

September 27, 2013

VIA OVERNIGHT DELIVERY

Mr. Steve Meredith
Executive Director
Nebraska Public Service Commission
300 The Atrium
1200 N Street
Lincoln, NE 68509-4297

**Re: Pre-filed Direct Testimony of Keith Hayes on behalf of Charter
Communications, Inc. to NUSF-77**

Dear Mr. Meredith:

Please find enclosed for filing in the captioned docket an original and five copies of the Pre-filed Direct Testimony of Mr. Keith Hayes on behalf of Charter Communications. An electronic version of the testimony has been served by email on the commission staff and on other participants in the NEBP cases as a courtesy.

Thank you for your assistance with this matter. Please let me know if you have any questions regarding this filing.

Sincerely,



K.C. Halm

cc: Service List

Encl.

**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Petition of The Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the Nebraska Universal Service Fund	Application No. NUSF-77.09 – Application to NEBP Received from CenturyLink
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PRE-FILED TESTIMONY

OF

KEITH HAYES

ON BEHALF OF

CHARTER COMMUNICATIONS, INC.

September 27, 2013

Exhibits

Exhibit A – LIST OF CENSUS BLOCKS IN GERING AND LEXINGTON
SERVED BY CHARTER

Exhibit B – NEBRASKA BROADBAND MAP EXCERPTS

Exhibit C – CHARTER PROTEST FILING AND LIST OF CENSUS BLOCKS
SERVED BY CHARTER IN NEBRASKA

1 **I. INTRODUCTION**

2
3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Keith Hayes. My business address is 11720 Amber Park Drive,
5 Alpharetta GA 30009. I am filing this testimony on behalf of Charter
6 Communications, Inc. (“Charter”).

7 **Q. BY WHOM ARE YOU EMPLOYED, AND WHAT IS YOUR POSITION**
8 **WITHIN THE COMPANY?**

9
10 A. I am Senior Vice President – Network Operations at Charter, a position I have
11 held since 2010. Prior to this position, I was Charter’s Vice-President of Network
12 Operations and Engineering Services. I have over thirty-two years of experience
13 in the telecommunications industry. Before coming to Charter, I served as Vice
14 President Network Operations/California Region Field Operations for Adelphia
15 Communications, Director of Operations at BellSouth Entertainment and Director
16 of Operations at MediaOne, among other positions within the telecommunications
17 industry.

18 **Q. WHAT ARE YOUR DUTIES AS THE SENIOR VICE PRESIDENT –**
19 **NETWORK OPERATIONS?**

20
21 A. In my capacity as Senior Vice-President of Network Operations, I oversee all
22 Network Operations support services for both business and residential customers,
23 which include Internet, Phone and High-Definition Television services and their
24 underlying infrastructure, including video processing and conditional access
25 systems, telephone switches, Video on Demand servers, high-capacity National
26 Backbone circuits and routers, Cable Modem Termination Systems, and Network
27 Operations Centers supporting a 200,000 mile, 12 million homes-passed network
28 with more than 1 million active elements.

1 **Q. PLEASE DESCRIBE YOUR RELEVANT WORK EXPERIENCE.**

2

3 A. I have been awarded numerous industry certifications, including the prestigious
4 Society of Cable Telecommunications Engineers (“SCTE”) Broadband
5 Communications Engineer (“BCE”) certification. I have obtained low-voltage
6 telecommunications licenses in multiple states and am an FCC licensed amateur
7 radio operator, and have been elected twice to the highest leadership position in
8 the technical society supporting Cable Telecommunications – Chairman of the
9 SCTE.

10 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

11 A. My testimony demonstrates that Charter provides broadband service in several
12 areas of Nebraska where CenturyLink seeks Nebraska Broadband Pilot Program
13 (NEBP) subsidies to deploy broadband service. The Commission’s policy, as I
14 understand it, is to prioritize NEBP funding in those areas that are *unserved* or
15 *underserved* by any existing broadband provider. However, the Commission
16 Staff has recommended grant of two CenturyLink applications made in NEBP
17 Docket NUSF-77 which seek subsidies for areas already served by Charter.
18 Directing NEBP subsidies to providers proposing to serve areas already served by
19 Charter would conflict with the Commission’s goals of competitive neutrality,
20 and undermine Charter’s significant network investments (supported by private
21 capital) in these areas. For those reasons Charter opposes the CenturyLink
22 applications in those areas already served by Charter.

