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 AND TIME WARNER CABLE INFORMATION SERVICES (NEBRASKA), LLC

In accordance with the Nebraska Public Service Commission's (the "Commission") *Order Seeking Comment* dated December 19, 2018, Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively, "Charter") take this opportunity to provide comments.

There is nothing more complex and arcane than the cost-allocation systems that apply to rate-of-return incumbent local exchange carriers ("RoR carriers"). The Commission has set forth detailed questions in the *Order Seeking Comment*, to which the RoR carriers in Nebraska (which benefit from this system) will likely respond with detailed analysis. Given our expectation that such filings will require review, Charter requests that the Commission provide an opportunity to file Reply Comments to respond to the RoR carriers' proposals.

With this procedural concern, Charter provides these Comments to recommend policy guidelines that should be used to judge the more detailed responses of the RoR carriers, as well as address in Attachment "A" the Commission's specific questions in the *Order Seeking Comment*.

Specifically:

- We agree that there likely are areas where a private-sector business case to construct broadband facilities does not exist based on current (but evolving) technologies and it is appropriate that the Commission seek to facilitate access by all Nebraskans to broadband services;

- Identifying with precision these specific areas – as well as determining the *minimum* subsidy necessary to create a private-sector business case – cannot be done reliably by any hypothetical cost model, and

- Universal service subsidies will always be a scarce resource that must be allocated efficiently, which necessarily means that no competitor should be overbuilt and that subsidies should be directed to the lowest-cost proposals.

We recognize that the federal high-cost system currently relies heavily on the use of cost models, specifically the Connect America Model (the "CAM") that was used to create statewide offers for price cap carriers, and the Alternative Connect America Model (the "ACAM") that was provided as an option to rate-of-return carriers. Such reliance, however, was always intended as a *temporary* deviation from a competitively-neutral, auction-based system that would empower any provider to craft business plans and propose cost-effective solutions limited only by their ingenuity.[1]

In our view, information vital to the Commission's understanding of rural broadband costs and opportunities will emerge from the upcoming July Connect America Fund ("CAF") Phase II auction, and the Commission should observe that auction to determine what lessons can be applied

1 *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*USF Transformation Order*") at ¶ 1, which states it is "important to emphasize the limited scope and duration of the state-level commitment procedure" and "we anticipate that funding will soon be allocated on a fully competitive basis." One can argue that the 6-year funding commitment to price cap carriers (and 10 years to those companies adopting ACAM support) stretch the characterization that "funding will soon be allocated on a fully competitive basis," but the relevant point is that the FCC is now far along this timeline, with the first tranche (nearly $200 million per year) of CAF Phase II wireline funding to be competitively awarded through auction this summer.

here.[2] There is simply no substitute for facts on the ground and competitive innovation to provide insight as to what technologies – and what providers – are best suited to deploy broadband services into rural areas. The Commission should synchronize this proceeding with the July auction to best inform the record. While comments may reveal interim reforms that better target its subsidies here, the Commission should affirmatively look to the auction to gain additional insights and further improvements to its current system.

<u>Universal Service Subsidies are a Scarce Resource</u>

Charter supports the availability of broadband services in all areas of the state, including areas where there may currently be no sustainable private-sector business case given the limitations of today's technologies. That said, it is important that any such program respect a central axiom: there should never be subsidy provided to a carrier where competitive facilities exist. Meaning, that subsidies should not be used where a business case exists for private investment.

The threshold justification to provide subsidy is that, in the *absence* of subsidy, broadband service would not be available. Obviously, if facilities/services are already in place due to private investment, there is no need to use public funds and burden consumers to subsidize a duplicate network. Moreover, the presence of a competitor is *prima facia* evidence that a private-sector business case does exist to provide service in a particular area.

