

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. NUSF-108  
Public Service Commission, on ) Progression Order No. 4  
its own motion, to make adjustments )  
to its high-cost distribution ) Order Seeking Further Comment  
mechanism and make revisions to its )  
reporting requirements. )

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

Nebraska  
Public Service Commission

In accordance with the Nebraska Public Service Commission’s (the “Commission”) *Order Seeking Comment* dated February 5, 2019, Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC (collectively, “Charter”), take this opportunity to provide additional Comments in the above captioned proceeding.

In its Comments to Commission Progression Order No. 4,<sup>1</sup> Charter requested that the Commission initiate a rulemaking, grounded in LB 994 enacted earlier this year and codified as Neb. Rev. Stat. § 86-330,<sup>2</sup> to design and, to the extent additional state subsidies are needed, implement a competitive bidding system in lieu of a high cost mechanism that relies on the Alternative Connect America Model ("A-CAM"). Charter has not changed its views regarding the inherent preferability of a competitive bidding system to identify and disburse Universal

<sup>1</sup> Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC filed December 18, 2018, NUSF-108.

<sup>2</sup> LB 994, as codified as Neb. Rev. Stat. §86-1102(3)(d), also implores the newly-created Rural Broadband Task Force, among other things, to:

Examine alternatives for deployment of broadband services to areas that remain unserved or underserved, such as reverse auction programs described in section 86-330, public-private partnerships, funding for competitive deployment, and other measures, and make recommendations to the Public Service Commission to encourage deployment in such areas.

Service Fund ("USF") funding. Charter recognizes, however, that the Commission has chosen to implement its A-CAM approach and now requests comment on a system to increase funding for those census blocks *assumed* by the A-CAM as having costs in excess of the federal support cap of \$200/month. Charter's comments therefore narrowly address the two most critical concerns raised by the *Order Seeking Comment*.

Specifically, Charter recommends that the Commission not commit additional funds to ILECs serving locations based solely on A-CAM estimates without demonstrated real-world evidence. In other words, the Commission should verify both that such support is needed and that the requested support represents the least amount necessary to extend rural networks to unserved areas. The recent CAF II Auction provided a real-world test *in Nebraska* as to the level of support needed to serve areas identified as extremely high-cost areas the by price-cap equivalent to the A-CAM, the CAM. Carriers were willing to deploy fixed-wireless networks to serve extremely high-cost areas – *i.e.*, locations in areas the CAM claimed would cost more than \$198.60 per month to serve<sup>3</sup> – for *only \$38.50 per month/location in total federal support*. As a result, clearly, there is no factual or real-world basis to assume that carriers require support above the \$200 federal levels when they are willing to serve those areas for less than \$40 per month.

This observation brings us to the second area of our comments, which concerns the usefulness of the High Cost Universal Broadband (HUBB) database for determining whether

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<sup>3</sup> *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Federal Communications Commission, WC Docket No. 10-90, Released: April 29, 2015.

deployment obligations are being satisfied. As the Commission recognizes in its *Order Seeking Comment*, the HUBB database is intended to track an A-CAM carrier's progress in meeting its *federal* build-out requirements. The HUBB database is not intended to track additional build-out made possible by supplemental state funding. Consequently, either the Commission intends to provide additional state funding to achieve the *same* build-out levels as would occur under the CAF-II system, or it envisions *additional* build-out requirements that would not be separately tracked in the HUBB database as presently configured.

The first outcome merely diverts money from the pockets of those that contribute to the Nebraska fund to A-CAM carriers without any additional deployment; the latter requires (to Charter's understanding) that the Commission request additional monitoring capabilities in the HUBB database. Either way, if the Commission's goal is to use the Nebraska USF to effectuate additional, verifiable, broadband deployment in Nebraska, providing support to A-CAM locations that would already be served and reported to the HUBB database accomplishes neither task.

#### **The A-CAM Does Not Accurately Estimate Location-Specific Costs**

The approach outlined by the *Order Seeking Comment* appears to suggest that the Commission will accept at face value the estimated theoretical cost calculated by the A-CAM and provide additional cash support to an ILEC accepting federally-established broadband buildout requirements where the A-CAM cost exceeds \$200 month. While it is not fully clear how the proposal is intended to work, it seems structured to provide the ILEC with additional subsidy to achieve the exact same broadband footprint as will already be required by the ILEC's acceptance of CAF II support. If so, then the Commission is effectively getting "nothing for

something” by providing support to an ILEC to do what it has already promised the FCC it will do with its acceptance of A-CAM based support.

The fundamental assumption at the core of the Commission’s math as shown in the Table 1 is that the A-CAM *accurately* determines the level of support required to serve each census block and therefore, the A-CAM can be used to determine the “remaining support required to serve” after reducing this cost by the expected federal subsidy.<sup>4</sup> This assumption, however, cannot be trusted. Indeed, the available evidence demonstrates that it is plainly wrong.

The federal CAM model (upon which the A-CAM was derived) similarly claimed an ability to identify areas in the territories served by price cap ILECs that were extremely high-cost, a term defined by the FCC as having a monthly cost in excess of \$198.60 per month/location. Because of the federal budget constraint for CAF II support for price cap ILECs, the FCC excluded these areas from its CAF II buildout requirements because the CAM assumed these areas would be too expensive to serve.

