Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	
for Removal of State Barriers to	)	WC Docket No. 14-115 (Wilson)
Broadband Investment	)	WC Docket No. 14-116 (Chattanooga)
and Competition	)	
	)	

COMMENTS OF THE SOUTHEAST ASSOCATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

I. INTRODUCTION

The SouthEast Association of Telecommunications Officers and Advisors ("SEATOA"), a chapter of NATOA, consists of local government officials, staff members and their consultants whose responsibilities include developing and administering local community broadband and other communications systems across the four state region of North Carolina, South Carolina, Georgia and Tennessee. SEATOA submits these comments in full support of the dual Petitions of the City of Wilson, North Carolina ("Wilson")[1] and the Electric Power Board of Chattanooga, Tennessee ("EPB")[2] (collectively "Petitioners") filed on July 24, 2014 and released for public comment on July 28, 2014, in the above-captioned proceedings.

II. STATEMENT OF SUPPORT

SEATOA strongly supports these dual Petitions and encourages the Commission to preempt North Carolina and Tennessee state laws to the extent requested in the respective Petitions on the grounds that they create artificial barriers to broadband infrastructure investment, deployment, competition and innovation, by severely restricting and unreasonably

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[1] *See* Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by City of Wilson, North Carolina, WC Docket No. 14-115 (filed July 24, 2014) (Wilson, NC Petition).

[2] *See* Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by Electric Power Board, Chattanooga, Tennessee, WC Docket No. 14-116 (filed July 24, 2014) (EPB Petition).

delaying the options available to local communities to obtain 21st Century broadband infrastructure and services for their businesses and residents.

A. State Broadband Laws like those in North Carolina and Tennessee Create Artificial Barriers to Broadband Infrastructure Investment, Deployment, Competition and Innovation

For four years, SEATOA was actively involved in opposing anti-competitive legislation strongly advocated by North Carolina's large incumbent telephone and cable companies, whose efforts ultimately proved successful in 2011 with a new state law: Section 160A-340 (known as "H129"). The proponents of the bill included the companies who would be, and were, competing with City of Wilson's and other municipal fiber networks,[3], and the end result of the legislation was to severely restrict the service area of the communities who offered competitive alternatives to those companies and to stifle any further municipal retail broadband deployments in North Carolina.

North Carolina's H129, dubbed the "Level Playing Field Act" by its promoters, is nothing of the sort.[4] The law does not subject the large private sector incumbents to the numerous restrictions it applies only to local North Carolina municipalities.[5] As SEATOA stated in 2011, if this law were applied to the large private sector incumbents, there is no imaginable way they could operate in a competitive market.[6] As Wilson's Petition recites, the law's provisions severely handicap municipal broadband providers from operating, and therein financing, a fiber-optic broadband system, especially in a competitive market, and restricts the service areas of current and all future municipal providers.[7] The law's benefit to the incumbents was obvious. Municipalities were deploying next generation fiber networks and this competitive alternative access to higher capacity services had the potential to force them to upgrade their own networks, meaning for some, overbuilding their existing coaxial or copper infrastructure.

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[3] Time Warner Cable ("TWC") and the North Carolina Cable and Telecommunications Association ("NCCTA") consistently spearheaded the lobbying effort through these four years. NCCTA is located in the law office of one of TWC's chief lobbyists and legal firms, and TWC government relations staff are top officers and board members of NCCTA.. See http://associationdatabase.com/aws/NCCTA/pt/sp/about. Centurylink was neutral on early versions of H129 in the first few years as it worked to negotiate a partnership with the City of Wilson until those negotiations fell apart. AT&T was neutral on the legislation in 2011 but was a member of NCCTA at the time..

[4] See NCLM legislative handout February 24, 2011 or Attachment 1.

[5] Wilson, NC Petition at page 14, pages 27-38 ; The legislation only regulates municipal providers of cable and broadband, and was ironically pursued by the large incumbents one year after they had successfully lobbied for complete cable deregulation in the state.

[6] See SEATOA legislative handout, February 2011 or Attachment 2.

[7] Wilson, NC Petition, pages 25-39.

After three years, the next generation capacity of Wilson's municipal fiber network has become nationally renowned. In July 2014, Wilson became North Carolina's first municipality to offer symmetrical gigabit broadband services to its community.[8] What a loss to North Carolina that H129 prohibits them from sharing this bandwidth and all its economic development benefits with any neighboring communities where it makes financial sense. H129's artificial barriers even prevent Wilson from sharing its next generation services with the five underserved rural counties it already serves with electricity, an otherwise natural and economical reach.

