$ 60.00	$ 90.00	$ 120.00	$ 150.00

Interconnected Smartphones Per Plan	1	2	3	4	5
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Even with the WCX proposed rate of $10 per GB, WCX has every incentive to reduce roaming use in order to achieve a better gross margin. However, if the roaming rates are so high (like AT&T proposes) that, even with a miniscule amount of roaming, WCX cannot have any gross margin under the effective rate caps imposed by the FCC and the Texas PUC for data and voice rates. It is clear that WCX will not be able to offer roaming to its customers and will be foreclosed from entering the smartphone services market – even for its own area.

We would hope that a superior infrastructure will make us competitive in the marketplace, but if we are practically prohibited from having any roaming capability, we will likely not invest in any Smartphone technology since WCX does not believe a regionally limited cell service is competitive in today's marketplace. While we might continue to slowly build out our area, our ability to fund that build-out will be limited. The lack of a roaming solution will reduce revenues and no investors are interested.

[redacted]

1 [redacted]
2 [redacted]
3 [redacted]
4 [redacted]
5 [redacted]
6 [redacted]

7 ## RWA and the RWA Model Agreement

8 AT&T in its answer calls the RWA Model Agreement one sided (Answer, pp. 2, 9, 10 and
9 paragraphs 73 and 77 in the Meadors Declaration); AT&T claims it's the result of like-minded
10 people to me (Answer, p. 8); AT&T denies in paragraph 29 of its Answer that myself or WCX had
11 any involvement with the RWA or the creation of the RWA Model Agreement, and AT&T
12 declares the RWA Agreement plainly inconsistent with the *Data Roaming Order* almost as many
13 times as AT&T equates roaming to resale (dozens of times).

14 While I addressed the policy issues showing roaming is not resale, and showing that it is in fact
15 AT&T's proposed terms that are inconsistent with the FCC's Roaming Orders and Rules; this
16 section is to rebut the averments that the RWA Model Agreement is merely a "prop" or is not
17 intended to be functional or has somehow sprung from my head like Athena being born of
18 Zeus.

19 Here is the history of the RWA Model Agreement. In December of 2012, after the FCC Roaming
20 Rules were upheld against challenge from Verizon and AT&T, I had discussions with Carri
21 Bennet and Daryl Zakov of the RWA about the U.S. Court of Appeals for the District of Columbia
22 Circuit, unanimous 3-0 decision to uphold the FCC roaming rules. At that time, myself and the
23 RWA were hopeful that in the wake of the appellate court decision, "reasonable terms and
24 conditions" consistent with the FCC rules and orders would find their way to the marketplace.

25 Nearly a year went by before that hope was dashed. No rural provider in the industry, and
26 certainly none associated with the RWA, had what any of us thought the FCC Roaming Rules
27 required.

In the fall of 2013, a concept was floated about how to assist members of the RWA who all found that "reasonable terms and conditions" consistent with the FCC rules and orders were simply not being made available by any major carrier to any rural carrier. The idea of starting a project within the RWA to begin collaboration on a document designed to be a "Model Roaming Agreement" that could be used by RWA members and others formed. I then had several discussions in the November 2013 time frame with various people interested in this project and, it was decided that we should discuss the concept and seek approval formally from the RWA board of directors to launch a roaming initiative within the RWA.

I attended the next board meeting in December in person where the following people were there.

[redacted]

1 [redacted]

2 We discussed the industry need for a fair Roaming Agreement with best practices terms and
3 conditions. We agreed that none of the agreements of which any of us were aware in any way
4 attempted to integrate the actual FCC rules or orders. It was determined at that meeting that
5 we would formally establish a RWA Roaming Committee, of which I was voted Chair, with the
6 express aim of creating a document that could be used by all members of the RWA. The goal
7 was that the document would in fact be consistent with the FCC rules and orders. It was also
8 decided that to the extent possible, if any large carrier wished to create a standard agreement
9 that could be used by multiple RWA members, that the Roaming Committee would assist in
10 negotiations as between a small carrier and the large carrier so as not to have to duplicate
11 timely and costly negotiations. In essence, we would try to bless as reasonable a large carrier
12 agreement if asked. This, of course, would only be done with the large carrier's consent.