Fortunately, these extremely high-cost areas were open to other providers and technologies in the recently concluded CAF II auction and the results are instructive. Charter provided a national summary attached to its earlier Comments in this proceeding.<sup>5</sup> Here, we narrow our focus to those areas in Nebraska and demonstrate that fixed wireless technologies can

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<sup>4</sup> We recognize that the Commission intends to apply a budget-control limitation based on the level of subsidy it collects under its new rate structure so that the Commission does not expect to fully offset the A-CAM based cost. Even so, one cannot begin with a false assumption concerning the A-CAM’s accuracy and hope the offsetting reduction in additional support caused by a budget limit will produce a better result.

<sup>5</sup> See “Lessons from the CAF II Auction and the Implications for Rural Broadband Deployment and the IP Transition,” attached as Exhibit 1 to Comments by Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC filed December 18, 2018.

bring broadband service at least as fast (and for most locations, far faster) as the 25/3 standard in the proposal at a fraction of the cost claimed by the CAM.

As shown in Table 1 below, the CAF II Auction demonstrated that fixed-wireless technology was the most cost-effective means to deploy rural broadband service in the extremely high cost areas of Nebraska located within the service territories of the price cap ILECs. In contrast to the over \$198.60 cost per month per location estimated by the cost model, all four CAF II winners in Nebraska committed to deploying broadband for less than \$39 per month / location of federal support. Importantly, these were no isolated bids offering to serve just a few locations – together these providers committed to serving 8,900 of 9,053 locations the FCC estimates are unserved in these extremely high cost areas. In other words, the CAF II Auction winners will extend broadband to roughly 98% of the unserved locations in the most high-cost areas served by price cap ILECs in Nebraska at a fraction of the cost estimated by the CAM.

**Table 1: Monthly Support/Location of CAF II Auction Winners – Nebraska  
(The CAM-Calculated Cost for Locations > \$198.60/month)**

	<b>Annual Support</b>	<b>Locations</b>	<b>Speed Tier</b>	<b>Support/ Month</b>
LTD Broadband	\$2,708	74	25/3	\$3.05
NE Colorado Cellular	\$24,099	56	25/3	\$35.86
Inventive Wireless of Nebraska	\$68	2	25/3	\$2.83
NextLink Internet <sup>6</sup>	\$4,084,839	8,768	100/20	\$38.82
	\$4,111,714	8,900		\$38.50

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<sup>6</sup> NextLink is clearly the most important CAF II Auction winner in Nebraska. NextLink is not new to providing broadband services using fixed wireless technology and currently serves over 26,000 customers. See <https://www.fiercewireless.com/tech/here-s-how-nextlink-biggest-caf-ii-auction-winner-spending-its-281m>

In addition, almost all of the locations (98.5%) will be offered 100/20 broadband speeds, *four times* faster than the 25/3 speed required by the Commission. Two of the CAF II Auction winners offering 25/3 broadband have concluded they could do so with less than \$5.00/month of federal support. Again, the CAM-produced cost estimates were above \$196.80/month for all of these locations. These facts demonstrate that the CAM cannot be trusted to accurately estimate the cost to serve specific census blocks and there is no reason to conclude that its A-CAM derivative is any more prescient. Indeed, if these cost models were in fact accurate, they would be licensed by network engineers, not to mention Wall Street, to make business decisions. We are unaware of any such uses.

On March 27, 2019, the Commission will learn which rural ILECs have accepted additional obligations in response to the FCC's offer of increased support. These will be voluntary decisions and commitments, based on the actual economic costs to extend service by these companies. No additional support should be provided to these companies to do what they will have already committed to the FCC they will do; nor should additional support be premised on the accuracy of the A-CAM's calculations. While there may be an ongoing "cost-revenue" gap according to A-CAM, that does not mean that there is an actual revenue shortfall in the real world. The Commission should provide support based on specific commitments and a demonstration of the actual additional support required to extend broadband.

**The HUBB Database Tracks Federal, Not State, USF Obligations**

The Commission's *Order Seeking Comment* proposes to use the HUBB database as evidence of deployment. As the Commission correctly notes, the HUBB database is used by the Universal Service Administrative Company to track whether companies are satisfying *federal* broadband deployment milestones.

It is not clear how the Commission proposes to use the HUBB database here. The HUBB database is not intended to track any additional build-out made possible by supplemental state funding. Consequently, either the Commission is intending to provide additional state funding to achieve the *same* build-out levels as would occur under the CAF-II system, or it envisions *additional* build-out requirements. It is our understanding, however, that the HUBB database would need to be modified to separately track additional state-level broadband deployment commitments.

In addition, the Commission should be aware that the HUBB database, while highly detailed in its locational requirements, is a reporting, not an auditing, mechanism. In other words, the data is not independently verified. This is not to suggest that any carrier would intentionally mislead the FCC as to its network capabilities, but history has suggested that each of the federal USF mechanisms was improved by complimentary auditing and the HUBB database does not itself provide such a function.

Finally, the *Order Seeking Comment* also suggests that the Commission intends to rely on the performance testing required by the FCC to assist in its validation efforts. As with our general discussion of the HUBB database above, these requirements apply to network locations funded by the CAF program and it is unclear whether such testing processes would need to be modified to accommodate locations separately funded by the Nebraska USF. In addition, there are several requests pending to delay and/or significantly change various requirements of the

performance testing Order.<sup>7</sup> As such, it may be premature for this Commission to rely on an Order that remains subject to significant revision.

Respectfully submitted this 7th day of March, 2019.



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<sup>7</sup> See, for instance, *Ex Parte* Communication of ITTA, Federal Communications Commission, WC 10-90, February 25, 2019.