If the intention of H129 was to arrest further deployment of municipal broadband systems it succeeded. Numerous plans that were in the works by various local North Carolina communities to build competitive, 21st century fiber networks for retail business and residential use ground to a halt with the passage of H129. SEATOA's anecdotal knowledge is that at least five communities stopped their plans to bring fiber to their local residents and businesses as a result of H129. There were five community-owned cable-broadband systems in 2011, and there are the same number today.[9] There have been no known community-owned residential fiber networks built since the passage of H129.

In addition, the law restricts the deployment of advanced telecommunications infrastructure by prohibiting communities from partnering with each other for retail broadband service, even in North Carolina's rural, low income areas in which the private sector incumbents have shown no apparent interest in serving or upgrading broadband. The impact has been significant. Half of North Carolina's population are located in rural areas. With the large incumbents unwilling to invest in low density, low income areas, and H129 prohibiting such communities from partnering with neighboring municipalities to create a more viable community-owned alternative, various rural communities have been relegated to offering large cash payments or proffers to build expensive tower infrastructures to any smaller private carriers who will work with them, or hoping that public subsidies, like Connect America Funds, will someday encourage the large incumbents to finally serve them.[10] However, to date, there have been few takers, and non offering symmetrical gigabit service to every home and business in the community. In addition, the elimination of alternative community-owned broadband options

[8] See also Attachment 4 - NC Department of Commerce Broadband Division map of NC communities (households) served with Gigabit upstream/downstream service.
[9] See Attachment 3
[10] Examples include Rockingham County offering to pay half the construction costs to any carrier who will serve their unserved areas (no takers); Person County made the same offer and received no takers willing to meet the standards for broadband set by the County, and so it implemented a feasibility study and will now be building large public safety towers at a cost of $600,000, using those towers to attract a small regional wireless provider to its broadband unserved areas.

created by H129 will soon become a dramatic educational issue for the state. In 2013, the North Carolina legislature expressed its intention to stop funding printed school books after 2016 with the passage of H44.[11] Families with children in rural North Carolina without sufficient internet access, will be faced with a decision to move away from their homes to obtain service in other areas, that is, if they could afford to consider that alternative. In such an environment, all options to deploy internet access need to be on the table.[12]

H129 has not leveled the playing field, it has limited the state's technology last-mile options, and cleared an entire sector of technology options and competition off the field, along with all the benefits that local choice and self reliance provide, including lower rates to residents and businesses, increased innovation, job creation, heightened productivity, economic development, and technology enhancements to educational and health care programs. Perhaps most significantly, it has severely handicapped the ability of the state's rural areas to develop the infrastructure necessary to compete in a global economy where many countries in the rest of the world have been or plan to build fiber to the home as rapidly as possible,[13] a global economy that has already siphoned away the traditional tobacco, textile and manufacturing economic base of many North Carolina communities, and one that rewards advanced broadband connectivity for software development, distributed computing applications, and modeling and simulation applications for scientific research and innovation.

What we have seen in Tennessee is the same story. As EPB notes, under Tennessee law, Tennessee municipal electric systems, including EPB, that operate state-of-the-art high-speed broadband networks, are prevented from providing advanced telecommunications services to surrounding communities outside their electric service territory. The territorial restriction contained under Tennessee law is a state imposed barrier to broadband infrastructure investment and deployment that also has the purpose and effect of preventing municipal electric utilities throughout the state from extending high-capacity network and services to portions of the state that currently lack the broadband capabilities. This is a significant loss to the communities who want access to these services. As the EPB Petition notes, these broadband networks provide countless benefits to their communities – including enhanced economic development and

[11] http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=H44&submitButton=Go

[12] H129 also has had the collateral effect of making many local communities risk averse to even creatively engage in public-private partnerships for fear of exposing themselves to a legal challenge by the State's well-funded incumbent carriers who could readily use H129's numerous ambiguous terms for legal fodder and as a means of delaying and cutting off such a competitive option for local businesses and residents.

[13] China's goal is to serve 200 million homes with fiber by the end of this year. http://usa.chinadaily.com.cn/china/2014-03/23/content_17371256.htm

competitiveness, educational opportunity, public safety, homeland security, energy efficiency, environmental protection and sustainability, affordable modern health care, quality government services, and the many other advantages that contribute to a high quality of life.