13 Over the next six months, in my capcity of RWA Roaming Committee Chair, I participated in
14 dozens of calls and work sessions, including [redacted]
15 [redacted]

16 By June of 2014, and through collaboration with other RWA members, an initial draft model
17 agreement was circulated to approximately 20 RWA individuals who had shown interest in the
18 document over the previous six months. A long discussion ensued on June 6. That initial draft
19 did not receive support for multiple reasons. Chief among them was the fact that in an attempt
20 to borrow concepts from existing agreements which had been used or negotiated by various
21 RWA members, it became apparent that many of these concepts predated the FCC Roaming
22 Rules and in fact should no longer be included in a roaming agreement if the primary aim was
23 to be consistent with current FCC rules.

24 Over the next few weeks rewrites were made and the concept to make the agreement a
25 "living" document was generally agreed upon. The idea is that as a living document, the RWA
26 can update the Model Agreement to incorporate legitimate feedback that will make the
27 document a better agreement. By July 1, a model agreement was voted on and approved by
28 the RWA Board. It has since been updated, and that update was approved by the RWA Board.

When this complaint is over, I am sure that the RWA will edit and improve the current version. The best feedback the RWA could possibly get would be from the FCC itself instructing the RWA what terms and conditions it finds reasonable and why. One example of a change that I will support is based upon AT&T's response in its Answer. AT&T opines that the agreement should have a defined term. I agree.

For the next draft of the RWA agreement I will suggest that it have a 5 year initial term with automatic renewals and in the event of a notice of non-renewal, an evergreen clause. Since I am the Committee Chair, I hope it passes. However, I was in favor of a 5 year term for the current RWA Model, and my suggestion was not previously adopted.

I am hopeful, for the industry's sake, that the FCC will be specific as to what terms should apply and why so that future rural carriers can benefit from the work done in this complaint.

Past Dealings

AT&T makes several allusions (*e.g.* AT&T Answer ¶12, Meadors Declaration ¶¶12, 54, Orszag Declararion ¶66, AT&T Legal Analysis pp. 9, 35) to some of my past positions and some of my recent actions in the communications industry. They imply often, and directly state once (Orszag ¶66), that certain terms proposed by AT&T are somehow targeted at my past actions. AT&T also attaches some filings from the UTEX bankruptcy case.

AT&T also factually errs. In each of the above-cited passages AT&T claims that WCX is a "subsidiary" of Worldcall, Inc. That is incorrect. There is admittedly some equity ownership overlap between WCX and Worldcall, Inc., and thus WCX and Worldcall, Inc. are affiliates." But from a corporate perspective WCX has no parent corporation and is not a subsidiary of Worldcall, Inc. WCX and Worldcall, Inc. have each fully disclosed their corporate status and ownership information in required filings such as the 499 Filer Uniform Licensing System databases.

If the audit and suspension provisions are in fact WCX targeted terms then they of course would not be in any of AT&T's other agreements, so they do not enjoy any claimed presumption of reasonableness. And they would reflect the only effort by AT&T to specially

craft provisions based on WCX's "particular circumstances." AT&T does not indicate that any other provisions, and in particular any provisions dealing with price, usage or restrictions, were drafted to address WCX-specific issues.

Nonetheless, since AT&T discusses various activities in my past, I will discuss the history even though it is posed more to distract and make *in personam* arguments. That history supports WCX's efforts here to obtain express regulatory determinations before we launch extensive and expensive new initiatives. The past litigation largely occurred because an AT&T ILEC chose to sue UTEX – just as it did many other companies -- over intercarrier compensation issues and opposed processing of an interconnection agreement arbitration that had been abated by the Texas PUC. UTEX defended its position and sought at every opportunity to obtain timely regulatory decisions.

