BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to its high-cost distribution mechanism and make revisions to its reporting requirements.	)))))	**Application No. NUSF-108 Progression Order No. 3**

COMMENTS BY CHARTER FIBERLINK – NEBRASKA, LLC, TIME WARNER CABLE INFORMATION SERVICES (NEBRASKA), LLC AND COX NEBRASKA TELCOM, LLC.

In accordance with the Nebraska Public Service Commission's ("Commission") *Order Seeking Further Comment and Setting Hearing* dated June 19, 2018 ("*Rate of Return Reform Order")*, Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively, "Charter"), and Cox Nebraska Telcom, LLC ("Cox") take this opportunity to provide comments in the above-captioned proceeding.

The *Order Seeking Further Comment and Setting Hearing* referenced above outlines several proposed steps to incrementally reform the Commission's universal service arrangements with respect to the areas served by rate-of-return carriers."[1] As we explain below, Charter and Cox generally support the *Rate of Return Reform Order* as a positive step to a more transparent – and, in the future, we would hope more open – universal service system. Specifically, we are encouraged by efforts to better *target* support to qualifying census blocks, to increase *transparency* by annually publishing the list of qualifying census blocks in conjunction with a

[1] On July 6, 2018, Hearing Officer Landis distributed a letter that provided staff's views concerning the proposed reforms ("*July 6 Letter*"). Although Hearing Office Landis made clear that the staff's responses do not necessarily represent the views of the Commission or any individual Commissioner, we have considered staff's responses in developing our support for the *Rate of Return Reform Order*.

challenge process, and to *allocate* available subsidy between ongoing support and capital investment, with the latter made part of a grant-based regime.

Creating a Public Catalog of Qualifying Census Blocks is a Positive Step

A foundational step in the reform process is to first identify, with precision, those areas that the Commission intends to support. We believe that the *Rate of Return Reform Order's* proposal to establish and update annually the list of Nebraska census blocks that will qualify for support – combined with a challenge process[2] – will better inform the Commission and lead to a more efficient system.[3] In particular, we fully support the Order's targeting mechanism that would remove:

- Urban census blocks;
- CAF-supported (more specifically, ACAM-supported) census blocks;[4] and
- Census blocks where an unsubsidized competitor is offering wireline voice and broadband service at speeds of at least 25/3 Mbps.

In our view, the list of qualifying census blocks should decline as alternative rural broadband technologies (such as the use of "white spaces," 5G wireless and low earth satellite technologies) become commercially viable. Moreover, we see the *Rate of Return Reform Order* as an incremental step and would hope that in the future alternative providers will be able to

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2 Because the purpose of the targeting mechanism is to identify those areas that do not have broadband service, it is important to make clear that those census blocks where Rural Utilities Service grants and loans have been received for broadband deployment are also removed from the list of qualifying census blocks as well as any other governmentally funded program (such as BTOP), now or in the future.

3 *Rate of Return Reform Order* at 4.

4 *July 6 Letter* at 1.

compete on equal terms with legacy phone companies for support through an auction (or some other merit-based) approach.

It is our understanding that the staff would define "urban" in this context as a census block containing at least 20 households, with a *spacial* density of 42 households per square mile.[5] These metrics may be overly generous, particularly the latter requirement that would better reflect cost conditions if stated as a *linear* density measured in households per road mile. Although we have long expressed skepticism that the State Broadband Cost Model accurately measures the actual *level* of the cost of rural broadband, there is less reason to challenge the basic cost *relationships* identified by the model. The NTCA ("The Rural Broadband Association") and USTelecom ("The Broadband Association") recently released a white paper on rural broadband the depicts the following cost relationships:[6]