B. Congress Provided the FCC the Authority to Preempt

As the Petitioners clearly describe, Congress foresaw as far back as 1994, that access to advanced telecommunications capabilities would become critically important to all Americans in the years ahead. Through Section 706(a) of the Telecommunications Act of 1996, Congress gave the Commission broad authority and discretion to determine when, where, and how to ensure that "all Americans would have such access ""on a reasonable and timely basis." [14] In Section 706(b), Congress also required the Commission to take affirmative action to acquire information about the pace of deployment of advanced telecommunications capabilities, to decide whether such deployment was occurring on a reasonable and timely basis, and, if the Commission ever answered that question in the negative, to act immediately to remove barriers to infrastructure investment and to promote competition.[15] The Petitioners note, that in charging the Commission with this responsibility Congress was well aware of the significant contributions that municipalities could make and undoubtedly understood that it would be impossible to make the benefits of broadband connectivity available to all Americans without the participation of municipalities, particularly in areas in which the private sector found investment un-remunerative.[16]

C. Local Communities Must be Able to Make Their Own 21st Century Broadband Infrastructure Deployment Choices

In today's global knowledge-based economy, all local communities -- rural, tribal, and urban -- recognize that access to modern broadband Internet infrastructure is essential to enable and accelerate economic activity and civic engagement. Modern broadband Internet infrastructure is the lifeblood of our 21st century global knowledge economy. Likewise, local communities are the lifeblood of America. Towns, counties, and cities are the places where economic activity and civic engagement happen. Local elected officials live among their local constituents, and as such are on the pulse of local needs, local resources, and local tolerance for risk, and are easily held accountable for their decisions, whether in the local grocery store,

[14] Wilson, NC Petition at pages 3-5; EPB Petition at page 14.
[15] Wilson, NC Petition at page 5; EPB Petition at page 41.
[16] Wilson, NC Petition at pages 3-5; EPB Petition at page 15.

church, soccer field or voting booth. Local communities are best positioned to determine the best options for their citizens, businesses and institutions, whether this means working with willing incumbents, entering into public-private partnerships, developing their own networks, or being served by other local communities who have the capacity to provide Gigabit services.

As Wilson's Petition succinctly stated:

> "[A]t the end of the day local governments, accountable to local citizens understand their own needs and should have the freedom to find local solutions to local problems. We should not require citizens to beg big corporations to deploy systems when these citizens have the power to take matters into their own hands." Section 160A-340 thoroughly undermines these principles."[17]

D. North Carolina's Section 160A-340 Must Be Preempted in its Entirety

As Wilson has carefully articulated in its Petition, Section 160A-340 must be preempted in its entirety.[18] The law contains multiple tiers of barriers and restrictions (including among others rate regulations, limited funding options, and census-block speed litmus tests) so that removing one (such as the geographical service area limit) in no manner frees communities to engage all options within their resources.

III. CONCLUSION

We fully support the Commission's removal of these artificial state barriers to broadband infrastructure investment, deployment, competition, and innovation. Ultimately it is about preserving local choice and ensuring broadband equity. At this critical time in our country's history, when the rest of the world is rapidly deploying this essential 21st century infrastructure, <u>all options</u> must be on the table for our country to remain globally competitive. Removing the barriers to broadband investment and competition as requested in the Petitions, will enable more communities to be self-reliant, and better enable America to maximize all resources so that <u>no one</u> is left behind and unable to participate in knowledge-based global opportunities for business, education, healthcare, security and quality of life.

[17] Wilson, NC Petition at page 43.
[18] Wilson, NC Petition at pages 25-39.

Respectfully submitted by,

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VERIFICATION

I, Catharine Rice, SEATOA President, under oath and under penalty of perjury, declare that I have read the foregoing submission and that the facts set forth in it are true and correct to the best of my knowledge and belief

Catharine Rice

Catharine Rice

August 27, 2014

ATTACHMENT 1:

NCLM LEGISLATIVE HANDOUT
FEBRUARY 2011

NC LEAGUE OF MUNICIPALITIES

215 North Dawson Street
Raleigh, NC 27603
Post Office Box 3069 | 27602-3069
919-715-4000 | fax: 919-733-9519
www.nclm.org

SB 87/HB 129 – Level Playing Field/Cities/Service Providers Act (really the "Block Broadband to NC Communities" bill)

Does this legislation provide a level playing field for public and private providers of communications services?
NO. These bills place prohibitive restrictions on cities and towns that seek to provide communications services to their local residents and businesses that are unserved or underserved by private providers. In many locations, broadband services are not available. Also not available in many areas is the state-of-the-art broadband that businesses, educational institutions, hospital and individuals need to operate in this global economy. Municipal officials understand that providing this modern infrastructure is essential for jobs, economic development, public safety and the future of their communities. This legislation essentially would keep cities and towns from providing this needed service by placing barriers.

Will the industry -- the private providers -- be subject to the "level playing field" requirements of SB 87/HB 129?
NO. Private providers would have to stop providing broadband services if they were subject to the requirements of SB 87/HB 129 because of the enormous burdens placed on broadband service providers. Private companies will not be subject to the bills' prohibition on cross-subsidies, the rate-setting provisions, annual auditing or public disclosure requirements. The purpose of SB 87/HB 129 is to slant the competitive playing field in the industry's direction and prevent local communities from providing their residents the broadband they need.