Mr. Meadors, at paragraph 12 and footnote 6, correctly notes that I was a Texas PUC Staff Economist. I was charged with representing the public interest. It should come as no surprise to the FCC that, on occasion, a regulator decides that an ILEC has taken action inconsistent with the statute, a rule or the public interest. My experience at the Texas PUC involved the following cases:

a) I was involved in a directory assistance rate case in which the Administrative Law Judge agreed with my recommendations not to raise rates on Texas consumers,
b) I participated in various ISDN rate cases, deployment issues and disputes in which I assisted the Texas PUC in creating a "Demand Driven Deployment Policy" focused on excluding risky investment from the rate base. The program was initiated when Texas still engaged in rate base/rate of return ratemaking. This plan later became moot after the Texas Legislature passed legislation known as "Texas First" and moved to incentive regulation;
c) I was involved in a voice messaging case involving an unaffiliated party ESP, SWBT and a SWBT affiliated ESP. The case settled.

I had many other duties as at the Texas PUC as well that did not involve litigation with SWBT. Sometimes the ILECs liked what I recommended and sometimes they did not.

AT&T's dredging of what should be ancient history is an effort to plant hidden suggestions. AT&T is implicitly arguing that any regulatory staff members who make independent recommendations AT&T does not like should suffer negative consequences by other regulators

in the future. AT&T is effectively saying a past regulatory staffer can legitimately be targeted for constant special adverse treatment by AT&T after he or she moves into the private realm. This should cause some legitimate concern. I trust that the Commission staff will see this veiled threat against them and all other regulatory staff for what it is.

AT&T also mentions three recent license sales by Worldcall Inc. (as noted above, an affiliate of WCX, not WCX's "parent") to AT&T. Two such sales have been completed and one is pending FCC approval. See Footnote 10 of Meadors Declaration.

These three sales show that, as a business person, I have no problem negotiating and reaching agreement with AT&T if the terms are fair – in other words truly voluntary, "arms-length" and mutual rather than adhesive. AT&T's real problem is that unlike some I prefer to not capitulate to overreaching, and when the issue is important enough will do precisely what AT&T does – invoke regulatory processes to secure an independent answer to the problem.

AT&T's centerpiece is UTEX Communications and the UTEX Chapter 11 bankruptcy filing that was ultimately converted to Chapter 7. AT&T claims that UTEX was and I by extension am "litigious" and perhaps even contumacious. I will admit to holding some firm opinions, but AT&T obviously shares that attribute. The "litigious" part, however, is misplaced. Litigation is endemic in the communications business, and a fair view would show that while I have indeed had my battles with AT&T mostly because I do not react to bullying in the fashion the bully wants, I do not stand out among all others. We are not a "law office with a switch out back" like, say, the old MCI. But the MCI history demonstrates that sometimes even that kind of hard-nosed attitude can lead to significant and positive change.

Steve Turner, who was counsel representing the liquidating trustee of the UTEX Bankruptcy after its conversion to chapter 7 is filing an affidavit about his interactions with me personally. That affidavit provides his opinion of my comportment and demeanor during that time.

1 The UTEX history is indeed relevant to the WCX roaming complaint. As the CEO of UTEX from
2 2004 to 2011,[25] I tried to create business certainty with respect to the intercarrier
3 compensation that applied when voice traffic to or from entities like Skype was sent through a
4 CLEC so that Skype customers could communicate with customers served by ILECs like AT&T.
5 See pages 11 and 12 of AT&T Exhibit 3.

6 UTEX opted into an Interconnection Agreement (ICA) that had very specific terms addressing
7 the intercarrier compensation that would apply to ESP traffic. It said that "No compensation is
8 due or payable to either Party for traffic that is destined for or received from an Enhanced
9 Service Provider ('ESP')." I understood those words to mean that all traffic to or from ESPs
10 would be "no-compensation due" as between interconnecting LECs. I also believed – like many
11 others – that the so called "ESP Exemption" exempted traffic to or from entities like Skype from
12 251(g) access charge obligations. This Commission was repeatedly asked to resolve that very
13 question over several years. It ultimately changed the rules *on a prospective basis* in 2011 so
14 that "toll VoIP" would for the first time be expressly subject to exchange access charges. But
15 even then the Commission refused to resolve what the rule was for prior periods, including the
16 period involved in the UTEX matter. AT&T's contention that I and UTEX should be punished for
17 holding a position shared by a large number of other industry participants, and should suffer
18 individual condemnation for litigating the question just like many others did, rings quite hollow.