23

24

1 **II. THE COMMISSION SHOULD DENY CENTURYLINK'S**
2 **APPLICATIONS FOR NEBP PROGRAM SUPPORT IN AREAS SERVED**
3 **BY CHARTER**

4
5 **Q. PLEASE DESCRIBE CHARTER'S NETWORK OPERATIONS AND THE**
6 **SERVICES IT PROVIDES IN NEBRASKA.**

7
8 A. Charter is a cable and broadband company serving parts of Nebraska, and twenty-
9 eight other states. Charter provides a full range of advanced broadband services,
10 including broadband Internet access, advanced cable television and video
11 entertainment programming, and voice services. In addition, Charter Business
12 similarly provides scalable, tailored, and cost-effective broadband
13 communications solutions to business organizations, such as business-to-business
14 Internet access, data networking, business telephone, video and music
15 entertainment services, and wireless backhaul in Nebraska.

16 **Q. WHAT AREAS HAS CENTURYLINK IDENTIFIED IN ITS**
17 **APPLICATIONS FOR NEBP (DOCKET NUSF-77) FUNDING?**

18
19 A. CenturyLink has filed numerous applications under NEBP Docket NUSF-77.
20 There are two applications which seek funding in areas where Charter already
21 provides broadband service. Specifically, CenturyLink seeks funding for a
22 project identified as "13th & M Streets in Gering" ("CenturyLink's Gering
23 Application"), and for a project identified as the "Hitch-n-Rail Trailer Park in
24 Lexington" ("CenturyLink's Lexington Application").

25 **Q. WHAT IS CHARTER'S POSITION ON THE PENDING CENTURYLINK**
26 **APPLICATIONS FOR NEBP SUPPORT IN THE AREAS SERVED BY**
27 **CHARTER?**

28
29 A. Charter opposes the several CenturyLink applications in those areas where
30 Charter provides broadband service to residents of Nebraska. Because Charter
31 provides broadband service at, or well above, the defined standards of 4 Mbps

1 download and 1 Mbps upload (Charter's lowest speed offering is 30 Mbps), in
2 specific areas targeted by several CenturyLink applications the Commission
3 should deny CenturyLink's applications seeking NEBP funding in the census
4 blocks served by Charter.

5 **Q. WHERE DOES CHARTER PROVIDE BROADBAND SERVICE IN**
6 **NEBRASKA?**

7
8 A. Charter provides service in sixty-seven different communities, both large and
9 small, across Nebraska.

10 **Q. PLEASE IDENTIFY THE AREAS IN CENTURYLINK'S APPLICATIONS**
11 **WHERE CHARTER PROVIDES SERVICE.**

12
13 A. Exhibit A sets forth a list of those census blocks identified in the applications of
14 CenturyLink, where Charter provides broadband service, at transmission speeds
15 well above the defined standards of 4 Mbps download and 1 Mbps upload.
16 Exhibit A specifically identifies the census blocks that cover Gering, and the
17 census blocks that cover Lexington. Also, earlier this year Charter filed with the
18 Commission on April 4, 2013, (attached as Exhibit C) a list of the census blocks
19 where Charter provides broadband service to residents of Nebraska. These census
20 blocks cover all of Charter's service territory in Nebraska, and include the areas
21 identified in CenturyLink's Gering Application and Lexington Application.

22 **Q. ARE THESE TWO CENTURYLINK PROJECTS INCLUDED IN STAFF'S**
23 **RECOMMENDATIONS?**

24
25 A. Yes, Table 3 of the Commission Staff recommendation filed on August 29th
26 includes proposed NEBP program support for CenturyLink's Gering Application
27 and its Lexington Application.

1 **Q. WHY DOES CHARTER OPPOSE CENTURYLINK'S REQUEST FOR**
2 **FUNDING OF THE GERING AND LEXINGTON PROJECTS?**
3

4 A. Charter opposes these projects because these areas are already served by Charter.
5 CenturyLink has identified areas in these applications as either unserved or
6 underserved. However, any such assertion regarding the nature of service in these
7 areas is not accurate. In fact, Charter provides broadband service in the areas
8 targeted for funding in CenturyLink's Gering and Lexington applications. As
9 noted above, Exhibit A sets forth a list of those census blocks identified in the
10 applications of CenturyLink, where Charter provides broadband service, at
11 transmission speeds well above the defined standards of 4 Mbps download and 1
12 Mbps upload. Exhibit A specifically identifies the census blocks that cover
13 Gering, and the census blocks that cover Lexington.