Why does the industry want cities and towns to be subject to the requirements of SB 87/HB 129?
To prevent local broadband networks from developing. Industry spokesmen say that if local governments want to enter the broadband business, they must play by the same rules as the private sector. But AT&T and Time Warner Cable are not subject to the rules of SB 87/HB 129. The bills saddle cities and towns – even those who want to partner with private sector companies – with unique new rules, numerous reporting auditing, accounting and rate-setting requirements that the industry knows will stop broadband deployment by cities and towns.

(over)

Will SB 87/HB 129 harm public safety networks?
YES. Public safety networks typically are regional communications networks incorporating counties, cities and towns, all paying in to operate the network and receiving federal grants to subsidize operating costs. Because these networks are fee-based, they would be subject to SB 87/HB 129 and would be shut down by the bills' restrictive rate-setting and financing requirements that only revenues generated directly from the systems could be used to operate them. Public safety systems would no longer be eligible for federal or state grants.

Why do cities and towns develop local broadband networks?

- Public safety
- Economic development and job development
- Service to citizens that the private sector won't provide
- Provision of higher speed/higher quality broadband service than offered by the private sector
- To provide a public service, not to make a profit.

Treatment under SB 87/HB 129

ISSUE	MUNICIPAL BROADBAND SYSTEMS	PRIVATELY OWNED CABLE SYSTEMS
Cable & Broadband Rates	Municipal systems would be subject to strict State rate regulation in violation of federal law prohibiting State rate regulation. Prices for would be set & regulated by N.C. Utilities Commission. Municipal providers would be prohibited from offering promotions to customers or setting prices below the cost of service. Prices could be artificially inflated due to 1) an effective prohibition on achieving economies of scale through the use of equipment & facilities for multiple public purposes; 2) mandatory inclusion of artificial costs in subscriber rates that have not actually been incurred; and 3) mandatory compliance with numerous regulatory requirements. Cities and towns would be prohibited from financing any broadband operations from any other internal financial resource or from transferring funds from one activity to another.	Private cable operators generally exempt from rate regulation under federal law Prices unconstrained and unregulated Private cable operators can engage in predatory pricing by charging prices below cost in markets served by municipal providers & offering promotions such as cash rebates to keep customers from switching to municipal systems or to lure back municipal customers. Prices not subject to any of the new rules that would apply to municipal providers, thereby allowing 1) use of equipment & facilities for multiple business purposes; 2) unlimited rates, making possible the lowering of rates in competitive markets by increasing prices in noncompetitive markets; and 3) no obligation to comply with any new regulatory requirements that apply to municipal providers. Most private cable companies are large national companies and can self-finance without limit (e.g., by transferring funds from one business activity to another or from one geographic region to another.)
Public Safety Networks	Operation of public safety networks for which public users share costs by paying fees would be subject to the same complex and strict regulations as apply to other municipal broadband systems.	Private cable companies would be unaffected because they have no public safety obligations and generally do not operate public safety networks.
Federal and State Funds	Cities and towns would be prohibited from using federal and state funds to develop or operate broadband systems, public safety networks operated on a cost-sharing basis or other.	Private cable companies could receive federal and state grants to expand their systems.
Oversight	Subject to N.C. Utilities Commission regulation with a lengthy public hearing process before initiating service. Required to publish independent annual audits, which would be available to competitors.	Private cable operators not regulated by N.C. Utilities Commission. Not required to publish audits or otherwise disclose information about finances to their competitors.
Sharing Facilities with Competitors	Required to allow competitors to use owned or leased transmission facilities and capacity.	Private cable operators are not required to share.
Financing	May not use common financing arrangements such as lease-purchase or security interest to secure financing. Local Government Commission must determine whether business plan is feasible before going to market for debt.	No restrictions on financing instruments. Debt purchasers assess the feasibility of business plans and the market determines whether debt can be issued at a viable cost to the provider.
Service Area	Limited to within municipal boundaries, even if an outside customer requests the service. Within boundaries, higher costs are required to provide service unless an area is unserved by internet access. A household can be served, even if there is not a cable connection at the residence.	Private cable operators need only declare their intent to serve an area in order to receive a franchise for that area.
Exposure to Legal Liability & Lawsuits	More possible lawsuits because "aggrieved party" could sue any municipal provider. Vague definitions in law make lawsuits more likely.	Deregulation of cable industry has limited the availability of meaningful remedies.
Grandfathering	No municipal broadband operations are grandfathered form all requirements. Existing operations will face costs due to the bill that were not in their business plans.	Not subject to bill requirements and given new rights to sue existing municipal competitors.