19 Based on my reading of the words "no compensation due or payable" in the ICA and the widely
20 shared view that this language tracked the ESP exemption, UTEX raised capital and hired
21 employees. We created numerous software innovations related to SIP trunking and softswitch
22 interworking facilitating large amounts of VOIP traffic from entities like Skype. UTEX
23 successfully "entered the market." By late 2005, according to AT&T's own records, UTEX was
24 passing more VoIP traffic than any other CLEC in Texas. At this same time UTEX sought renewal
25 of its interconnection agreement and implementation of what I thought the ESP Exemption
26 required at the Texas PUC via an arbitration which was given Docket Number 26381. After a

[25] AT&T conveniently forgets to mention that I never took a salary from UTEX during its entire existence. I risked personal capital, as did others.

1 year's worth of work, the Texas PUC decided to indefinitely "abate" Docket 26381 in June of
2 2006.

3 Soon after Docket 26381 was abated, AT&T filed a complaint at the Texas PUC against UTEX for
4 collection of access charges from UTEX for ESP traffic. The Texas PUC Commissioners initially
5 ruled in UTEX's favor, but it then reversed its decision and found UTEX liable. It turns out that
6 the "no compensation due or payable" language did not mean what it seemed to say. The
7 liability finding put UTEX into bankruptcy. AT&T's opposition to UTEX's reorganization plan
8 ultimately led to an involuntary conversion to Chapter 7. The judge basically concluded that
9 AT&T would always pursue UTEX through "more litigation."[26] Even though the Texas PUC
10 ultimately held in Docket 26381 that the ESP Exemption did mean much of what I had always
11 contended, AT&T refused to accept that decision and opposed implementation. The fact that
12 the matter was still going to be fiercely litigated even after any confirmation of a plan meant, to
13 the judge, that the reorganization plan was too uncertain in terms of future viability, so it could
14 not be confirmed.

15 As I mention above, I raised capital, employed people, and entered a market thinking I knew
16 both what the words in UTEX's contract with AT&T the ESP Exemption meant. I learned from
17 this experience, however, that it does not matter what I think the words in a contract or rule
18 mean if AT&T disagrees. I learned that one cannot prudently risk significant capital and the
19 future of my employees based on mere hope, expectation or even firm opinion based on words
20 set out in what appears to be plain English. When AT&T is on the other side one must, sadly,
21 seek and obtain a definitive resolution from the deciding regulatory commission before one
22 takes major risks.

23 I am therefore not willing to twice make the same strategic mistake. WCX will not risk more
24 capital, deploy additional infrastructure beyond Commission build-out requirements, begin to
25 innovate in new areas, create jobs and enter the market in the face of AT&T's strong
26 opposition, until the regulators tell me what the applicable words mean, in the specific context
27 of WCX's business plan. Any agreement cannot be merely the gateway to continual disputes

[26] Conversion Order Paragraph 23. See page 4 to Meadors Exhibit 4.

and litigation in the future. WCX wants to know, and has a right to know, its rights, obligations, and, if they exist, any use prohibitions before it expends significantly more capital and resources launching the contemplated business plan.

That is why we filed this complaint: to obtain Commission determinations regarding the "impasse issue" separating WCX and AT&T. I want to know – from the Commission – what restrictions, if any, apply to roaming, and then WCX will need an FCC-prescribed roaming agreement with understood provisions, as a result of this complaint. I want to hear from the Commission whether WCX can use roaming to support WCX's M2M business plans and WCX's smartphone business plans. This complaint is designed to obtain a declared and clear common understanding between the parties before WCX expends significantly more capital and time on these business plans. My sincere hope is that, with a more certain foundation for a roaming contract between WCX and AT&T, the parties can then in good faith implement on a timely basis. We will have future disputes only if AT&T – not WCX – continues to be litigious and contumacious.

Lowell Feldman