More fundamentally, however, is the recognition that universal service subsidies will always be a scarce resource that must be allocated efficiently to prevent unnecessarily burdening consumers. The most efficient mechanism to allocate subsidy is a comparative (*i.e.*, auction)

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[2] *See* Public Notice, Connect America Fund Phase II Auction Scheduled for July 24, 2018, Notice and Filing Requirements And Other Procedures For Auction 903, AU Docket No. 17-182 WC Docket No. 10-90, January 30, 2018.

process that would allow *all* providers to propose projects, with the available support directed to those projects that reach the greatest number of subscribers (equalized for speed and cost). Such an approach is *similar* to the suggestion raised by the Commission's Question 3 (which asks whether RoR carriers should annually present a list of projects for which broadband funding is requested), but with the important difference that *any* provider could seek support (whether or not it is a legacy RoR carrier) and have its projects judged by their relative merit.

There is no reason to limit the universe of potential subsidy recipients to preexisting local telephone companies. While Charter does not believe that incumbency should disqualify a proposal, neither should it confer preference. If *only* RoR carriers request support – or if the subsidy requested by a RoR carrier is demonstrably better than alternatives – the Commission (within its budget) should consider approving specific RoR carrier projects. But the key is a *merit-*based system that is open to other providers.

A Merit/Auction Process is Preferable to any Approach Using a Cost-Model

As noted, the most efficient system to identify cost-effective rural broadband solutions is through a competitive procurement/bidding system. This would be true even if the Commission had access to a cost model blessed with divine insight and information, qualities that most assuredly do not apply to the CAM and its variants, the ACAM and the State Broadband Cost Model (SBCM).

Cost models attempt to determine where – and by what amount – future costs will exceed future revenues so that the model can calculate the subsidy needed for a business case to become attractive. In a competitive procurement environment, estimates of these unknowns are prepared by individuals and firms looking at detailed information concerning particular markets and specific network configurations, because (even with subsidy) some private capital will be placed at risk and investors demand market-specific information before committing that capital.

A cost model approach substitutes this highly decentralized and fact-specific decision process with rulemaking. The *CAM Inputs Order* alone is 91 pages in length,[3] reflecting hundreds of input choices, several based on a single, nationwide determination (such as, for instance, the expected average revenue per customer and take-rate) that ignores any real-world variation in markets. A cost model must make choices among technologies, and adopt assumptions about inputs, that limit the range of possible approaches. The CAM adopts as "fixed" the location of the incumbent's wire centers and tandems – locations which may have no relevance to the incumbent's broadband network, much less the network of an entrant. Moreover, the CAM is based on a single architecture (fiber to the premise),[4] when the actual proposals of other providers would consider whatever architecture best served the terrain and/or market.

If investors would not substitute the CAM for their own analysis, the Commission should not either. The CAM had a role (for better or worse) in "jump starting" the federal universal service fund system, but that role has passed, and the Commission should not revive that role here. Moreover, there is substantial evidence that the CAM (and its variants) overstate cost. As we have previously explained, the CAM includes the cost to reach a significant number of phantom

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[3] In addition to adopting specific inputs in the *CAM Inputs Order*, the Wireline Competition Bureau previously released a 29-page Order addressing the underlying model platform. *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (Wireline Comp. Bur. 2014) ("*CAM Inputs Order*"); *see also Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 28 FCC Rcd 5301 (Wireline Comp. Bur. 2013) (*CAM Platform Order*). Rel. April 22, 2013.

[4] Notably, while the CAM estimates the costs to deploy a fiber-to-the-premises architecture, the FCC only requires a network capable of 10/1 speeds (which can be achieved through less costly means). Indeed, CenturyLink has indicated that it expects to deploy a fiber-to-the-node and/or fiber-to-the-midnode architecture, not fiber-to-the-premises. *See* Comments of CenturyLink, WC Docket 10-90 *et. al*., filed August 8, 2014 at pp. 8-9.

locations that providers are learning do not exist, while the FCC's Rural Broadband Experiments (a precursor to the auction approach) demonstrated that bidders made proposals requiring far less support than the cost model asserted, suggesting that the modeled offers to ILECs were overly generous.[5]

The Commission Should Not Duplicate ACAM Support

It is important the Commission rationalize its state subsidy scheme to the federal system, including for those RoR carriers that voluntarily chose ACAM support.[6] These "ACAM carriers" have agreed to deploy broadband to meet required number of locations for each speed tier (25/3 Mbps, 10/1 Mbps, 4/1 Mbps). For locations supported by ACAM, no additional state support is needed.