2011-02-24 NCLM

ATTACHMENT 2:

SEATOA LEGISLATIVE HANDOUT
FEBRUARY 2011

QUESTIONS THAT NEED TO BE ASKED ABOUT REP AVILA AND SEN. APODACA'S ANTI-BUSINESS, ANTI-LOCAL BROADBAND bill (H129/S87 Level Playing Field/Local Gvt Competition)

Will the industry be subject to the "level playing field" requirements of H129/S87?

NO. The industry would cease providing broadband services if they were subject to the requirements of this bill, due to the onerous burdens it places on broadband providers.The federal government and North Carolina deregulated broadband and cable services years ago; this bill re-regulates those services only if they are provided by local communities. The purpose of this industry-sponsored bill is to slant the competitive playing field in the industry's direction and prevent local communities from providing their residents the broadband they need.

Why does the industry want local governments subject to the requirements of H129/S87?

SO LOCAL BROADBAND NETWORKS DON'T DEVELOP Industry spokesmen say if local governments want to enter the broadband business they must play by the same rules as the private sector. Cable and broadband services were deregulated years ago and community broadband systems are subject to the same broadband rules as the private companies. This bill is designed to remove business and consumer choice and access to broadband services.

Is this bill actually good for the private sector?

NO. This bill will harm the private sector. The real private sector, local businesses, depend on access to reliable, advanced broadband infrastructure to sell goods and services.Yet large portions of our state remain unserved by the large telecoms or are served by unreliable, dated technology. So local communities have stepped in to build the critical reliable infrastructure that will let their private sector flourish. **This bill is only good for the large out-of-state telecom corporations whose monopolies benefit from being able to charge our local businesses higher rates due to lack of choice. North Carolina needs more broadband providers, not less.**

Will this bill prevent public/private broadband partnerships, like Google Fiber?

YES. §160A-340.4 limits the funding, construction or improvement of any community broadband to general obligation bonds which impose severe limits on private sector investments in the system. This bill will stop even public/private attempts to compensate for a lack of local broadband service.

Are the cable and telephone industry really interested in the welfare of taxpayers?

NO. The industry does not care about local taxpayers; they care about profit. If Time Warner Cable cared about taxpayer burdens,why have they raised cable rates on businesses and residential taxpayers every year? §160A-340.4 of the bill, actually shifts the financial risk of local systems directly to taxpayers by requiring that community systems are funded directly on the backs of taxpayers via general obligations bonds. §160A-340.1(b) also removes the requirement that the public vote before the sale of a community system occurs!

How do we ensure public accountability on public broadband projects without H129/H87?

The General Assembly has already established: (1) rules governing Public Enterprises (NCGS Chapter 160A, Article 16); (2) strict rules in the Budget and Fiscal Control Act governing all municipal budgets and expenditures, including hearing and disclosure requirements (NCGS Chapter 159, Article 3); and (3) strict oversight of municipal borrowing by the Local Government Commission (NCGS Chapter 159); and municpalities are subject to public document "Sunshine" laws, which Time Warner Cable has repeatedly used to obtain access to municipal financial and strategic planning decisions. In contrast, North Carolina's telephone and cable companies are not required to publicly reveal any information about their systems.

Are portions of H129/S87 unconstitutional? YES

The big telecoms want you to vote for a bill that is in contravention of NC's state constitution. Their bill violates § 2(3) of Article v of North Carolina's Constitution, which exempts all municipally-owned property from taxation by requiring municipalities to pay property taxes on broadband and other communication systems by renaming the property tax a "payment in lieu of taxes.

Will H129/ S87harm public safety networks? YES.

Public Safety networks are typically regional communication networks of Counties, Cities, and Towns who pay fees and receive federal grants to cover operational costs. This bill would shut them down by limiting their service areas and imposing restrictive rate-setting and financial limitations;it will also make them ineligible for Homeland Security, ARRA and Farm grants.

