

**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Nebraska Public)
Service Commission, on its Own Motion,)
to Consider Appropriate) Application No. NUSF-139
Modifications to the High-Cost Distribution)
and Reporting Mechanisms in its)
Universal Service Fund Program in)
Light of Federal and State)
Infrastructure Grants)

**COMMENTS OF CHARTER FIBERLINK – NEBRASKA, LLC,
AND TIME WARNER CABLE INFORMATION SERVICES (NEBRASKA), LLC**

Charter Fiberlink - Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively “Charter”) hereby submit these Comments for consideration in the above-captioned proceeding. Charter’s Comments are filed pursuant to the Commission’s Order Opening Docket, Seeking Comment and Setting Hearing, issued August 29, 2023 (the “Order”). Specifically, these Comments address issues raised in Subpart II.A of the Order, captioned “The Need for Immediate Reform.” Charter and its approximately 167,000 customers across 91 Nebraska communities contribute approximately \$2 million each year to the Nebraska Universal Service Fund (“NUSF”), and we are concerned that Nebraska has one of the highest state USF surcharges in the nation, so we appreciate that the Commission is thoughtfully considering several fundamental issues surrounding the NUSF, and we appreciate this opportunity to provide comments and recommendations on these issues raised by the Commission in the Order.

Through the many issues addressed during the course of this proceeding, Charter urges the Commission to focus on the following policy priorities: (1) adopt NUSF policies that are fair to all providers and all consumers in the state, regardless of where they live or who their provider is; (2) remain cognizant that the NUSF surcharge is paid only by customers of intrastate

telecommunications services, and thus the need to keep the NUSF surcharge as small as possible so that telephone service in Nebraska remains affordable; (3) carefully consider the extent to which the hundreds of millions of dollars aimed at bringing robust broadband service to every Nebraska resident will impact the need for a continued elevated NUSF surcharge; (4) wherever possible, adopt policies that synchronize with other broadband programs and policies at the federal and state levels, to achieve a coordinated and unified broadband policy in Nebraska; and (5) while preserving necessary accountability for NUSF funds, limit the reach of Commission regulation over broadband services. Charter anticipates exploring these issues in more detail later, but focuses these comments on the limited scope of issues raised in Subpart II.A of the Order.

I. Use of FCC Broadband Data Collection Data

The Commission notes that discontinuance of the FCC Form 477 eliminates a tool used by competitive carriers to demonstrate service within a census block and that the Commission had used such data as a minimum surrogate for determining broadband service availability in a given census block. Accordingly, the Commission seeks comment on whether it should use the FCC's broadband data collection ("BDC") data in its current model for the next calendar year to determine high-cost support distributions.

Charter supports the Commission aggregating BDC data for use in its current model to determine high-cost support distributions for the upcoming calendar year. The FCC clearly intends this BDC data to be available to states for determining eligible locations, challenges, and/or other purposes and has published instructions to enable different entities, including government entities, to access the BDC data.¹ Of course, the FCC's BDC data should be supplemented with information

¹ See: <https://help.bdc.fcc.gov/hc/en-us/articles/6785010654235-How-Government-Entities-Can-Access-the-Location-Fabric->

from the FCC’s Broadband Funding maps² and the PSC’s own information regarding locations funded by Broadband Bridge Program, NUSF support, and other state and local broadband grant programs, but obtaining BDC data directly from the FCC would provide the Commission with a “one-stop shopping” method for gaining the necessary broadband availability data that would be quick, efficient, and complete.

The Commission asks if, in the alternative, in order to make high-cost distribution amounts available earlier, it should seek broadband availability data directly from carriers as they file BDC information with the FCC during the July through September timeframe. Charter, however, does not believe that adopting a separate process to obtain data directly from carriers would be necessary, efficient, or helpful. The Commission does not have jurisdiction over various entities from which it will need data and, therefore, may not be able to obtain all of the necessary broadband availability data from those unregulated entities. Accordingly, adopting a separate collection process from providers will likely result in less complete data than the Commission would obtain from the FCC directly.

Additionally, to the extent carriers would be required to provide such data directly to the Commission, they would need reasonable notice and a reasonable amount of time after FCC filings are complete to provide and/or seek confidentiality protection for the data provided. Given this amount of time required to collect the data, as well as the high likelihood of incomplete data, it is doubtful that any separate Commission data collection process would create efficiencies or allow the Commission to make high-cost distribution amounts available earlier.