14 **Q. IS THERE OTHER EVIDENCE THAT CHARTER SERVES THE AREAS**
15 **IDENTIFIED IN CENTURYLINK'S GERING AND LEXINGTON**
16 **APPLICATIONS?**
17

18 A. Yes, Exhibit B to this testimony are print outs from the Nebraska State Broadband
19 Map showing that Charter currently provides broadband service to the areas
20 identified in CenturyLink's Gering and Lexington applications. Specifically, the
21 maps in Exhibit B show that Charter Communications, Inc. is identified as a
22 provider of broadband, via cable modem DOCSIS 3.0 technology, in Gering
23 (including the areas of 13th and M Streets in Gering). Similarly, the maps in
24 Exhibit B show that Charter Communications, Inc. is identified as a provider of
25 broadband, via cable modem DOCSIS 3.0 technology, in Lexington.
26
27

1 **Q. SO CHARTER IS PROVIDING BROADBAND SERVICE IN LEXINGTON**
2 **AND GERING AT THIS TIME?**

3
4 A. Yes, as demonstrated by the list of census blocks in Exhibit A and the maps in
5 Exhibit B, Charter has current broadband customers and serviceable homes in the
6 areas where CenturyLink is requesting subsidies to build its own broadband
7 network. Charter provides service to customers in these areas over the robust
8 high-speed cable modem broadband network which the company has deployed in
9 Nebraska.

10 **Q. DOES THAT MEAN THESE AREAS ARE “SERVED” WITHIN THE**
11 **COMMISSION’S DEFINITION OF THAT TERM?**

12
13 A. Yes, Charter provides broadband service in such areas at, or well above, the
14 defined standards of 4 Mbps download and 1 Mbps upload. As such, these areas
15 are served by Charter, as defined by the Commission.

16 **Q. WHY SHOULD THE COMMISSION REJECT CENTURYLINK’S**
17 **APPLICATIONS?**

18
19 A. For several reasons. First, CenturyLink’s applications do not meet the
20 Commission’s criteria of targeting unserved or underserved areas. Because these
21 applications seek funding where Charter offers broadband service at, or, above the
22 4 Mbps down / 1 Mbps up standards used by the Commission, they are not
23 targeted to unserved or underserved areas. Second, the applications also fail to
24 meet the Commission’s criteria of serving largely rural areas. Thus,
25 CenturyLink’s Gering and Lexington Applications do not satisfy the
26 Commission’s criteria of prioritizing unserved and underserved areas in largely
27 rural areas of Nebraska.

28

1 **Q. ARE THERE OTHER REASONS THE COMMISSION SHOULD DENY**
2 **THESE APPLICATIONS?**

3
4 A. Yes, in Progression Order No. 4 the Commission stated that the NEBP program
5 “should be administered in a competitively ... neutral manner.” (P.O. 4 at p. 10)
6 However, grant of CenturyLink’s applications would not be competitively neutral.
7 To the contrary, grant of those applications would subsidize CenturyLink’s
8 building of networks in areas already served by Charter’s network.

9 **Q. SHOULD THE COMMISSION BE SUBSIDIZING CENTURYLINK’S**
10 **ATTEMPT TO “OVERBUILD” CHARTER’S NETWORK?**

11
12 A. No, the Commission should not be in the business of picking winners and losers
13 by subsidizing competitors to build networks in areas already served by
14 companies that rely upon their own private capital and resources to build
15 broadband networks. Charter has done just that and should not be forced to
16 compete with an entity that receives subsidies to build its network. Nor should
17 the Commission use public funds to subsidize the building of a network where
18 one already exists. That would skew an otherwise level playing field, and would
19 not be competitively neutral.

20 **Q. PLEASE DESCRIBE CHARTER’S INVESTMENT IN ITS NETWORK**
21 **FACILITIES IN NEBRASKA.**

22
23 A. Charter deployed its network in Nebraska using private capital resources.
24 Charter’s cable broadband network serves sixty-seven communities in Nebraska.
25 This network is the result of significant investment and expenditure of resources
26 to build this network to serve Nebraskans. Specifically, Charter has invested
27 millions of dollars in constructing its broadband network in Nebraska, which

1 includes over one thousand miles of aerial plant, and over five hundred miles of
2 underground plant.

3 **Q. WOULD GRANT OF CENTURYLINK'S APPLICATIONS SUBSIDIZE**
4 **AN OVERBUILD OF CHARTER'S NETWORK?**

5
6 A. Yes. Charter has invested significant resources in its network to serve areas like
7 Gering and Lexington, without any subsidies from the Commission or other
8 government agencies. Private capital markets are less likely to support the
9 building of broadband networks like Charter's network if they believe that
10 government is going to subsidize competitors in those areas. Thus, subsidizing
11 CenturyLink will send the wrong signal to private capital markets.