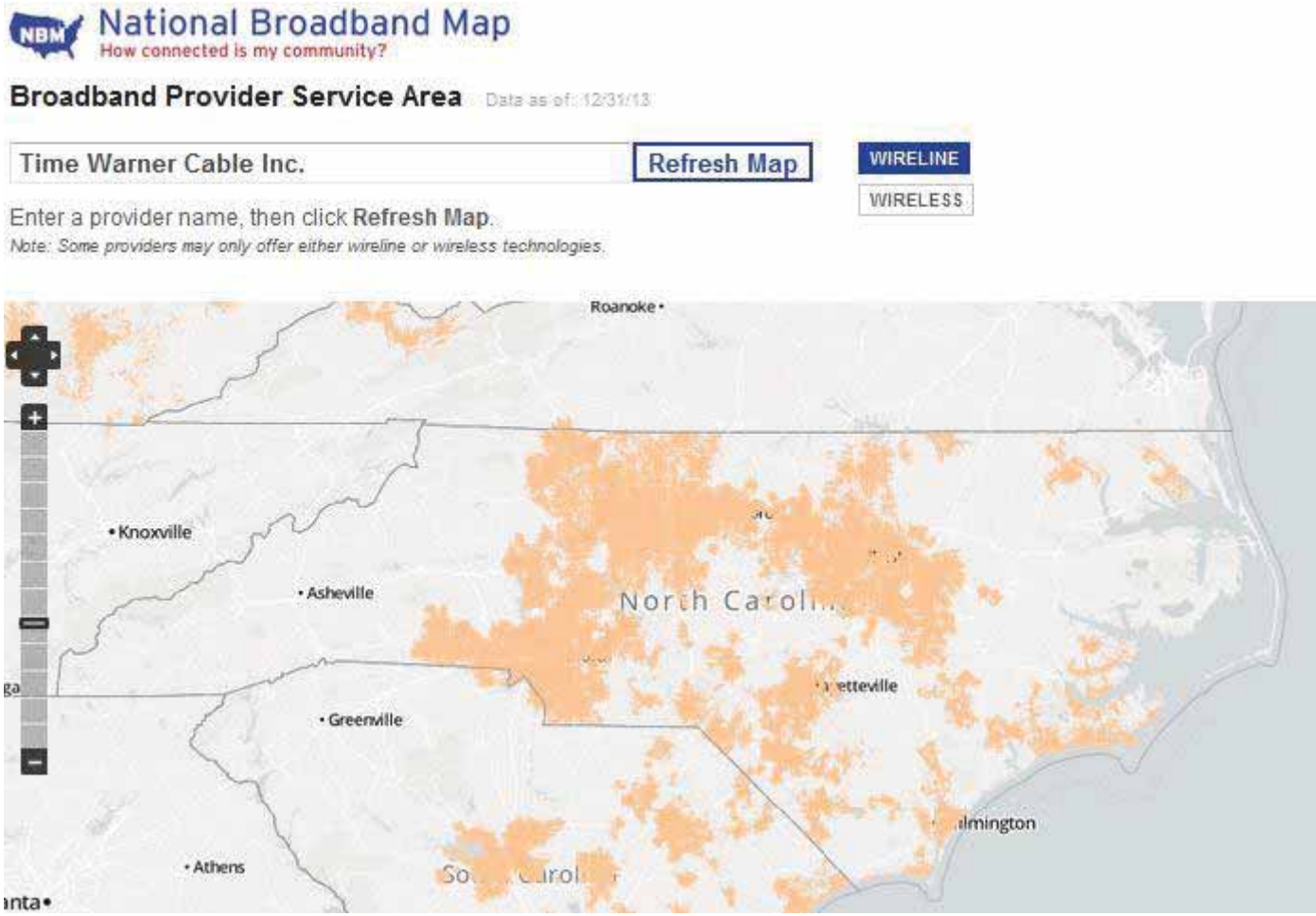
ATTACHMENT 3:

COMMUNITIES WITH COMMUNITY-OWNED BROADBAND SYSTEMS 2011

NC COMMUNITIES THAT OFFERED RESIDENTIAL CABLE-BROADBAND SERVICES IN 2011 (same in 2014).
(Source: Revenue Laws Study Committee April 21, 2010, Heather Fennell (staff)
*the City of Pineville owns its own phone company but was not listed on the map

Cities that offer communications services.

TWC and CENTURYLINK BROADBAND SERVICE AREAS:



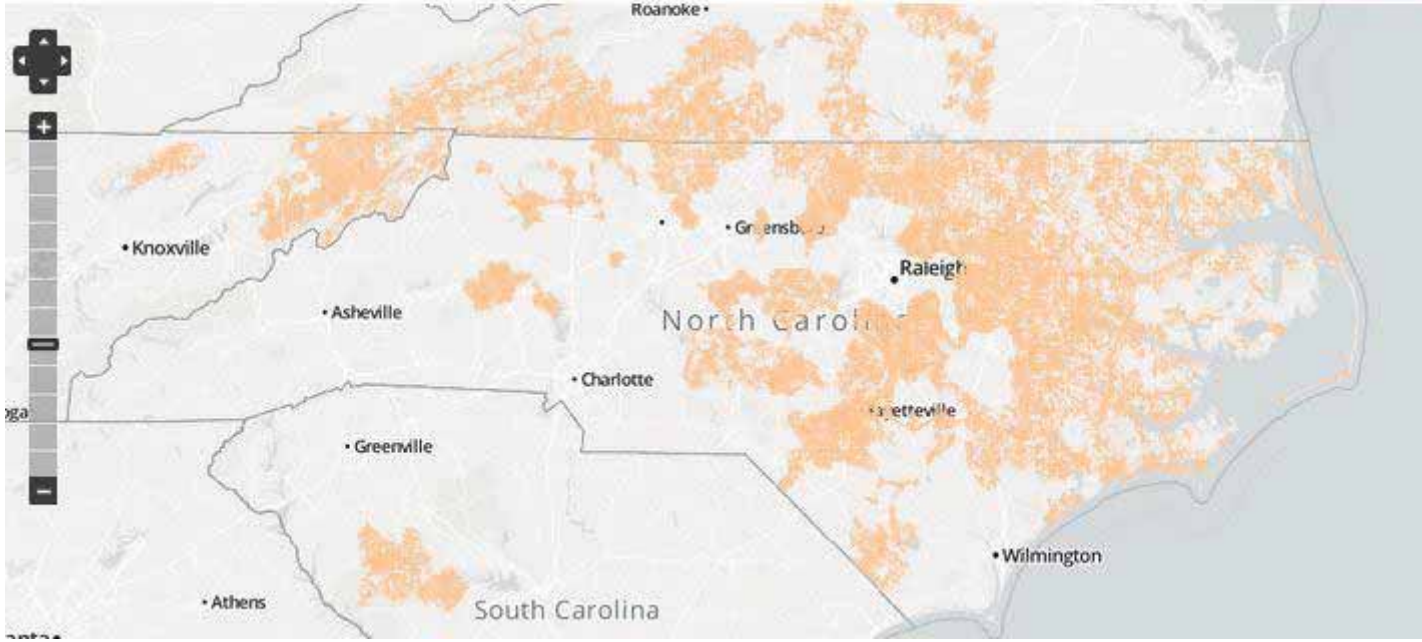
National Broadband Map
How connected is my community?

Broadband Provider Service Area Data as of: 12/31/13

CenturyLink, Inc. | Refresh Map | WIRELINE | WIRELESS

Enter a provider name, then click **Refresh Map**.

Note: Some providers may only offer either wireline or wireless technologies.