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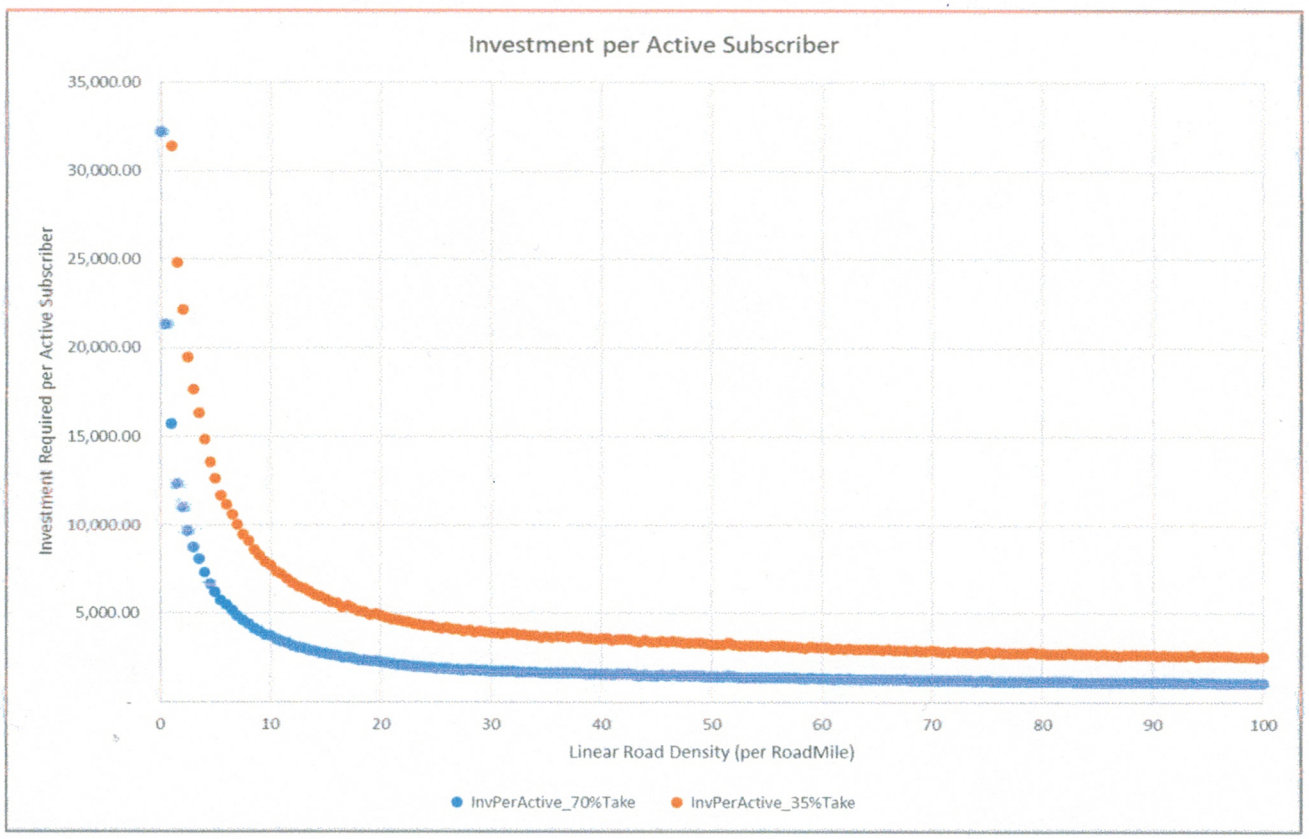
5 *Ibid.*

6 Rural Broadband Economics - A Review of Rural Subsidies, CostQuest Associates, July 11, 2018 ("*CostQuest Study*") at 22. The orange curve in the above figure assumes a take-rate of 35%, while the blue curve assumes a take rate of 70%. https://www.ustelecom.org/news/press-release/government-support-key-bridging-digital-divide-rural-america



It is not our purpose here to support the accuracy of the *values* on the vertical axis, or to suggest that the Commission should use the CostQuest model for the disbursement of support.[7] However, much like the Commission proposes to use the relative split between OpEx and CapEx (which we discuss below) to allocate subsidy between ongoing support and deployment grants, the Commission can generally conclude from these cost curves that costs become relatively flat at densities substantially below the 42 household/square mile standard suggested by staff. As a result, even if the Commission continues to use the household per mile metric, it must recognize that the 42 households per square mile standard is too high and set the benchmark lower.

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[7] Charter has previously explained that the SBCM likely overstates the cost to deploy rural networks (and, therefore, overstates the need for support). *See* Reply Comments of Charter Fiberlink – Nebraska, LLC, Time Warner Cable Information Services (Nebraska), LLC and Cox Nebraska Telcom, LLC, April 12, 2018 at 2-3; *See also* Comments of Charter, NUSF-111, January 30, 2018 at 8.