Although choosing ACAM should not disqualify a RoR carrier from additional state support, such support should only be provided for (a) locations not addressed by ACAM, and (b) only where the ACAM RoR carrier's proposal is the best-available alternative when judged against *all other* proposed uses of state USF support. There should be no automatic entitlement to a provider based on its legacy role.

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[5] Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC, filed January 30, 2018 in Docket No. NUSF-111.

[6] Over 62% of the NUSF support intended RoR carriers is budgeted for RoR carriers that have selected ACAM for federal support. *See* NUSF-108 High-Cost Support Distribution, Year 14 NUSF26 Distribution Model – Public, available at: http://www.psc.nebraska.gov/ntips/ntips_nusf.html.

Respectfully submitted this 5th day of March, 2018.

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Charter's Responses to Specific Listed Questions

1. Should the Commission reform the distribution mechanism for carriers by making specific allocations for broadband buildout in RoR areas?

The Commission should reform the distribution mechanism to allow *any* provider to apply for broadband support in areas not served by a competitor. The Commission should approve applications based on *relative* merit and should not predestine support to any particular RoR carrier's area.

2. If so, how should the Commission consider ongoing operations expenses? Should the revised mechanism default to mirror the mechanism in place for price cap carriers which includes specific percentages of support allocated for broadband plant and ongoing operating expenses? Please explain.

Charter does not take a position at this time, but requests the Commission to grant the parties an opportunity for Reply Comments. In doing so, the Commission would ensure that it builds a full and complete record upon which to base its decision. Such a record cannot be built if all commenters do not have an opportunity to reply to issues that may be raised in the initial round of comments.

3. How can the Commission establish a responsible but administratively efficient process for RoR carriers to annually present a list of the projects for which broadband funding is desired and have the Commission review, and approve or deny the projects?

As noted in (1) above, the Commission should establish a process that enables third-parties to propose broadband projects and should only approve those of the RoR carriers to the extent they are the most efficient.

4. How should the Commission coordinate the use of state high-cost support with federal support particularly for those RoR carriers that have elected to take model support? How should the Commission treat RoR carriers where the carrier will remain on a legacy-based support mechanism?

Carriers selecting model support should not require additional support to achieve commitments made to the FCC. To the extent that an RoR carrier has accepted model support, it should only be permitted to propose projects to serve locations that are not covered by the federal subsidy mechanism. In addition, support for these locations should only be approved as part of a system that judges the relative merit of proposals from ILECs and other providers.

5. Similar to the price cap territories, the Commission proposes to disallow broadband buildout support in areas that already have an unsubsidized carrier providing comparable broadband service. Please comment.

The Commission should never provide support in an area that is already served by an unsubsidized carrier. Doing so would be wasteful of scare resources and unnecessarily burden consumers.

6. How can the Commission fairly treat rate-of-return carriers who have already deployed broadband throughout their footprint? For RoR carriers that have built out fiber to the premises, is the NUSF EARN Form an appropriate way to determine or limit the allocation of support?

Charter does not take a position at this time, but requests the Commission to grant the parties an opportunity for Reply Comments.

7. How do we account, for ROR carriers that have built-out to 100 percent of their subscribers and have extensively borrowed for plant investment? Should the Commission focus on the amount of debt taken on by a carrier for plant investment? Should the Commission look at existing loan terms and payment requirements? If so, what type of information should be filed? How could the Commission account for this in an administratively efficient manner? How should the Commission consider in-town versus out-of-town investment when looking at structuring support aimed at ongoing operational expenses and debt?

Charter does not take a position at this time, but requests the Commission to grant the parties an opportunity for Reply Comments.

8. How should the Commission account for the RoR carriers that have built out broadband to a majority of subscribers but not to those that are the furthest out? Should the Commission focus NUSF support on the last mile customers? Are there some subscribers that are too expensive to serve? Should the Commission encourage the use of alternative technologies to reach the last mile subscribers above a certain cost threshold? If so, what should that. threshold be?

The Commission should not favor one technology or type of provider over another. Technological neutrality also means that the Commission should consider the use of alternative technologies where such technologies are cost effective.