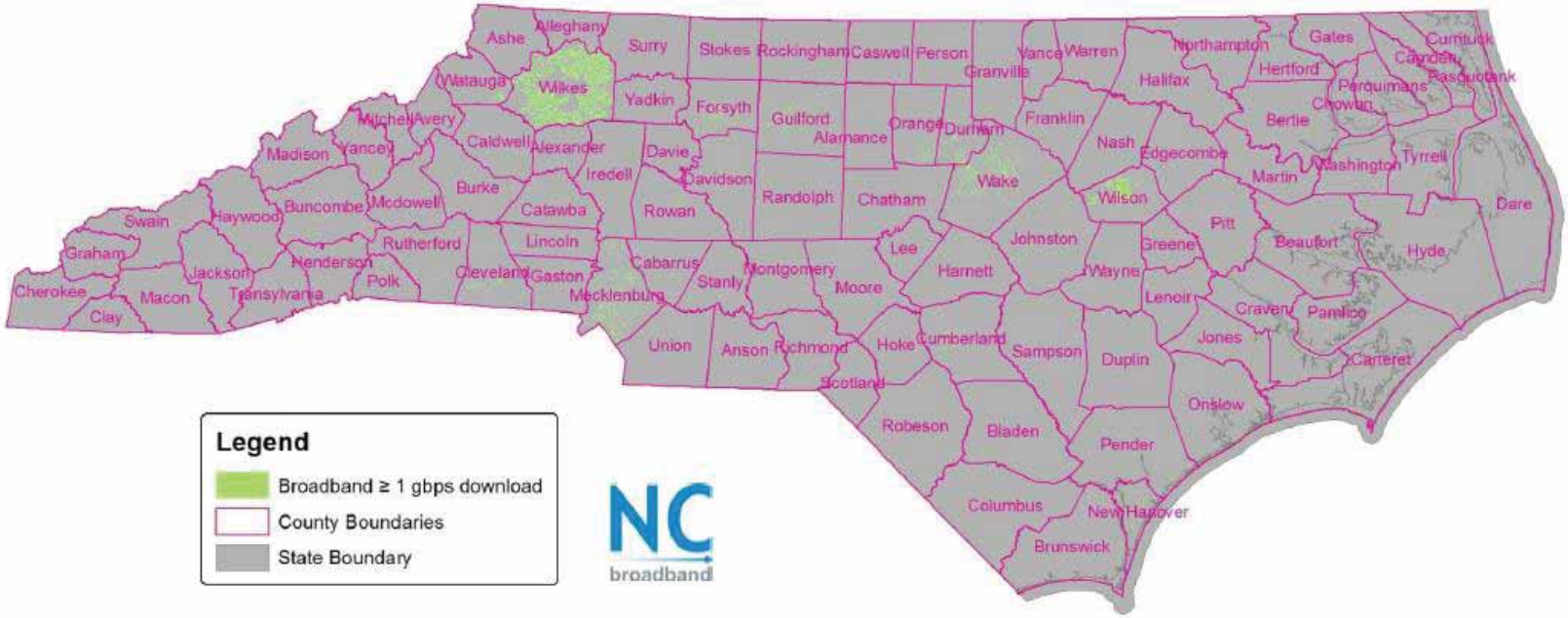
ATTACHMENT 4

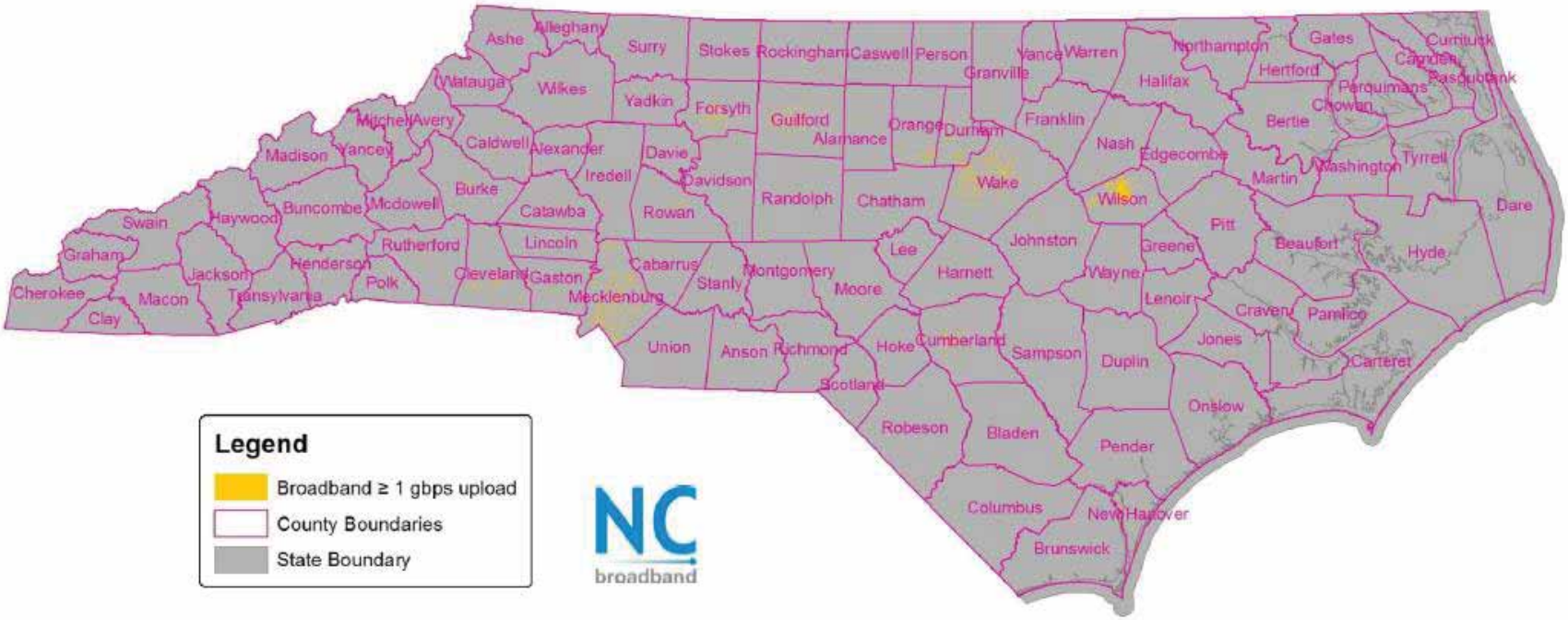
NC HOUSEHOLDS WITH ACCESS TO RESIDENTIAL GIGABIT SPEED

Source: N.C. Department of Commerce, Broadband Division, June 2014 (Spring 2014 data)
(Salisbury is now also offering residential, symmetrical, Gigabit speeds)

≥ 1 gbps download

An estimated 1.0% of households statewide have broadband available at this speed or higher, which leaves 3,705,243 households without this availability.



≥ 1 gbps upload

An estimated 0.6% of households statewide have broadband available at this speed or higher, which leaves 3,720,039 households without this availability.