II. Challenge Process

² <https://fundingmap.fcc.gov/home>

The Commission next asks whether it should forgo its own challenge process and instead rely on carrier challenges to the BDC data within the FCC broadband map. Charter agrees that the Commission should utilize the FCC’s existing challenge process. The FCC’s process is robust, well-developed, and location-specific. The FCC has established carefully considered mechanisms and documentation requirements for challenges, and there is no reason the Commission should craft its own, different mechanism.³ Indeed, a different state process could create needless uncertainty for providers, whereby a location might be challenged under the FCC’s challenge process, but not under the Commission’s process (or vice versa). And a Nebraska-specific challenge process would be expensive and time-consuming to implement, without assurances that the results would be better than the existing FCC process.

The Commission also asks whether the challenge process should be based upon the service currently provided, rather than whether a provider could initiate service through a routine installation within 10 business days of a request with no extraordinary monetary charges or delays attributable to the extension of the provider’s network. Whether the Commission relies on FCC processes or establishes its own, defining “currently provided” differently than the FCC’s standard would be problematic and would substantially understate the extent of broadband coverage in the state. The FCC’s guidelines appropriately provide that:

Service is considered to be “available” at a location if the provider has, or previously had, a connection in service to the location, or if the provider could initiate service through a routine installation within 10 business days of a request with no extraordinary monetary charges or delays attributable to the extension of the provider’s network.⁴

³ See <https://help.bdc.fcc.gov/hc/en-us/articles/10476040597787-How-to-Submit-an-Availability-Challenge>, listing the reasons for filing an availability challenge and the requirement to upload documentation supporting the challenge. See also <https://help.bdc.fcc.gov/hc/en-us/articles/8554187214107-Fabric-Challenge-Process> which contains a video tutorial on the bulk fabric challenge process.

⁴ <https://help.bdc.fcc.gov/hc/en-us/articles/10476040597787-How-to-Submit-an-Availability-Challenge>

The Commission should not attempt to deviate from this well-considered process. A home within a neighborhood with fiber and coaxial cable running down every street should not be considered “unserved” simply because that location has never sought the broadband connectivity immediately available to them on request.

With respect to the proper speed benchmark to use to consider a location served, Charter urges the Commission to use a 100/20 Mbps benchmark instead of a 100/100 Mbps benchmark. Changing the speed benchmark would require a statutory change – and would be unwise, as it could result in providers requesting NUSF support for areas that currently have gigabit-speed internet connections. The 100/20 Mbps benchmark set forth in both Nebraska law and the federal BEAD program should be maintained.

First, in the context of the Broadband Bridge Program, Neb. Rev. St. § 86-1302(11) provides that an underserved area is one which “lacks broadband Internet service providing access to the Internet at speeds of at least one hundred megabits per second for downloading and twenty megabits per second for uploading.” Separately, in connection with the Commission’s authority to redirect NUSF support away from noncompliant providers, Neb. Rev. St. § 86-330(4) provides that funding support shall not be withheld where infrastructure is found by the Commission to be capable of reliably providing broadband service “at a minimum download speed of one hundred megabits per second and a minimum upload speed of twenty megabits per second.”

Second, the BEAD program considers a location “underserved” if it lacks broadband service with speeds of 100 Mbps downstream/20 Mbps upstream.⁵ The FCC also made 100/20 its standard for carriers receiving Enhanced Alternative Connect America Funds after October 1,

⁵ See Notice of Funding Opportunity, Broadband Equity, Access and Deployment Program, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> at p. 7.

2023.⁶ Using the standard of 100/20 Mbps both comports with Nebraska law and maintains consistency between the federal and state goals for locations considered “served.” If this standard for considering locations served is not used, the NUSF could be used to overbuild areas where 100/20 Mbps buildout is supported by federal programs like BEAD, Connect America Fund, RDOF,⁷ or other programs. Such a result would not be a productive use of NUSF funds.

Lastly, Charter has no comment on the structure of payments made to carriers for buildout projects, but reserves its right to respond to any comments filed on the issues raised by the Commission.

Charter appreciates the opportunity to participate in this phase of the proceeding.

Dated: September 29, 2023

Charter Fiberlink – Nebraska, LLC and Time Warner
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⁶ 47 C.F.R. § 54.308(a)(3).

⁷ Most RDOF locations will be built to gigabit-speed service, but many RDOF locations will be built to 100/20 Mbps. <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf> (“[W]inning bids for downstream speeds of at least 100 megabits per second (Mbps) cover 99.7% of these locations, with over 85% of locations covered by winning bids for Gigabit speed service”).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of September, 2023, the above Comments of Charter Fiberlink – Nebraska LLC and Time Warner Cable Information Services (Nebraska), LLC in Application No. NUSF-139 was delivered via electronic mail to the following:

Nebraska Public Service Commission
psc.nusf@nebraska.gov

/s/ Kevin M. Saltzman _____