12

13 **III. RECOMMENDATION**

14 **Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE**
15 **COMMISSION'S CONSIDERATION OF CENTURYLINK'S GERING**
16 **AND LEXINGTON APPLICATIONS?**

17
18 A. The Commission Staff's recommendation in support of two CenturyLink
19 applications in areas already served by Charter conflicts with the Commission's
20 stated priority of targeting unserved or underserved areas. Directing NEBP
21 support to providers proposing to serve areas already served by Charter would
22 conflict with the Commission's goals of competitive neutrality, and undermine
23 Charter's significant network investments (supported by private capital) in these
24 areas. For these reasons the Commission should deny CenturyLink's Gering
25 Application and Lexington Application.

26

27

1 **IV. CONCLUSION**

2 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

3 **A. Yes.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Pre-filed Testimony of Keith Hayes, filed in Application No. NUSF-77, was provided to the following person this 27th day of September, 2013, by electronic mail and first class mail.

Andy S. Pollock
Rembolt Ludtke Law Firm
1201 Lincoln Mall - Ste 102
Lincoln NE 68508
APollock@remboltlawfirm.com

Paul M. Schudel
James Overcash
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
PSchudel@woodsaitken.com
JOvercash@woodsaitken.com

Loel P. Brooks
Katherine Vogel
Brooks, Pansing Brooks, PC, LLO
1248 O Street, Suite 984
Lincoln, NE 68508
LBrooks@brookspanlaw.com
KVogel@brookspanlaw.com

Andrew Newell
Brooks Pansing Brooks, PC, LLO
1248 O Street, Suite 984
Lincoln, NE 68508
Andrew.Newell@viaero.com

Deonne Bruning PC LLO
2901 Bonacum Drive
Lincoln, NE 68502
deonnebruning@neb.rr.com

Stephanie Cassioppi
United States Cellular Corporation
8410 W Bryn Mawr
Chicago, IL 60631-3486
stephanie.cassioppi@uscellular.com

Mark Brown
Rich Strong
Charter Communications, Inc.
11720 Amber Park Drive
Alpharetta GA 30009
Mark.brown@charter.com
Richard.strong@charter.com

Rob Logsdon
Cox Communications
Rob.Logsdon@cox.com

Amy Prenda
Executive Director
Nebraska Cable Communications
Association
aprenda@neb.twcbc.com

Loren Duerksen
Director of Operations
Diller Telephone Company
lorend@diodecom.net

Bill R. Garcia
Windstream Communications
1800 Old Pecos Trail, Ste. J
Santa Fe, NM 87505
Bill.Garcia@windstream.com

Matthew Feil
Senior Counsel, Windstream
1201 West Peachtree Street, Suite 610
Atlanta, GA 30309
Matthew.Feil@windstream.com

Scott Bohler
Manager, Government and External Affairs
Frontier Communications
2378 Wilshire Boulevard
Mound, MN 55364

Scott.Bohler@FTR.com

Neil Classen
Three River Communications
P O Box 66
Lynch, Ne 68746
neil@threeriver.net

Tom Schommer, President
Telebeep, Inc.
2404 Taylor Avenue
Norfolk, NE 68701
tom@telebeep.com

Craig Gilley
Meghan McCarthy
Cable One, Inc.
Edwards Wildman Palmer LLP
1255-23rd Street N.W., 8th Floor
Washington, DC 20037
cgilley@edwardswildman.com

William E. Hendricks
CENTURYLINK
902 Wasco Street
Hood River, OR 97031
Tre.Hendricks@CenturyLink.com

Jill Vinjamuri Gettman
Scott E Daniel
Gettman & Mills LLP

10250 Regency Circle Suite 350
Omaha, NE 68114
jgettman@gettmanmills.com

Dan Spray, President
Connecting Point
123 N 4th Street
Norfolk, NE 68701
sales@conpoint.com

Steve Meradith, Executive Director
Nebraska Public Service Commission
300 Atrium Building
1200 N Street
Lincoln, NE 68508

Electronically please serve:
Brandy Zierott
Brandy.Zierott@nebraska.gov

Ms. Shana Knutson
General Counsel
Nebraska Public Service Commission
1200 N Street, Ste. 300
Lincoln, NE 68508
Shana.Knutson@nebraska.gov



Gina Lee