Moreover, in our experience, "square mile" metrics frequently understate density by including areas – such as lakes, rivers and farmland – in which the costs of terrestrial broadband deployment are never going to be relevant.[8] Indeed, when measured in square miles, nearly all of Nebraska (93%) is farmland,[9] which is the highest percentage in the nation. But that does not mean that the linear density along roads (which farm *houses* are logically near) is similarly dispersed.[10]

The Proposed Movement Towards a Grant-Based System is Reasonable

A second key feature of the Commission's *Rate of Return Reform Order* is its proposal to allocate the available subsidy between ongoing support to Rate of Return carriers and a grant-based program. This reform is analogous to a similar policy that the Commission applies to price-cap carriers today.[11] To determine the allocation of support, the *Rate of Return Reform Order* proposes to use the relative importance of OpEx and CapEx estimated by the SBCM. On a national basis, the recent NCTA/USTelecom analysis suggests an initial allocation of approximately 55% to ongoing support, with 45% of the support allocated to specific

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8 For instance, even in a relatively dry State such as Nebraska, there are over 5,500 census blocks that contain nothing but water. https://www.census.gov/geo/maps-data/data/tallies/tractblock.html

9 http://www.stuffaboutstates.com/agriculture/farm_by_percent.htm (2004).

10 To be clear, we are not disputing that there are areas of Nebraska where linear density suggests that subsidy is required to justify broadband deployment (at least using terrestrial, wired technologies). Rather, our point is that the Commission should consider linear density because it is both more relevant to the *cost* of wired technology and less likely to be distorted by the inclusion of areas that are not relevant to broadband *demand*.

11 By *Order* entered in NUSF-99, P.O. 1 on September 1, 2015, the Commission required price cap companies to use 50% of their NUSF support for broadband grant projects. That amount has since been increased to 80%.

projects/grants.[12] Importantly, reimbursement would be based on *actual* costs, which is a necessary element of an efficient universal service system.[13]

Consistent with our earlier comments regarding the SBCM, it is not our purpose here to suggest that the 55/45 division is a perfect measure, but rather that it is a reasonable first step towards relying, to the maximum extent practical, on a project-specific (which is to say, fact-specific) justification for high-cost support. Although we are skeptical that the SBCM accurately estimates the *absolute* level of rural deployment costs, we have no reason to conclude that its *relative* estimate of OpEx and CapEx is flawed. As we understand the proposal (based on the data here), the Commission would "set aside" 45% of the subsidy for grant programs, before doing an allocation of the ongoing support total (the 55%) to individual companies.

Given our view that the SBCM inflates the cost of rural broadband overall, we are concerned by the *Rate of Return Reform Order's* suggestion that it will provide ongoing support payments to those qualifying census blocks that are already broadband-capable based on the SBCM's estimated cost.[14] It may be reasonable to *allocate* the statewide ongoing-support among individual companies using the combined OpEx and CapEx amount, but it would be inappropriate to *pay* support based on these OpEx and CapEx estimates that artificially inflate actual cost. To the extent that the Commission overstates ongoing support for those areas that already have broadband, it will unnecessarily reduce the support available for grant-based deployments. The result would be *less* broadband than is otherwise possible, which is an

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12 *CostQuest* Study at 8-9.

13 *Rate of Return Reform Order* at 5-6.

14 *Rate of Return Reform Order* at 6 (emphasis added):

> [F]or carriers that have eligible census blocks already built out with broadband networks capable of 25/3 Mbps service, we propose to pay both operating expenses and capital expenses for these blocks, based on the calculation of support by SBCM.

outcome directly at odds with the fundamental purpose of the fund. As such we recommend that the Commission first determine the statewide total allocation between ongoing support and its grant-based system, before allocating this total between individual carriers.

Conclusion

In conclusion, we find the *Rate of Return Reform Order* to represent a welcome incremental improvement to the universal service system in Nebraska. While we hope that future improvements will move towards competitive bidding for qualifying census blocks, we applaud the Commission's efforts here as a valuable first step.

Respectfully submitted this 19th day of July 2018.

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Certificate of Service

The undersigned hereby certifies that on this 19th day of July, 2018, five copies of the Joint Comments of Charter Fiberlink - Nebraska, LLC and Cox Nebraska Telcom, LLC in Application NUSF-108 were hand-delivered to the Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, Lincoln NE and a copy of the same has been e-mailed to the following:

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